



**Commonwealth  
Human  
Rights  
Initiative**

**India**

**Submission to the UN Universal Periodic Review  
13<sup>th</sup> Session of the UPR Working Group**

**Submitted 28 November 2011**

**Submitted by CIVICUS: World Alliance for Citizen Participation, NGO in General Consultative Status with ECOSOC and the Commonwealth Human Rights Initiative.**

**1. (A) Introduction**

1.1 CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizen's freedom of association are threatened.

1.2 The Commonwealth Human Rights Initiative (CHRI) is an international NGO working towards the practical realisation of human rights in the countries of the Commonwealth.

1.3 In this document, CIVICUS and CHRI outline urgent concerns related to the environment in which civil society activists and human rights defenders operate in India, and about threats faced by them in the exercise of the freedoms of expression, association and assembly.

- Under Section B, CIVICUS and CHRI highlight concerns regarding assassinations and physical attacks on civil society activists exposing corruption
- In section C, CIVICUS and CHRI focus on lethal attacks on protestors and legal cover for security forces using excessive force to quell protests
- In section D, CIVICUS and CHRI highlight concerns about judicial harassment and arbitrary arrests of human rights defenders
- In section E CIVICUS and CHRI highlight unwarranted restrictions on foreign funding for civil society organisations
- In section F, CIVICUS and CHRI make a number of recommendations in the areas of the concerns listed.

**2. (B) Concerns regarding physical attacks on and murder of civil society activists exposing corruption**

**2.1** The Constitution of India and ICCPR to which India is a party guarantee the freedoms of expression, association and assembly as well as the right to life. Nonetheless, assassinations of a large number of civil society activists and human rights defenders exposing corruption and human rights violations across the country indicate that the authorities in India are failing in their responsibility to provide adequate protection to civil society activists and human rights defenders.

**2.2** Exposing corruption and human rights violations is a dangerous and life threatening activity in many parts of India. Throughout 2010-2011, mafia and criminal elements carried out targeted killings of at least a dozen anti-corruption activists in the states of Jharkhand, Maharashtra, Uttar Pradesh, Andhra Pradesh and Bihar. The murdered activists were engaged in exposing illegal business activities. The manner of killing varied from beating resulting in death to use of firearms. Following are the names of some of the murdered activists: Shehla Masood, Niyamat Ansari, Ramdas Ghadegavkar; Babbu Singh; Amit Jethwa; Dattaray Patil; Vitthal Gite; Sola Sanga Rao; Arun Sawant; Shashidhar Mishra; Vishram Laxman Dodiya; Lalit Mehta; and Satish Shetty.

**2.3** In addition to assassinations, an alarming number of murderous attacks have also been reported by activists involved in exposing official nepotism and corruption. Many of the activists against whom physical attacks were carried out had filed applications under India's Right to Information Act asking for details regarding mining activities. The information sought if disclosed had the potential of exposing illegal mining activities and the alleged nexus between the land and timber mafia and corrupt government officials.

**2.4** Although, arrests have been made in a few instances, the slow pace of investigations in some cases as well as the failure to apprehend and bring perpetrators to justice in a number of cases is a major cause of concern.

### **3. (C) Excessive use of Force on protestors and legal cover for security forces using excessive force to quell protests**

**3.1** The Constitution of India and the ICCPR to which India is a party guarantee the freedom of peaceful assembly. Nevertheless, the freedom to protest particularly in politically sensitive areas and situations is severely threatened and fraught with danger.

**3.2** In the state of Jammu and Kashmir, over a hundred civilians were shot dead by the police and paramilitaries in the pervasive anti-government protests that took place between June and September 2010. Amongst these were children in some instances under the age of 12 years. Protestors and stone pelters were with met with tear smoke shells and bullets. The force used was excessive which resulted in huge loss of human life and serious injuries. Till date there has been little effort to bring perpetrators to book. The most basic requirement of registering First Information Reports for the deaths during the firing has not been complied with.

### **4 (D) Harassment through judicial processes and arbitrary arrests of human rights defenders**

**4.1** Despite constitutional protection for an independent judiciary political interference in India's criminal justice system remains rife particularly at the operational level in districts.

There have been well documented reports of human rights defenders being subjected to harassment through judicial proceedings.

**4.2** In December 2010, Dr Binayak Sen, Vice President of the People's Union for Civil Liberties, who was engaged in documenting human rights violations by security forces in the state of Chhattisgarh was convicted of sedition and criminal conspiracy on the grounds that he provided assistance to and supported the activities of outlawed Maoist groups. The manner in which the police charged Dr Sen and the weak evidence relied upon by the court to convict him has been the subject of severe criticism by civil society organisations.

**4.3** Activists documenting human rights violations including torture by the police are particularly vulnerable and susceptible to arbitrary arrests and harassment through motivated prosecutions. In August 2010, five members of the Dalit Foundation, an NGO committed to the eradication of caste discrimination who were on a fact finding mission to inquire into the case of torture of a Dalit youth by the police were themselves arrested and detained by the police in the state of Tamil Nadu. They were accused of various offences including "impersonating a public servant, "assault or criminal force to deter a public servant from the discharge of his duty, "cheating by personation" and "criminal intimidation."

## **5. (E) Unwarranted restrictions on international funding for civil society**

5.1 The UN Declaration on Human Rights Defenders passed through a UN General Assembly Resolution guarantees the right to access resources for the purpose of protecting human rights, including the receipt of funds from abroad.

5.2 The Foreign Contributions Regulation Act (FCRA) 2010 places a number of hurdles for civil society groups engaged in human rights advocacy and documenting of violations by allowing for broad executive discretion to designate organisations as being of a 'political nature' and thereby prevent them from accessing funding from abroad.

5.3 The FCRA also mandates that organisations must renew their registration to enable international funding every five years. This provision subjects civil society organisations to additional layers of bureaucracy and also makes organisations critical of official policies vulnerable to bureaucratic sanction thereby impacting the independence of the civil society sector.

## **6. (F) Recommendations to the Government of India**

6.1 CIVICUS and CHRI call on the Indian Government to create an enabling environment for civil society to operate in accordance with the rights enshrined in the Constitution of India, the ICCPR and the UN Declaration on Human Rights Defenders.

- In particular, the Government of India should guarantee the following minimum requirements in policy and practice for civil society to operate: *freedom of association; freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding, and the state's duty to protect*

## 6.2 Regarding assassinations and physical attacks on civil society activists exposing corruption

- A National Human Rights Action Plan in consultation with the National Human Rights Commission has been pending for over a decade. This needs to be finalised. Such a plan can take into account protection for all vulnerable persons and in particular those persons that face an added risk of persecution by the state or non state actors.
- Police reforms should be urgently undertaken in the spirit of the 2006 Supreme Court judgement on the issue as well as the recommendations of the National Police Commission - which are pending implementation since three decades.

## 6.3 Regarding excessive use of force on protestors and legal cover for security forces using excessive force

- Security forces in charge of crowd control should be equipped with non-lethal weapons and provided training across the board on 'humane means of crowd control' as well as on the UN Basic Principles on the Use of Force and Firearms.
- Every case of injury caused to protestors by security forces should be subjected to a mandatory police investigation as well as referred to the National Human Rights Commission.
- The Armed Forces Special Powers Act and Section 197 of the Code of the Criminal Procedure which impede action against security forces for human rights violations should be repealed.

## 6.4 Regarding arbitrary arrests of human rights defenders

- Complaints of arbitrary arrest and detention of civil society activists should be inquired by district police chiefs and also referred by them as a matter of policy to the National Human Rights Commission.
- Laws allowing preventive/ administrative detention which permit detention without due process of law such as the National Security Act and the Jammu and Kashmir Public Safety Act should be repealed.

## 6.5 Regarding unwarranted restrictions on international funding for civil society

- The Foreign Contributions Regulations Act should be amended to: ensure that the definition of a "political organisation" is only restricted to political parties contesting elections; and the requirement to renew permission for obtaining foreign funding every five years should be repealed in favour of one time permission.