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Press Release

Statement of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, as she concludes her visit to India

NEW DELHI, 21 January 2011 – From 10 to 21 January 2011, I carried out a fact-finding mission to assess the situation of human rights defenders in India, and traveled to New Delhi, Bhubaneswar (Orissa), Kolkata (West Bengal), Guwahati (Assam), Ahmedabad (Gujarat), Jammu and Srinagar (Jammu and Kashmir).

I met with the Foreign Secretary; the Union Home Secretary; the Additional Secretary (International Organisations and Environment Diplomacy); the Joint Secretary (Human Rights), Ministry for Home Affairs; the State Chief Secretary, State Home Secretary and Director-General of Police in states visited; the Chairperson of the National Human Rights Commission; Members of the Statutory Full Commission; Chairpersons and Members of State Human Rights Commissions; and Judges from the High Court in Delhi. However, I regret I was unable to meet the Prime Minister, nor with members of the Parliament.

I met as well with members of the diplomatic community and United Nations agencies in the capital. Finally, throughout my mission, I met a very wide and diverse segment of the civil society through national and regional consultations.

I thank very much the Government of India for extending an invitation to me and for its exemplary cooperation throughout the mission. I further want to thank all human rights defenders with whom I had meetings, some of whom had to travel long distances to meet me. Finally, I want to express my appreciation to the Office of the United Nations Resident Coordinator in India for its invaluable support in preparation of and during the mission.

While I must now take some time to review and analyse the considerable amount of information I have received, and to follow up on further exchanges of information with the Government, human rights defenders and other stakeholders, I would like to provide a few preliminary observations and recommendations.

I first want to commend the Government for opening its doors to my mandate. Previous requests to visit India were made by my predecessor in 2002, 2003 and 2004. This is an important development, and I hope that the invitations of other Special Procedures mandate-holders will be similarly honoured in the near future.

I further commend the Government for enabling me to visit five States, which

assisted me in gaining a clear understanding of the local specificities in which human rights defenders work. Given the duration of the mission and the size of the country, I regret I could not access all parts of the country, but I invite those who wish to do so to provide me with information now or in the near future.

I note with satisfaction that India has a comprehensive and progressive legal framework which guarantees human rights and fundamental freedoms, as enshrined, inter alia, in the Constitution, the Protection of Human Rights Act, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and the Right to Information Act. I welcome the commitment expressed by Indian authorities to uphold human rights.

I further welcome the draft Bill on the Prevention of Torture with a view to ratifying the Convention Against Torture in the near future.

Besides the National Human Rights Commission and existing State-level Human Rights Commissions, I note the existence of a wide range of Statutory Commissions mandated to promote and protect the rights of, inter alia, women, children, scheduled castes and scheduled tribes.

However, despite the aforementioned laws aimed at promoting and protecting human rights, I note widespread deficiencies in their full implementation at both central and state levels, adversely affecting the work and safety of human rights defenders. Similarly, I have observed the need for the National and existing State Human Rights Commissions to do much more to ensure a safe and conducive environment for human rights defenders throughout the country.

Throughout my mission, I heard numerous testimonies about male and female human rights defenders, and their families, who have been killed, tortured, ill-treated, disappeared, threatened, arbitrarily arrested and detained, falsely charged, under surveillance, forcibly displaced, or their offices raided and files stolen, because of their legitimate work in upholding human rights and fundamental freedoms.

These violations are commonly attributed to law enforcement authorities; however, they have reportedly also shown collusion and/or complaisance with abuses committed by private actors against defenders. Armed groups have also harassed human rights defenders in some instances.

In the context of India's economic policies, defenders engaged in denouncing development projects that threaten or destroy the land, natural resources and livelihood of their community or of other communities, have been targeted by State agents and private actors, and are particularly vulnerable.

I am particularly concerned at the plight of human rights defenders working for the rights of marginalized people, i.e. Dalits, Adavasis (tribals) religious minorities and sexual minorities, who face particular risks and ostracism because of their activities. Collectivities striving for their rights have in fact been victimized.

Women human rights defenders, who are often at the forefront of the promotion and protection of human rights, are also at particular risk of persecution.

Right To Information (RTI) activists, who may be ordinary citizens, have increasingly been targeted for, among others, exposing human rights violations and poor governance, including corruption of officials.

Other defenders targeted include those defending women's and child rights, fighting impunity for past human rights violations, seeking accountability for communal pogroms, upholding the rights of political prisoners, journalists, lawyers, labour activists, humanitarian workers, and church workers. Defenders operating in rural areas are often more vulnerable.

While I acknowledge the security challenges faced by the country, I am deeply concerned about the arbitrary application of security laws at the national and state levels (in Jammu and Kashmir and in the North-East of India), most notably the Public Security Act and the Armed Forces Special Powers Act, the Jammu and Kashmir Public Safety Act and the Unlawful Activities Prevention Act, which direly affects the work of human rights defenders.

I am troubled by the branding and stigmatization of human rights defenders, who are labeled as "naxalites (Maoists)", "terrorists", "militants", "insurgents", "anti-nationalists", "members of underground". Defenders on the ground, including journalists, who report on violations by State and non-State actors in areas affected by insurgency are targeted by both sides.

Freedom of movement of defenders has also been restricted under these security laws; for instance, applications of passport or renewal have been denied, as well as access for defenders to victims in some areas.

Illegitimate restrictions to freedom of peaceful assembly were also brought to my attention: for example, I was informed of instances of protests in support of a human rights defender in detention which were not allowed to take place.

Finally, I am concerned about the amendment to the Foreign Contribution Regulations Act which provides that non-governmental organisations must reapply every five years for the review of their status by the Ministry of Home Affairs in order to receive foreign funding. Such a provision may be used to censor non-governmental organisations which are critical of Government's policies.

In view of the above, the space for civil society is contracted.

Although the judiciary is the primary avenue for legal redress, I have observed that its functioning is hampered by backlog and significant delays in administrating cases of human rights violations.

The National Human Rights Commission and the existing State Human Rights Commissions is an important additional avenue where human rights defenders can seek redress. However, all the defenders I met during the

mission voiced their disappointment and mistrust in the current functioning of these institutions. They have submitted complaints related to human rights violations to the Commissions, but reportedly their cases were either hardly taken up, or the investigation, often after a significant period of delay, concluded that no violations occurred. Their main concern lies in the fact that the investigations into their cases are conducted by the police, which in many cases are the perpetrators of the alleged violations. While I welcome the establishment of a human rights defenders focal point within the National Human Rights Commission, I regret that it was not given sufficient prominence within the Commission.

Based on the above, I wish to make the following preliminary recommendations:

To the Central and State Governments:

- The Prime Minister and the Chief Secretaries should publicly acknowledge the importance and legitimacy of the work of human rights defenders, i.e. anyone who “individually and in association with others, [...] promote[s] and [...] strive[s] for the protection and realization of human rights and fundamental freedoms at the national and international levels “ (article 1 of the Declaration on Human Rights Defenders, A/RES/53/144). Specific attention must be given to human rights defenders who face particular risks (as identified above).
- Security forces should be clearly instructed to respect the work and the rights and fundamental freedoms of human rights defenders, especially human rights defenders who face particular risks (as identified above).
- Sensitization training to Security forces on the role and activities of human rights defenders should be delivered, with technical advice and assistance from relevant UN entities, non-governmental organizations and other partners.
- Prompt and impartial investigations on violations committed against human rights defenders should be conducted, and perpetrators should be prosecuted.
- The Supreme Court judgment on police reform should be fully implemented in line with international standards, in particular at the State level.
- Full implementation of laws and policies which guarantee human rights and fundamental freedoms of human rights defenders should be ensured.
- A law on the protection of human rights defenders developed in full and meaningful consultation with civil society and on the basis of technical advice from relevant UN entities should be enacted.
- The Foreign Contribution Regulation Act should be critically reviewed.
- The Draft Bill on Prevention Against Torture should be adopted without further delay.

- The Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women should be ratified. The ratification of the complaints procedure will provide women human rights defenders an opportunity to access another procedure to address any violations of rights under the Convention.
- The Armed Forces Special Powers Act and the Public Security Act should be repealed and application of other security laws which adversely affect the work and safety of human rights defenders should be reviewed.
- The functioning of the National Human Rights Commission should be reviewed with a view to strengthening the Commission by, inter alia: broadening the selection criteria for the appointment of the Chairperson; diversifying the composition of the Commission; extending the one-year limitation clause; establishing an independent committee in charge of investigating complaints filed; elevating the status of the human rights defenders focal point by appointing a Commissioner. The Protection of Human Rights Act should be amended as necessary in full and meaningful consultation with civil society.
- State Human Rights Commissions should be established in States where such commissions are not yet in existence without further delay.
- Central and State Governments should continue collaborating with Special Procedures of the Human Rights Council, including by extending invitations for country visits.

To National and existing State Human Rights Commission:

- The supportive role of the commissions for human rights defenders should be strengthened by inter alia, conducting regular regional visits; meeting human rights defenders in difficulty or at risk; and undertaking trial observations of cases of human rights defenders wherever appropriate.
- The visibility of the commissions should be ensured through regular and proactive engagement with civil society and the media.
- A toll-free 24-hour emergency hotline for human rights defenders should be established.
- The commissions should monitor the full implementation of recommendations made by UN human rights mechanisms, including Special Procedures mandate-holders, Treaty Bodies, and the Universal Periodic Review.

To the judiciary:

- In the absence of a witnesses and victims protection Act, the judiciary should take measures to ensure the protection of human rights defenders at risk, witnesses and victims.

- The judiciary should ensure better utilization of *suo motu* whenever cases of violation against human rights defenders arise.
- The importance of the role of human rights defenders in the vibrant and active functioning of the judiciary should be recognised.

To human rights defenders

- Platforms or networks aimed at protecting defenders and facilitating dialogue should be devised or strengthened.
- Defenders should better acquaint themselves with the Declaration on Human Rights Defenders.
- Efforts should be made to continue making full use of United Nations Special Procedures and other international human rights mechanisms when reporting on human rights violations.

To the international community and donors

- The European Union Guidelines on Human Rights Defenders and local strategies on India should be implemented on a systematic basis.
- The situation of human rights defenders, in particular the most targeted and vulnerable ones, should be continually monitored, and support for their work should be expressed through, inter alia, interventions before central and state institutions.
- Efforts should be intensified in empowering civil society.

To all stakeholders:

- The Declaration on Human Rights Defenders should be translated in main local languages, and disseminated widely.
- Efforts should be continued to raise civic awareness among the general public, and the spirit of dialogue and cooperation in society fostered.

I will present my full report with final conclusions and recommendations to the UN Human Rights Council in March 2012.
