

THE OBSERVATORY

for the Protection of Human Rights Defenders

L'OBSERVATOIRE
pour la Protection des Défenseurs des Droits de
l'Homme

EL OBSERVATORIO
para la Protección
de los Defensores de Derechos Humanos

COMMONWEALTH HEADS OF GOVERNMENTS MEETING

Kampala, Uganda
23-25 November 2007

Contribution of
The International Federation for Human Rights (FIDH)
and
The World Organisation Against Torture (OMCT)

in the framework of their joint programme,
The Observatory for the Protection of Human Rights Defenders

fidh

International Federation for Human Rights
17, Passage de la Main d'Or
75 011 Paris, France



World Organisation Against Torture
Case postale 21 - 8 rue du Vieux-Billard
1211 Geneva 8, Switzerland

The International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), in the framework of their joint programme, the Observatory for the Protection of Human Rights Defenders, would like to draw the attention of the members of the Commonwealth Heads of Government on the worsening situation of human rights defenders in Commonwealth countries in 2007.

In 2007, an important number of human rights defenders were thus subjected to judicial harassment, arrests, arbitrary detentions and other acts of violence (*Bangladesh, India, Malaysia, Pakistan, Sri Lanka*). In addition, new measures on freedom of association were drafted in *Zambia*, aiming at restricting the capacity of non-governmental organisations to operate in the country. These acts amount to a flagrant violation of the provisions of the 1991 Harare Commonwealth Declaration adopted by the Heads of Government on October 20, 1991 and of the Declaration on Human Rights Defenders adopted by the United Nations General Assembly on December 9, 1998.

The following list of cases is not exhaustive and is based on the information received by the Observatory throughout the year 2007.

I - Harassment and intimidation against human rights defenders

1/ Harassment against defenders of civil and political rights

In many members of the Commonwealth of Nations, those who stand for the defence of civil and political rights were subjected to acts of harassment, judicial proceedings, arbitrary arrests and detentions as well as to acts of torture and ill-treatment.

In *Bangladesh*, on January 11, 2007, President Iajuddin Ahmed proclaimed the state of emergency following violent political protests and a multiparty alliance threatening to blockade voting places before the planned January 22 elections, which were then indefinitely postponed. Under the state of emergency, some basic constitutional rights, including those of freedoms of speech, assembly, and movement, have been suspended. Furthermore, law enforcement agencies have been allowed to enter into any place without any warrant and to arrest any individual on suspicion. Since the new caretaker government assumed power, it has called on the army to stay in the streets pending elections. As of November 14, 2007, no date had been set for the elections and the state of emergency was still in force.

It is in this context that on January 27, 2007, Mr. **Shahidul Islam**, a leading human rights defender on land, water and river issues in the southwest region of Bangladesh, and Executive Director of the development NGO Uttaran¹, was arrested by military members from the training centre of Uttaran in Tala Upazilla. Mr. Islam was then brought to an interrogation cell, where he has allegedly been tortured. On the same day, the military handed him to the local police station. On January 28, 2007, Mr. Shahidul Islam was given one month' detention order under the so-called Special Powers Act² and was sent to jail. No official charges were brought against him. However, as of July 2007, Mr. Islam was still detained on the basis of the Special Powers Act, in spite of the issuance of a decision to release him on bail. No further information could be obtained as of November 2007.

• Furthermore, on May 3, 2007, Mr. **Nasiruddin Elan**, Acting Director of the human rights organisation Odhikar, was subjected to acts of harassment and intimidation after being summoned by phone by the Naval Intelligence Services in Banan, in order to discuss about the death of two men in naval custody at sea, in Bhola, in February and March 2007. Mr. Elan was taken to the Naval headquarters where two navy officers and two members of the Directorate General of Forces Intelligence (DGFI) insulted and threatened him with death. The four officers also declared that all members of Odhikar were involved in "seditious and anti-State activities", all of them being "traitors", "agents of America, India and Pakistan", "from where [Odhikar] received money". Finally, they urged Odhikar to stop all its activities. Mr. Zubayer added that if Mr. Elan mentioned this meeting to anyone, he would be arrested.

In *India*, on February 8, 2007, Mr. **Gopen Sharma**, District Human Rights Officer of People's Watch's "National Project on Prevention of Torture in India" (NPPT), in the Murshidabad District of West Bengal,

¹ Uttaran works in favour of the rights of the landless people and is based in Satkhira.

² The Special Powers Act of 1974 provides for the detention for long periods of individuals who might commit "prejudicial acts" against the State. Under Section 2(f) of the Act, "prejudicial acts" include undermining the sovereignty or security of Bangladesh, creating or exciting feelings of enmity and hatred between different communities and interfering with the maintenance of law and order. Detentions under the Special Powers Act generally rely on allegations with very little evidence.

and a member of the human rights organisation *Manabadhikar Suraksha Mancha* (MASUM), was arrested by police officers while visiting the Kaharpara Border Out Post of the Border Security Force (BSF) camp in order to collect information on three cases of human rights violations that would have been committed by the BSF, following complaints lodged to the National Human Rights Commission (NHRC). In the course of his arrest, Mr. Sharma was threatened and insulted by a police officer, who accused him of filing complaints with human rights groups against the police and the BSF. In addition, the police seized all documents and papers regarding the complaints to the NHRC and Mr. Sharma's mobile phone. On March 20, 2007, Mr. Sharma was released on bail. However, he remains prosecuted under Sections 420 ("cheating and dishonestly inducing delivery of property"), 468 ("forgery for purpose of cheating") and 471 ("using as genuine a forged document") of the Indian Penal Code, and faces up to ten years' imprisonment.

These events followed a NPPT fact-finding mission carried out on February 1, 2007 to inquire into human rights violations perpetrated by police officers against local villagers. When the fact-finding team reached the area, the BSF staff at the BSF Khayer Tala Border Out Post threatened and harassed the four members of the mission.

Furthermore, on August 1, 2007, Mr. Sharma was abusively charge sheeted by the Jalangi police station (Murshidabad district). The complainant in the case alleged that Mr. Sharma had accepted Rupees 6,000 (about 150 US\$) for, accordingly, promising that he would arrange for a telephone connection for him. The later accused Mr. Sharma of having failed to keep his promise. This was denied by Mr. Sharma. A case was then registered against Mr. Sharma under Section 420 of the Indian Penal Code, for "cheating". However, it seems that this case was filed at the initiative of two Sub-Inspectors of the Jalangi Police Station, namely Mr. Swapan Saha and Mr. Tuhin Biswas, who have been challenged several times by Mr. Sharma for their abuse of power. Furthermore, one of the witnesses present in court, Mr. Surya Kanta Sarkar, is accused within the framework of a case that Mr. Sharma had been investigating, i.e. the murder of Mr. Surya Kanta Sarkar's sister-in-law. In particular, MASUM had complained to various higher police officials and to the West Bengal Commission for Women about the fact that the officers of the Jalangi police station did not investigate the case properly. In particular, Sub-inspector Biswas would have played a vital role in helping that Mr. Surya Kanta Sarkar be arrested under lighter penal sections than it should have been.

On August 4, 2007, Mr. Sharma filed an application under section 438 of the Criminal Procedure Code for anticipatory bail to the District and Sessions Judge of Murshidabad. On August 9, 2007, at which date the hearing concerning the anticipatory bail application had been set, the police did not submit any report before the court of District and Sessions Judge of Murshidabad. The Court then directed the police to submit report over the matter.

- On March 8, 2007, Mr. **Vasanth SR**, a member of People's Watch, was arrested after he witnessed and attempted to inquire on behalf of the NPPT into a torture case as he was visiting the Medikeri Town Police Station in the Kodagu District of Karnataka in order to collect information on a police lathi charge that had taken place a few days earlier near Medikeri. Mr. Vasanth was reportedly beaten by the police while in custody. On the following day, Mr. Vasanth was released on bail. On August 22, 2007, charges under Sections 186 ("obstructing public servant in discharge of public functions"), 225 ("resistance or obstruction to lawful apprehension of another person") and 353 of the Indian Penal Code ("assault or criminal force to deter public servant from discharge of his duty") were framed against Mr. Vasanth. If found guilty, Mr. Vasanth, who is currently waiting for his trial to start, may face up to two years' imprisonment.

- On July 17, 2007, Mr. **Subash Mohapatra**, Director of the Forum for Fact-finding Documentation and Advocacy (FFDA), a human rights monitoring organisation in Raipur, Chhattisgarh, was arrested by policemen in the office of the Chhattisgarh State Human Rights Commission³. At the time of his arrest, Mr. Mohapatra was submitting comments on an investigation report, upon request of the Commission, regarding a case of a Dalit student whose grant had been seized by the Durg Rajnandgoan Grameen Bank because of the debts of her father. After Mr. Mohapatra refused to bribe to a clerk of the Commission, seven persons prevented him from leaving the office, abused him physically and verbally.

After being detained for three hours, he was transferred to the City Kotwali police station, where he was interrogated for his alleged connections to the armed Naxalite movement. Mr. Mohapatra was then brought back to the Gol Bazar police station, before being released on bail at 10.30 pm.

Mr. Subash Mohapatra is prosecuted for "obstructing public servant in discharge of public functions" (Section 186 of the Indian Penal Code), "assault or criminal force to deter public servant from discharge of his duty" (Section 353), "obscene acts and songs" (Section 294) and "punishment for criminal intimidation" (Section 506).

³ As the Director of FFDA, Mr. Mohapatra has filed over 300 complaints to the Chhattisgarh State Human Rights Commission on issues of human rights violations that occurred in the State during 2001-2007. On several occasions, Mr. Mohapatra also questioned the role of the Commission, accusing the latter of being ineffective and corrupt.

On August 16, 2007, Mr. Mohapatra got a regular bail of INR 8,000 (about 142 euros). The next hearing was first scheduled for October 16 then for November 28, 2007 but Mr. Mohapatra asked the local court to postpone the hearing as he was intervening during an hearing at the Supreme Court on child marriage and custodial death on the same dates, which request the local court accepted. As of the end of November, no date had been set for the next hearing.

In the meantime, the State Human Rights Commission sent a letter to Mr. Mohapatra, informing him that “the police did not violate any law”, and “did not torture [him]”. In addition, although Mr. Mohapatra lodged a complaint to the Gol Bazar police station, his complaint was not registered and no investigation was open into acts of ill-treatments against him.

As of November 2007, Mr. Mohapatra’s office remained daily watched by the police.

In *Pakistan*, since President Musharraf declared the state of emergency on November 3, 2007, suspended the constitution and dismissed the Chief Justice, more than 900 human rights activists, lawyers, magistrates and journalists have been arrested in various provinces (Punjab, Sindh, Balochistan and NWFP). While some have been released, many remain detained.

At the beginning of November, two 90-day house arrest warrants were issued by the Home Department of the Government of Punjab against Ms. **Asma Jahangir**, Chairperson of the Human Rights Commission of Pakistan (HRCP), human rights lawyer and United Nations Special Rapporteur on freedom of religion or belief, as well as against Ms. **Hina Jilani**, HRCP Vice-Chairperson and Special Representative of the United Nations Secretary General for Human Rights Defenders, who is expected to be arrested when she returns from overseas.

On November 4, 2007, the police raided the office of HRCP located in Tipu Block, New Garden Town in Lahore and arrested 55 of its members, including Messrs. **Syed Iqbal Haider** and **I. A. Rehman**, respectively HRCP Secretary General and Executive Director, who were charged with holding “illegal assembly” and interfering with public officers under the Criminal Procedure Code, taken into preventive detention under Maintenance of Public Order Ordinance and remanded to the Kot Lakhpat Jail Lahore. On November 6, 2007, the 55 HRCP members were released on bail by the order of Home Secretary. Yet, they are still facing charges under the Maintenance of the Public Order Ordinance and sections 146, 147 and 148 of the Penal Code.

Furthermore, hundreds of lawyers and judges of superior courts are currently under arrest and would have been tortured while in detention, including Mr. **Muneer A Malik**, former President of the Supreme Court Bar Association and leader of the lawyers’ movement, currently detained at the Attack Fort under the custody of the military intelligence ; Mr. **Aitzaz Ahsan**, President of the Supreme Court Bar, and currently kept in Adiyala jail in solitary confinement, Mr. **Tariq Mahmood**, former President of the Supreme Court Bar Association, first detained in the Adiala jail and who was reportedly shifted to an unknown place; and Mr. **Ali Ahmed Kurd**, former Vice Chair of the Pakistan Bar Council, detained by military intelligence and being kept in an undisclosed place.

On November 13, 2007, Mr. **Afrasiab Khattak**, former HRCP Chairperson, was also arrested as well as some prominent lawyers in Karachi.

As of November 13, 2007, over 900 lawyers remained in detention in Lahore, Gujranwala, Faisalabad and Kasur alone. In Lahore, many released earlier were rearrested.

In a new move to further consolidate army rule in the country, on November 10, 2007, President General Pervez Musharraf promulgated an Ordinance amending the Pakistan Army Act (1952) by giving power to military courts for trying civilians for a wide range of offences. The amendments take effect retroactively from January 1, 2003. The amended Army Act gives power to the military courts to try numerous offences punishable under various pieces of legislation, including the Prevention of Anti-national Activities Act (1974) and the Anti-Terrorism Act (1997), as well as the attempt to commit any of the said offences. It is feared that this new Ordinance might be aimed at further muzzle the independent civil society and the judiciary.

In *Sri Lanka*, on April 17, 2007, an email was sent to NGOs and United Nations agencies working in the Trincomalee district by the Intelligence Unit of the Thamil Makkal Viduthalai Pulikal (TMVP), a break-away group of the Liberation Tigers of Tamil Eelam (LTTE) movement. In this email, organisations were required to fill in an application form to join LTTE, and to submit it before April 30, 2007. They were also “invited” to “stop [their] bad behaviours” and to join LTTE as this would “create a peaceful country”. Besides, the email warned that for those failing to register TMVP would “not [be] responsible for [their] security in the North and East”. On April 20, 2007, another threatening message was sent to the NGOs that are members of the Consortium of Humanitarian Agencies (CHA) as well as to UN workers in eastern Sri Lanka. The authors of this email said that they were “following CHA very closely” and that they “would take the necessary steps to eliminate them if needed”. They added that they would guarantee “full security to whoever

co-operates” and that those who did not “would have to face the consequences after the deadline”. Subsequently, the TMVP denied having sent these emails.

- On August 7, 2007, while Mr. John Holmes, the United Nations Under Secretary General on Humanitarian Affairs and Emergency Relief Co-ordination, was carrying out a visit to Sri Lanka from August 6 to 9, 2007, his attempt to meet with civil society representatives during his visit to Jaffna was marred by the heavy presence of the military, thus preventing humanitarian and human rights NGOs from freely sharing their views, perspectives and experiences with Mr. Holmes, without fear of any kind of reprisals. Furthermore, the day before Mr. Holmes’s visit to Jaffna, the military commander reportedly called for a meeting at Palaly military headquarters, during which NGOs and civil society representatives were instructed not to refer to human rights issues and to restrict themselves to issues of humanitarian assistance during their meeting with Mr. Holmes. The military further told the civil society representatives present that the military would brief Mr. Holmes about the human rights and security situation, while the Government would brief Mr. Holmes about the situation of Internally Displaced Persons (IDPs).
- Furthermore, on September 26, 2007, Rev. **Fr. Nicholaspillai Packiaranjith**, known as Fr. Ranjit, a Catholic priest from the Diocese of Mannar who had been working to assist and protect children and IDPs in and around Mannar, as the District Coordinator of the well known international church agency Jesuit Refugee Service (JRS), was killed in a claymore blast⁴ in the Mallavi area, while he was carrying humanitarian supplies to a camp and orphanage at Vidathalvu for people affected by the war, and as he was in a vehicle clearly marked with JRS logo. The political wing of LTTE condemned the killing “without reservation”.

2/ Harassment against defenders of economic, social and cultural rights

In several Commonwealth countries, the struggle for economic, social and cultural rights is still considered as a political opposition activity. In this context, human rights defenders denouncing corruption and abusive labour laws and practices continue to face harsh repression from both State authorities and non-State actors.

In **India**, on September 26, 2007, the Indian VII Additional Chief Metropolitan Magistrate in Bangalore decided to issue arrest warrants against four members of the Clean Clothes Campaign (CCC), an organisation which struggles for the improvement of working conditions in garment industries⁵ and three members of members of the India Committee of the Netherlands (ICN)⁶, an NGO raising awareness on the negative impacts of globalisation policies on human rights in India. The arrest warrants were issued at the request of the company Fibres and Fabrics International (FFI) and its subsidiary company Jeans Knit Pvt Ltd (JKPL). FFI and JKPL are two subcontractors of big brands such as G-Star, Armani, RaRe, Guess, Gap and Mexx, which are accused of physical and verbal abuse on employees, forced labour, unpaid overtime working hours, non-deliverance of contracts, confiscation of identity cards, etc. The seven defenders are accused of “cybernetic crimes”, “racist and xenophobe acts” and “criminal defamation” under Articles 499 and 500 of the Indian Criminal Procedure Code and under Articles 2 to 6 of the Additional Protocol to the Convention on Cybernetic Crime. As a consequence, they could be arrested and sentenced to two years’ imprisonment if caught on the Indian soil.

It has further been reported that since 2005, several local trade unions, including the Garment and Textile Workers’ Union (GATWU), the New Trade Union of India (NTUI), the Civil Initiative for Development and Peace (CIVIDEP), the Textile Industry Workers’ Front (Munnade) and the CCC task-force of Tamil Nadu, which had reported in late 2005 violations of labour rights in FFI/JKPL facilities, including high workload, forced overwork, non-payment of overtime, physical and psychological abuse, have been sued by FFI for “defamation”. Following a court order issued by the Court of the IV Additional City Civil Judge in Bangalore on July 28, 2006, and prolonged on February 19, 2007, they have been denied the right to disclose information on the working conditions of FFI and JKPL workers. The case has not yet been tried on content, only a ‘prima facie case’ was stated. The order will be challenged before the High Court of Justice by the affected organisations. Yet, as of November 14, 2007, no date was known as regards the next hearing on that matter.

⁴ A claymore mine is a generic term for directional fragmentation munitions that can function either in a command-detonated mode or victim-activated mode.

⁵ Namely Ms. **Ineke Zeldenrust**, Ms. **Esther de Haan**, Ms. **Christa de Bruin** and Mr. **Evert de Boer**, CCC Chair.

⁶ Namely Mr. **Gerard Oonk**, Mr. **Hans Maas** and Ms. **Pauline Overeemand**.

II - Restrictions to freedoms of association and peaceful gathering

In 2007, serious violations of the right to freedom of association and peaceful gathering were reported.

In *Malaysia*, on June 17, 2007, Mr. **Nyam Kee Han** and Mr. **See Siew Min**, respectively the Coordinator of the *Suara Rakyat Malaysia* (SUARAM) branch in Johor Bahru, and a secretariat member of the branch, were arrested during a demonstration organised in front of the residence of the Chief Executive of the State, in order to draw his attention to the rising crime rate in Johor Bahru. Both men were then handing out leaflets calling for the immediate creation of the Independent Police Complaint and Misconduct Commission (IPCMC), recommended by the Royal Commission in April 2005.

On the next day, Mr. Nyam Kee Han and Mr. See Siew Min were brought to a magistrate's court in Johor Bahru, which decided to grant a 24-hour remand order to custody. Following their release on June 19, 2007, Mr. Nyam Kee Han and Mr. See Siew Min had to report back to the police station on June 26, 2007 to find out if they would be charged by the police. On June 26, they were not charged but were asked to report back on July 2. Since then, it seems that their case has been dropped.

On June 19, 2007, the police searched Mr. Nyam Kee Han and Mr. See Siew Min's houses without warrant while they were still in detention. The police took away Mr. Nyam Kee Han's computer devices as well as some personal documents. His computer was returned upon his release.

In *Zambia*, on July 20 2007, the Zambian Parliament started debates on the Non-Governmental Organisation bill, which was presented on July 17, 2007 to Parliament for enactment by the Minister of Justice, Mr. George Kunda.

This bill seems to aim at regulating the activities of the organisations of civil society and at stifling any dissenting voice towards the government. Non-governmental organisations are indeed regularly accused by the government of being "politicians using NGOs as a shield". In particular, the bill calls for "the registration and co-ordination of NGOs [including international organisations that have offices in Zambia, so as] to regulate the work, and the area of work of NGOs operating in Zambia". In addition, if the bill becomes law it would empower the Minister of Home Affairs to form a 10-member board, comprised of government members and two representatives from civil society, which would "receive, discuss and approve the code of conduct [of NGOs], and [...] provide policy guidelines to NGOs for harmonising their activities to the national development plan of Zambia".

The bill also provides that NGOs should register annually, and enables the government to suspend NGOs that fail to submit quarterly or annual reports or when they misapply funds they receive from donors.

Recommendations :

In view of the serious and recurrent acts of repression against human rights defenders, the Observatory urges the States of the Commonwealth of Nations to:

- **Guarantee in all circumstances the physical and psychological integrity of human rights defenders in the States of the Commonwealth;**
- **Put an end to the continuous repression of human rights defenders and their organisations;**
- **Fully recognise the vital role of defenders in the advent of democracy and the rule of law;**
- **Review their national legislation to conform with international and regional human rights instruments;**
- **Fully comply with the Harare Commonwealth Declaration, adopted by the Heads of Government on October 20, 1991;**
- **Fully comply with the provisions of the Declaration on Human Rights Defenders, adopted on December 9, 1998 by the United Nations General Assembly;**
- **Work towards the creation of an effective mechanism for the protection of human rights defenders, so that the Commonwealth Secretariat develop a capacity to deal with individual cases and to take appropriate and timely action.**

fidh

International Federation for Human Rights
17, Passage de la Main d'Or
75 011 Paris, France



World Organisation Against Torture
Case postale 21 - 8 rue du Vieux-Billard
1211 Geneva 8, Switzerland