

URGENT APPEAL - THE OBSERVATORY

New information

IND 004 / 0408 / OBS 055.3

Release on bail / Judicial harassment

India

April 18, 2011

The Observatory for the Protection of Human Rights Defenders, a joint programme of the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH), has received new information and requests your urgent intervention in the following situation in **India**.

New information:

The Observatory has been informed by People's Watch about the release on bail of 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.

According to the information received, on April 15, 2011, the Supreme Court of India ordered the release on bail of Dr. Binayak Sen. As a matter of fact, the Supreme Court had to review the decision of February 10, 2011 of the Chhattisgarh High Court, which refused to grant bail to Dr. Sen on the grounds that he was closely associated with "alleged" people from the Naxalite Maoist guerrilla, which made him guilty of sedition. Dr. Sen had filed an application for a release on bail on January 6, 2011 before the Chhattisgarh High Court. In its April-15 ruling, the Supreme Court stated that Dr. Sen may be a sympathiser to the Naxalite Maoist guerrilla¹ but that this could not be considered as sedition, thus overruling the February-10 decision of the Chhattisgarh High Court and allowing the release on bail of Dr. Sen.

Dr. Sen had been sentenced in first instance on December 24, 2010 to life imprisonment by the Raipur Additional District and Sessions Judge of the same Chhattisgarh High Court, on charges of "sedition" and "conspiracy" under the Sections 124 (A) and 120 (B) of the Indian Penal Code. Dr. Sen had been accused - *inter alia* - of aiding Naxal activity through the transmission of letters written by Maoist leaders of the Communist Party of India to a suspected guerrilla leader from the same party in Chhattisgarh prison. Dr. Sen had appealed against the December-24 decision to the Chhattisgarh High Court on the grounds that his incrimination lacked evidence to prove that he had committed sedition and conspiracy.

As of issuing this urgent appeal, in spite of the release on bail granted by the Supreme Court to Dr. Sen, the charges against him have reportedly not been dropped. The hearings in appeal against the December-24 decision will therefore be held before the same Chattishgarh High Court, at an unknown date.

The Observatory welcomes the release on bail of Dr. Binayak Sen, and thanks all the persons, institutions and organisations who intervened in his favour.

The Observatory nonetheless remains concerned about the charges pending against him and calls the Indian authorities to put an end to the judicial harassment against Dr. Sen and to drop charges against him, since his condemnation only aims at sanctioning his human rights activities.

¹ Dr. Sen always asserted, however, that his visits to prisons had solely a humanitarian basis. This human rights defender has been harassed since 2007 under the "Chhattisgarh Special Public Security Act 2005" and the "Unlawful Activities (Prevention) Act 1967", amended by the "Unlawful Activities (Prevention) Amendment Ordinance, 2004", for alleged links with the Naxalite Maoist guerrilla. See *infra*, and 2010 Annual Report of the Observatory.

Background information:

Before his arrest, Dr. Binayak Sen had led human rights activities in the State of Chhattisgarh, where the State police and armed Maoists have been engaged in clashes over the last seven years.

Dr. Sen was notably engaged on the promotion and protection of the right to health of marginalised and indigenous communities in Chhattisgarh. He reported on unlawful killings of indigenous peoples from the Adivasis minority by the police and by Salwa Judum, a private militia allegedly sponsored by the State authorities to fight the armed Maoists.

He organised fact-finding investigations on human rights violations in the State of Chhattisgarh, especially in prisons where he documented abuses against detainees such as murders, underfeeding and absence of adequate sanitation leading to dysentery epidemics. In this context, he was in contact with people arrested for their alleged involvement in the Maoist Naxalite guerrilla.

Dr. Sen had notably visited Mr. Narayan Sanyal, a guerrilla leader of the Communist Party of India (CPI), to monitor his health status and conditions of detention in Chhattisgarh prison.

Those visits to the Maoist leader led to his arrest and detention four years ago. On May 14, 2007, he was charged under the “Chhattisgarh Special Public Security Act 2005” and the “Unlawful Activities (Prevention) Act 1967”, amended by the “Unlawful Activities (Prevention) Amendment Ordinance, 2004”, for “aiding and abetting Naxal activity” and for having transmitted letters written by Maoist leaders of the CPI to Mr. Narayan Sanyal in Chhattisgarh prison. From March 15 to April 11, 2008, Dr. Sen was placed under solitary confinement at the Raipur Central Jail in Chhattisgarh.

On May 25, 2009, the Supreme Court of India granted bail to Dr. Sen on medical grounds as he was awaiting his trial by a court of first instance. Dr. Sen had been suffering from a heart ailment and needed treatment at Christian Medical College, Vellore, in Tamil Nadu.

On December 24, 2010, Dr. Binayak Sen was sentenced in first instance to life imprisonment by the Raipur Additional District and Sessions Judge of the Chhattisgarh High Court under charges of sedition and conspiracy. Immediately after the sentencing, the bail granted on May 25, 2009 by the Supreme Court of India to Dr. Sen was revoked, and he was taken back into the Raipur Central Jail.

Dr. Binayak Sen then decided to appeal against this sentence on the grounds that his incrimination lacked evidence to prove his accusation of sedition and conspiracy. He declared that he had met with Maoist leaders in prison in the frame of his work to monitor conditions of detention, and that he had never transmitted any documents to Mr. Narayan Sanyal. Moreover, according to him, his visits to the latter were always watched by the prison authorities, and no convincing evidence of his involvement in the Maoist guerrilla have reportedly been submitted to the Raipur Additional District and Sessions Judge in Chhattisgarh.

Following the December-24 sentencing, on January 6, 2011, Dr. Sen’s filed a bail application, which was notably supported by forty Nobel Laureates in a signed letter dated February 8, 2011². The EU delegation in India was allowed to attend the proceedings which took place on February 10, 2011. However, at the end of these hearings on the same day, his release on bail was rejected by the Chhattisgarh High Court on the grounds that Dr. Sen was closely associated with “alleged” people from the Naxalite Maoist guerrilla. The Chhattisgarh High Court referred to the doctrine of ‘guilt by association’ to justify its refusal.

² The letter is available on the Free Binayak Sen campaign’s website:
<http://www.freebinayaksen.org/?p=1504>

Dr. Sen then appealed the decision of the Chhattisgarh High Court dismissing his bail application before the Supreme Court of India, which ordered the release on bail on April 15, 2011.

Actions requested:

Please write to the Indian authorities and ask them to:

- i. Take all necessary measures to guarantee, in all circumstances, the physical and psychological integrity of Dr. Binayak Sen;
- ii. Put an end to any act of harassment, including at the judicial level, against Dr. Binayak Sen as well as against all human rights defenders in India;
- iii. Comply with the provisions of the Declaration on Human Rights Defenders adopted by the UN General Assembly on December 9, 1998, in particular:
 - Article 1, which states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”;
 - Article 6.a, which provides that “everyone has the right, individually and in association with others, to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems”;
 - Article 9.3.c, which states that: “everyone has the right, individually and in association with others, to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms”;
 - Article 12.2, which provides that “the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”;
- iv. Guarantee the respect of human rights and fundamental freedoms in accordance with the Universal Declaration on Human Rights and other international human rights instruments ratified by India.

Addresses:

- Shri Manmohan Singh, Prime Minister of India, Prime Minister’s Office, Room number 152, South Block, New Delhi, Fax: + 91 11 2301 6857 E-mal: pmosb@pmo.nic.in
- Dr. P. Chidambaram, Union Minister of Home Affairs, Ministry of Home Affairs, 104-107 North Block, New Delhi 110 001 India, Fax: +91 11 2309 2979. hm@nic.in
- Justice Kapadia, Chief Justice of India, Supreme Court, Tilak Marg, New Delhi -1, Fax: +91 11 233 83792, Email: supremecourt@nic.in
- Justice K. G. Balkrishnan, Chairperson of the National Human Rights Commission of India, Faridkot House, Copernicus Marg, New Delhi 110 001, Tel: +91 11 230 74448, Fax: +91 11 2334 0016, Email: covdnhrc@nic.in ; ionhrc@nic.in
- Ambassador Extraordinary and Plenipotentiary Permanent Representative to the United Nations (Geneva), Rue du Valais 9, 1202 Geneva, Switzerland. Tel: +41 22 906 86 86, Fax: +41 22 906 86 96, Email: mission.india@ties.itu.int

- Embassy of India in Brussels, 217 Chaussée de Vleurgat, 1050 Brussels, Belgium,
Fax: +32 (0)2 6489638 or +32 (0)2 6451869

Please also write to the diplomatic representations of India in your respective countries.

Geneva-Paris, April 18, 2011

Kindly inform us of any action undertaken quoting the code of this appeal in your reply.

The Observatory, an OMCT and FIDH venture, is dedicated to the protection of Human Rights Defenders and aims to offer them concrete support in their time of need.

To contact the Observatory, call the emergency line:

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