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Rapport de la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, Margaret Sekaggya

Additif

Mission en Inde (10-21 janvier 2011)*

Résumé

La Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme a effectué une visite en Inde du 10 au 21 janvier 2011, afin d'examiner la situation actuelle des défenseurs des droits de l'homme dans le pays. Au cours de sa visite, elle s'est entretenue avec des hauts fonctionnaires au niveau central et au niveau des États, et avec des défenseurs des droits de l'homme.

Après une introduction, la Rapporteuse spéciale décrit, dans le chapitre II de son rapport, le cadre institutionnel et juridique de la promotion et de la protection des droits de l'homme.

Dans le chapitre III, elle revient en détail sur les problèmes actuels auxquels se heurtent les défenseurs des droits de l'homme en Inde dans le cadre de leurs activités légitimes, notamment les défenseurs des droits économiques, sociaux et culturels; les défenseurs touchés par la militarisation et les effets des lois relatives à la sécurité; les militants du droit à l'information; les journalistes; les défenseurs de sexe féminin et les défenseurs des droits de la femme et de l'enfant; les défenseurs des droits des personnes marginalisées; les défenseurs des minorités religieuses; les défenseurs qui s'emploient à établir les responsabilités dans le cadre des pogroms perpétrés; et les défenseurs qui s'occupent des violations des droits de l'homme dans les régions frontalières.

Enfin, dans le chapitre IV, la Rapporteuse spéciale formule des conclusions et des recommandations à l'intention de toutes les parties intéressées.

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé, et il est distribué dans la langue originale seulement.

Merci de recycler

Annexe

Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, on her mission to India (10–21 January 2011)

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I. Introduction

1. Pursuant to General Assembly resolution 60/251 and Human Rights Council resolution 7/8, the Special Rapporteur on the situation of human rights defenders conducted an official visit to India from 10 to 21 January 2011, at the invitation of the Government of India.

2. The Special Rapporteur would like to thank the Government of India for extending an invitation to her and for its exemplary cooperation throughout the mission. The Special Rapporteur also expresses her appreciation to the Office of the United Nations Resident Coordinator in India for its excellent support in preparation of, and during, the mission.

3. The purpose of the visit was to assess the situation of human rights defenders in India in the light of the principles set forth in the Declaration on Human Rights Defenders adopted by the General Assembly in 1998.

4. The Special Rapporteur commends the Government of India for opening its doors to her mandate. Previous requests to visit India were made by her predecessor in 2002, 2003 and 2004. She further commends the Government for extending a standing invitation to all special procedure mandate holders in September 2011.

5. The Special Rapporteur travelled to New Delhi, Bhubaneshwar (Orissa), Kolkata (West Bengal), Guwahati (Assam), Ahmadabad (Gujarat), Jammu and Srinagar (Jammu and Kashmir). She further commends the Government for enabling her to visit five states, which assisted her in gaining a better understanding of the local specificities in which human rights defenders work. Given the duration of the mission and the size of the country, the Special Rapporteur regretted that she could not access all parts of the country, but she invited those who wished to do so to provide her with information after the mission.

6. The Special Rapporteur had the opportunity to meet with the Foreign Secretary; the Union Home Secretary; the Additional Secretary (International Organizations and Environment Diplomacy); the Joint Secretary (Human Rights), Ministry for Home Affairs; the Joint Secretary and the Director of the Legal and Treaties Division, Ministry of External Affairs; the State Chief Secretary, State Home Secretary and Director-General of Police in states visited; judges from the High Court in Delhi; the Chair of the National Human Rights Commission; Members of the Statutory Full Commission; and Chairs and Members of West Bengal and Jammu and Kashmir Human Rights Commissions.

7. The Special Rapporteur also met a very wide and diverse segment of civil society representatives through national and regional consultations, and met members of the diplomatic community and United Nations agencies in the capital.

II. Legal and institutional framework for the promotion and protection of human rights

A. Legal framework

1. Domestic level

(a) Constitution

8. The Constitution of India, adopted in 1950, is widely recognized as a progressive document that provides a comprehensive legal framework for the guarantee of human rights.

9. Part III of the Constitution on Fundamental Rights lays down civil and political rights as justiciable. Articles 14 to 18 guarantee the right to equality and discrimination is thereby prohibited on grounds of caste, religion, race, sex, and place of birth. Abolishment of untouchability is also included (art. 17). Articles 23 and 24 also guarantee the right not to be subjected to exploitation and prohibit human trafficking and forced labour. Cultural and educational rights of minorities are also specifically protected under articles 29 and 30.

10. Part IV of the Constitution sets out economic, social and cultural rights that are non-justiciable as the Directive Principles of State Policy. They are recognized as fundamental in the governance of the country, to serve as guidelines for the framing and passing of laws. While the rights contained therein are not directly enforceable by the courts, through its progressive judicial activism over the years, the Supreme Court has endeavoured to achieve their justiciability, primarily by referring to article 21 of the Constitution, the right to life, as amounting to the right to life with dignity.

(b) The Protection of Human Rights Act

11. The 1994 Protection of Human Rights Act ("Human Rights Act" hereinafter), as amended in 2003, defines "human rights" as "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India". It is the founding law of the National Human Rights Commission of India (NHRC), the State Human Rights Commissions (SHRCs) and the district level Human Rights Courts.

(c) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act

12. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was enacted in 1989 to "prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences".

(d) The Right to Information Act

13. The 2005 Right to Information Act was enacted in order to provide citizens access to information under the control of public authorities to promote accountability and transparency in the functioning of public authorities. The Act, which also provides for the establishment of a Central Information Commission and State Information Commissions, require timely response to citizen requests for Government information.

(e) The draft Bill on the Prevention of Torture

14. The Prevention of Torture Bill in India, 2010, was passed by the Lower House (Lok Sabha) of India's Parliament on 6 May 2010, and is currently before the Upper House (Rajya Sabha). The adoption of this bill is seen as a prerequisite for the eventual ratification by India of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it signed in 1997, but has yet to ratify.

(f) Main public security legislations

(i) *National Security Act*

15. The National Security Act 1980 allows the Central Government or the state governments to make an order to detain any person who may act in a manner prejudicial to the security of the State or the maintenance of public order, for a maximum detention period of 12 months from the date of detention.

(ii) *Unlawful Activities (Prevention) Act*

16. The Unlawful Activities (Prevention) Act 1963, as subsequently amended, is the country's main counter-terrorism legislation extending to the whole of India. It allows the Government to place certain restrictions on civil liberties, including freedoms of expression, assembly, and association, in the interest of protecting the sovereignty and territorial integrity of India. It permits pre-charge detention of up to 180 days, and grants immunity from suit, prosecution or other legal proceedings to officials of the central and state governments acting under this Act.

(iii) *Armed Forces (Special Powers) Act*

17. The Armed Forces (Special Powers) Act, enacted in 1958, enables "certain special powers to be conferred upon members of the armed forces in disturbed areas". It was first applied to the north-eastern states of Assam and Manipur, but was later extended to also cover Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and Tripura following an amendment in 1972. The Act also applies to Jammu and Kashmir, following the enactment of the Armed Forces (Jammu and Kashmir) Special Powers Act in 1990. The Act grants the Armed Forces a wide range of extraordinary powers, including the powers to: "fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order" (art. 4(a)); "arrest without warrant any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest" (art. 4(c)); "enter and search without warrant" and "use … force as may be necessary" (art. 4 (d)). This Act further grants immunity for members of the Armed Forces (art. 6).

(iv) *Jammu and Kashmir Public Safety Act*

18. Jammu and Kashmir Public Safety Act of 1979 applies exclusively to the state of Jammu and Kashmir. It permits administrative detention of individuals without judicial intervention for a maximum period of two years, which is non-renewable, if the Government is "satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of the public order" (art. 8.1(a)).

(v) *Chhattisgarh Special Public Safety Act 2005*

19. The Chhattisgarh Special Public Safety Act of 2005 contains very broad definitions of "unlawful activities", including showing a "tendency" to "pose an obstacle to the administration of law". It permits administrative detention of individuals without judicial intervention for two to seven years without proof of intent or definite act to commit certain acts.

(g) The Foreign Contribution Regulation Act

20. The Foreign Contribution Regulation Act, adopted in 2010 and which came into force on 1 May 2011, replaced the Foreign Contribution Regulation Act of 1976. The Act aims at "consolidat[ing] the law to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies, and to prohibit such acceptance and utilisation for any activities detrimental to the national interest and for matters connected therewith or incidental thereto" (preamble).

2. International level

21. As at June 2011, India is a State party to: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child and its two Optional Protocols; and the Convention on the Rights of Persons with Disabilities.

22. The Special Rapporteur welcomes the commitment of India to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention for the Protection of All Persons from Enforced Disappearance, which it has signed but not ratified.

23. The Special Rapporteur notes that India has not recognized the competence of any of the treaty bodies to consider individual communications.

24. India is also a party to the Geneva Conventions of 12 August 1949, and the Convention on the Prevention and Punishment of the Crime of Genocide.

25. International treaties are not self-executing in India and cannot be invoked directly before the courts, although article 51 (c) of the Constitution stipulates that the State "shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another".

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.

28. The enactment of the Right to Information Act was a major achievement for India, of which the Government is justifiably proud. However, the Special Rapporteur was alarmed by reports of what is now commonly described as "Right to Information (RTI) killings", as presented in chapter III C.

29. The Special Rapporteur was deeply disturbed by the large number of cases brought to her attention during the course of her visit by defenders who claimed to have been targeted by the police and security forces under counter-terrorism legislation such as the Unlawful Activities (Prevention) Act, the Armed Forces (Special Powers) Act (AFSPA) and the Jammu and Kashmir Public Safety Act (see chap. III sect. B). The Special Rapporteur was told that these laws are being arbitrarily applied, particularly, but not solely, in areas where internal conflict or severe civil unrest exist, to provide legal grounds for a number of human rights violations against defenders. In addition, the Special Rapporteur is of the view that the broad and vague definitions of terrorism contained in these security laws, including the Unlawful Activities Prevention Act, have allowed the State apparatus to wrongfully target defenders.

30. The Special Rapporteur acknowledges the security challenges faced by the country, including in parts of India which have witnessed violent Maoist insurgency for nearly a decade. Between 2001 and 2011, the Maoists killed 5,465 civilians and destroyed infrastructures worth millions of dollars. While noting the 1994–1995 Ten Commandments issued by the Chief of the Army Staff to be followed by the army personnel while dealing with militants and insurgents,[1] she remains disturbed by the draconian provisions of the public security laws, such as the maximum period of pre-charge detention that goes beyond internationally recognized limits, the excessive powers of the police to search and arrest, and the presumption of guilt under certain circumstances. In addition, administrative detention places detainees beyond judicial control and hence at risk of serious human rights violations. She is encouraged by the announcement made by Indian Kashmir Chief Minister in October 2011, stating that "the gradual improvement in the security scenario and restoration of peace has paved the way for revocation of AFSPA in peaceful areas of the state".[2]

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.

B. Institutional framework

1. Law enforcement authorities

33. The Special Rapporteur met with the Joint Secretary, Human Rights, the Director of Human Rights (Ministry of External Affairs), and the State Chief Secretary, State Home Secretary and Director-General of Police in states visited. They reported that security is a state matter, and refuted the claim made by defenders that they have been branded by law enforcement officials. To the contrary, it was reported that dialogue with defenders has regularly taken place at the federal and state levels.

34. Human rights protection cells within the police are in charge of investigating allegations of human rights violations committed by police officers. The Director of Human Rights stressed that when abuses committed by law enforcement forces occur, necessary action is taken. Between January 1994 and December 2010, out of the 1,417 human rights-related complaints received against the Indian army personnel and paramilitary forces, 1,388 were investigated, and 1,308 eventually found to be false allegations. In 80 cases

[1] In *Naga People's Movement of Human Rights v. Union of India* (AIR 1998 SC 431), the Supreme Court observed that these Commandments are in essence a set of Guiding Principles for the prevention of human rights violations by soldiers involved in counter-insurgency operations.

[2] AFP, 12 October 2011.

where the complaints were found genuine, penalties were imposed on the perpetrators. It is, however, unclear how many cases relate to violations against defenders.

35. In 2006, the Supreme Court issued the judgment *Prakash Singh and Others v. Union of India and Others* on police reform. Owing to the "gravity of the problem" and "total uncertainty as to when police reforms would be introduced",[3] the Supreme Court issued seven directives aimed at achieving two main objectives: the autonomy of the police free from political interference, and enhanced police accountability. To this end, the Supreme Court ordered the establishment of independent Police Complaints Authorities, at the state and district levels, which "would take cognizance of only allegations of serious misconduct by the police personnel, [including] incidents involving death, grievous hurt or rape in police custody… [and in addition at the district level] extortion, land/house grabbing, and any incident involving serious abuse of authority". The recommendations of the Police Complaints Authorities for any disciplinary or criminal action are binding. The Special Rapporteur regrets not having received data on the number of operational Police Complaints Authorities, and the number of recommendations for any action (disciplinary and criminal) taken when the rights of defenders were violated.

36. Human rights courses, including on women's rights, have reportedly been introduced at police academies and extended to paramilitary forces. Some of these training sessions have reportedly been undertaken jointly with NGOs.

2. Judiciary

37. The Special Rapporteur met with two judges from the High Court in Delhi. She was informed that the Indian judiciary is very active and the Supreme Court guidelines play an important role in covering many gaps in law. Furthermore, no threats or pressure of any kind is exerted upon the judiciary.

38. The majority of cases pertaining to violations against defenders reportedly go to NHRC and SHRCs. Such cases may also go before Human Rights Courts in accordance with article 30 (Chap. VI) of the Human Rights Act, which states that "for the purpose of providing speedy trial of offences arising out of violation of human rights, the state Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences". The Special Rapporteur was informed by the Joint Secretary that 10 states presently have human rights courts. She, however, did not receive information on cases handled by those courts which pertain to violations of defenders' rights.

3. National and State Human Rights Commissions

(a) National Human Rights Commission

39. The Special Rapporteur met with the Chair and several members of the National Human Rights Commission (NHRC) who apprised her of the functioning of the Commission, which covers 28 districts. Chapters II–IV of the Human Rights Act[4] govern the establishment of NHRC, its composition, functions, powers and procedure.

40. Article 12 lists the various functions of the Commission, including to "(a) inquire, suo motu or on a petition … into complaint of (i) violation of human rights … ; or (ii) negligence in the prevention of such violation, by a public servant; (b) intervene in any proceeding involving any allegation of violation … pending before a court with the

[3] Supreme Court of India: http://supremecourtofindia.nic.in/orders_guidelines.htm

[4] http://www.nhrc.nic.in/

approval of such court; (c) visit … any jail or other institution under the control of the state Government, where persons are detained … ; … (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation; ... (i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights".

41. According to article 20 (1), the Commission "shall submit an annual report to the central Government and to the state Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report".

42. Article 14(1) provides that "the Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be".

43. In 2010, the Commission registered 65,827 cases for consideration, and disposed of 62,551 ones, including cases brought forward during previous years. The Commission also transferred 5,673 cases to SHRCs for disposition. It recommended payment of interim relief in 269 cases amounting to 177,033,500 rupees. At the time of the visit, the Chair of the Commission reported that there were 32 cases specifically on harassment by the police against defenders, but few cases were deemed serious.

44. The Special Rapporteur was informed that the Commission conducts research and investigation with a team of 350 people. It cannot conduct investigation on a sub-judice matter. Most recommendations made by NHRC are accepted by the Government. He refuted claims of a backlog in handling complaints by defenders. The Chair acknowledged some delays, but insisted that cases are usually dealt within few days. The Special Rapporteur was also told that, upon investigation, reports on cases are issued within a week and no complaints lie unattended. He added that the Commission goes public on certain issues, but it is not a regular function. From time to time, it makes field visits throughout the country, staying for three days in one place, meeting local defenders and taking immediate action. The most recent annual report available is from 2008/09, which has yet to be placed before the Parliament. The Special Rapporteur was also told that NHRC has an annual budget of 40 million rupees and does not suffer from lack of resources.

45. The Special Rapporteur welcomes the recommendations made at the workshop on human rights defenders held in New Delhi on 12 October 2009. These include providing a focal point for human rights defenders within the Commission; the posting on NHRC and SHRC websites of complaints of harassment by human rights defenders to draw attention on their situations; the dissemination of the Declaration on Human Rights Defenders to the Chief Secretaries and Directors General of Police of all states and Union Territories, as well as other Government civil servants; the inclusion of cases of defenders' rights along with action taken thereon in a section of its annual report; and the call on all training institutions for public functionaries to include human rights awareness in their courses, notably on the role of defenders. The Special Rapporteur particularly welcomes the call made by NHRC to the Government of India to have invited her to the country.

46. In the framework of the implementation of the above-mentioned recommendations, the Special Rapporteur was informed that NHRC sent the Declaration on Human Rights Defenders to all authorities, including police departments. A human rights defenders focal point was established, whose phone number has reportedly been circulated to all defenders; and submissions on violations against defenders and information on related action taken have been posted on the Commission's website since July 2011.

47. The Special Rapporteur was informed that NHRC works very closely with NGOs (there is a NHRC Core Group of NGOs) on a regular basis, often according to their advice,

and encourages and supports the work of the defenders community, notably through the organization of human rights training sessions.

(b) State Human Rights Commissions

48. Chapter V of the Human Rights Act covers the establishment and functioning of SHRCs. There are currently 20 SHRCs in India.

49. SHRCs are vested with the same functions as NHRC, except the study of treaties and other international human rights instruments (art. 29 (c) of the Human Rights Act). They are further required to submit annual reports, and at any time special reports, to state Governments concerned (art. 28). SHRCs are staffed with a Secretary, and police and investigative officers (art. 27).

50. The Special Rapporteur met with representatives of SHRCs of West Bengal, Gujarat, and Jammu and Kashmir. She was apprised of their work, notably their *suo motu* enquiries, activities in raising awareness on human rights standards and the reportedly good dialogue they have had with local civil society representatives. All the commissions stated that, although they can be parties in a trial, they do not want to "interfere" with legal processes.

51. The Secretary of the West Bengal SHRC stated that the Commission scans petitions and takes up complaints against any public officials who may violate human rights violations. He acknowledged some delays in handling complaints, owing to a lack of staff. The Commission presented itself as a speedy procedure to investigate claims of violations; 99.5 per cent of its recommendations have been accepted by the Government.

52. The Chair of the Gujarat Human Rights Commission shared data on petitions filed against public officials, but no specific reference to human rights defenders was made. He said that the Commission never issues media statements. The Commission meets NGOs on special occasions; it has undertaken awareness-raising on human rights standards. When asked regarding claims about false cases brought against defenders, the Chair responded that false cases are brought against the police.

53. The Chair of the Jammu and Kashmir Human Rights Commission said the Commission has existed since 1998. It is composed of the Chair, two members and more than 100 staff, including 80 police investigation unit staff. He shared figures of human rights abuses in general where the police were the perpetrators. During his time, the state commission has not received many cases of defenders and such cases are generally minor, with few complaints of killings or arrests.

4. Statutory commissions

54. There are National Commissions for Minorities, for the Scheduled Castes, for the Scheduled Tribes, for Women and for the Protection of Child Rights. These Commissions together form the Statutory Full Commission, and the respective Chairs are represented in NHRC as "deemed members" and are involved in the non-judicial functions of NHRC. The Special Rapporteur met with the Chair of the National Commission for the Protection of Child Rights.

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.

57. While the Special Rapporteur notes the claim made by officials that law enforcement authorities receive human rights education, she remains concerned that it is not enough. In fact, Justice Vikramjeet Sen and the Chair of the Jammu and Kashmir Human Rights Commission claimed that the police had not been sensitized to human rights, as torture, killings and custodial death by the police and paramilitary forces are frequently brought to their attention.

(b) Judiciary

58. The Special Rapporteur was informed that the functioning of the judiciary is hampered by a backlog and significant delays in administrating cases of human rights violations due to a lack of capacity, manpower and resources. Furthermore, high costs of litigation have reportedly restrained access to justice for victims. Police intimidation is also said to play a role in deterring victims from filing cases.

(c) NHRC and SHRCs

59. NHRC and the existing SHRCs are key avenues where human rights defenders can seek redress. However, the vast majority of the defenders that the Special Rapporteur met during the mission voiced their disappointment and mistrust in the current functioning of these institutions.

60. Defenders have submitted complaints related to human rights violations to the Commissions, but reportedly their cases were either hardly taken up or the investigation, often after a significant period of delay, concluded that no violations had occurred or mild action was pursued rather than prosecution. Their main concern lies in the fact that the investigations into their cases are conducted by the police, who in many cases are the perpetrators of the alleged violations. This concern was echoed by the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights in May 2011, which stated that "this practice has adverse implications for the actual and perceived independence of the NHRC".[5] Another key concern is the one-year limit on submitting complaints to NHRC. The Special Rapporteur finds this limitation highly problematic.

61. The composition and pluralism of the Commission is another cause of criticism, since very few candidates are eligible to apply for membership. Similarly, the Sub-Committee on Accreditation voiced concern over this issue. In addition, there has been no female member in NHRC for the past three years. To this end, amendments to the Human Rights Act are needed, as supported by the Chair of the Jammu and Kashmir Human Rights Commission.

62. While the Special Rapporteur certainly welcomes the establishment of a human rights defenders focal point within NHRC, she believes that there is space for him/her to be more proactive.

[5] International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Sub-Committee on Accreditation report, May 2011 (29 August 2011), sect. 3.5 (2). Available from http://nhri.ohchr.org/EN/WhoWeAre/News/Pages/News.aspx.

63. According to NGOs, including those belonging to the NHRC Core Group of NGOs, the engagement of NHRC through this Core Group is haphazard and unsatisfactory.

64. The lack of capacity seems to be a major obstacle to the work of NHRC and SHRCs.

65. Defenders also reported that NHRC is not proactively exercising its full mandate provided by article 12 of the Human Rights Act as it used to in the past. The Special Rapporteur calls on NHRC to become once again the true voice of the people and the model for other national human rights institutions it once was. It certainly can.

(d) Other statutory commissions

66. Defenders were similarly circumspect with regard to the work of the other statutory commissions, mainly deploring a lack of capacity. The Sub-Committee on Accreditation also regretted that the "deemed members" of NHRC, consisting of the chairpersons of the other statutory commissions, are not adequately involved in discussions on the focus, priorities and core business of the NHRC non-judicial functions.

III. Situation of human rights defenders

67. In the course of her visit, the Special Rapporteur met more than 300 human rights defenders engaged in advocating and protecting civil, political, economic, social and cultural rights. She is grateful to all those who travelled long distances to meet her in Delhi and outside the capital. She was much impressed by the vibrancy and high sophistication of the Indian civil society. Since 2004, the mandate has sent 65 communications to the authorities on alleged human rights violations against defenders, including 7 after the mission.

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.

70. The cases cited are only a few representative ones of the valued information received owing to word limit for this report.

A. Defenders working on economic, social and cultural rights

71. In the context of the country's economic policies and despite legal requirements of consultation and rehabilitation, defenders engaged in denouncing development projects that threaten or destroy the land, natural resources and the livelihoods of their community or of other communities have been targeted, increasingly on a joint basis, by State agents and private actors and are particularly vulnerable.

72. In Assam, indigenous communities who were not consulted on the construction of mega-dams and criticized such projects because of their human rights and environmental consequences were branded by the authorities as anti-Government activists. This is the same rhetoric used under the Armed Forces (Special Powers) Act. Defenders live in constant fear. In Assam, one defender was tortured with electric shocks while in detention and a woman defender was shot. Three defenders were killed in Manipur.

73. In Andhra Pradesh, defenders who denounced environmental issues and sensitized citizens about their right to land have been branded as sympathizers of Naxalites, or being Naxalites.

74. In Kerala, defenders protecting natural resources (forest, land and water) have been repeatedly arrested, beaten and in some instances killed because of their activities.

75. In Nagaland, a dam protestor was seriously injured by teargas used against her: the state reportedly did not acknowledge that she was affected by security forces' actions.

76. In Orissa, anti-mining campaigners have been killed and the police reportedly claimed that they were Maoists. Many corporate projects, which caused land grabbing and displacement, were undertaken with the collusion of the Government. A defender denouncing bonded labour spent 110 days in jail. In Orissa, women defenders are at the forefront of demonstration against dams. Forty-two women defenders were put in jail for protesting against the building of a dam.

77. In West Bengal, an activist who denounced the sponge iron pollution in the state and the health consequences on the population was arrested in January 2010 on the charge of sedition. He was released four months later. Another activist advocating for a clean environment was arrested.

78. In Gujarat, trade unionists advocating for the implementation of the 2005 National Rural Employment Guarantee Act were attacked in front of authorities and the police and then falsely charged of attacking the attackers. Defenders providing legal assistance to migrant workers received threats, and reported them to the police. However, the police refused to register the complaint and instead filed a counter-case.

79. In Maharashtra, a former judge from the High court of Judicature at Mumbai was arrested by the police in December 2010 when participating in a peaceful protest against the building of six nuclear reactors in Jaitapur. He was taken to court and reportedly tortured in police custody.

80. In Mumbai, a woman defender supporting slum-dwellers facing eviction received threats for conveying their voices.

81. In Delhi, defenders working on urban poverty issues have reportedly been phone tapped and prevented from holding protests.

B. Defenders affected by security legislations and militarization

82. Defenders operating in Jammu and Kashmir and in the North East states who have challenged the heavy military presence in these states for decades and denounced human rights-related violations have faced multiple challenges.

83. At the time of the visit, Manipur was reportedly the state worst affected by militarization, with more than half a dozen human rights groups having been branded as terrorists due to their self-determination advocacy work. Since 2000, Irom Sharmila, who has been on a hunger strike to demand the repeal of the Armed Forces (Special Powers) Act, has been forcibly detained and force-fed in a hospital in Imphal. For 10 years, NHRC reportedly never visited Ms. Sharmila, despite repeated requests by defenders. The Special

Rapporteur thanks Ms. Sharmila for her letter, read by her brother, during her visit to Guwahati.

84. In Manipur, on 5 August 2010, several human rights defenders were arrested as part of a crackdown to end protest against an alleged extrajudicial killing in Imphal by the police. They were remanded to judicial custody for 13 days and detained under the National Security Act in addition to the judicial remand according to an order of the Imphal West District Magistrate. On 25 August, the President of Poirei Leimarol Meira Paibi Apunba Manipur, was arrested by the Imphal West Police, along with two activists. The police seized posters advocating "Repeal AFSPA 1958" and "Punish criminal police commandos". She was remanded in judicial custody for 15 days and the two other activists were released on the same day. Similarly, women defenders, including a 70-year-old woman activist, were arrested and detained for months because of their peaceful protest against the National Security Act. In Nagaland, defenders have been branded as terrorists.

85. In addition, defenders denouncing the alleged nexus between politicians and armed groups have been threatened not only by such groups, but also by the police. Some were picked up by the police and their laptops and mobiles were confiscated. They were released without charge.

86. In Jammu and Kashmir, in the case of Jalil Andrabi, a lawyer who denounced abuses committed by security forces and whose body was later found after he had spent several days in military custody, justice has reportedly not been done. An alleged perpetrator was identified and, despite a High Court order to arrest him, he managed to flee abroad. Furthermore, investigations in the suspected involvement of four other individuals in Mr. Andrabi's murder have not taken place.

87. In the case of Shopian, a girl allegedly gang raped and killed by the military, criminal charges were filed against lawyers, witnesses, doctors and neighbours who pointed to the military. Members of the committee established in her memory, who always gathered peacefully, were reportedly physically abused by the Central Reserved Police Force. Passport applications by family members were denied. Similarly, in the case of a girl's disappearance since 2002, her parents were denied passports. The police also allegedly used abusive language against them.

88. In addition, widows and other relatives of disappeared have been harassed and intimidated because of their advocacy work. Families have been pressured to withdraw their complaints in order to receive ex gratia release.

89. Parvez Imroz, an advocate and president of the Jammu Kashmir Coalition of Civil Society, has faced repeated harassment because of his work in denouncing impunity for human rights violations by security forces in the state, including extrajudicial executions, enforced disappearances and torture. In 2008, security forces reportedly attacked his home at night in reprisal for having report a few months earlier published on alleged mass graves. The same year, Mr. Imroz was arrested and beaten by police officers, along with several other persons, while monitoring a demonstration during the first phase of the state legislative election in Bandipora. He was accused of instigating the rally which turned violent. Mr. Imroz was also prevented from travelling abroad to receive an award for his human rights achievements by not having his passport renewed. He further stressed the unique situation of defenders in the state, who receive little attention from Indian NGOs outside the state.

90. Lawyers operating in Jammu and Kashmir were asked by the authorities whether they were with them or against them. Six lawyers were killed in recent years because they were representing victims of human rights violations. The President of the Jammu and Kashmir High Court Bar Association in Srinagar was arrested allegedly because of his legal advocacy for the detained and disappeared in Jammu and Kashmir.

91. Student activism in Jammu and Kashmir is reportedly banned: for instance, students are not allowed to criticize fee hikes. Students in Kashmir are profiled by intelligence services and often branded as separatists, as was the case of one student who was falsely charged and his house raided. Some security forces came to the house of another student, armed with weapons, to intimidate his parents.

92. In Chhattisgarh, relief organizations have been prevented from carrying out their work. Members of such organizations have been threatened, and in some instances ambulances were intercepted. In Orissa, defenders spoke about "Maophobia" in the state, with adverse consequences for their work. In West Bengal, a defender is accused of being a Maoist, whereas he is unable to go home because the Maoists reportedly want to kill him. In addition, the Committee for the Release of Political Prisoners, which operates in West Bengal, was charged on several occasions, including for "raising war against the state". The Committee was stigmatized as belonging to the Maoists.

C. Right to Information activists

93. Right to Information (RTI) activists have increasingly been targeted for exposing human rights violations and poor governance, including corruption of officials. This is a new category of human rights defenders, who are extremely vulnerable because they may be ordinary citizens, not linked to any human rights organization, and are often found in the same locality as the alleged perpetrator. Their families have also been targeted in some instances.

94. At the time of the visit, there had been as many as 10 cases of extrajudicial killings recorded in 2010 of individuals who had filed under RTI. These activists had denounced: land scams, administrative corruption, corruption in public distribution system and sand mafia, school irregularities, and various malpractices in Maharashtra; scams in a welfare scheme in Bihar; sought information on the funding of a pipeline in Andhra Pradesh; exposed illegal mining, and sought details about the illegal electricity connection obtained by the Torrent Power Company in Gujarat. One of these activists was a police home guard who sought information on Government funds and activities undertaken by his village chief in Katghar in Uttar Pradesh.

95. Two more cases have since been recorded. In March 2011, an activist for the National Rural Employment Guarantee Act was beaten to death by unidentified assailants in Jerua, Jharkhand, for having exposed corruption in the National Rural Employment Guarantee Act by contractors. In August 2011, a woman RTI activist was shot dead by unidentified individuals on her way to attend an anti-corruption demonstration in Bhopal, Madhya Pradesh.

96. In Rajasthan, RTI activists are reportedly continuously attacked. Nine cases were brought against an activist. An RTI activist who enquired why there are temples in every official building although it is a non-secular state received threats.

97. In Punjab, defamation cases were filed against RTI activists.

D. Journalists

98. In Manipur, six journalists were killed in the last decade. Journalists reported pressure exerted on them by the authorities not to report on some aspects of the conflict. They mentioned the closure of four newspapers in the last few years. State agencies often use the presence of armed underground groups to suppress a certain type of information or journalist's work. The editor of the newspaper *Sanaleibak* was arrested and detained for a

week in December 2010 on the allegation that he works for secessionist elements operating in the region. He was released on bail as no prima facie case had been made against him.

99. In Jammu and Kashmir, at least 10 journalists have been killed since 1990, allegedly by armed forces and by non-state actors. There were reportedly no investigations conducted in those killings. Journalists stated that they have been approached by both parties to the conflict to join them, but always refused in order to stay impartial and objective. Journalists who covered protests in the streets were on some occasions slapped by law enforcement authorities who branded them as "enemies", and had their equipment damaged. They reportedly lodged complaints, to no avail. They also mentioned the difficulty in accessing information from the authorities and, when accessed, to publish it. The violence in the summer 2010 was reportedly marked by an unprecedented censorship by the authorities.

100. In Chhattisgarh, in January 2011, a reporter with the daily *Nai Duniya* was killed outside his house near Raipur. A note was found next to the body, on which it was written "if you don't stop publishing news, you will die". In December 2010, a *Dainik Bhaskar* reporter, in Bilaspur district, was shot by unidentified gunmen.

101. In West Bengal, a journalist was brutally assaulted and tortured by Bengali police because he documented the case of a developer who acquired the land of a poor man and captured it on camera.

102. In Karnaka, the chief editor of the newspaper *Karavali Ale*, was arrested in 2007 and 2008, together with his wife, because his newspaper published a letter from a Christian reader offended by a religious procession headed by a Jain Sadhu who was naked as per religious customs. Mr. Seetharam and his wife were charged with inciting communal disharmony. The High Court ultimately ordered their release.

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. The militarization of states has presented a greater danger for women defenders. Many complained that the Women's Commissions were not doing enough to protect women defenders.

104. In Orissa, a woman defender who works on trafficking issues had two cases filed against her allegedly because of her advocacy work, and the perpetrator of sexual violence who was convicted due to her testimony threatened to kill her.

105. In Tamil Nadu, the former State Secretary for Women worked on the case of Dalit women gang raped in police custody. The victims were compensated, but the culprits were not convicted. Following this case, the police ransacked the house of the defender's house and those present were injured. The High Court awarded her compensation and the culprits received three-year convictions.

106. In Chhattisgarh, a team of women activists trying to visit the place where Adivasi women were raped were threatened and forced to leave.

107. In Gujarat, the Government reportedly tends to ignore the existence of defenders working on women's rights. It is reportedly fine to work on health or HIV/AIDS issues, but not to speak about women's rights.

108. Activists working on trafficking of women and children have reportedly been under attack by traffickers and by the state. In March 2010, a group of individuals entered a

tuition centre working on issues of forced prostitution and trafficking in Shivdaspur, Uttar Pradesh. They verbally abused staff members present at the premises and threatened that "they would break the arms and legs of anyone who attempted to continue teaching the children there". A few days later, a group of individuals ransacked the centre, beat staff members and tore their clothes. According to the authorities, the matter pertained to a property dispute which was later amicably resolved.

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

[6] A rowdy sheeter is someone with a criminal record.

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.

2. Adivasis

117. The ancestral land, water and resources of Adivasis are part of their identity as well as livelihood. They have been subjected to severe violations of their rights by state Governments and private actors who often act in collusion to exploit such lands which are often rich in minerals and natural resources. Frequently, Adivasis's non-violent means of protests against exploitation of their lands and displacement have been met by violent state response. They are often arrested and placed in detention with false cases. In addition, they are often victims of the ongoing conflict between the authorities and the Maoists.

118. On 14 May 2007, Dr. Binayak Sen, a medical doctor and General Secretary of the People's Union for Civil Liberties, Chhattisgarh, and Vice-President of People's Union National, was arrested and charged with allegedly "aiding and abetting Naxal activity in the state" under the Chhattisgarh Special Public Security Act 2006 and the Unlawful Activities (Prevention) Act 2004. Dr. Sen had actively advocated access to healthcare for Adivasi communities in the state of Chhattisgarh, and had been instrumental in highlighting alleged human rights abuses against these communities, including unlawful killings, sexual abuse and forced disappearances. In 2008. Dr. Sen was placed in solitary confinement for one month. In various parts of the country, protests in support of Dr. Sen were not allowed. He was granted bail by the Supreme Court on 15 April 2011, which the Special Rapporteur welcomes. She also notes that Dr. Sen was recently appointed member of the Steering Committee on Health for formulation of the Twelfth Five Year Plan (2012–2017) for Health Sector of the Government of India.

119. In Orissa, staff members of KIRDT, an NGO which sensitizes Adivasis on their rights when facing eviction, were harassed by the police who branded them as Maoists. Their families were ostracized.

120. In Jharkhand, several indigenous peoples were arrested following protests in relation to a land dispute and forced eviction benefitting corporate companies.

121. In Assam, 1,000 Adivasis came to Guwahati to peacefully demonstrate, demanding for scheduled tribe status: more than 300 were reportedly injured by police officers using batons.

3. Sexual minorities

122. Defenders engaged in promoting and defending the rights of lesbian, gay, bisexual and transgender (LGBT) persons face discrimination, stigmatization and threats reportedly from many parts of society, especially in rural areas. On some occasions, the police attacked LGBT activists for raising issues pertaining to the situation of the LGBT community. In 2008, five LGBT defenders were falsely charged with extortion and unlawful assembly. In 2009, one LGBT activist was arrested in Orissa and detained for one day because of his advocacy work. He was insulted by police officers in the course of his arrest and detention.

123. In West Bengal, an LGBT activist stated that she has faced public harassment, emotional violence and beatings.

G. Defenders working for religious minorities

124. Church workers engaged in promoting and protecting the rights of marginalized people, including Adivasis and Dalits, have reportedly faced, in a number of instances, intimidation and harassment in their daily activities.

125. In Gujarat, in 2004, a case was opened against Cedric Prakash, Director of the human rights NGO Prashant. He was labelled as "anti-national". No reason was given to the summoning. In addition, the police and the intelligence services have regularly visited religious centres to intimidate the workers, asking whether they are connected to Father Prakash.

126. In 2008, an activist defending Dalit Christians in Kandhamal, Orissa, was attacked with swords and axes by a paramilitary group armed. His home was ransacked, looted and set on fire. He called the police and the fire brigade, but no one came because the incident reportedly occurred late at night. He was subsequently forced to leave his village. The trial was yet to start and the perpetrators were reportedly threatening him.

127. In Kerala, defenders reportedly face Islamophobia. In Orissa, a defender working with youth Muslim groups was accused by the authorities of working against the state.

128. In Gujarat, the founder of the social organization Mujahid Young Organisation, which supports Muslim minorities in terms of education, among others, faced harassment from the police following a bomb blast in Gujarat in 2008. The founder was summoned for questioning on many occasions because of the work of his organization, in an alleged attempt to break him. Details on the registration and constitution of his organization, activities undertaken, a list of members and receipt books were demanded on several occasions. Other defenders were reportedly interrogated in connection to this bomb blast.

H. Defenders seeking accountability for communal pogroms

129. In 2002, Ms. Saribhai was the first activist to file a case against the Government of Gujarat for "genocide" following the Gujarat riot of February 2002. Within 24 hours, Ms. Saribhai received threats, together with her children and colleagues, and a media campaign was led against her.

130. Teesta Setalvad, a lawyer and Secretary of the organization Citizens for Justice and Peace, who has been advocating for the rights of Gujarat victims, believes her physical safety is endangered by the reported hostility of the Gujarat state and its police, on the basis of threats of arrests made against her. She has also reportedly been followed by unmarked vehicles immediately following court hearings on more than one occasion. Her professional credibility has also been put into question by the state government of Gujarat, accusing her of tutoring witnesses and tampering with evidence.

131. Another lawyer who defended Gujarat victims seeking compensation has faced hostility from his colleagues.

132. A former senior police officer denounced the way the police handled the 2002 communal pogrom, not registering complaints of non-Hindu victims, and alleged that the system was subverted as victims did not get justice. He was asked to appear before the commission of enquiry, but was told by his hierarchy that if he told his story his promotion would be denied.

I. Defenders monitoring violations on border areas

133. Defenders engaged in monitoring human rights violations by security forces on border areas have been targeted because of their activities. For instance, in West Bengal, in December 2010, a defender working for NGO MASUM on alleged atrocities by Border Security Forces (BSF) was beaten in police custody, and spent some time in hospital due to head injuries. He was later reminded that there was an arrest warrant pending against him in relation to two complaints filed by the BSF, whereas he was reportedly not in the vicinity of the BSF outpost during the commission of the alleged offences.

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 Chhattisgargh 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.**

[7] See the report of the High Commissioner for Human Rights on witness protection, A/HRC/15/33.

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.**