



DUBLIN
81 Main Street, Blackrock,
Co. Dublin, Ireland.

info@frontlinedefenders.org
www.frontlinedefenders.org

phone +353 1 212 3750
fax +353 1 212 1001

BRUSSELS
Square Marie - Louise 72
1000 Brussels, Belgium.

euoffice@frontlinedefenders.org
www.frontlinedefenders.org

phone +32 2 230 9383
fax +32 2 230 0028

Submission by: Front Line; The International Foundation for the Protection of Human Rights Defenders (Front Line has Special Consultative Status with the Economic and Social Council of the United Nations)

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Introduction

The following submission has been prepared based on information received from independent human rights defenders in India. Front Line is an international NGO based in Ireland with Special Consultative Status with the Economic and Social Council of the United Nations. We have particular expertise on the issue of the security and protection of human rights defenders and we work to promote the implementation of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders) adopted by General Assembly resolution 53/144 of 9 December 1998.

Front Line is extremely concerned by the ongoing acts of repression against human rights defenders (HRDs) in India. HRDs are active on a wide range of civil and political, economic, social and cultural rights such as caste discrimination, child rights, environmental issues, globalization and human rights, housing rights, indigenous rights, LGBT rights, women's rights and trafficking. Human rights defenders who tackle issues deemed sensitive by the government find themselves at considerable risk. Torture, preventive illegal or arbitrary detention, disappearances, ill-treatment, the use of excessive force, and the violation of due process rights are used by State actors to prevent HRD's from carrying out their legitimate and peaceful work in defence of human rights. In addition the security forces, including the military, paramilitary forces, and the police, routinely abuse human rights with impunity. HRDs who investigate and monitor atrocities committed by the police and custodial violence are at particular risk, as are Dalit and Tribal human rights defenders and those defending the rights of historically marginalized groups.

In November 2007, the Asian Forum for Human Rights and Development (FORUM-ASIA), Asian Centre for Human Rights and People's Watch Tamil Nadu organised a consultation workshop entitled "India National Consultation for Preparation of Stakeholders' Report under the Universal Periodic Review". The aim of the workshop was to draft a national strategy on the UPR, and involved the identification of substantive issues related to human rights in the country.

Repression against defenders of economic, social and cultural rights

HRDs who work within movements addressing issues of environment, gender, caste, communalism, and other matters of the marginalized masses of people living in poverty continue to pay a heavy price for their activities in favour of the disadvantaged, and their opposition to powerful interest groups. These defenders challenge the structures underlying poverty and address issues pertaining to the larger machinery keeping poverty in place. These human rights defenders also face the same vulnerabilities as other defenders in the country and endure ongoing harassment and persecution.

- ❖ **Medha Patkar**, head of Narmada Bachao Andolan, **Gautam Bandhopadhyay** and **Yogini Khanolkar** of Nadi Ghati Morcha (NGM), **Simpreet Singh** and **Mukta Srivastava** of the National Alliance of People's Movements (NAPM), **Sister Celia** of the Domestic Workers Union, based in Bangalore, **Nidhi Agarwal** of the Saheli Women's Collective, were among 62 protesters arrested during a peaceful demonstration in New Delhi, on 22 March 2007. The demonstration was organised by 'Action 2007', against the privatization and appropriation of water resources leading to deprivation and water scarcity. The arrests took place outside the Planning Commission Office (Yojana Bhavan) where an appointment had been requested with the Deputy Chair of the Planning Commission on World Water Day. Members of the police and Rapid Action Force reportedly used excessive force to disperse the crowd which resulted in the tearing of some of the female protestors' clothing. The 62 protestors were then taken to the Parliament Police Station where they were told to sign blank arrest memos. All of the male protestors and only two of the female protestors were presented before the judicial magistrate that evening, and were remanded in custody until 5 April 2007. The women were then taken to Chanakyapuri Police Station before they were all transferred to Tihar jail in the morning of 23 March.

The aforementioned organisations campaign for water rights and mobilise [tribal](#) people, Adivasis, farmers, [environmentalists](#) and human rights activists against the [Sardar Sarovar Dam](#) being built across the [Narmada](#) river in [Gujarat, India](#). The dam would damage the ecosystem and force the displacement of millions of poor peasants belonging mainly to tribal fishing communities and to the Dalit caste.

Human rights defenders working with marginalised groups

Socially and economically marginalized groups such as Adivasis, Dalits, marginal/landless farmers and the urban poor continue to face systemic discrimination and loss of resource base and livelihood because of development projects. In India, opposition to policies of development which are seen to impinge on the rights of vulnerable groups has brought together a wide variety of human rights defenders. Many of those affected by development projects and involved in protests against them have been from Dalit or Adivasi communities particularly concerned with displacement. In these instances, whole communities often unite to defend their rights.

Dalit activists and those defending the rights of Dalits are active throughout India. The growing assertion of Dalit human rights which necessarily challenges existing power groups, be it landlords, employers or even so-called "backward castes", has met with violent reaction in some quarters. Those defending the rights of Dalits have been routinely subjected to physical attack and harassment. Similarly non-governmental organizations and individuals involved in a process of assertion of Adivasi rights to land as well as against various forms of exploitation are viewed with suspicion by the authorities in India and subjected to all forms of harassment.

- ❖ **Subash Mohapatra** is the Director of the Forum for Fact-finding Documentation and Advocacy (FFDA), a human rights monitoring organisation based in Raipur, Chhattisgarh. On 17 July 2007, Subash Mohapatra was arbitrarily arrested by officers from the Gol Bazar Police at the office of Chhattisgarh State Human Rights Commission (CSHRC), in Raipur. At the time of the arrest he was allegedly filing a response to an investigation report concerning the case of a Dalit student. Subash Mohapatra was requested to pay a fee for filing the complaint. However when he refused to pay the bribe, he was reportedly physically attacked by a group of seven staff members who detained him in the office for a period of 30 minutes. A short time later the two police officers arrived at the office, arrested him without a warrant and took him to Gol Bazar Police Station where he was reportedly detained in a cell for a period of 3 hours before being transferred to the City Kotwali police station. He was then interrogated for alleged Naxalite connections and released on bail later that evening. During his detention he was prevented from contacting his family to explain his whereabouts.

- ❖ On 26 October 2006 at 9 a.m., Mr **Hebal Abel Koloy**, chairman of Borok Peoples' Human Rights Organization was arrested by Tripura Police without issuing any "Arrest Memo" and was subsequently charged under section 120-B(waging war against the state) of Indian Penal Code, the Armed Act and Unlawful Activities Prevention Act. When Mr Koloy was granted bail in these cases, the police slapped a notice under the National Security Act 1980 to detain him further from 12 December 2006. He was released only on 13 April 2007 when the High Court quashed the notice. No charge sheet has been filed against him to date.

State Security forces and impunity

HRDs who work within movements challenging political power and authority in India run the risk of being identified as "terrorists" and are subjected to harsh measures outlined in "anti-terrorist" acts of the government. In many cases, human rights defenders are attacked and threatened by security forces and armed groups who act with impunity for crimes committed in India. Laws such as the Public Safety Act (Jammu and Kashmir), the Disturbed Areas Act and the Armed Forces (Special Powers) Act (AFSPA) have propagated abuses in various parts of the country, including many deaths in custody and widespread allegations of torture. The AFSPA passed by the Indian Parliament in 1958 is one of the country's more draconian pieces of legislation. Under this Act, all security forces are given unrestricted and unaccounted power to carry out their operations, once an area is declared "disturbed". The Act gives security agencies unchecked powers of detention that often foster torture during interrogation. Indian police and security forces have also been documented in committing human rights violations including, extrajudicial killings, custodial killings, torture, and rape. A person wishing to file suit against a member of the armed forces for abuses under the AFSPA must first seek the permission of the Central Government. Section 197 of the Criminal Code of Procedure, also prevents security forces from being held accountable for actions committed in the course of duty.

- ❖ **Gopen Sharma**, is a district human rights officer with People's Watch. He also works on the National Project on Prevention of Torture in India (NPPT), in the Murshidabad District in West Bengal. On 8 February 2007, Gopen Sharma was

arrested by a police officer whilst visiting the Kaharpara border outpost of the Border Security Force (BSF), in order to report on human rights violations allegedly committed by the Force. At Out Post One Gopen Sharma was assaulted by a civilian who alleged that he owed money to a villager. Gopen requested protection from the BSF, but was taken into custody and transferred to the Ranningar Police Station. There is apparently no record of this transfer. When he arrived at the police station he made a formal complaint against the person who had assaulted him. Again there is reportedly no record of a complaint having been submitted. Gopen Sharma was threatened and insulted by a police officer who confiscated his mobile phone along with reports that he had relating to complaints made to the National Human Rights Commission. He was charged 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. On 9 February 2007, Gopen Sharma appeared before the Additional Chief Judicial Magistrate of Lalbagh, Murshidabad, and was placed on judicial remand until 22 February 2007. This was further extended until 8 March 2007.

Prior to his arrest, on 1 February 2007, Gopen Sharma was involved in a human rights verification mission along with Henri Tiphagne, Executive Director of People's Watch, Kirity Roy, and Biplap Mukherjee, State Programme Coordinator of the NPPT for West Bengal. The human rights defenders were researching human rights violations allegedly perpetrated by police officers against local villagers. On this occasion the human rights defenders were threatened and harassed by members of the BSF.

Human rights defenders working in conflict areas

Human rights defenders working within movements seeking liberation, sovereignty or separation from India face particular risks, particularly those working in Indian-administered Kashmir and Gujarat. HRDs living within these areas are often unable to document abuses for fear of retaliation from State security forces on the one hand and armed opposition groups on the other. HRDs working in such areas are often presented as being linked to armed opposition groups. Several human rights defenders in Punjab, Jammu and Kashmir and states of the north-east have been killed. In Jammu and Kashmir and Assam, the use of surrendered members of armed opposition groups, by security forces has presented human rights defenders with enormous challenges and dangers. Such groups operate without uniform or identity badges and the fear they generate is enormous. Access of international human rights monitors has been severely restricted to all areas of armed conflict in India for many years. This isolation affects not only access to information relating to human rights but also impacts on regular communication channels and the resources necessary to sustain such communication.

Human rights non-governmental organisations (NGOs) and freedom of association

Although many independent human rights organisations are able to operate in India some organizations and their members are regularly subjected to reprisals, ongoing harassment and persecution. Restrictive legislation also contributes to further infringements of freedom of association and prevents some organisations from carrying out their legitimate work in defence of human rights.

In 2006 the Foreign Contribution Regulation Bill (FCR) was introduced by the government to replace the already restrictive Foreign Contribution Management and Control (FCMC) Bill 2005. However the provisions outlined in the FCR are similar to those enshrined in the FCMC. Like its predecessor the FCR prohibits NGOs from accepting and using foreign contributions for “any activity prejudicial to national interests”. Section 5(1) empowers the central government to determine whether an organisation is “of a political nature” on the basis of its activities or programmes and through the FCR, the government can control which organisations receive foreign contributions, from whom, and for what purpose. The FCR also introduced a costly registration renewal requirement applicable every five years for NGOs receiving foreign contributions, whereas registration was free of charge and permanent under the FCRA.

On 30 October 2007, the Indian Minister of Commerce and Industry made controversial remarks regarding the role of **NGOs in India** in the fight against child labour. Minister Kamal Nath stated that recent newspaper reports regarding the employment of children in sweatshops in the garment industry were exaggerated and implied that the allegations were motivated by a desire to impede economic progress in India. The Minister's remarks were made following a report by the London based *Observer* newspaper on 28 October 2007, which reported having witnessed children as young as 10 making garments in a sweatshop in New Delhi which were destined for sale in stores belonging to the GAP Inc. fashion retail chain. Minister Nath reportedly viewed these reports, and NGO activities denouncing child labour in India, as little more than an attempt to create 'a non-tariff barrier for Indian goods' and stated that the Indian government 'would be under pressure to retaliate'. Minister Nath's sentiments were echoed by several members of the Cabinet, including the Minister for Finance and the Ministry of Labour and Employment. Indian law prohibits the employment of children under the age of 14 but it is recognised by all sectors that child labour continues to contribute significantly to their economy. The Indian government estimates that there are currently 13 million children employed in the garment industry, while some children's rights activists place the number at approximately 60 million. However, Minister Nath stated on October 30 that reports regarding the involvement of children in Indian production for global brands such as GAP were 'false and slanderous', and threatened retaliatory action against NGOs involved in the fight against child labour.

Front Line views any attempt to undermine the work of the NGOs and civic activist groups who are working to eradicate child labour in India and elsewhere as most worrying.

Front Line calls upon the UN to urge the authorities in India to prioritise the protection of human rights defenders and in doing so to:

- (1) To conduct an independent inquiry into the source of threats, ill-treatment, torture and all forms of intimidation and harassment directed towards all those human rights defenders mentioned in this report;
- (2) To ensure that all human rights defenders in India are free to carry out their human rights activities free from persecution;
- (3) To invite the UN Special Representative for Human Rights Defenders to India.

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