

Human Rights Defenders

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Background Paper

FEBRUARY 2004

ASIA PACIFIC HUMAN RIGHTS NETWORK

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Introduction

In 1999, the UN General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, conveniently referred to as the Declaration on Human Rights Defenders.¹ At the time, it was heralded as constituting a clear commitment on the part of all UN member states to respect the rights of human rights defenders at the national and international levels.²

In spite of this, almost five years later the status of human rights defenders in the Asia Pacific region and the protections enshrined in the Declaration are under fire from both Governments and non-state actors, raising serious questions regarding the purpose and efficacy of the Declaration. Among the most pressing issues are: to what degree, if any, does the Declaration improve upon existing human rights protections that are afforded to all persons under international law? And can its provisions be realistically applied or is it no more than a rhetorical expression of goodwill?

This discussion looks to clarify the international standards applicable to the treatment of human rights defenders. For the purposes of this analysis, ‘human rights defenders’ are defined broadly to include ‘anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms,’ consistent with the definition adopted by the UN Commission on Human Rights.³ The conditions under which human rights defenders operate in several countries in the Asia Pacific region will then be profiled to illustrate the extent to which these countries abide by the relevant standards.

¹ U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, U.N. GA Doc. A/RES/53/144, 8 March 1999.

² LCHR, Protecting Human Rights Defenders: Analysis of the Newly Adopted Declaration on Human Rights Defenders, available at http://www.lchr.org/defenders/hrd_un_declare/hrd_declare_1.htm.

³ U.N. Doc. E/CN.4/RES/2000/61, 26 April 2000.

International Standards Relating to Human Rights Defenders

The Substantive Provisions of the Declaration on Human Rights Defenders

The Declaration on Human Rights Defenders, like all declarations, is not a legally binding instrument, but rather is an acceptance of widely recognised principles. Such declarations may be referred to in a court of law, but only in support of customary law. Treaties or Conventions, on the other hand, are legally binding on States Parties upon ratification, and therefore the observance of treaty provisions carries a legal imperative on States in international law. Thus, in the case where a particular Declaration provision is mirrored in a Convention, the protection afforded by the Convention is superior.

It is on this basis that the Declaration on Human Rights Defenders is most compromised. Excepting Article 13 on the right to receive funding, all of its provisions are mirrored in other international human rights Conventions, and apply equally to human rights defenders as to all individuals.

Articles 1 and 5 of the Declaration reaffirm the right to association and assembly, as provided for by Article 21 and 22 of ICCPR⁴, Article 5(d)(ix) of ICERD⁵, and Articles 2,3,5 and 11 of ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise⁶. Articles 1 and 5 do not advance any emerging right and are therefore secondary to the protection of the latter Conventions.

Articles 2 and 4 concern the responsibility and duty of States to promote and protect human rights, including the rights of human rights defenders. This is simply a reaffirmation of the principle on which the Universal Declaration of Human Rights was founded, and is repeated in all human rights Conventions that derive from the Universal Declaration. Thus the insertion of this provision in any human rights treaty or Declaration is mandatory and otherwise uncontroversial.

Article 8 is a worthwhile contribution, if only for asserting the relationship between human rights defenders and the State. It elaborates on the common understanding of political participation by “specifically including the right to submit criticism and proposals to governmental bodies on how their functioning can be improved.”⁷

Article 9 concerns the assurance of effective remedy and redress for violations of human rights, before an independent, impartial and competent judicial or other authority, and without undue delay. These provisions are mirrored in Articles 2(3), 9(5) and 14 of the

⁴ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

⁵ International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, entered into force Jan. 4, 1969.

⁶ Freedom of Association and Protection of the Right to Organise Convention (ILO No. 87), 68 U.N.T.S. 17, entered into force July 4, 1950.

⁷ LCHR, Protecting Human Rights Defenders: Analysis of the Newly Adopted Declaration on Human Rights Defenders, available at http://www.lchr.org/defenders/hrd_un_declare/hrd_declare_1.htm.

ICCPR, and Article 13 of CAT⁸. However, Article 9 adds that individuals and groups are entitled to observe all public trials to “form an opinion on their compliance with national law and international obligations and commitments” without being arbitrarily excluded. The Declaration also reiterates that everyone is entitled to offer “professionally qualified legal assistance or other advice and assistance in defending human rights and fundamental freedoms.” The worth of this provision, however, is entirely dependent on the proper implementation of its provision, which, in view of its multitudinous violations, is presently inadequate.

Articles 14 to 16 address the responsibility of States “to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights” (Article 14); and both the responsibility of States and the important role of NGOs in the promotion and facilitation of human rights and fundamental freedoms at all levels of education. This is a common feature of all human rights treaties and declarations, including Article 13(1) of the ICESCR⁹, and most notably perhaps Article 7 of ICERD¹⁰. Considering that ICERD, a legally binding Convention, is the second most widely ratified human rights Convention and requires periodic State Reports detailing compliance with provisions, this constitutes a considerably more enforceable provision than Articles 14 to 16 of the Declaration.

Limiting the Rights in the Declaration on Human Rights Defenders

Article 17 posits the rights and freedoms referred to in the Declaration as limited rights. It allows for limitations of all of the rights of the Declaration “determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of the meeting the just requirements of morality, public order and the general welfare in democratic society.”

It is not unusual for certain rights in international conventions and declarations to be prescribed as limited or restricted when provided for by domestic law ‘for the protection of national security or of public order, or of public health or morals.’¹¹ However, it is arguable that the right to receive funding should not be a limited right. Furthermore, the allowance of limiting rights on the grounds of the ‘general welfare of society’ is a new limitation and a potentially lower threshold than previously given to States.

The potential for oppressive states to exploit this provision to unduly limit the effect of the Declaration is augmented by Article 3 of the Declaration, which positions domestic law as the ‘judicial framework within which HR and fundamental freedoms should be

⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], *entered into force* June 26, 1987.

⁹ International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976.

¹⁰ *Supra* note 9.

¹¹ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, Article 19(3)(b).

enjoyed.’ It has been argued that such a position aligns domestic legislation with States’ international treaty obligations and other norms of customary law. However, these international obligations aren’t explicitly stated in Article 3. Moreover, there are certain aspects of States’ treatment of NGOs that fall outside the parameters of international law. This includes the cessation of international funding and the categorisation of NGOs as “organisation[s] of a political nature, not being a political party”¹², to give but two examples. The concession to domestic law thus seriously curtails the possibility of the Declaration introducing any new protections outside the scope of existent human rights law instruments.

The Plight of Human Rights Defenders in the Asia Pacific Region

Bangladesh

Human rights defenders in Bangladesh face an uncertain predicament as a result of long-standing legislation allowing for the arbitrary detention of individuals for long periods without charge, and the prevalent use of torture within law enforcement agencies.¹³

The combined effect of the Special Powers Act 1974 and Section 54 of Bangladesh’s Code of Criminal Procedure has enabled numerous opposition activists to be arrested and convicted for criminal offences, as a pretext for curbing their political activity.¹⁴ A pertinent example of this is the preventive detention of members of Jamaat-e-Islami under the Special Powers in June 2001 after they met with a foreign NGO, the National Democratic Institute (NDI), to discuss training for election polling agents. NDI held virtually the same meeting with each of the major political parties. At the time of the arrest, police told Jamaat members that they were under arrest for “subversive, secret meeting with foreigners.” All of the 11 were later released.

More recently, Bangladeshi businessman Nuruzzaman was arrested and continues to be held without any formal charges after participating in a press conference in which he accused a local Member of Parliament of extortion.¹⁵ Amnesty International has issued a report claiming that he is at risk of further torture and ill-treatment if returned to police custody, after being beaten severely in his cell by two civilian assailants while being detained initially in Sylhet.¹⁶ Nuruzzaman was allegedly beaten by close associates of the accused MP, and subsequently denied medical treatment at the local hospital after political activists from the MP’s party told doctors not to admit him. The five complaints

¹² See for example the Indian Government’s utilisation of the Foreign Contribution (Regulations) Act of 1976, Section 5(1) against NGO’s; South Asian Human Rights Documentation Centre, “The Purse Strings as the Noose: Indian NGO’s Face New Challenges”, *Human Rights Features*, 29 Oct. 1999.

¹³ Special Powers Act 1974.

¹⁴ US State Department, ‘2002 Country Reports on Human Rights Practices - Bangladesh,’ (2002) available at <<http://www.state.gov/g/drl/rls/hrrpt/2002/18309.htm>> (last visited 12 February 2004).

¹⁵ Amnesty International, ‘Fear of Torure or Ill-Treatment/Denial of Medical Treatment’, *Amnesty International Press Release*, (2 December 2003) available at <http://web.amnesty.org/library/Index/ENGASA130192003?open&of=ENG-BGD> (last visited 12 February 2004).

¹⁶ Ibid.

filed against him all appear to have been intended as reprisals for his statements implicating the aforementioned MP.¹⁷

Freedom of the Press

Despite pledges by authorities to uphold the freedom of the press, journalists in Bangladesh are frequently targets of attacks, intimidation and harassment. Dozens of journalists have been assaulted with impunity either by the police when covering demonstrations or by armed gangs affiliated with various political parties. In addition, several journalists have been arrested and accused of a range of politically motivated charges including sedition. They have been taken into custody for weeks or months at a time, and often have been subjected to torture or other forms of ill-treatment while being held.¹⁸

According to the 2003 Report of the Special Representative on Human Rights Defenders, Saleem Samad, a correspondent for Reporters Without Borders, was arrested on 29 November 2002 for having assisted two reporters from the British TV Station Channel 4. It is alleged that his family also had to go into hiding after being threatened by police. Additionally, Sumi Khan a correspondent for the weekly Shaptahik 2000 in Chittagong, was detained by police on 28 November 2002 for having met with the same Channel 4 journalists. Despite an urgent appeal by the Special Representative and the Special Rapporteur on Freedom of Opinion and Expression, the government has not responded to any of these allegations.

In yet another attack on press freedom in Bangladesh, warrants of arrests were issued on 11 June 2003 against Mahfuz Anam, the editor and publisher of The Daily Star, Matiur Rahman, the editor of the daily Prothom Alo, and Abdul Jalil, the Secretary General of the main opposition party, the Awami League.¹⁹ This followed the publication, on 3 June, of a letter written by Abdul Jalil expressing his opinion about the candidacy of a Bangladeshi nominee for an executive position in an international organisation. The letter was critical of the nominee, a senior government official, who in turn filed a complaint before Dhaka Metropolitan Magistrate Court under sections of the Bangladesh Penal Code which provide for up to two years' imprisonment for "defamation". This law has often been used by the state machinery to subvert the freedom of the press and also incriminate human rights defenders and dissidents.

¹⁷ Ibid.

¹⁸ Amnesty International, 'Bangladesh: Harassment of News Editors Must Stop,' *Amnesty International Press Release* (13 June 2003) available at <http://web.amnesty.org/library/Index/ENGASA130152003?open&of=ENG-BGD>, (last visited 12 February 2004).

¹⁹ Ibid.

Freedom of Association

Trade union freedom is far from being a reality in Bangladesh. Legal and administrative obstacles affect all aspects of trade union activities.

As reported by the Observatory for the Protection of Human Rights Defenders in its Annual Report 2001²⁰, the government draws on the special powers of the 1974 law to detain trade unionists without formally charging them. In 1999, ten members of the Bangladesh Jatiyabadi Sramik (BJSI) trade union, affiliate to the International Confederation of Free Trade Unions (ICFTU), including the BJSI's President Nashu Miah, were arrested for having encouraged industrial action in the Afil jute mill, due to salaries in arrears. The unionists were held for four months until the High Court declared their detention illegal.

The right to strike is also restricted. In May 2001, the Chinese Ring Ching Garments Mill, in the Savar EPZ, announced 25 redundancies and salary reductions. On 4 May employees occupied the mill as a sign of protest.²¹ The mill's directors closed the doors and the police opened fire on the protestors. Thirty-two workers died. Far from being an aberration in the Government's record of responses to labour rights activism, this is exemplary of the Government's behaviour. For example, on 8 December 2001, in a police confrontation with workers demanding payment of overdue salaries, one worker was killed and fifty others injured after police fired blanks and teargas.²² The same month, police confronted and opened fire on 2,000 demonstrators at the port of Mongla, killing four demonstrators and injuring one hundred.²³

Brunei

The Government of Brunei has a long record of suppressing the civil liberties of its citizens. Citizens do not have the power to change the government, and few attempt any sort of political action for fear of reprisal.

The Operation of NGOs

Few local NGOs and no international NGOs operate in the country. Those local NGOs that existed in the past had narrow established goals. After an attempted uprising in 1962, the Sultan assumed emergency powers allowed in the Constitution for two years, and has continued to renew his mandate. By severely restricting the right of citizens to join associations, assemble, and express themselves, all criticism and potential political opposition to the government has effectively been silenced.

²⁰ Observatory for the Protection of Human Rights Defenders, *Annual Report 2001*, available at <http://www.omct.org/obs/2001report.html> (last visited 3 February 2004).

²¹ The Observatory for the Protection for the Human Rights Defenders, *Annual Report 2001*, available at <http://www.fidh.org/lobs/rapport/2002/rap1to151a.pdf> (last visited 12 February 2004).

²² Ibid.

²³ Ibid.

No local NGOs deal exclusively with political or human rights issues; most are business or social associations. The activities of international service organisations such as Kiwanis, Rotary, and the Lions, are restricted by the government. Muslims are not allowed to be members of these organisations.²⁴

The Consumers' Association of Brunei (CAB), established in March, addresses human rights, although its primary focus is consumer rights. The CAB has publicised the poor working and living conditions and alleged abuses by factory management of Bangladeshi workers involved in protest work stoppages. The organisation then received a letter from the Commissioner of Police requesting CAB to show reason why it should not be deregistered for exceeding its mandate. Senior CAB members were reportedly subject to surveillance. The country's largest English language paper was warned not to publish any articles about the CAB.²⁵

In 1998, authorities briefly detained several citizens under the Internal Security Act for distributing allegedly defamatory letters about the royal family and senior government officials connected with the collapse of the Amedeo Group, a large holding company headed by the former Finance Minister and the Sultan's brother, Prince Jefri. The Government warned citizens it would take action against anyone involved in any other such activities.²⁶

In May 2002, 13 foreigners were prevented from leaving the country, including people from the UK, Australia, New Zealand, and Malaysia, due to alleged irregularities in their work permits. All of the foreigners had worked for Global Evergreen, the company involved in the collapse of the Amedeo Group. They were held because of their efforts to trace the \$10 billion that had allegedly been embezzled by Prince Jefri.²⁷ They were eventually released when the foreign press took up their story.

Freedom of Association

Opposition political parties are legal, but they may not engage in any activities "that endanger people." Civil servants and security forces, who make up 60 percent of the population, are not allowed to join them. The two existing registered political parties have pledged their support to the Sultan. They are largely inactive, and any activities that do take place go unpublicized.²⁸

²⁴ US State Department, '2002 Country Reports on Human Rights Practices – Brunei' (US State Department Report 2002), available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18236.htm> (last visited 13 February 2004).

²⁵ Ibid.

²⁶ US State Department, '2001 Country Reports on Human Rights Practices – Brunei', available at <http://www.state.gov/g/drl/rls/hrrpt/2001/eap/8255.htm>, (last visited 10 February 2004).

²⁷ BBC News Online, <http://news.bbc.co.uk/2/hi/asia-pacific/2008695.stm>, 26 May 2002.

²⁸ US State Department, '2002 Country Reports on Human Rights Practices – Brunei' (US State Department Report 2002), available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18236.htm> (last visited 13 February 2004).

Brunei's laws permit the formation of trade union federations, but forbid affiliation with international labour organisations. Legal trade union activities are not in violation of the required individual contract between an employer and an employee.²⁹ Brunei is not a member of the International Labour Organisation.

Freedom of Press and Expression

The emergency powers that have been in effect in the country since 1962 significantly restrict freedom of press and expression. In October 2001, the government passed new legislation that required local newspapers to get operating licenses and official approval of editorial staff. The government was granted the power to close newspapers without showing cause and to bar foreign publications. Journalists could be arrested or fined for "false and malicious" reports.³⁰

The country's largest English newspaper practices self-censorship. Despite this fact, letters to the editor in this newspaper often included criticisms of the government's handling of certain social, economic and environmental issues.³¹

In 2001, the government frequently raided the offices of a second English daily, the News Express, known to publish articles and letters that were critical of the government. The newspaper's willingness to publish such letters represented a large stride in the exercise of press freedom in the country.

Fiji

In spite of the political upheaval in Fiji in May 2000, the Fijian Government has maintained a generally satisfactory record of treatment of human rights defenders, although there appears to be heightened political sensitivity to public protests and criticism of the Government in the wake of the coup that took place almost four years ago.³²

Freedom of Speech

The provisions for freedom of speech in the Fijian Constitution were generally abided by before 2000, however in July of that year, the Government introduced controls limiting the right to assemble and speak out publicly on issues relating to human rights and democracy.³³ Proposals for public meetings now have to be vetted by government officials, as a result of which, the majority of events have been barred.³⁴ In fact, only 2 permits for protest demonstrations have been granted since May 2000.³⁵

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² US State Department, '2002 Country Reports – Fiji', (2002) available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18244.htm> (last visited 12 February 2004).

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

For example, during the Asia Caribbean Pacific meeting held in Fiji in 2002, permits to NGOs including the Citizens Constitutional Forum, a pro-democracy organisation, were denied. The Prime Minister justified the refusal of the permits on the basis that they would destabilize and ‘undermine the success’ of the meeting.³⁶

Freedom of the Press

Criticism of the Government has been voiced in all major media outlets without political interference.³⁷ Although the Government has holdings in the major television and newspaper companies, all of these outlets aired a variety of political opinions, including criticism of the Government’s ‘affirmative action policies, ministerial competence, alleged scandals, and racist remarks by MPs.’³⁸

Political Opposition and the Operation of NGOs

Opposition parties and political organisations have generally been able to operate without governmental interference.³⁹ The Government’s interaction with domestic and international human rights NGOs has also been largely commendable, allowing these groups to investigate and publish their findings on human rights cases.⁴⁰ The Citizens Constitutional Forum was briefly deregistered as a non-profit organisation in February 2001, but successfully challenged this in court in 2001 and was subsequently re-registered.⁴¹

Fiji also has a constitutionally mandated Human Rights Commission in operation. The Commission has appeared to function impartially and independently, mostly investigating alleged human rights violations by police and prison officers.⁴² The work of the Commission has however been hindered by the Constitutional Redress Rules, which require cases involving human rights issues to be filed in the High Court within thirty days of receiving the complaint.⁴³

India

Human rights defenders in India are exposed to the entire gamut of human rights violations – ranging from blatant suppression in the form of arbitrary detention, torture and extrajudicial execution to subtle yet oppressive measures such as denial of registration and blocking of funding.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

The State, in general, considers human rights activists as being inimical to “national interest” rather than looking on them as partners in the democratic process. As a result, human rights activists – taken to include individual activists, organisations, lawyers, journalists, and physicians, among others – find themselves at considerable risk when they take on issues deemed sensitive by the government.

The entire range of violations that human rights defenders attempt to address is often directed at the defenders themselves. Thus, 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 blunt the efforts of human rights defenders. State actors include, among others, police, military personnel, paramilitary forces and intelligence officials.

In addition to violating the law to deter defenders, State actors often also misuse the law. Preventive detention laws as well as sections in the Criminal Procedure Code and the Indian Penal Code that allow for preventive detention are applied arbitrarily to harass, intimidate, or obstruct peaceful protests by defenders.

Violations by State Actors

The 1996 abduction and murder of Jalil Andrabi is a classic case. Mr. Andrabi, who had been investigating and pursuing cases of human rights violations in Jammu and Kashmir, disappeared after he was taken away by members of the Rashtriya Rifles, a paramilitary group. His body, with the hands tied, was found 19 days later in a river. The trial of the army major, identified by a special investigation team as prima facie responsible for the murder, is proceeding at a snail’s pace.

The case of Jaswant Singh Khalra is almost similar. A lawyer investigating disappearances and illegal cremations carried out by security forces in the state of Punjab during an insurgency in the 1980s, Mr. Khalra himself “disappeared” in 1995. Supreme Court proceedings into Khalra’s investigations as well as his own disappearance are continuing, but again at unacceptably slow pace. His fate is still unknown.

A number of other attacks on human rights defenders have involved intimidation, harassment and the obstruction of peaceful protests. Activists protesting the construction of the series of dams on the Narmada river have been baton-charged, detained and even fired upon. Activists working with tribal people in the forest areas have faced arrests, threats and intimidation. Recently, attempts were made to intimidate lawyer and civil liberties activist, Mr. K.G. Kannabiran and his family following an attempt on the life of Andhra Pradesh Chief Minister Chandrababu Naidu. Human rights groups in Andhra Pradesh have observed that attempts on the lives of senior government figures by extreme left-wing groups have led to retaliatory attacks on activists in the state. Those involved in such attacks are said to either owe allegiance to the state police or are protected by the police.

Immunity from Prosecution

A major reason for the persistence of violations of human rights in general, and the attacks on human rights defenders in particular, is the impunity enjoyed by the perpetrators. The Constitution of India allows for the immunisation of public officials and Governmental institutions in cases of human rights violations -- despite prevailing international legal standards to the contrary. Under the current system, Government personnel have the privilege of "official immunity" -- effectively protecting them from criminal prosecution or civil suit -- even if they commit serious human rights abuses. Additionally, all governmental organs and institutions possess "sovereign immunity," preventing them from being sued for damages for human rights violations committed by their officials. These two forms of immunity allow officials to commit severe human rights violations with impunity and prevent victims from ever obtaining effective redress.

The Operation of NGOs

A less conspicuous, but equally debilitating method is used by the State to clamp down on the work of human rights defenders in India. Since mid-1999 all NGOs organising international conferences in India have been required to obtain prior permission from the Ministry of Home Affairs and other relevant ministries, and have been required to submit personal details of international participants.

The government has also breathed new life into the Foreign Contributions Regulation Act (FCRA), an anachronistic, Emergency-era statute. The FCRA requires all Indian organisations and individuals that seek to receive foreign contributions to receive clearance first from the Ministry of Home Affairs, in the form of either registration or prior permission.

The Government has a legitimate interest in holding NGOs accountable for financial or other wrongdoing. However, normal regulatory and criminal justice procedures provide sufficient institutional resources to accomplish this task. However, the Ministry of Finance, rather than the highly politicised Home Ministry, should administer these laws. A number of organisations have either had their applications for FCRA registration pending or have been turned down after long delays.

The Government of India also attempts to curtail the freedom of assembly and association. From mid-1999, NGOs organising international conferences in India have required prior permission from the Ministry of Home Affairs and other relevant ministries. The clearance requirement is not pursuant to any law, rule or guidelines, it is simply the new practice of the Government of India. The clearance requirement is not manifest as a written policy with established procedures. It functions at the whim and fancy of the Government of India. This ad hoc operation places NGOs at a distinct disadvantage in its dealing with the Government of India as the procedure lacks transparency. The clearance requirement procedures are clearly prone to arbitrary use and abuse in the absence of established policies and procedures.

A good illustration of State paranoia is the 1999 crackdown on a number of civil society organisations that endorsed a campaign criticising the ruling party's pro-Hindu fundamentalist ideology. The signatories to the campaign were accused of using foreign funds to carry out the campaign. The government then went further and issued notices to the organisations under the FCRA. Thirteen organisations were asked to show why they should not be required to obtain prior government permission before accepting any foreign contribution and why they should not be notified as an organisation of political nature.

However, harassment and intimidation of NGOs is not a sporadic affair. Visits and phone calls by intelligence officials, and constant queries about the activities carried on by NGOs are a constant feature.

Violations by non-State actors

Human rights defenders in internal conflict areas face a two-pronged threat – from State security forces on the one hand and armed opposition groups on the other. While defenders in internal conflict areas may be more prone to attacks and harassment by non-State actors, the skewed socio-economic balance in India means that defenders elsewhere also face the disapproval – and the strong-arm tactics – of members of dominant social and economic groups, often in concert with the authorities.

In June 2002, Navleen Kumar, who had helped a number of tribal families win back the land wrested from them 25 years ago, was brutally murdered. A trained social worker, Ms. Kumar had taken up the cause of the Adivasis, indigenous people living at the edge of the city of Mumbai, whose land had been illegally acquired from them by local politicians, bureaucrats and builders with the connivance of the police. Arrests were made in connection with the crime, but the police is yet to present evidence against the accused.

Right-wing Hindu fundamentalist groups are another force defenders must contend with. Christian organisation involved in providing education, health and other services to underprivileged communities face threats, harassment and, often, violent attacks by Hindu right-wing organisations. The Christian groups are accused of proselytisation and of attempting to “destroy” Hindu culture and religion.

The compelling force of multinationals comes into play when cudgels are raised on behalf of those resisting displacement, protesting the violation of labour laws, or simply demanding the protection of economic, social or cultural rights. In 1997, those leading protests against a power project in the western state of Maharashtra were often detained, served externment orders, and also beaten up by police. Provisions of various laws were used to obstruct demonstrations and to prohibit them from entering areas where opposition to the project were most intense.

Maldives

The Government of the Maldives has recently come under heavy criticism for its intolerance of political dissent and its detention of prisoners of conscience. In spite of pledging to improve the human rights situation in the country by reforming the criminal justice system and introducing a Human Rights Commission, human rights defenders find themselves operating in an increasingly oppressive environment.⁴⁴

Freedom of Speech

At present, at least five political dissidents are being held in detention – three of them for their involvement in producing a clandestine Internet publication that published articles critical of the Government.⁴⁵ The other two prisoners were similarly outspoken in their criticism of the Government in the lead up to their detention, and have reportedly been held without charge or trial since December 2001 and June 2002, respectively.⁴⁶

In the wake of civil protests of an unprecedented scale in early September 2003, the government initiated a spate of arbitrary arrests, arresting over 100 people, including children.⁴⁷ Among the people taken in custody was Jennifer Latheef, an artist and film producer who is an outspoken critic of the Government.⁴⁸ Latheef continues to be detained under house arrest, which is believed to be a measure by the Government to limit the activities of her father, a Maldivian politician, currently engaged in a campaign of peaceful political opposition to the Maldivian Government.⁴⁹

Amnesty International also recently released a report highlighting an ‘endemic patter of arbitrary detention of Government critics and their continued imprisonment before and after convictions in grossly unfair trials.’⁵⁰

Freedom of the Press

There have been no reports of Government censorship of print or electronic media, even though most major media outlets are owned either by the Government or its

⁴⁴ Amnesty International, ‘Reforms will lack credibility unless prisoners of conscience released’, *Amnesty International Press Release*, (28 January 2004) available at <http://news.amnesty.org/mav/index/ENGASA290012004> (last visited 12 February 2004).

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Amnesty International, ‘The Republic of Maldives: Prisoners of Conscience should be released,’ *Amnesty International Press Release*, (19 November 2003) available at <http://news.amnesty.org/library/index/ENGASA290052003> (last visited 12 February 2004).

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Amnesty International, ‘Maldives: Repression of Political Opponents Must Stop,’ *Amnesty International Press Release*, (30 July 2003) available at <http://news.amnesty.org/library/Index/ENGASA290032003?open&of=ENG-MDV> (last visited 12 February 2004).

sympathizers.⁵¹ Nor have there been any allegations of intimidation or harassment of journalists.

The Human Rights Commission

The Government recently established a Presidential Commission of Inquiry into human rights abuses, as well as the Human Rights Commission of Maldives in December 2003 'with a mandate of protecting and promoting human rights in the country.'⁵² The Human Rights Commission has reportedly begun investigating cases, but is constrained by the fact that it is not able to deal with cases older than one year prior to its formation.⁵³ In another promising initiative, the Government has also undertaken to improve prison conditions and introduced measures to address some of the failings of the judicial system. However, it is too early to judge the impact of these reforms.

Malaysia

The Government of Malaysia obstructs the work of human rights defenders and NGOs in the country through legislation and legal action. A number of repressive policies, including the Internal Security Act, the Societies Act, the Official Secrets Act, the Printing Presses and Publications Act and the Sedition Act have been used to curb the activities of human rights defenders that are seen as dangerous.

The Operation of NGOs

A number of NGOs, including the Bar Council and other public interest groups, devote considerable attention to human rights. The government is generally tolerant of their activities, although it never responds to their inquiries or press statements. The National Front Coalition has controlled the government for 40 years, and is intolerant of political opposition activity and highly sensitive to criticism of its policies. As a result, human rights defenders – including individual activists, organisations, lawyers, journalists, and physicians, among others – that criticise the government's policies are often silenced.

The NGO sector is active in addressing human rights violations in the country. Public discontent over the removal, imprisonment and subsequent trial for corruption and sodomy charges of former Deputy Prime Minister Anwar Ibrahim was high. Anwar's trial was politically motivated; evidence was doctored and witnesses later claimed they were coerced into testifying. This blatant example of the bias of the judiciary encouraged more NGOs began to speak out in criticism. Ethnic Malays began to participate more in NGO activity, which had generally been dominated by non-Malays. The government has not banned or decertified any group recently. However, it remains harshly critical of

⁵¹ US State Department, '2002 Country Report – Maldives,' (2002) available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18312.htm> (last visited 12 February 2004).

⁵² Amnesty International, 'Reforms will lack credibility unless prisoners of conscience released', *Amnesty International Press Release*, (28 January 2004) available at <http://news.amnesty.org/mav/index/ENGASA290012004> (last visited 12 February 2004).

⁵³ Ibid.

those NGOs it suspects of collaborating with foreigners, including international human rights groups, and continues to prosecute or detain individuals it considers a threat.⁵⁴

One such case in which the government targeted an individual human rights defender was the prosecution of Irene Fernandez under the Printing Presses and Publications Act for charges she made in 1995 of mistreatment of detainees at illegal alien detention centres. Ms. Fernandez's trial was characterised by numerous irregularities, notably a surfeit of postponements, recesses, and adjournments. At six years, the trial had the dubious distinction of being the longest criminal prosecution in Malaysia.⁵⁵ Although the verdict was originally expected to be announced in March 2004, the case was unexpectedly brought forward by the impending resignation of the judge. With her lawyer away in Pakistan, Ms. Fernandez made the closing statements herself. She was found guilty and sentenced to a year in jail. Following an application by her counsel, the court granted a stay of execution of sentence pending an appeal against the verdict.

Another example of the government's targeting of individuals is that of Badaruddin Ismail, a member of the secretariat of the human rights NGO Suara Rakyat Malaysia (Suaram). Badaruddin Ismail was allegedly arrested on 26 April 2001 without charge and held incommunicado in an unknown location. It was suspected that his detainment was in reprisal for his work assisting families of detainees and documenting police brutality. He was eventually released on 5 June 2001.⁵⁶

Political Opposition

In Malaysia, the lines between the work of the political opposition and human rights defenders are often blurred. This grey area is often where defenders are hit hardest. For example, the vice-president of the opposition Keadilan party and long-time workers' rights activist Tian Chua was detained on 10 April 2001 and not released until June 2003. Mr Chua was arrested under the provisions of the Internal Security Act, which empower the Home Minister to pass a two-year detention order where an individual is suspected of posing a threat to national security. The detainee has no right to a criminal trial. The ministerial order, which is infinitely renewable, is not subject to judicial review. Instead, an Internal Security Advisory Board has statutory authority to make non-binding recommendations to the government. Despite a decision by the Federal Court of Malaysia, the highest court in the country that the detention was illegal, and two decisions by the Internal Security Advisory Board advising that the prisoners be released, the Home Minister refused to lift the detention orders till 2003. Tian Chua has long sought to combine labour activism with the promotion of basic human rights in Malaysia.

⁵⁴ US State Department, '2002 Country Report on Human Rights - Practices Malaysia', available at www.state.gov/g/drl/rls/hrrpt/2002/18252.htm (last visited 12 February 2004).

⁵⁵ UN Special Representative on Human Rights Defenders, Annual Report 2001, E/CN.4/2001/106.

⁵⁶ UN Special Representative on Human Rights Defenders, Annual Report 2002, E/CN.4/2002/106.

Freedom of Association

Freedom of association is protected in the Constitution. However, the Societies Act mandates that all groups of seven or more must be registered and approved before they may function as societies. The government sometimes refuses to register organisations or may impose conditions when allowing a society to register. Many NGOs register as companies in order to avoid complexities of the Societies Act. However, the government increased its powers to disband, block, and revoke the registration of companies and businesses seen to be acting unlawfully or prejudicially to national security in 1998 and 2001. The government has used these powers selectively against political opposition groups in the past, and human rights activists claimed that these powers could be used to check NGOs that are critical of the government.⁵⁷

The government does not allow international human rights agencies to form domestic branches. Amnesty International was allowed to register as a business and functioned much like an NGO.⁵⁸

The Internal Security Act (ISA) and other provisions have been used against members of political opposition groups and other groups critical of the Malaysian government. The arrest of Mohamad Fuad Mohs Ikhwan, president of the Student Representative Council of University Malaya, and Khairul Anuar Ahmad, a student leader from the Institute Kemaharin Mara. Both were arrested under the draconian ISA. Although both students were eventually released, their example reveals the willingness of the Malaysian government to put a stop to the freedom of association and stifle criticism of its policies or opposition activities by force.

A key element of Prime Minister Mahathir's blueprint for economic growth, entitled Vision 2020, was to build a sophisticated manufacturing sector that could compete in global markets. But workers across Malaysia are oppressed by lack of legal protections for basic rights. For a long time, the Malaysian Trades Union Congress has expressed concern that the Trade Union Act only weakens the union movement. Indeed, Malaysia has not ratified ILO Convention 87 on Freedom of Association and Protection of the Right to Organise. It is believed that less than 20 percent of employees in the country are unionised.⁵⁹

Freedom of Assembly

The government continues to restrict significantly freedom of assembly and on peaceful gatherings, especially those organised by the political opposition, by refusing to issue permits for political gatherings from July 2001 onward. They effectively limit the ability

⁵⁷ US State Department, '2002 Country Reports on Human Rights Practices – Malaysia' available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18252.htm>.

⁵⁸ UN Special Representative on Human Rights Defenders, Annual Report 2002, E/CN.4/2002/106.

⁵⁹ Lawyers' Committee For Human Rights, Malaysian Workers' Rights, 'Workers Rights in Malaysia', available at http://www.lchr.org/workers_rights/wr_se_asia/wr_malaysia/wr_malaysia.htm (last visited 10 February 2004).

of opposition parties especially the Islamic parties to communicate with supporters and raise funds.

On 1 October 2003, the police blocked a meeting scheduled to take place in Selangor Chinese Assembly Hall organised by civil society activists to protest the government's refusal to release the six opposition figures detained under the ISA following the Federal Court's ruling that their initial detentions were unlawful.

Freedom of Press and Expression

The English and Malay mainstream press provides uncritical coverage of government officials and policies and usually only give limited and selective coverage of opposition views or political rivals. Editorial opinions are in line with government positions on most issues. The Chinese language press is freer in reporting, but not immune to government pressure. Criticism of the government is mostly found in publications of opposition parties, social actions groups, unions, and other private groups. However, these publications are required to renew publishing permits annually, keeping them under the thumb of the Government, and are limited in circulation only to relevant organization members. *Harakah* is the only Malay and English publication that publishes opposition views. It is the target of several libel suits and its publishing is limited to twice a month from twice a week. However, other opposition newsletters are published and distributed without government oversight.⁶⁰

Two exclusively on-line newspapers are active, although another one that was forced to shut down in December 2000 due to financial difficulties was reestablished in June 2000 under a different name. Exclusively online newspapers do not require publication permits; however, the Government denies their reporters press accreditation to cover government functions and ministers' press conferences, and refuses their admission into government buildings. The government engaged in a sometimes intimidating campaign to discredit the independent Internet daily, *malaysiakini.com*, winner of an International Press Institute 2001 Press Freedom Award. According to Human Rights Watch, an Information Ministry official stated that *malaysiakini.com* would be barred from covering government press conferences "because their credibility is doubtful." However, this policy was not systematically implemented.⁶¹

The National Human Rights Commission

The National Human Rights Commission, Suhakam, is now a more a credible human rights monitor than earlier and a reasonable check on police activities. Many NGO leaders fear that Suhakam's new leadership, who are culled from the civil service, will tilt the leadership in a pro-government direction. Suhakam is not empowered to investigate matters that are related to ongoing court cases. Many observers view Suhakam as the

⁶⁰ US State Department, '2002 Country Report on Human Rights Practices - Malaysia', (2002) available at www.state.gov/g/drl/rls/hrrpt/2002/18252.htm (last visited 10 February 2004).

⁶¹ US State Department, '2001 Country Report on Human Rights Practices - Malaysia,' (2001) available at <http://www.state.gov/g/drl/rls/hrrpt/2001/eap/8342.htm> (last visited 10 February 2004).

only institution with any ability to challenge executive power. After the war on terrorism became a regional priority, Suhakam's Chairman had taken a low-key, behind the scenes approach to promoting human rights.

Suhakam has spoken out publicly about the state of prison conditions in the country and has undertaken an investigation into the numbers and conditions of detainees under the ISA. Significantly, Suhakam has not made any statements about the trials of Anwar Ibrahim or Irene Fernandez or the detention of Tian Chua.

Singapore

The People's Action Party (PAP) has dominated Singapore's government since it gained independence from Britain in 1949. The lack of success of the political opposition is in part due to the repressive policies of the government, which continues to limit the freedom of assembly, association, and expression of its people.

The Operation of NGOs

There are few NGOs in the country, apart from non-political organisations such as religious groups, ethnically affiliated organisations, and providers of welfare services. This situation is largely due to the legal limitations on the creation of such organisations. Additionally, in the past, government leaders have used court proceedings, in particular defamation suits, against political opponents and critics.

One such example is that of Dr. Chee Soon Juan, who was sentenced to five weeks of imprisonment on 8 October 2002 after he refused to pay a fine for holding a May Day rally in support of worker's rights worldwide without a permit. Dr. Chee, the secretary-general of the Singapore Democratic Party, had applied for the permit, but was rejected on what appear to be groundless fears of a threat to law and order from the rally. The prison conditions faced by Dr. Chee were substandard. Although Article 14 of the Singaporean Constitution explicitly guarantees the freedom of speech, association, and assembly, the Public Entertainments and Meetings Act 1959 is repeatedly used by the government to convict and detain those who criticise government policy. Dr. Chee is a prominent advocate for workers' rights including fair conditions of labor, adequate wages, severance entitlements, and job security. He was an outspoken critic of labour conditions in the country and warned that they would adversely impact Singapore's industrial strength.⁶²

Although prison conditions in Singapore are generally believed to meet international standards, it was reported that Dr. Chee was chained to his bed at night during his incarceration.

⁶² Lawyer's Committee on Human Rights, 'Singapore May Day Arrest,' (4 November 2002) available at www.lchr.org/workers_rights/wr_se_asia/wr_singapore/wr_chee/adv_alert_chee.htm (last visited 12 February 2004).

Efforts by independent organisations to investigate and evaluate the government's human rights policies are greatly hindered, although in recent years, international human rights groups have been permitted to observe human rights-related court cases. In 2001, opposition politician J.B.Jeyaretnam's bankruptcy appeal was witnessed by a Canadian observer who acted as a representative of both Amnesty International and the Lawyer's Rights Watch in Canada. However, the UN Special Representative on Human Rights Defenders has not received any reply to her request to the Singapore government to carry out an official visit to the country.⁶³

October 2001 saw the official registration under Singaporean law of the Think Centre, an independent organisation committed to the expansion of civil liberties. Founder James Gomez faced pressure during the year for holding rallies without permits but no legal action was taken against him.⁶⁴

Freedom of Association

Most associations, societies, clubs, religious groups, and other organisations with more than 10 members are required to register with the Government under the Societies Act. The government often denies registration to groups that it believes are likely to have been formed to assemble for unlawful purposes or for purposes prejudicial to public peace, welfare, or public order.

The government has absolute discretion in applying this broad, vague language to register or dissolve societies. It prohibits organised political activities except by groups registered as political parties or political organisations. This prohibition limits opposition activities, and contributes to restricting the scope of unofficial political expression and action. In 2001, two NGOs that often took positions critical of the government were declared political organisations, but their operations were unaffected. Political parties and organisations are subject to strict financial regulations, including a ban on receiving foreign donations.

The Constitution provides citizens the right to peaceful assembly. In practice, the Government severely restricted this right. Assemblies of more than 5 people required police permission. Spontaneous public gatherings or demonstrations were virtually unknown.

Freedom of Press and Expression

Although freedom of speech and expression are guaranteed in the Constitution, they are not respected. In addition, strict defamation and press laws exist.

In September 2000, a Speaker's Corner opened in a financial district park. However, numerous government restrictions on the identities of the speakers, registration, and

⁶³ UN Special Representative on Human Rights Defenders, Annual Report 2002, E/CN.4/2002/106 E/CN.

⁶⁴ Human Rights Watch, '2002 World Report: Asia Overview', (2002) available at www.hrw.org/wr2k2/asia.html (last visited 12 February 2004).

sound amplification limit the exercise of free speech. Dr. Chee (mentioned earlier) was warned about the restriction on speeches that “have the potential to cause feelings of enmity, ill will, or hostility between different racial or religious groups” when he attempted to make a speech about the requirement for headscarves in schools. Although he was allowed to finish the speech by police, he was arrested not long afterwards of other violations.⁶⁵

The government strongly influences both the print and electronic media. Singapore Press Holdings, which owned most of the newspapers in all the four major languages, is closely tied to the government and editorials and news coverage reflect government views in all papers. Government-linked companies operate all broadcast television stations and almost all radio stations. Satellite dishes are banned, although cable allowed access to some foreign television news channels. Foreign media operations located within the country are under strict government supervision thanks to a law that requires a \$133,000 bond and named legal representatives. Strict defamation laws make it difficult for newspapers to criticise any public officials. The Singapore Broadcasting Authority censors broadcast media and Internet sites.⁶⁶

In August 2001, the Bloomberg News Service paid \$338,000 in damages to the Prime Minister due to an article accusing him of nepotism. In July of 2001, two persons had their computers seized because they were allegedly responsible for libelous Internet postings.⁶⁷

Sri Lanka

In Sri Lanka, the conflict between the government and the Tamil separatist movement continues to lead to serious human rights violations committed both by government forces and by the armed opposition group Liberation Tigers of Tamil Eelam (LTTE). In spite of having a National Human Rights Commission, human rights defenders routinely face arbitrary detention, incommunicado detentions for several weeks or months, torture, unfair trial etc., to suppress any form activism. Although human rights defenders continue to play a crucial role in exposing, combating and preventing abuse, they face both legal and extralegal efforts to silence criticism.

Human rights defenders in the capital, Colombo, operate in relative freedom, but individuals and organisations in the north and east face serious pressure from state forces, armed paramilitary groups, and the LTTE. In some cases, human rights defenders in the east ask that the details of threats made against them--particularly those made by LTTE members and paramilitaries--be kept confidential out of fear of retaliation.⁶⁸

⁶⁵ US State Department, ‘2002 Country Reports on Human Rights Practices – Singapore’, available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18263.htm>.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Human Rights Watch, ‘2002 World Report: Asia Overview’, (2002) available at www.hrw.org/wr2k2/asia.html (last visited 12 February 2004).

Freedom of Speech

The Sri Lankan Government's reputation for tolerance of political dissent has been compromised recently by the attempted kidnapping of Michael Fernando, a torture victim in Sri Lanka who has complained of human rights violations in local courts and to the UN Human Rights Committee.⁶⁹ Fernando had apparently received death threats in the past as a result of having made these complaints. Prior to the most recent assault, his assailant allegedly asked him whether he was the man who had asked for police protection and complained to the UN about human rights violations.⁷⁰

Other evidence of intimidation of political dissidents by State agents has also been documented. On 2 July 2001, the Sri Lankan Army in Inuvil arrested Thivyan Krisnasamy, the former Secretary of the Jaffna University Students' Union⁷¹. According to the information received, Krisnasamy has also been heavily involved in the "Tamil Upsurge" movement, a non-violent movement that is protesting against the State armed forces, demanding self-determination for the Tamils and calling for an end to the current conflict.

Since 1996, Mr. Krisnasamy has also reportedly been active in protesting against large-scale disappearances in Jaffna and violations committed by the Sri Lankan armed forces, such as sexual violations of Tamil women. It is believed that his arrest was connected with these activities. According to the information received, he was accused of being a member of the LTTE and of conducting "subversive activity". It is believed that Mr. Krisnasamy has been tortured during his detention, in order to get him to make a false confession that he is involved with the LTTE, which can then be used against him as evidence in a trial. According to a communication from the Sri Lankan government⁷², the charges for which Mr. Krisnasamy was indicted were finally dropped in early 2002.

Nimal Punchihewa, a senior lawyer for the National Human Rights Commission of Sri Lanka (NHRC), was the victim of an act of intimidation by a senior police official on 22 January 2002, while conducting an inquiry into a complaint of illegal arrest against three police officers. It has been alleged that since its inauguration in 1994, the NHRC has been under heavy pressure from individuals alleged to be law enforcement officials and politicians. There was no response from the Government with regards to this specific case.⁷³

⁶⁹ OMCT, 'Sri Lanka: Attempted Kidnapping of Michael Fernando', (3 February 2004) available at <http://www.omct.org/base.cfm?page=article&num=4584&consol=close&kwrd=OMCT&cfid=830155&cfoken=36456971> (last viewed 12 February 2004).

⁷⁰ Ibid.

⁷¹ According to the UN Special Representative on Human Rights Defenders' Annual Report for 2002 (E/CN.4/2002/106), the Special Representative, together with the Special Rapporteur on torture, sent an urgent appeal on 2 August 2001 and an allegation on 30 August 2001 concerning the arrest of Thivyan Krisnasamy.

⁷² UN Special Representative's 2003 Annual Report (E/CN.4/2003/104/Add.1).

⁷³ UN Special Representative on Human Rights Defenders, 2003 Annual Report (E/CN.4/2003/104/Add.1).

Freedom of Press

Claims of harassment and intimidation of private media by the government continue. In November 2001 Paul Harris, a foreign national and a journalist loosely affiliated with the "Daily Telegraph" was denied a visa extension, allegedly for violation of the terms of his visa. Speculation in the press is that the denial was based on political pressure because of Mr. Harris' criticism of the Government and the LTTE. Multiple organizations, including the Editor's Guild of Sri Lanka, the Free Media Movement, the Foreign Correspondents Association of Sri Lanka, and the President's office have criticized the decision as an infringement on freedom of the press.⁷⁴

No action was taken, nor is any likely, into the 1999 killing of editor Ramesh Nadarajah, and the 1999 abduction of a journalist by an army brigadier.⁷⁵

The Sri Lanka Tamil Media Alliance (SLTMA) was formed in 1999 to protect the interests of Tamil journalists, who allege that they are subject to harassment and intimidation by Tamil paramilitary groups and Sri Lankan security forces. Regional Tamil correspondents working in the war zones have complained of arbitrary arrest and detention in the past and difficulty in obtaining press accreditation. The SLTMA has filed cases on behalf of Tamil journalists, but its cases have not yet succeeded in the courts.⁷⁶

The LTTE restricted academic freedom, and it has repressed and killed intellectuals who criticize it, most notably the moderate and widely respected Tamil politician and academic, Dr. Neelan Tiruchelvam, who was killed by a suicide bomber in July 1999. The LTTE also has severely repressed members of human rights organizations, such as the University Teachers for Human Rights (UTHR), and other groups. Many former members of the UTHR have been killed.⁷⁷

Freedom of Assembly

The LTTE does not allow freedom of association in the areas that it controls. The LTTE reportedly has used coercion to make persons attend rallies that it sponsors. On the Jaffna Peninsula, the LTTE occasionally has posted in public places the names of Tamil civilians accused of associating with security forces and other Government entities. The LTTE has killed Tamil civilians who have cooperated with the security forces in establishing a civil administration in Jaffna under a political leadership elected freely and fairly in January 1998.

The National Human Rights Commission

⁷⁴ US State Department Report, '2002 Country Reports – Sri Lanka', (2002) available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18315.htm> (last visited 12 February 2004).

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

The NHRC in Sri Lanka (SLHRC) has come in for a lot of criticism from various human rights groups and defenders for its skewed attempt at addressing human rights violations in the country. Though the SLHRC is given access to conduct investigations into complaints and allegation of violations, its attempts do not manifest into action for the real safeguard and protection of human rights in Sri Lanka.⁷⁸

The SLHRC's power and ability to investigate human right's violations is being substantially undermined by the notorious Emergency Regulations and by uncooperative police officers. This puts human rights defenders in Sri Lanka under a palpable threat of attacks and violations by the State.

In May 2000, the President of Sri Lanka promulgated new emergency regulations, which confer powers of arrest to "any authorized person" in addition to the police and armed forces and considerably extend the powers to detain available to them.⁷⁹ As a safeguard against abuse of the emergency regulations, section 28 of the Human Rights Commission Act No. 21 of 1996 stipulates that every officer who makes an arrest or order of detention must inform the SLHRC or any person specially authorized by it of the arrest or detention, as well as the place at which the person arrested or detained is being held. Unfortunately, section 28 is being largely ignored in practice. Many officers have been consciously disregarding it and have not been notifying the SLHRC of arrests, and other officers have not been notifying the SLHRC of arrests and detentions because the section 28 requirements do not appear to be very well known.

Due to abuse of the emergency regulations and disregard for section 28 of the National Human Rights Commission of Sri Lanka of Act, several hundred persons have reportedly been killed extrajudicially by the security forces or have disappeared after being taken into security force custody; they are presumed dead. With the exception of 6 security officers who were convicted in the 1996 killing of Krishanthi Kumaraswamy and the 4 convictions for abduction involving 88 security personnel, no member of the security forces has been convicted for any of these crimes. In the majority of cases where military personnel have committed human rights violations, the government has not identified those responsible or brought them to justice.⁸⁰

The leadership of the SLHRC has been recently changed. A well-known human rights academic and a former UN Special Rapporteur is now at the helm. The human rights community is hopeful of changes that will make the SLHRC an effective instrument of human rights accountability, playing an important role in the protection and safeguarding of human rights defenders in Sri Lanka.

⁷⁸ For a detailed discussion on the SLHRC see, Asia Pacific Human Rights Network, "National Human Rights Commission of Sri Lanka: Jettisoning an Unproductive Past", *National Human Rights Institutions in the Asia Pacific Region*, November 2002, p119.

⁷⁹ Amnesty International, 'Sri Lanka: New Emergency Regulations – erosion of human rights protection', *Amnesty International Press Release*, AI Index: ASA 37/19/00. Distr: SC/CO. International Secretariat, 1 Easton Street St., London WC1X 0DW, UK. July 2000.

⁸⁰ U.S State Department, '2000 Country Reports – Sri Lanka', (2000) available at <http://www.state.gov/g/drl/rls/hrrpt/2000/sa/index.cfm?docid=704&CFNoCache=TRUE&printfriendly=true> (last visited 12 February 2004).

Australia and New Zealand

Both Australia and New Zealand are in general compliance with the provisions of the Declaration on Human Rights Defenders. In Australia and New Zealand, a wide variety of domestic and international human rights groups operate without governmental interference.⁸¹

Both countries also have Human Rights Commissions that operate independently of the Government with broad powers of investigation and conciliation. However, the Australian Federal Parliament is currently debating legislation that will restrict the power of the Human Rights and Equal Opportunity Commission to intervene in legal proceedings involving human rights violations, unless permission has been granted by the Federal Attorney-General.⁸²

In 2000, the Australian Government also announced that it intended to limit visits by UN human rights treaty committees to cases where 'a compelling reason' existed for their visit. The Government has been especially reluctant to allow visits to the facilities in which it detains asylum-seekers as their claims for refugee status are being processed.⁸³ The Australian Government however, like the New Zealand Government, is still generally exemplary in its observance of the provisions of the Declaration.

Conclusion

The adoption of the Declaration on Human Rights Defenders by the UN General Assembly appears to have done nothing to alleviate the plight of human rights defenders in the Asia Pacific region. In the majority of countries profiled, even those with national human rights institutions, individuals and organisations promoting respect for human rights are systematically subjected by State agencies to a range of oppressive measures, from intimidation to prolonged detention. This is arguably indicative of the inefficacy of the provisions of the Declaration, as they merely serve to duplicate protections already existent in international human rights Conventions, such as the ICCPR and ICERD. Furthermore, to the extent that the Declaration imposes new obligations on States, these provisions are easily subverted by State Governments by relying on Article 3 of the Declaration.

⁸¹ US State Department '2002 Country Reports – Australia', (2002) available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18235.htm> (last visited 12 February 2004) and US State Department, '2002 Country Reports – New Zealand', (2002) available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18257.htm> (last visited 12 February 2004).

⁸² Australian Lawyers for Human Rights, 'Inquiry into Human Rights Legislation Amendment Bill (No 2)', available at <http://www.alhr.asn.au/html/documents/hrlab2sub.html> (last visited 12 February 2004) and US State Department '2002 Country Reports – Australia', (2002) available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18235.htm> (last visited 12 February 2004).

⁸³ US State Department '2002 Country Reports – Australia', (2002) available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18235.htm> (last visited 12 February 2004).