

# Steadfast in Protest



The Observatory  
for the Protection  
of Human Rights Defenders

ANNUAL REPORT 2010



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## **STEADFAST IN PROTEST**



OBSERVATORY FOR THE PROTECTION  
OF HUMAN RIGHTS DEFENDERS

**OMCT / FIDH**

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**ANNUAL REPORT 2010**

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\* BEIJING: An emotional and grieving Zheng Shuzhen (2nd left) is holding a portrait of her deceased grand-daughter Zhou Mengxin outside the Complaints Department of the Ministry of Health in Beijing on May 8, 2009. She denounces the fact that the child's death, which resulted from the 2008 tainted milk scandal, has never been dealt with appropriately by their local government in Zhokou, Henan province. At least six babies died and nearly 300,000 fell ill in 2008 after they consumed milk powder contaminated by the industrial chemical melamine, which was mixed in to give the appearance of a higher protein content.

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# INTRODUCTION

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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*“A true society, where discussions and debates are an essential technique, is a society full of risks”<sup>1</sup>.* Although written over thirty years ago, these words of Moses I. Finley strongly summarise the spirit of this twelfth Annual Report of the Observatory. Drawing up an inventory as accurate as possible of the situation of human rights defenders in the world in 2009, this report illustrates forcefully the difficulty and danger of promoting the exchange of ideas, pluralism, protection of fundamental freedoms and the democratic ideal, on all continents.

**Who controls the civil society ensures the outcome of elections –**  
A motto of childlike simplicity that many States seem to have literally applied this year.

One who speaks of democracy and rule of law in contemporary societies immediately refers to the right of peoples to freely choose their leaders by vote. A right explicitly guaranteed by the Universal Declaration of Human Rights and which implementation requires the combination of different elements – respect for freedoms of association and expression, transparency, freedom of information, freedom of assembly – without which no election could be recognised as free and fair. So many elections took place worldwide in 2009, and many of these ballots did not meet these requirements. It is indeed clear, given the information we collected throughout the year, that these principles were often trampled upon or superbly ignored. Few leaders in authoritarian countries (but also in some countries said to be more “democratic”) have agreed to play the game of pluralism. On numerous occasions, on the contrary, we witnessed a muzzling of the opposition, media subservience and sometimes even blatant constitutional amendments, designed to maintain the power of Heads of States unwilling to pass on even a small part of their authority.

In recent years, Africa has seen many attempted coups, both at military and constitutional levels. In Latin America, for the first time since the fall of military dictatorships in the 1980s, a coup occurred in 2009 in *Honduras*, proving again that no situation can be definitely taken for granted.

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1/ See Moses I. Finley, *Democracy Ancient and Modern*, 1973, Rutgers University Press. Non official transcription.



In such contexts, human rights defenders, who strive daily to ensure that rights and freedoms are guaranteed, were once again subjected to considerable pressure, when they did not pay with their lives for their commitment. The role they have played in these electoral processes, some of which were highly publicised, such as in *Tunisia*, *Iran* or *Nicaragua*, accentuated an already pronounced repression against them.

In addition, some States provided little or no space for the freedoms of association, assembly and expression. In some others, like *Saudi Arabia*, the establishment of independent human rights organisations is purely and simply prohibited. In *Libya*, the Criminal Code even provides the death penalty for anyone belonging to a banned group. Where these associations can exist legally, they must often operate in a highly restrictive regulatory framework, and remain under permanent control of the authorities. *Cambodia* remains for its part subject to a risk of similar restrictions through a draconian Bill on NGOs. In *Tunisia*, State-controlled organisations continue to prosper, in a country where independent human rights organisations and their members are subject to constant harassment. In the *Russian Federation*, the implementation of the promises to reform the Law on NGOs made by President Medvedev during the year – a reform that would enable facilitation of the work of civil society organisations – remained insufficient at the end of 2009.

Obviously, such practices have the effect of hindering the work of human rights defenders and organisations, especially at election time. In *Armenia* and *Azerbaijan* for instance, election observers were repressed or prevented from doing their work, while in *Nicaragua*, associations that denounced the rigging of the elections to renew Daniel Ortega's term in office were targeted by authorities throughout the year. Similarly, the authorities intensified the repression of defenders at the time of elections in *Uzbekistan* and *Kyrgyzstan*. In *Niger*, defenders and NGOs that were critical about the concentration of power in the hands of the executive branch experienced serious impediments to their activities. Many supporters were also assimilated to the opposition and found themselves at the forefront of the crackdown for opposing bad or flawed pre-election practices (*Mauritania*, *Nigeria*, *Republic of Congo*), for exposing post-election violence (*Kenya*, *Zimbabwe*), for calling for free elections (*Sudan*) and respect for democratic principles during an inter-institutional crisis (*Democratic Republic of Congo*). On every continent, serious attacks on freedom of assembly also took place during such periods, resulting again in reprisals against defenders. Thus, following the events of September 28, 2009, presidential guards violently dispersed the peaceful opposition demonstration to the candidacy of *de facto* President Moussa Camara Dadis in the presidential election in

*Guinea-Conakry*. Similarly, repression of post-election protests in *Iran* resulted in mass arrests in the ranks of Iranian human rights defenders and in *Burma*, the year 2009 was characterised by a campaign by the military junta to eradicate all opposition on the eve of the 2010 elections. Many defenders, journalists, union leaders and social workers were arrested and sentenced to severe penalties.

**The media: a double-edged sword** – Restrictive press codes, control and surveillance of emails, Law on Lese-Majesty in *Thailand*, or even, as in *Yemen*, establishment of a special tribunal for press offences: the range of measures to muzzle the media is extremely broad, which, among others, is sometimes resulting in forced self-censorship. While many journalists around the world play a significant role in promoting pluralism and the protection of human rights, this situation is indeed fragile and requires that the media remains free, accessible to all, and that journalists can work safely.

In some countries, like *Senegal*, freedom of the press saw a significant improvement, although the media is still subject to hassling. However, in *Somalia*, the *Russian Federation*, *Kenya* and *Sri Lanka*, many journalists were murdered or arbitrarily detained in 2009 for denouncing human rights violations. Other media – including foreign – were suspended, or agreements reached with their distributors, so that concerned emissions could no longer be accessible to local populations.

Moreover, when a country's press sector is totally controlled by those in power, it can be a formidable propaganda instrument in their hands, and a very effective tool for defamation against defenders. "Mercenaries", "spies", or "agitators", for example, are some of the many adjectives used in long columns in the Tunisian press to tarnish the image of independent journalists who denounced once again the lack of pluralism in presidential elections of October 2009. These highly virulent smear campaigns against defenders were also reported this year in *Niger*, *Sudan* and *Georgia* during pre-election periods.

**Fragility of some intergovernmental mechanisms** – Is it a coincidence that the protection mechanisms that have developed in recent years in some inter-governmental organisations are subject to repeated attacks from their member States? Many countries, like *Pakistan*, *Uzbekistan* or *Zimbabwe*, are still refusing entry to their territory to UN Special Procedures that have requested it, and thus contribute to the weakening of these independent special procedures. This hostility *vis-à-vis* the intergovernmental bodies can also be found within the UN Human Rights Council and at the

UN General Assembly, where the reports of some mechanisms are under increasingly virulent attack.

At the regional level, the situation is equally disturbing. Within the Organisation for Security and Cooperation in Europe (OSCE), *Russia* and some Central Asian countries make use of all their influence to stigmatise and discredit NGOs participating each year in the “Human Dimension Implementation Meetings”. At the head of the Organisation in 2010, *Kazakhstan* for its part did little in 2009 to improve the situation of human rights and their defenders, either within the institution or in its own country. Moreover, much remains to be done for the decisions of the African Commission on Human and Peoples’ Rights (ACHPR) to be effectively implemented by its member States, and the Commission remains extremely cautious to the idea of challenging certain States on the violations they commit. In Asia, the emerging mechanisms within the Association of Southeast Asian Nations (ASEAN) is meanwhile facing considerable challenges, and several years will likely be required so that it asserts its autonomy in the region. Furthermore, the policies of openness within the European Union (EU) *vis-à-vis* certain States such as *Uzbekistan* and *Belarus* were not successful, as evidenced by the lifting of sanctions towards these countries, which was – as expected – not accompanied by improvements in the situation of human rights and the protection of defenders. Finally, the degree of implementation of EU external policy instruments – such as its Guidelines on Human Rights Defenders – unfortunately continues to depend too often on political or economic considerations.

This Annual Report, which also addresses the situation of defenders in Western European countries, shows that even in the most accomplished democracies – or those which consider themselves as such – vigilance must remain the order of the day, and shows that the defence of fundamental rights can be questioned anytime, for purposes of efficiency of questionable policies, or of a greater control of social bodies. It shows how defenders, everywhere, play an important role as a bulwark against arbitrariness and abuse, and that they remain, more than ever, a cornerstone of the rule of law.

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# METHODOLOGY

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The 2010 Annual Report of the Observatory for the Protection of Human Rights Defenders presents an analysis by region of the situation in which human rights defenders operated in 2009. The analyses are followed by country fact-sheets, which provide for the political context that prevailed at the national level during the year, and the most prevalent forms of repression against defenders, which are duly illustrated by concrete cases. However, given the volume of information gathered for the “Western Europe” region, it was decided to treat cases of obstacles for defenders in an regional analysis rather than in separate fact-sheets, with the exception of Turkey.

The cases presented in the regional analyses and country fact-sheets reflect activities of alert, mobilisation and support carried out by the Observatory on the basis of information received from member organisations and partners of FIDH and OMCT<sup>1</sup>. We would like to take this opportunity to express our appreciation and heartfelt thanks for their collaboration and their vital contributions.

This Annual Report is not exhaustive insofar as it relies on information received and addressed by the Observatory in 2009. In some States, systematic repression is such that it renders impossible any independent or organised activity of defence of human rights. In addition, some conflict situations also make it extremely difficult to isolate trends of repression that aim exclusively at human rights defenders. Situations that are not covered by country fact-sheets in this report are nevertheless referenced as much as possible in the regional analyses.

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1/ See Annex 1, p. 500.

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# ACRONYMS MOST FREQUENTLY USED IN THE REPORT

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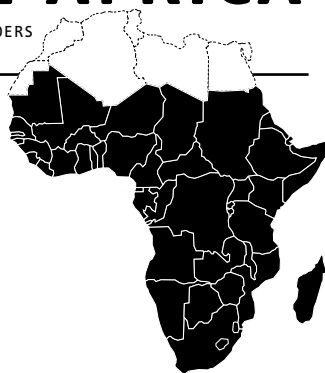
ACHPR .....	African Commission of Human and Peoples' Rights
ASEAN .....	Association of Southeast Asian Nations
AU .....	African Union
ECHR .....	European Court on Human Rights
EU .....	European Union
FIDH .....	International Federation for Human Rights
IACHR .....	Inter-American Commission on Human Rights
IACtHR .....	Inter-American Court on Human Rights
ICC .....	International Criminal Court
ILO .....	International Labour Organisation
HCR .....	United Nations High Commissioner for Refugees
LGBT .....	Lesbians, Gays, Bisexuals and Transgenders
NGOs .....	Non-Governmental Organisations
OAS .....	Organisation of American States
ODIHR .....	Office for Democratic Institutions and Human Rights
OHCHR .....	Office of the United Nations High Commissioner for Human Rights
OMCT .....	World Organisation Against Torture
OSCE .....	Organisation for Security and Cooperation in Europe
PACE .....	Parliamentary Assembly of the Council of Europe
UN .....	United Nations
UPR .....	Universal Periodic Review

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# SUB-SAHARAN AFRICA

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# REGIONAL ANALYSIS SUB-SAHARAN AFRICA

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In 2009, democratic transition remained the exception on the African continent. While Sub-Saharan Africa has several leaders who have remained in power for years with no challengers (*Angola, Cameroon, Djibouti, Zimbabwe*), the Presidents of *Niger* and *Cameroon* did not hesitate this year to initiate proceedings modifying the Constitution to run for another term. Moreover, while several States in the region agreed to cooperate with the United Nations or African Union (AU) mechanisms protecting human rights and hosted visit by Special Rapporteurs (*Botswana, Burundi, Central African Republic (CAR), Chad, Democratic Republic of Congo (DRC), Kenya, Liberia, Mauritania, Senegal, Somalia, Sudan, Uganda, Zambia*), others continued to ignore requests for visits from several Special Procedures of the United Nations, including those of the UN Special Rapporteur on the Situation of Human Rights Defenders (*Chad, Equatorial Guinea, Kenya, Mozambique, Zimbabwe*), or did not hesitate to revoke their commitments, as this was the case of *Zimbabwe* with respect to a visit from the Special Rapporteur on Torture, Mr. Manfred Nowak<sup>1</sup>.

The year 2009 was also marked by an increase in assassinations of defenders in countries such as *Burundi, DRC, Kenya, Nigeria, the Republic of the Congo* and *Somalia*. The intensification of repression against defenders was facilitated through systematic denigration by certain heads of State, like in *The Gambia* President Yahya Jammeh who, during a television programme held in September, openly threatened to kill human rights defenders, accusing them of seeking to “destabilise the country”. Following these statements, the African Commission on Human and Peoples’ Rights (ACHPR) unsuccessfully appealed to the AU to provide extra-budgetary resources to enable the holding of its 46th session in Ethiopia or any other AU Member State other than the Gambia, and to examine the possibility of transferring its secretariat in another country. Despite this appeal, the 46th session was finally held in Gambia and, while no incident hampered

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1/ See UN Special Rapporteur on Torture Press Release, October 29, 2009. Manfred Nowak was turned back at the airport in October while preparing to lead a tour of Zimbabwe in a context of renewed crisis between President Mugabe and Prime Minister Tsvangirai.

the session, the President's remarks remain representative of the difficult environment in which defenders operate in the Gambia.

### **Acts of harassment against human rights defenders in the context of elections or political crises**

In 2009, human rights defenders were particularly at risk during political crises, as in *Guinea-Conakry* following the events of September 28, when soldiers of the presidential guard violently suppressed a peaceful demonstration of opposition to the candidacy of *de facto* President Moussa Dadis Camara in the presidential election scheduled for 2010. In this context, several defenders were arrested. Defenders were also found at the forefront of crackdowns during crisis situations related to contested or flawed elections (*Mauritania, Nigeria, Republic of the Congo*). Those who denounced post-election violence (*Kenya, Zimbabwe*) or called for the holding of free elections (*Sudan*) were assimilated to the opposition and threatened, arrested, attacked or harassed. In other countries, defenders were subjected to campaigns of intimidation ahead of elections (*Ethiopia, Rwanda*). In *Niger*, several demonstrations against the reform of the Constitution aiming to lift presidential term limits were violently repressed by the police and led to arrests of supporters, some of whom were then subjected to judicial harassment. Finally, in the *DRC*, defenders who had called for respect of democratic principles during an inter-institutional crisis were either threatened, arrested or threatened with prosecution.

### **The precarious situation of human rights defenders in areas of conflict or post-conflict**

The barriers against defenders operating in countries affected by conflict or in post-conflict situations continued in 2009 and humanitarian personnel continued to be exposed to considerable risks (*Somalia, Sudan*). In these countries, protection of humanitarian workers has meant the suspension of their activities in some areas that have become too dangerous, to the detriment of civilian populations. In *Sudan*, the closure of three national NGOs involved in assisting victims of torture in Darfur and the expulsion of thirteen international humanitarian aid organisations thus resulted in a reduced ability to monitor the human rights situation in the country.

### **Human rights defenders fighting against impunity still a major target of repression**

The year 2009 saw no improvement in the repression of defenders fighting against impunity and defending the rights of victims, especially those before the International Criminal Court (ICC). The attacks, intimidation, threats and accusations of tarnishing the public image of the country



particularly intensified in *CAR*, *Sudan* and *DRC*, where human rights defenders identifying violations committed by parties to conflicts and providing support to victims continued to be exposed to considerable risk. Since the opening before the ICC in 2007 of the case “Prosecutor v. Jean-Pierre Bemba”, in the context of the situation in the *CAR*, lawyers, witnesses and families of victims have been routinely subjected to threats, harassment and intimidation, not only in the *CAR*, but also in the *DRC*, from where Mr. Jean-Pierre Bemba originates. These threats further increased following the opening in January and November 2009 of the trials of Messrs. Thomas Lubanga, Germain Katanga and Mathieu Ngudjolo for “war crimes” and “crimes against humanity”, and when civil society organisations opposed the provisional release of Mr. Bemba in November 2009, for fear of reprisals against victims. Similarly, in *Sudan*, in the context of the arrest warrant issued by the ICC against President Omar Al Bashir for “war crimes”, “crimes against humanity” and “genocide”, defenders involved in the fight against impunity were assimilated to “traitors to the nation”. The reluctance of some African countries to fight impunity and cooperate with the ICC, as evidenced by the decision taken by Heads of State and Governments during a meeting at the AU Conference on July 3, 2009 in Syte<sup>2</sup> and the delays in the establishment of the court in Senegal to try former Chadian dictator Hissène Habré, led to the creation of a climate conducive to repressive practices against human rights defenders, both by the armed forces (*DRC*, *Guinea-Bissau*) and police forces (*Chad*, *DRC*, *Kenya*, *Mauritania*, *Zimbabwe*).

At the national level, in most countries, impunity remained the rule and those fighting against impunity for perpetrators of serious crimes were threatened with death (*Burundi*, *DRC*, *Ethiopia*, *Guinea-Bissau*, *Kenya*) or rape (*DRC*), and subjected to arrests and judicial harassment (*Ethiopia*, *Gambia*, *Guinea*). In *Togo*, an organisation committed in the assistance to victims was also the subject of several burglaries.

More worrying still, a particular trend was confirmed this year, increasing the danger for human rights defenders. During the visits of Special Rapporteurs, human rights defenders who through their testimony questioned the actions of security forces were the target of direct attacks, as was the case in *Kenya*, where two defenders whose organisation had provided

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2/ The UN Security Council refused to consider the request of the AU to defer prosecution against Sudanese President Omar Al Bashir, the latter refusing to follow the provisions of Article 98 of the Rome Statute on Immunities regarding his arrest and transfer to the ICC. See AU Conference, *Decision on the Commission report on the meeting of African States Parties to the Rome Statute of the International Criminal Court*, Document Assembly/AU/Dec. 245 (XIII) Rev.1, July 3, 2009.

information to the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions were murdered in March.

## Repression of defenders of economic and social rights

### Defenders denouncing corruption, plunder of natural resources, organised crime or the embezzlement of public funds

In 2009, the increased repression of defenders of economic, social and cultural rights on the continent, especially those who exposed corruption, resulted in the murder of a defender in *Burundi* who worked on highly sensitive issues of corruption involving the highest authorities of the State, of a journalist who investigated the corruption of the police in *Kenya*, and of Mr. **John Igbiowubo**, who was killed in *Nigeria* during a peaceful demonstration against forced evictions and house demolitions by members of the elite unit responsible for controlling the insurgency in the Niger Delta<sup>3</sup>. Finally, in the *Republic of Congo*, a journalist who had blamed the authorities for corruption cases died as a result of the fire caused to his house under mysterious circumstances. Similarly, defenders fighting corruption received death threats (*Cameroon, DRC*), were assaulted (*Guinea Bissau*), victims of attempted murder (*Chad*) or were the subject of arrests and prosecutions (*Burundi, Cameroon, CAR, DRC, Gabon, Guinea-Bissau, Niger, Somalia, Zimbabwe*). Crackdowns also led to threats of closure of NGOs (*Chad, Gabon*), barriers to freedom of peaceful assembly and arbitrary arrests following demonstrations (*Cameroon, Kenya, Nigeria*). The case of the “ill-gotten gains” (“*biens mal acquis*”)<sup>4</sup> in particular had an impact on the harassment of defenders, including at the judicial level (*DRC, Gabon, Republic of Congo*).

### Repression of trade union movements

Trade union freedom also continued to be hampered in several countries on the continent. For example, *Ethiopia* and *Djibouti* authorities did not hesitate in establishing non-independent and non-representative trade unions and usurping the name, qualifications and role of trade unions already in existence. In other countries, obstacles led to the arrests of union leaders (*Gambia, Zimbabwe*) and obstacles to the freedom of association of trade unions (*Kenya, Nigeria*).

3/ See CLO.

4/ Judicial proceedings conducted in European countries against African leaders suspected of embezzling public funds to acquire luxury goods in Europe.

## Obstacles to freedom of association

In 2009, many States again made use of restrictive laws on freedom of association to regulate or muzzle civil society: intervention in the affairs of organisations (*Ethiopia*), dissolution or abusive freezing of assets (*Burundi*, *Sudan*). In addition, the adoption in early 2009 of a draft NGO Law under discussion for several years in Ethiopia created a highly restrictive environment for defenders. Any NGO with more than 10% of foreign funds – which is the case for 95% of Ethiopian NGOs – are now subject to very stringent rules. In *Rwanda* and *Uganda*, two draft amendments to the Criminal Code were also presented to Parliament in October and November respectively, in order to criminalise activities to promote awareness and advocate for the rights of lesbian, gay, bisexual and transgender people (LGBT). Faced with domestic and international pressure, the two governments finally abandoned or rejected projects, which represented a serious threat to the freedom of association. Finally, in *Rwanda*, the methods used by the authorities, in a more insidious way, tackled the legislative framework in which defenders operate. The recent adoption of draconian provisions on interception of communications, the fight against terrorism and regulation of the press has helped create a climate of fear and self-censorship throughout civil society.

## Ongoing repression against journalists exposing violations of human rights

While freedom of the press has gained ground in some countries like *Senegal*, restrictive legal framework and summons persisted during the year, and journalists denouncing human rights violations have met with death during the exercise of their functions. Thus, in *Somalia*, at least four journalists covering the chaotic situation facing the country were killed, including Mr. **Mohamed Amin Adan Abdulle**, a reporter with *Radio Shabelle*, and Mr. **Hassan Zubeyr Haji Hassan**, a cameraman for *Al-Arabia*<sup>5</sup>. As mentioned above, a journalist who was investigating corruption within the police force was tortured and murdered in Kenya.

The practice of their profession has again proven extremely difficult. Thus, several States continued to weigh on press offenses, and journalists faced prison sentences for “defamation”, “seditious publication” and “publishing false news”, especially in the context of denouncing embezzlement or challenging the Government such as in *Cameroon*, *Mauritania*, *Niger*, the *Republic of the Congo* or *Rwanda*, where journalists denouncing the atrocities and abuses committed by the authorities run the risk of being

accused of “genocide ideology”. Freedom of expression also remained restricted around the issue of armed conflict (*DRC*) and during elections (*Niger, DRC, Sudan*). In addition, some States like the *Republic of Congo* did not hesitate to manipulate the media to broadcast denigrating remarks on the advocacy and promotion of human rights.

### **Urgent Interventions issued by The Observatory in 2009 on countries of the region for which there is no country fact-sheet**

COUNTRY	Names	Violations / Follow-up	Reference	Date of Issuance
CAMEROON	Ms. Maximilienne Ngo Mbe and nine members of the Citizen's Association in Defence of the Collective Interest (ACDIC), including Messrs. Nono Théophile, Mowha Franklin and Bernard Njongang	Harassment / Threats	Urgent Appeal CMR 001/0309/OBS 042	March 9, 2009
CAMEROON	Mr. Jean Bosco Talla and Mr. Jean-Marc Bikoko	Threats	Joint Press Release	July 2, 2009
GABON	Messrs. Gregory Ngbwa Mintsa, Marc Ona Essangui, Georges Mpaga, Dieudonné Koungou and Gaston Asseko	Arbitrary arrests	Joint Press Release	January 6, 2009
	Messrs. Thierry Lévy, Ruphin Koulou, Gregory Ngbwa Mintsa, Marc Ona Essangui, Georges Mpaga, Dieudonné Koungou and Gaston Asseko		Press Release	January 9, 2009
			Press Release	January 14, 2009
GUINEA-CONAKRY	Messrs. Mamadou Kaly Diallo, Sékou Bamba, Thierno Amadou Sow, Laye Sangare, Alpha Amadou Bah, Thierno Souleymane Balde, Jean Kamano, Christophe Kone and Ms. Ibrahima Sidibe	Arbitrary detention	Press Release	October 30, 2009
GUINEA-CONAKRY	Mr. Mouktar Diallo	Arbitrary detention	Press Release	December 1, 2009
		Judicial harassment	Press Release	December 16, 2009
RWANDA	Mr. François-Xavier Byuma	Judicial proceedings	Urgent Appeal RWA 001/0607/OBS 059.2	February 6, 2009
RWANDA		Obstacles to freedom of association	Press Release	December 16, 2009

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# BURUNDI

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## Political context

The year 2009 was marked by significant progress in the implementation of the peace process from the 2000 Arusha Agreement and the preparation of five elections – including the election of President of the Republic by universal and direct vote – scheduled between May and September 2010. In particular, on April 18, 2009, members of the Party for the Liberation of Hutu People – National Forces of Liberation (*Parti pour la libération du peuple hutu – Forces nationales de libération – Palipehutu-FNL*) a rebel movement, definitively renounced the armed struggle and the movement was registered as a political party, the FNL, on April 21<sup>1</sup>. This decision suggests a real hope for peace in this country, which was in the grip of a bloody civil war for decades. The only drawback remains issues related to the fight against impunity for perpetrators of serious crimes and establishing transitional justice mechanisms, which are well behind schedule. National consultations on this theme were organised throughout the country.

While the end of the rebellions led to the preparation of the 2010 elections, issues of election-related security and resolution of electoral disputes remained sensitive. In the pre-election context, the National Council for the Defence of Democracy – Forces for the Defence of Democracy (*Conseil national pour la défense de la démocratie – Forces de défense de la démocratie – CNDD-FDD*), the ruling party, tried to control the outcome of elections to ensure its re-election, without hesitating to restrict spaces for democratic debate and tighten freedoms. Violations of the freedom of assembly of political parties were reported, as well as violence between young members of political parties.

Among the positive developments, the new Criminal Code promulgated by President Pierre Nkurunziza on April 22, 2009 abolished the death penalty, severely punished perpetrators of sexual violence and criminalised torture, genocide, war crimes and crimes against humanity. Moreover, the majority of criminality for children was raised from 13 to 15 years. However, this same Code provides, in Section 567, that persons found guilty of having homosexual relations can be sentenced to three months'

to two years' imprisonment and a fine of 50,000 to 100,000 francs CFA (75 to 150 euros), with sexual practices between people of the same-sex becoming illegal for the first time in the history of Burundi<sup>2</sup>.

Finally, during the Universal Periodic Review (UPR) of Burundi by the United Nations Human Rights Council in December 2008, a delay in the establishment of an independent National Commission on Human Rights was reported<sup>3</sup>. Although it was expected early 2009, the Bill remained on the Government's table throughout the year. The first version, which was not in accordance with the Paris Principles, would be presented to Parliament in early 2010.

### Attacks against defenders denouncing corruption

The year 2009 was marked by an intensification of repression against defenders fighting corruption. In the night of April 8 to 9, 2009, Mr. **Ernest Manirumva**, Vice-President of the Observatory for the Fight Against Corruption and Economic Embezzlement (*Observatoire de lutte contre la corruption et les malversations économiques* – OLUCOME) and also Vice-Chairman of the Regulatory Authority Procurement Committee (*Autorité de régulation des marchés publics*) and member of the National Committee for Monitoring and Management of Expenses in Heavily Indebted Poor Countries (*Comité national de suivi et de gestion des dépenses des pays pauvres très endettés*), was killed in Bujumbura by strangers, who also confiscated his documents. The same night, the door of his office was forced open and documents were stolen. Shortly before, Mr. Manirumva had been regularly threatened by phone or through flyers placed in his office or by attacks on websites. On January 5, 2009, some OLUCOME members had received threats ordering them to surrender certain records, including those relating to the misuse of public funds for the benefit of the Interpetrol society and the case of the presidential plane Falcon 50<sup>4</sup>. On January 7, 2009, a complaint was lodged with the Prosecution Mayor of Bujumbura, but no action had been taken. On April 10, 2009, an initial commission of inquiry was formed, but as it was deemed ineffective and incompetent to interrogate alleged perpetrators, it was replaced on April

2/ See Burundian and international NGOs Petition against the criminalisation of homosexuality in Burundi, April 24, 2009.

3/ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Burundi*, United Nations Document A/HRC/10/71, January 8, 2009.

4/ This case concerns the sale of the presidential jet Falcon 50 at the Delaware Corporation company at a price considered ridiculous and a shortfall, according to OLUCOME, by more than five billion CFA francs (approximately 3,153,482 euros). A committee was appointed following a resolution of the National Assembly on August 15, 2007 but its report was never discussed by the Assembly. See OLUCOME Letter, October 16, 2009.

22 by another judicial inquiry. In addition, the United States Federal Bureau of Investigation (FBI) and Interpol, as part of a collaboration by the police, acceded to the request for international support to Burundian civil society and delegated agents in the country to provide technical and logistical support. On October 8, 2009, in the absence of progress in the investigation, OLUCOME informed the Attorney General of the Court of Appeal of Bujumbura that he would serve as plaintiff in the case of Mr. Ernest Manirumva's assassination. On October 22, 2009, a third judicial commission of inquiry was formed, with Mr. Adolphe Manirazika, First Deputy to the Court of Appeal of Bujumbura, as President. As of the end of 2009, the investigation had still not progressed. Furthermore, on April 21, 2009, Mr. **Gabriel Rufyiri**, President of OLUCOME, received death threats by telephone following which he filed a complaint against persons unknown to the Public Prosecutor of Bujumbura town. However, as of late 2009, no action had been taken on this complaint.

### **Acts of harassment against defenders exposing miscarriages of justice**

In 2009, several lawyers were summoned by the judiciary, following a broadcast between July 14 and 16, 2009 after they denounced corruption in the High Court of Ngozi. Mr. **Marc Kirura**, journalist of *Radio publique africaine*, and the person he interviewed, Mr. **Stany Mbazumutima**, member of Ngozi branch of the Burundian Human Rights League Iteka (*Ligue burundaise des droits de l'Homme Iteka*), appeared before the Prosecutor of Ngozi on July 23, 2009 for questioning following a complaint for "false statements". Mr. **Jean Bosco Ndayiragije**, Head of the radio station, also appeared on July 28, 2009 before the Prosecutor of Ngozi. By decision of the National Communications Council (*Conseil national des communications*), all cases were subsequently closed due to lack of evidence<sup>5</sup>.

### **Obstacles to freedom of peaceful assembly**

In 2009, several meetings organised by civil society on human rights were banned in accordance with the Law on Public Meetings and Demonstrations of 1981. For instance, on June 29, 2009, a day of information and awareness on the national consultations for the establishment of transitional justice mechanisms, organised in the province of Karuzi by the Forum for the Strengthening of Civil Society (*Forum pour le renforcement de la société civile* – FORSC)<sup>6</sup> was banned on the grounds that the authorities had not been informed. Demonstrations denouncing

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5/ See Iteka League.

6/ The FORSC is an organisation that gathers 146 Burundian civil society associations with the aim of strengthening these associations' capacities.

Mr. Manirumva's assassination and calls for serious investigation and assaults suffered by albinos were also banned during the year<sup>7</sup>.

### Acts of harassment against defenders fighting impunity

In 2009, several human rights defenders and organisations were threatened and harassed because of their fight against impunity. For example, FORSC and its members suffered various acts of harassment after calling for a campaign to conduct serious investigations into the murders of Mr. Ernest Manirumva and Mr. Salvator Nsabirihho, who died on November 5, 2009 after being tortured by the guards of the Governor of Kayanza on October 13, 2009 during a case linked to the transfer of land plots. In mid-November 2009, the Delegate General of FORSC, Mr. **Pacifique Ninihazwe**, and Mr. **Pierre Claver Mbonimpa**, President of the Association for the Protection of Human Rights and Detained Persons (*Association pour la protection des droits humains et des personnes détenues* – APRODH), were placed under supervision by the National Intelligence Services. Similarly, on November 18 2009, FORSC, OLUCOME, Iteka League, the Observatory of Government Action (*Observatoire de l'action gouvernementale* – OAG) and APRODH published an Open Letter to the President of the Republic, to denounce the “unsustainable demonization” of civil society organisations indulged in by “some high administrative authorities”, including the Ministry of the Interior and the CNDD-FDD<sup>8</sup>. The same day, representatives of these five associations convened and met with the Minister of the Interior, who threatened to take “measures” against those organisations. Furthermore, on November 19, 2009, members of APRODH saw several people in the vicinity of the association's premises, monitoring the movements of its members. On November 21, 2009, Mr. Pacifique Ninihazwe received a series of anonymous death threats. Fearing for his safety, he had to live in hiding for over a month. Finally, on November 23, 2009, the Minister of the Interior signed an order rescinding the approval of FORSC, citing a technical error in the order, approved by that same ministry in May 2006. This is the first NGO to be banned in Burundi. In a letter dated December 5, 2009, the Minister reversed his decision suspending the effects of the order of November 23, and a technical committee consisting of four members of FORSC and three members of the Ministry of the Interior was appointed to overcome the crisis. The Ministry of the Interior considered that organisations without the legal status of non-profit association within FORSC should leave it. As of the end of 2009, FORSC had still not been re-registered as an association.

7/ See Iteka League.

8/ In particular, these organisations denounced the threats to their representatives, the prohibition of their protests and the surveillance of their members.



## Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Ernest Manirumva	Assassination	Urgent Appeal BDI 001/0409/OBS 061	April 14, 2009
Forum for the Strengthening of Civil Society (FORSC) / Mr. Pacifique Ninihazwe	Obstacles to freedom of assembly / Threats / Intimidation	Urgent Appeal BDI 002/1209/OBS 176	December 1, 2009

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# CENTRAL AFRICAN REPUBLIC

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In 2009, efforts made towards settling the conflict in northern Uganda between the Central African Armed Forces (*Forces armées centrafricaines* – FACA) and rebel groups were not accompanied by an enhanced respect for human rights. While the Central African Republic authorities launched a disarmament, demobilisation and reintegration programme in early 2009, by the year's end the process had not advanced due to resistance by the rebels of the Convention of the Patriots for Justice and Peace (*Convention des patriotes pour la justice et la paix* – CPJP)<sup>1</sup> and the Union of Democratic Forces for Unity (*Union des forces démocratiques pour le rassemblement* – UFDR). New massacres took place, with those responsible for past violations never having been prosecuted and a climate of general insecurity prevailing in the north-west. Summary executions of civilians, recruitment of child soldiers, sexual violence, torture and looting also caused the forced displacement of over 100,000 people<sup>2</sup>. In its report published in May 2009, the United Nations Special Rapporteur on Summary Executions noted that the most urgent issues to resolve remained protecting the population against crime, abolition of the state of general lawlessness, the fight against impunity and reform of the security forces, which are to a large extent absent of accountability<sup>3</sup>. The Lord's Resistance Army (LRA) also stepped up attacks in south-eastern regions of the Central African Republic following the bombardment of their camps in the Democratic Republic of Congo (DRC) during joint military operation conducted in December 2008 by Uganda, Sudan and the DRC.

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1/ The CPJP is headed by Mr. Charles Massi, who was several times minister under President Ange-Felix Patassé, overthrown in 2003, and the current President Francois Bozizé. On December 18, 2009, Mr. Massi was caught at the border with Chad and exchanged between Chadian President Idriss Deby and President Francois Bozizé on December 31, 2009.

2/ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review- Central African Republic*, United Nations Document A/HRC/12/2, June 4, 2009.

3/ See Human Rights Council, *Report of the Special Rapporteur on summary or arbitrary executions, Addendum - Mission to the Central African Republic*, United Nations Document A/HRC/11/2/Add. 3, May 27, 2009.

After the appointment in January 2009 of a consensus government, a Monitoring Committee of the Recommendations from the Inclusive Political Dialogue (*Comité de suivi des recommandations du dialogue politique inclusif* – CSDPI) was established on February 5, 2009 in preparations for the 2010 general elections. This committee, consisting of twenty-five members, included representatives of political parties, international, regional and sub-regional institutions and only two representatives of civil society. Preparations ahead of the 2010 elections occurred under tension, as evidenced by the promulgation of the Electoral Code on August 3, despite the fact that some parts were declared unconstitutional by the Constitutional Court, as well as the difficulties met during the nominations of members of a national independent electoral commission. The election date was also marked by the return of former President Ange-Felix Patassé, in exile in Togo since 2003, who reported his intention to run.

It is within this context that the Trial Chamber ordered on August 14, 2009 the provisional release of Mr. Jean-Pierre Bemba, former Vice-President of the Transitional Government in the DRC accused by the International Criminal Court (ICC) of being responsible for war crimes and crimes against humanity committed by the Congolese Liberation Movement (*Mouvement de libération du Congo* – MLC) in 2002 and 2003, when Mr. Patassé was presiding over the Central African Republic, causing fear on the part of victims and witnesses. On December 2, the ICC ordered on appeal the detention of the accused until the trial<sup>4</sup>.

Moreover, the media continued to be unable to report freely, especially on the armed conflict. For instance, on January 10, 2009, the newspaper *Le Citoyen* was denied publication for one month by a decision of the High Council of Communication (*Haut conseil de la communication* – HCC) for “insulting the authorities”, after categorising the Parliamentarians as “kpandas” (“insignificants” in Sango), arguing that the Parliament’s decisions only obeyed presidential will. The daily *L’Hirondelle* was also suspended by the HCC for a period of fifteen days from April 20, 2009 following its publication, on April 2, 2009, of an article alleged to have called for “the sedition of the armed forces”<sup>5</sup>. Although the daily published on April 3, 2009 the two rights of reply of the Ministry of Defence, the

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4 / See ICC Press Release, December 2, 2009.

5 / The article quoted a statement by the Collective of the Free Officers (*Collectif des officiers libres* - CORLC) led by former Army Captain Mr. Joaquim Kokaté, published on March 29, 2009 and which said President Bozizé was responsible for the lack of security in the country, accusing him *inter alia* of being “unpatriotic”. This statement further called for disobedience by the youth and refusal to go on a mission, considering the war as a ploy by the Government to hide the problems of governance.

HCC still felt that the newspaper had violated Article 29 of the Disclosure Act, which forbids any journalist to “put sovereignty in danger”<sup>6</sup>.

### Harassment and intimidation of defenders fighting against impunity

Human rights defenders fighting against impunity for international crimes committed in the Central African Republic, including those working for the ICC, continued in 2009 to be subject to threats and intimidation, as any attempt to denounce human rights violations was perceived as an attack on peace efforts, or support for rebels operating in the north and south-east. The presidential address on November 30, 2009 went to that effect, Mr. Francois Bozizé having issued the following hints on the eve of National Day on December 1: “Human rights, human rights ... the population from rebel areas also has rights, unfortunately human rights activists never talk about them ... If [it’s about] the presidential guard, then they speak”. Since the opening before the ICC in 2007 of the case “Prosecutor v. Jean-Pierre Bemba”, the lawyers, witnesses and families of the victims have been regularly subjected to threats, harassment and intimidation. For example, in the night of July 14-15, 2009, Mr. **Adolphe Ngouyombo**, President of the Movement for Human Rights and Humanitarian Action (*Mouvement pour les droits de l’Homme et d’action humanitaire* – MDDH), was shot by a bullet from an assault rifle in his living room. Mr. Ngouyombo works with victims of rape and sexual violence to ensure their right to justice<sup>7</sup>. In late 2009, no information had been obtained regarding the possible opening of an investigation. Similarly, the night after the women’s march held in Bangui on November 4, 2009 to protest the application for provisional release of Mr. Jean-Pierre Bemba and require the prosecution of his accomplices, Mr. **Erick Kpakpo**, Coordinator of the Organisation for Compassion and Development of Families in Distress (*Organisation pour la compassion et le développement des familles en détresse* – OCODEFAD), received anonymous death threats by telephone, the caller telling him to “go to the cemetery”<sup>8</sup>. In late 2009, no information had been obtained regarding the possible opening of an investigation into those threats. Furthermore, on November 17, Mr. **Mathias Morouba**, Vice-President of the Central African Observatory of Human Rights (*Observatoire centrafricain des droits de l’Homme* – OCDH), lawyer and assistant to the legal representative of victims in the “Prosecutor v. Jean-Pierre Bemba” case, received threats from a man identified as a supporter of Mr. Patassé. On November 18, 2009, a client of Mr. Morouba was also warned in his office and before witnesses that he

6/ See Journalists In Danger Press Release, April 22, 2009.

7/ See Organisation for Compassion and Development of Families in Distress (OCODEFAD).

8/ *Idem*.

was “disturbing” the “President” Patassé and that there was talk of him in meetings between supporters of the former President. The following week, Mr. Morouba complained to the Prosecutor, who referred the case to the police for an investigation to be opened<sup>9</sup>. Moreover, the Central African civil society remained deeply affected by the death, on December 27, 2008, of Mr. Nganatouwa Goungaye Wanfiyo, Chairman of the Central African League for Human Rights (*Ligue centrafricaine des droits de l’Homme* – LCDH) and lawyer who played a central role in denouncing human rights violations in the country, in unclear circumstances and which remained unresolved at the end of 2009.

### **Arbitrary detention and judicial harassment against defenders of the rights of refugees and the displaced**

In 2009, defenders who defended the rights of people displaced by armed conflict were also subject to harassment. For instance, on December 18, 2009, Mr. Alexis Mbolinani, Coordinator of the NGO “Youth United for Environmental Protection and Community Development” (*Jeunesse unie pour la protection de l’environnement et le développement communautaire* – JUPÉDEC), which defends the rights of refugees and displaced persons in the Upper-Mbomou after LRA incursions, was arrested in his home by policemen of the Research and Investigation Division (*section recherche et investigation* – SRI), while JUPÉDEC was due to receive funding from institutional donors in the days to come. The police also searched his home and confiscated his computer, his camera and his record collection. Mr. Mbolinani was arrested on a trumped up case against him, accusing him of collaborating with the LRA leader in Kenya, of being the focal point of the LRA in the Central African Republic, and of hiding weapons of war at home. Based on these false charges, Mr. Mbolinani was accused of “undermining the internal security of the State” and, on December 31, 2009, he was detained at the SRI, pending his trial<sup>10</sup>.

### **Urgent Intervention issued by The Observatory in 2009**

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Mathias Morouba	Harassment / Intimidation	Urgent Appeal CAF 001/1109/OBS 174	November 27, 2009

9/ On March 16, 2010, Mr. Morouba was contacted by the police to this effect.

10/ In April 2010, Mr. Mbolinani was finally released, with no explanation from the authorities.

See OCODEFAD.

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# CHAD

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

The armed attack against the Government in the capital by three rebel groups in February 2008 has left its mark. In this context, the United Nations Human Rights Committee denounced in August 2009 the acts of murder, rape, enforced disappearance, arbitrary detention, cases of torture, destruction of property, forced displacements and attacks against the civilian population perpetrated by the Chadian security forces<sup>1</sup>. Shortly after the offensive, the political and military authorities imposed a 15-day state of emergency, which relegated the question of human rights and fundamental freedoms to secondary importance. The power of the military increased, with the army benefitting from material and financial advantages and also total impunity. Furthermore, President Idriss Deby Itno continued to leave the opposition no room for manoeuvre and to put considerable pressure on the officials of civil society organisations after some of them refused to take part in marches in support of the Government that were initiated in February 2009 by the different ministries, including the Ministry of Human Rights.

On January 7, 2010, the President of the National Independent Election Commission (*Commission électorale nationale indépendante* – CENI) announced the election calendar<sup>2</sup>. Civil society stakeholders emphasised the fact that the prospect of elections constituted the sole progress made under the Global Political Agreement, for lack of introduction of a real dialogue on issues of governance and management of the State, particularly oil revenues and social injustice linked to the discrimination and favouritism enjoyed by Government allies<sup>3</sup>. Amongst other things, this agreement gave the rebels the chance to form a political party<sup>4</sup>. However, in May 2009, the start of fighting again between the rebels grouped within

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1/ See Human Rights Committee, *Concluding Observations of the Human Rights Committee*, United Nations Document CCPR/C/TCD/CO/1, August 11, 2009.

2/ In the framework of the Global Political Agreement concluded between the presidential majority and the radical opposition on August 13, 2007, the parliamentary elections should take place on November 28, 2010, followed by local elections on December 12, 2010 and the first round of the presidential elections, scheduled for April 23, 2011.

3/ See International Crisis Group Africa Report No. 65, August 26, 2009.

4/ See Chadian Association for the Defence and Promotion of Human Rights (*Association tchadienne pour la promotion et la défense des droits de l'Homme* - ATPDH).

the Union of Resistance Forces (*Union des forces de la résistance* – UFR) and Government forces once again threatened peace and security in the sub-region and also increased the risk of aggravating the humanitarian situation in the east of the country.

In this context, the United Nations Human Rights Committee reminded the Chadian Government, amongst other things, that it had an obligation to respect and protect human rights defenders and to lift non-conventional restrictions on freedom of association, freedom of the press and freedom of assembly<sup>5</sup>. Included in these provisions is Regulation No. 5, adopted in February 2008, which drastically restricts press freedom through provisions that penalise any critical reporting of sensitive subjects in Chad, notably Government business, the armed rebellion and ethnic relationships. This regulation had still not been repealed by the end of 2009.

Furthermore, although Chad gave political support to Senegal and promised financial support for trying former Chadian President Hissène Habré, accused for his presumed responsibility in the mass crimes committed under his regime, impunity remained commonplace in the country, and there was still no real political willingness to begin judicial proceedings against the holders of office under the Habré regime, guaranteeing senior positions in defence, security and civil administration institutions for the great majority<sup>6</sup>. Similarly, although the national commission of inquiry set up to investigate the repression that followed the N'Djamena attack in 2008 noted the responsibility of the Chadian army in the disappearance of political opponent Ibni Oumar Mahamat Saleh, no serious inquiry or judicial proceedings had been opened against those responsible by the end of 2009.

### Intimidation of defenders who denounce impunity

In 2009, defenders who were most at risk were again those who fight against impunity for the most serious crimes and abuses committed by agents of both the previous and the current State regime. As an example, human rights defenders working on the disappearance of Mr. Ibni Oumar Mahamat Saleh since February 3, 2008 were constantly under surveillance and exposed to threats and intimidation<sup>7</sup>. Furthermore, Messrs. **Michel Barka**, President of the Union of Chad Trade Unions (*Union des syndicats du Tchad* – UST), and **Tenebaye Massalbaye**, President of the Chadian

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5/ See Human Rights Committee, *Concluding Observations of the Human Rights Committee*, United Nations Document CCPR/C/TCD/CO/1, August 11, 2009.

6/ See ATPDH.

7/ For security reasons, the names of the people concerned are not mentioned.

League of Human Rights (*Ligue tchadienne des droits de l'Homme – LTDH*), were particularly at risk after travelling in February 2009 to Paris and Brussels as delegates of the Monitoring Committee of the Appeal for Peace and Reconciliation (*Comité de suivi de l'appel à la paix et à la réconciliation – CSAPR*)<sup>8</sup> to alert the French authorities and European Union representatives on the political situation and law and order in Chad. In particular, they provided evidence concerning the blocking of implementation of the recommendations of the commission of inquiry set up to investigate the human rights violations committed during the coup d'état in February 2008. For instance, on October 13, 2009, while he was driving his car, Mr. Barka was tailed by several unmarked vehicles. An unidentified person wearing plain clothes then stopped in the middle of the road, blocking the way. In order to escape from what he believed to be an illegal arrest, Mr. Barka turned into another street. A motorbike followed him and its driver took advantage of Mr. Barka stopping and brandished a gun in his direction. Mr. Barka managed to escape. On the same day, and then again on October 14, 16 and 23, Mr. Massalbaye was also subjected to tailing and was watched by unidentified individuals. On October 23, around ten armed men entered his home while he was absent. On October 26, 2009, Messrs. Massalbaye and Barka filed a complaint against unknown persons with the Prosecutor General of the Republic for being followed and for attempted murder. The case was sent to the N'Djamena Court of First Instance. On October 20, 2009, Mr. Massalbaye was received by the Minister of the Interior and Public Security, accompanied by the Director of the national police, the Director of public security and the Director of intelligence services, who assured him that they would take all measures necessary to guarantee his safety and that of Mr. Barka, as well as open an extensive investigation into the facts. On October 29, 2009, the authorities took steps to guarantee the safety of Mr. Massalbaye. During five days, security officers were assigned to his home and police also accompanied him when he travelled around. As of the end of 2009, there had been no progress in the police investigation and the complaint to the Prosecutor. Furthermore, on October 26, 2009, Mr. Bertin Djim-Ambingam, a journalist with *Radio Arc en ciel* and a member of the Orientation, Strategy and Political Analysis Committee (*Comité d'orientation, de stratégie et d'analyse politique – COSAP*), one of the CSAPR bodies, was attacked by three people near his home. One of the attackers fired at him but was

8 / CSAPR is the civil society follow-up structure for the Appeal for Peace and Reconciliation launched at the end of a day organised on November 16, 2002 in Chad to consider the issue of peace. This appeal was signed by 150 members of civil society, opposition political parties and hundreds of Government allies as well as representatives of religious denominations. The CSAPR is trying to organise national dialogue and to implement a procedure for national reconciliation.



unable to hit him. On the same day, he had broadcast a programme on modernisation of public life in Chad in which questions on good governance had been broached. One of the attackers was arrested on October 29, 2009 and then released. As of the end of 2009, there had been no progress in the police investigation.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
<b>Mr. Michel Barka and Mr. Massalbaye Tenebaye</b>	Attempted murder / Threats / Surveillance	Urgent Appeal TDC 001/1009/OBS 153	October 22, 2009
<b>Messrs. Michel Barka, Massalbaye Tenebaye and Bertin Djim-Ambingam</b>	Harassment	Urgent Appeal TDC 001/1009/OBS 153.1	October 30, 2009

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# DEMOCRATIC REPUBLIC OF CONGO

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

The “Kimia II” Operation – launched in the provinces of north and south Kivu in February 2009 by the Armed Forces of the Democratic Republic of Congo (*Forces armées de la République démocratique du Congo* – FARDC), and supported by the United Nations Mission in the DRC (MONUC) to neutralise the Democratic Forces for the Liberation of Rwanda (*Forces démocratiques pour la libération du Rwanda* – FDLR) and other rebel groups – ended on December 31, 2009. It took a very high toll on civilian populations and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions described the results in terms of human rights as “catastrophic” following his visit conducted in October 2009. Humanitarian workers were also targeted several times while trying to help people affected by the conflict<sup>1</sup>. On August 23, 2009, Mr. Bruno Koko Chirambiza, a journalist from *Radio Star*, was assassinated by a group of eight armed men 150 metres from a police station in Bukavu, south Kivu, bringing the number of journalists killed in this city to three since 2007<sup>2</sup>. In the eastern province on the border with Uganda, operations by the FARDC and MONUC forces against the Lord’s Resistance Army (LRA), particularly since March 2009 as part of “Rudi II” Operation, also resulted in serious violations of human rights and humanitarian law, and reprisals against civilians by the LRA<sup>3</sup>. Furthermore, in order to avoid critical reporting on the security situation and the role of the army in the east, the Minister of Communication and Media warned journalists in February 2009 not to broadcast any information that would demoralise the FARDC. It is in this context that the contract of broadcasting of *Radio France internationale*, deemed too critical, was terminated on July 26, 2009 first in Bukavu and Bunia and then in the rest of the country<sup>4</sup>.

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1/ See UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, October 15, 2009.

2/ See Committee for the Protection of Journalists (CPJ) Press Release, August 24, 2009.

3/ *Idem*.

4/ See Journalists In Danger (*Journalistes en danger* - JED) Annual Report 2009, *Liberté de la presse au quotidien : entre la peur et la survie, l'état de la liberté de la presse en Afrique centrale*, December 15, 2009.

Following reports from international humanitarian and human rights organisations, the MONUC publicly announced that it would halt all cooperation with the offensives of the FARDC, accused of committing serious human rights violations. Its mandate, which was renewed by the Security Council in December 2009, now emphasises the role of the MONUC in the protection of civilians, including human rights defenders.

In March 2009, seven UN Special Procedures<sup>5</sup> recommended the Congolese authorities to fight impunity and strengthen the areas of law and order and justice, to reform the security sector, to prevent re-recruitment of children by armed groups, to protect the rights of women and ensure gender equality in law and society, to deal with underlying economic causes of human rights violations, to protect the rights of internally displaced peoples and minorities, and to ensure access to health care<sup>6</sup>.

Furthermore, impunity generally prevailed. For instance, General Bosco Ntaganda, who has an arrest warrant issued against him by the International Criminal Court (ICC), continued to operate among the FARDC and the authorities refused to transfer him to the ICC. During the Universal Periodic Review (UPR) of the UN Human Rights Council, the DRC authorities also rejected all recommendations to fight against impunity in the FARDC, to establish a monitoring mechanism to exclude known perpetrators of serious human rights violations and put an end to intimidation, threats and arrests of human rights defenders and journalists, and to release the remaining political prisoners<sup>7</sup>. Meanwhile, January 26, 2009 marked the beginning of the ICC trial of Mr. Thomas Lubanga, which represents a milestone in the fight against impunity<sup>8</sup>. Indeed, this is the first case before an international court for which the use of child soldiers is being considered as a war crime. The trial of Messrs. Germain Katanga

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5/ The Special Rapporteur on Violence Against Women, its Causes and Consequences, the Secretary-General Representative for Human Rights of Indigenous People, the Special Rapporteur on the Independence of Judges and Lawyers, the Special Rapporteur on the Right of Everyone to the Highest Attainable Standard of Physical and Mental Health, the Special Rapporteur on the Situation of Human Rights Defenders, the Special Rapporteur on the Question of Human Rights and Transnational Corporations and Other Businesses and the Special Representative of the Secretary-General for Children and Armed Conflict.

6/ See Human Rights Council, *Combined report of seven thematic special procedures on technical assistance to the Government of the Democratic Republic of the Congo and urgent examination of the situation in the east of the country*, UN Document A/HRC/10/59, March 5, 2009.

7/ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review\* - Democratic Republic of the Congo*, UN Document A/HRC/13/8, January 4, 2010.

8/ See Declaration of the European Union Presidency after the opening of Mr. Thomas Lubanga's trial before the ICC in January 2009, January 28, 2009.

and Mathieu Ngudjolo Chui for “war crimes” and “crimes against humanity” committed in the Ituri district also started on November 24, 2009.

Similarly, during her visit to the DRC from May 21 to June 3, 2009, the UN Special Rapporteur on the Situation of Human Rights Defenders noted a “widespread impunity for violations committed against human rights defenders”<sup>9</sup>. Indeed, complaints filed by defenders and those seeking justice due to violations of human rights defenders are rarely subject to a serious investigation, and often the trial does not respect the right to a fair trial. This context of impunity is compounded by the lack of operational mechanisms to ensure the protection of defenders. In south Kivu, the Provincial Assembly was declared incompetent and rejected a proposed edict protecting defenders brought by Deputy Ngongo on February 14, 2009. Moreover, the protection programme for witnesses and human rights defenders in eleven provinces set up by MONUC, with funding from the European Union, does not seem to produce the desired results<sup>10</sup>. In addition, defenders were regularly stigmatised by the authorities and by non-State actors, who presented them as “enemies”, “traitors” or “opponents”, exposing them to serious dangers<sup>11</sup>.

### Harassment of defenders calling for the preservation of democracy

Throughout the year, advocates raising questions about democracy in the DRC were subject to harassment. Thus, on March 24, 2009, Mr. **Davy Shabani**, Head of Communications for the Collective of Youth Organisations Supportive of the Congo (*Collectif des organisations des jeunes solidaires du Congo* – COJESKI), was threatened through an anonymous phone call. On March 13, members of COJESKI had co-signed an Open Letter to the President of the Republic to denounce the forced resignation of Mr. Vital Kamerhe<sup>12</sup>, and on March 24, the COJESKI had published a report on the inter-institutional crisis in the DRC. On March 26, two unidentified gunmen appeared at the home of Mr. Shabani, who was absent, and between April 2 and 5, several people looking like soldiers in plain clothes monitored the premises of COJESKI. Fearing reprisal, Mr. Shabani fled the DRC on April 28, 2009. Neither COJESKI nor the members of the Synergy of Civil Society Organisations in the DRC (*Synergie des organisations de la société civile de la RDC*),

9/ See UN Special Rapporteur on the Situation of Human Rights Defenders Press Release, June 3, 2009.

10/ See Human Rights Council, *Combined report of seven thematic special procedures on technical assistance to the Government of the Democratic Republic of the Congo and urgent examination of the situation in the east of the country*, UN Document A/HRC/10/59, March 5, 2009.

11/ See UN Special Rapporteur on the Situation of Human Rights Defenders Press Release, June 3, 2009.

12/ The President of the National Assembly of the DRC, forced to resign on March 25, 2008 for having criticised Rwanda's participation in an operation against Rwandan Hutu rebels in eastern DRC.

in which COJESKI participates, filed a complaint, discouraged by the lack of follow-up to complaints submitted by defenders. On March 15, 2009, officials of the armed national police and others in plain clothes arrested **Mr. Floribert Chebeya Bahizire**, Executive Director of Voice of the Voiceless (*Voix des sans-voix* – VSV), National Executive Secretary of the National Network of Human Rights NGOs Rights of the DRC (*Réseau national des ONG des droits de l'Homme de la RDC* – RENADHOC) and member of OMCT General Assembly, **Mr. Dolly Ibefo Mbunga**, VSV Deputy Executive Director, **Mr. Donat Tshikaya**, Responsible for Reception at RENADHOC, and **Mr. Coco Tanda**, a cameraman for *Canal numérique télévision* (CNTV). The arrest followed a press conference on the inter-institutional crisis in the DRC that had been held at the headquarters of RENADHOC in Barumbu, and which aimed at announcing a peaceful march and rally outside the Hall of the People on March 16 and submitting a memorandum to the Chairmen of the Senate and National Assembly calling for the preservation of democracy in the DRC. During a raid by police at the headquarters of RENADHOC, computer equipment, office material and a camera belonging to the privately-owned Canal Congo TV were seized. Messrs. Floribert Chebeya Bahizire, Dolly Ibefo Mbunga, Donat Tshikaya and Coco Tanda were held incommunicado at the National Intelligence Agency (*Agence nationale de renseignements* – ANR) in Kinshasa / Gombe before being taken in the evening to solitary confinement at Kin Maziere, headquarters branch for the General Information and Special Services (*Direction des renseignements généraux et des services spéciaux* – DRGS) of police. During their detention, the four men were abused. On March 17, they were released without any charges against them. The Synergy of Civil Society Organisations in the DRC filed a complaint on March 17 with the Attorney General of the Republic, which had not been addressed as of the end of 2009.

### **Reprisals against defenders fighting against impunity for serious crimes**

In 2009, all security and police forces, the ANR, the Republican guard, the DRGS and the Military Detection of Anti-Patriotism (*Détection militaire des activités anti-patrie* – DEMIAP) continued to seek to silence anyone denouncing the abuses they commit, and these acts generally went unpunished<sup>13</sup>. For instance, as of the end of 2009, the murder of Messrs. **Serge Maheshe** in 2007 and **Didace Namujimbo** in 2008, journalists of *Radio Okapi*, which plays a key role in the fight against violence, particularly in

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13/ See UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions Press Release, October 15, 2009.

eastern DRC, remained unpunished<sup>14</sup>. On April 20, 2009, members of the FARDC military base in Muanda Kitona, Bas-Congo, repeatedly threatened to kill Mr. **Willy Iloma Ikilelo**, President of the human rights NGO “Brotherhood of Rights of the Child” (*Fraternité des droits de l’enfant* – FDE), which had denounced the acts of abuse against two women soldiers on *Radio Okapi.net*. In late 2009, no information had been obtained regarding the possible opening of an investigation into those threats. In addition, in Kisangani on September 18, 2009, during a military parade at the Sergeant Ketele military camp and a briefing held the same day at the headquarters of the Ninth Military Region, Brigadier General John Claude Kifwa attacked the report of the Lotus Group (*Groupe Lotus* – GL), entitled *Evaluation de l’implication de l’Etat congolais dans la lutte contre l’impunité des crimes graves et violations massives et flagrantes des droits humains commis en République démocratique du Congo de novembre 2002 à mai 2009*<sup>15</sup>, published in May 2009, as well as its Chairman, Mr. **Dismas Kitenge**, calling him a “lunatic” and “corrupt to blow \$100 for writing false reports and conducting smear campaigns against himself and the Congolese authorities”. Mr Kitenge was accused of “working on behalf of foreign powers seeking to destabilise the Congolese Government”, of “tarnishing the image of the Congolese army”, of having “nothing to contribute to the development of the eastern province” and, finally, of “wanting to disturb the peace in this province as a non-native”. The statements issued at the press briefing aired during two days in the television news and various stations of the Congolese army on *Radio télévision nationale congolaise de Kisangani* as well as several radio and TV stations. In addition, on October 5, 2009, Mr. Dismas Kitenge received an oral ban to leave the city of Kisangani by officials of the Directorate General of Migration (*Direction générale de migration* – DGM) and from the ANR posted at the international airport of Bangboka, Kisangani. The next day, he was finally able to leave the country to The Hague (The Netherlands), where he attended appointments with the ICC<sup>16</sup>.

### **Acts of harassment against women defenders denouncing sexual violence**

Women defenders who denounce sexual violence committed by the army and with impunity were also particularly exposed. For example, during the

14 / After having been postponed several times in 2009, the trial for the murder of Mr. Namujimbo finally began on January 7, 2010 before the Military Tribunal in Bukavu.

15 / *Evaluation of the involvement of the Congolese in the fight against impunity for serious crimes and mass and flagrant human rights violations committed in the Democratic Republic of Congo from November 2002 to May 2009*.

16 / See GL Press Release, October 6, 2009.

night of October 1, 2009, eight men broke into the home of Ms. **Rebecca Agamile**, Treasurer of the Women's Association for Solidarity, Peace and Integral Development (*Solidarité féminine pour la paix et le développement intégral* – SOFEPADI) in Bunia. The men accused her of blaming men belonging to armed groups for human rights violations. They threatened to rape and kill her and her daughter, and robbed her of her personal belongings, including her mobile phone. On October 7, relatives of Ms. Agamile received a call from the mobile phone stolen by the attackers. The caller again made threats against Ms. Agamile, who complained. As of late 2009, no investigation had been opened<sup>17</sup>. Likewise, the assaults in 2008 of defenders because of their activities for the disclosure of sexual violence went unpunished in 2009, like the assassination of Ms. **Wabihu Kasubi**, in charge of monitoring within the organisation Voice of Those with no Voice nor Freedom (*Voix des sans voix ni liberté* – VOVOLIB) and Counsellor at the listening house for victims of sexual violence in Panzi, who was killed on May 18, 2008 in south Kivu, and the attack in November 2008 against Ms. **Noella Usumange Aliswa**, SOFEPADI Coordinator in the town of Bunia<sup>18</sup>.

### Harassment of defenders of economic and social rights

In 2009, defenders of economic and social rights were subjected to numerous acts of harassment because of the sensitivity of the issues raised in the context of their activities. Faced with this situation, the Committee on Economic, Social and Cultural Rights adopted a recommendation on the protection of human rights defenders in the DRC<sup>19</sup>.

#### Obstacles and acts of judicial harassment against defenders denouncing poor working conditions

Those who denounced poor working conditions suffered retaliation in 2009. For example, on August 31, 2009, Mr. **Robert Ilunga Numbi**, National President of Friends of Nelson Mandela in the Defence of Human Rights (*Amis de Nelson Mandela pour la défense des droits humains* – ANMDH) in the province of Bas-Congo, Ms. **Marie-Thérèse Kalonda**, in charge of the programme “Woman and Family” within the ANMDH, Mr. **Jean-Paul Itupa**, Public Relations Officer in the Kalamu branch of ANMDH, and Mr. **Ndumba Toutou**, a member of the ANMDH, were

17/ See League of Electors (*Ligue des électeurs*).

18/ Although the Military Prosecutor took Ms. Usumange Aliswa's case, three suspects arrested were subsequently released one after the next.

19/ See Committee for Economic, Social and Cultural Rights, *Final Observations of the Committee for Economic, Social and Cultural Rights - Democratic Republic of the Congo*, UN Document E/C.12/COD/CO/4, December 16, 2009.

arrested without a warrant at their workplace in Matonge by two ANR agents. The arrest came two weeks after the publication by the ANMDH of a press release denouncing the working conditions of workers in the General Industrial Society (*Société générale industrielle* – SGI), and following a press conference on August 24, 2009 in Kinshasa on the same subject. While Ms. Kalonda, Mr. Itupa and Mr. Toutou were all released later that evening, Mr. Ilunga Numbi was held in custody on the premises of the ANR in Kinshasa/Gombe for nine days instead of the 48 hours prescribed by law, without the reasons for his arrest communicated to him and without access to his lawyer. He was referred to the Prosecutor of Kinshasa on September 8, when he was formally charged with “defamation”, “incitement to rebellion” and “incitement to civil disobedience to the public authorities”, and taken to the central Kinshasa prison. On September 28, the High Criminal Court (*Tribunal de grande instance* – TGI) in Gombe ordered Mr. Ilunga Numbi’s provisional release, after having paid a bail of 20,000 Congolese francs and one thousand dollars (equivalent to a total of approximately 700 euros). However, the conditions of his release, including the fact that the court did not want to set a record for the decision, prevents him from freely exercising his activities. As of the end of 2009, he remained sued for libel. Furthermore, Messrs. Chebeya and Ibefo Mbfunza, who had planned a peaceful demonstration in support of Mr. Ilunga Numbi at the Summit of the South African Development Community (SADC), which was held in Kinshasa on September 7 and 8, had to cancel the event after being threatened with arrest.

### **The fight against corruption: a high-risk activity**

In 2009, defenders fighting against corruption were regularly subjected to harassment. Thus, on January 19, 2009, Mr. **Nginamau Malaba**, President of the Union Committee at the Ministry of National Economy and Commerce, was arrested by five officers of the ANR while he was preparing to submit a memorandum denouncing the embezzlement of public funds by the Minister of National Economy and Foreign Trade and demanding the surrender of revenue made via bonus and incentive payments to Ministry officials. Mr. **Richard Kambale Ndayango** and Mr. **Israël Kanumbaya Yambasa**, two other union signatories of the memorandum submitted by Mr. Malaba, were arrested on January 11 and 16, 2009. On February 19, Mr. Malaba went before the Instructing Magistrate at the Bokango Office of the Prosecutor General of Gombe in Kinshasa after a complaint was lodged by the Minister of National Economy and Foreign Trade. At the hearing, the Bokango magistrate refused to consider the complaint lodged by Mr. Malaba on his arrest and arbitrary detention by the ANR, nor the torture he underwent during that time. On February 23, Messrs. Malaba, Ndayango and Yambasa were transferred to



the Penitentiary and Re-education Centre in Kinshasa (*Centre pénitentiaire et de rééducation de Kinshasa* – CPRK). On February 26, the Court of Peace of Kinshasa/Gombe ordered their release pending trial, but they were detained following an appeal by the prosecution. On March 19, the TGI of Kinshasa/Gombe ordered bail on appeal. On March 23, Messrs. Nginamau Malaba, Richard Kambale Ndayango and Israël Kanumbaya Yambasa were released after having paid a bail of 150 dollars per person (equivalent to approximately 110 euros). As of the end of 2009, they remained within the scope of a complaint lodged by the Minister of National Economy and Foreign Trade, which alleges that “officers of [its] Ministry” made a false travel order, in which names of the three defenders would appear at any time. All three were abused during their detention. Yet, in late 2009, no investigation into the acts of abuse had been opened, although the Bokango magistrate did inform their lawyer that the Prosecutor’s Office in Kinshasa/Gombe would forward the matter to court.

### **Sensitive issues in the management of natural resources**

Defenders of economic and social rights denouncing the Congolese and foreign mining companies that develop their activities outside of the national legal framework and international instruments, particularly in the provinces of Katanga and Equateur, and the environmental consequences of these activities, continued to be exposed to threats and obstacles in the course of their work. In addition, local authorities, which enjoy a certain freedom from the central Government, were regularly accused of collusion with some of these companies by the defenders and lawyers in the region, which caused them to be the target of these same authorities. The harassment suffered by Mr. **Golden Misabiko**, President of the Katanga branch of the African Association for the Defence of Human Rights (*Association africaine pour la défense des droits de l’Homme* – ASADHO/Katanga), is particularly emblematic of this situation. On July 24, 2009, Mr. Misabiko was arrested by the ANR/Katanga following the publication by ASADHO/Katanga of a report alerting readers to the dangers of artisanal mining of uranium in violation of Shinkolobwe Presidential Decree No. 04/17 of January 27, 2004. When the judge sat to consider the request for continued detention made by the prosecution, the Minister of Communication and Media, Mr. Mende Omalanga, held a press briefing in Kinshasa, during which he attacked the activities of the FIDH and its member organisations in the DRC and expressed the Government’s desire to prosecute Mr. Misabiko. Mr. Misabiko was remanded into custody until August 20, before being released on bail for medical reasons. On September 21, the Court of Peace of Lubumbashi sentenced Mr. Golden Misabiko to a one year suspended sentence following a trial marred by numerous irregularities. Lawyers for Mr. Misabiko appealed that deci-

sion but, as of the end of 2009, the appeal had not yet occurred. In addition, on August 6, 2009, a peaceful demonstration that a group of 17 civil society organisations held in support of Mr. Golden Misabiko to demand his immediate release was banned by the Mayor of Lubumbashi. The show of support was finally held on August 7, after having informed the authorities, and resulted in the arrest of Messrs. Dismas Kitenge, Floribert Chebeya, **Timotheé Mbuya**, Vice-President of the Katanga branch of ASADHO, **Jean-Marie Kabanga**, a member of the Evangelical Non-Violent Action Group (*Groupe d'action non violente évangélique*), and **Elie Kadima**, member of the Movement for Human Rights and Reconciliation (*Mouvement pour les droits de l'Homme et la réconciliation*). All were released without charge several hours later. Finally, in September 2009 in Lubumbashi, many defenders who had supported the report of ASADHO/Katanga were threatened with reprisals. Thus, on September 16, 17, 18 and 21, 2009, Mr. **Emmanuel Umpula**, Executive Director of Action Against Impunity for Human Rights (*Action contre l'impunité pour les droits humains* – ACIDH), Mr. Timothy Mbuya, Mr. **Grégoire Mulamba**, member of the Centre for Human Rights and Humanitarian Law (*Centre pour les droits de l'Homme et le droit humanitaire*), and Ms. **Dominique Munongo**, member of the Centre for Development for Women (*Centre de développement pour la femme* – CDF), received threats from the same phone number. On September 17, 2009, Mr. Umpula, Mr. Mbuya, Mr. Mulamba and Ms. Munongo complained to the Prosecutor but, as of the end of 2009, no serious investigation had been conducted. On September 28, Messrs. Umpula and Mbuya, fearing for their lives, left Lubumbashi until November, but continued to receive threatening messages, which prevented them from fully resuming their activities. Ms. Munongo had to leave Lubumbashi from September 29 to October 3. She received new threats following an interview on *Radio Okapi* on October 14, 2009. Furthermore, on October 18, 2009, Mr. Mulamba was kidnapped by two men while returning home by taxi. These men threatened him with a firearm after having blindfolded him and dropped him off at night in the cemetery of Gecamines, near Lubumbashi. Mr. Mulamba complained to the Prosecutor of Lubumbashi in December 2009.

### Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Paul Henry Mundela and Mr. François Toussaint Kalonda Omanyana	Arbitrary detention / Risk of torture	Urgent Appeal COD 001/0109/OBS 011	January 21, 2009
Mr. Nginamau Malaba	Arbitrary detention / Risk of torture	Urgent Appeal COD 002/0209/OBS 026	February 17, 2009

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
<b>Messrs. Nginamau Malaba, Richard Kambale Ndayango and Israël Kanumbaya Yambasa</b>		Urgent Appeal COD 002/0209/OBS 026.1	February 19, 2009
		Urgent Appeal COD 002/0209/OBS 026.2	February 26, 2009
	Arbitrary detention / Judicial harassment / Torture and ill-treatment	Urgent Appeal COD 002/0209/OBS 026.3	March 12, 2009
	Release / Prosecution / Ill-treatment	Urgent Appeal COD 002/0209/OBS 026.4	March 24, 2009
<b>Messrs. Floribert Chebeya Bahizire, Dolly Ibefo Mbfunza, Donat Tshikaya and Coco Tand</b>	Arbitrary detention / Fear for physical safety / Search	Urgent Appeal COD 003/0309/OBS 049	March 16, 2009
	Release / Inhuman and degrading treatment	Urgent Appeal COD 003/0309/OBS 049.1	March 18, 2009
<b>Messrs. Eric Muvomo, Raymond Badesirwe Namalingo and Peter Kihuha Byagolo / Association Against Malnutrition and for Youth Education (ACMEJ)</b>	Threats	Urgent Appeal COD 004/0309/OBS 050	March 23, 2009
<b>Mr. Fernandez Murhola and Mr. Davy Shabani / Collective of Organisations of Youth Solidarity in Congo-Kinshasa (COJESKI)</b>	Threats / Judicial harassment	Urgent Appeal COD 005/0409/OBS 056	April 1, 2009
<b>Mr. Willy Iloma Ikilelo</b>	Death threats	Urgent Appeal COD 006/0509/OBS 074	May 14, 2009
<b>Mr. Golden Misabiko and Mr. Timothée Mbuya</b>	Arbitrary detention / Release	Urgent Appeal COD 007/0709/OBS 110	July 27, 2009
	Arbitrary detention / Judicial harassment	Press Release	July 30, 2009
		Urgent Appeal COD 007/0709/OBS 110.1	August 5, 2009
	Arbitrary detention / Judicial harassment / Obstacles to freedom of peaceful assembly	Urgent Appeal COD 007/0709/OBS 110.2	August 7, 2009
<b>Messrs. Golden Misabiko, Dismas Kitenge, Floribert Chebeya, Timothée Mbuya, Jean-Marie Kabanga and Elie Kadima</b>	Arrest / Release / Arbitrary detention / Obstacles to freedom of peaceful assembly	Urgent Appeal COD 007/0709/OBS 110.3	August 10, 2009
<b>Mr. Golden Misabiko</b>		Urgent Appeal COD 007/0709/OBS 110.4	August 18, 2009
	Provisional release / Judicial harassment	Urgent Appeal COD 007/0709/OBS 110.5	August 26, 2009
	Judicial harassment	Press Release	September 2, 2009
		Urgent Appeal COD 007/0709/OBS 110.6	September 4, 2009

Names	Violations / Follow-up	Reference	Date of Issuance
		Urgent Appeal COD 007/0709/OBS 110.7	September 15, 2009
	Condemnation	Urgent Appeal COD 007/0709/OBS 110.8	September 22, 2009
		Press Release	November 25, 2009
Mr. Dismas Kitenge	Threats / Harassment	Urgent Appeal COD 008/0709/ OBS 112	July 31, 2009
	Defamation campaign	Urgent Appeal COD 009/0909/OBS 137	September 22, 2009
Committee of Observers of Human Rights (CODHO) and Centre for Studies and Popular Training for Human Rights (CEFOP-DH) / A member of the CEFOP-DH	Aggression / Ill-treatment / Theft / Acts of intimidation	Urgent Appeal COD 009/0809/OBS 115	August 7, 2009
Ms. Marie-Thérèse Kalonda and Messrs. Jean-Paul Itupa, Robert Ilunga Numbi and Ndumba Toutou	Arrest / Arbitrary detention	Urgent Appeal COD 007/0909/OBS 132	September 2, 2009
Mr. Robert Ilunga Numbi	Provisional release / Judicial harassment	Urgent Appeal COD 007/0709/OBS 132.1	October 8, 2009
		Press Release	November 25, 2009
Messrs. Emmanuel Umpula, Timothée Mbuya and Grégoire Mulamba / Action Against Impunity for Human Rights (ACIDH), African Association for the Defence of Human Rights, Katanga branch (ASADHO-Katanga), Centre for the Development of Women (CDF) and Centre for Human Rights and Humanitarian Law (CDH)	Death threats	Urgent Appeal COD 008/0909/OBS 136	September 18, 2009
Messrs. Emmanuel Umpula, Timothée Mbuya, Grégoire Mulamba and Ms. Dominique Munongo	Death threats	Urgent Appeal COD 008/0909/OBS 136.1	September 22, 2009
Defenders of economic, social and cultural rights	Harassment	Note of Situation to the Committee on Economic, Social and Cultural Rights	October 26, 2009
		Press Release	November 25, 2009

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# DJIBOUTI

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

In 2009, the global economic crisis added to the many failings of the public services and denunciation was severely repressed, in a country where demonstrations are systematically repressed. As an example, on October 4, 2009, 189 young Djiboutians aged from 11 to 16 years old were arrested in Djibouti City following a demonstration to denounce electricity cuts and, in particular, cuts in drinking water that can sometimes last for several days. The 189 young people were brought to emergency trial in the middle of the night, without any lawyers, for “disturbing public order” and were all sentenced to six months’ imprisonment. Although the President pardoned 130 of them on October 15, 2009, around thirty were still held in Gabode prison on December 31, 2009<sup>1</sup>. In addition, the request for special permission to visit the young detainees made to the Minister of Justice by the Djibouti League of Human Rights (*Ligue djiboutienne des droits humains* – LDDH), which had undertaken to make an independent report on the events, remained unanswered as of the end of 2009<sup>2</sup>.

Furthermore, in its analysis of the human rights situation, the rule of law, democracy and governance in all the countries of the Horn of Africa, the European Parliament expressed great concern regarding credible reports of arbitrary arrests, forced labour, torture and ill-treatment of prisoners and persecution of journalists in Djibouti. In addition, the European Parliament called on the Djibouti authorities to protect the political rights of opposition parties and independent human rights organisations, including full guarantees of press freedom, freedom of assembly and freedom of expression<sup>3</sup>. Indeed, there is still very little room for manoeuvre for all the actors of public life, with strict control of their activities, particularly of meetings, and self-censorship of the already limited number of media, for fear of arrest. The European Parliament also stressed the need for a meaningful dialogue between Government and opposition, leading to

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1/ See Association for the Respect of Human Rights in Djibouti (*Association pour le respect des droits de l’Homme à Djibouti* - ARDH) Alerts, October 4 and 15, 2009 and January 17, 2010.

2/ See LDDH Open Letter to the authorities, October 12, 2009.

3/ See European Parliament Resolution P6\_TA (2009)0026 on the situation in the Horn of Africa, January 15, 2009.

adaptation of the electoral law to permit fairer representation of existing political parties in Parliament<sup>4</sup>.

Finally, during the Universal Periodic Review by the United Nations Human Rights Council in February 2009, Djibouti refused recommendations relating to necessary guarantees of trade union freedom and calling for an end to physical and judicial harassment of union representatives and intimidation of journalists<sup>5</sup>.

### **Judicial harassment of a defender who denounced malfunctions of justice**

In 2009, Mr. Jean-Paul Noël-Abdi, President of LDDH, continued to be subjected to harassment, particularly following his denunciation of malfunctions of justice. On April 4, 2009, members of the Search and Documentation Centre (*service de recherche et de documentation* – SRB) of the national gendarmerie arrested him in the town centre of the capital of Djibouti, without presenting an arrest warrant. He was verbally informed that the arrest followed “public insults of the judicial authorities” that he had apparently made in a briefing note dated March 26, 2009 in which he had condemned the serious derelictions of the Djiboutian justice system, especially its lack of independence, illustrated by the lack of justification and drafting of certain judgements and judicial rulings, particularly in sensitive trials such as that of Father Sandro De Pretis, an Episcopal Vicar accused of paedophilia<sup>6</sup>. Mr. Noël-Abdi was then taken to the northern brigade of the Djibouti gendarmerie before being placed in custody. On April 5, 2009, Mr. Noël-Abdi was deferred before the court for an immediate hearing by the Deputy Prosecutor under the flagrant offence procedure. He was then questioned by the Examining Magistrate before being released. In compliance with the terms of the magistrate’s ruling, Mr. Noël-Abdi was placed under judicial control and required to register regularly at the Examining Magistrate’s office while waiting for an investigation to be started against him. Mr. Noël-Abdi benefited from a discharge on June 7,

4/ The Movement for Democratic Renewal and Development (*Mouvement pour le renouveau démocratique et le développement* - MRD) opposition party was indeed still banned by a simple presidential decree dated July 2008. See LDDH Briefing Note, February 28, 2009.

5/ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Djibouti*, United Nations Document A/HRC/11/16\*, October 5, 2009.

6/ Father Sandro De Pretis, an Italian Catholic priest held in preventive detention in Djibouti since October 28, 2007 for “receiving stolen goods” and “distribution of child pornography pictures”, was sentenced on March 26, 2009 to three months and four days in prison, plus a suspended sentence bringing the total to five months in prison. The Prosecutor of the Republic of Djibouti who ordered this arrest is himself subject to an arrest warrant issued by the French Government, accusing him of corrupting witnesses in the Borrel affair. LDDH noted many procedural irregularities.

2009 and is therefore free to travel. He is nevertheless, at his own request, still waiting for a ruling for dismissal of the case due to the absence of any complaint filed during questioning in the Examining Magistrate's office. In addition, the proceedings opened against Mr. Jean-Paul Noël-Abdi in 2007 by the Djibouti armed forces were marred by irregularities once again this year<sup>7</sup>. The trial was postponed *sine die* by the Supreme Court on November 29, 2008. A new date for the hearing was set for April 14, 2009 then postponed to April 19, 2009, without respecting the period allowed for Mr. Noël-Abdi to prepare his defence. Furthermore, no response was received to three letters sent on November 5 and 12 and April 14, 2009 by Mr. Tubiana, the French lawyer assisting in the defence of Mr. Noël-Abdi, in order to plead before the court on behalf of his client, although other foreign and Djibouti lawyers have been able to plead before the Supreme Court in other cases. A hearing was finally set on October 17, 2009 then postponed to January 17, 2010<sup>8</sup>. Apart from the April 2009 postponement, all the other postponements by the Supreme Court were decided on without any prior ruling on postponement.

### Continuing obstacles to trade union freedom

In 2009, several trades unions were again prevented from carrying out their work and filed numerous complaints with the International Labour Organisation (ILO) during its 98th Conference, held in Geneva (Switzerland) from June 2 to 19, 2009, relating to obstacles to trade union activities<sup>9</sup> and to a disagreement regarding workers' representation at the conference. Each year, this event indeed crystallises attacks on trade union freedom in Djibouti, with the unsatisfactory procedure for the appointment of workers' representatives to the delegation of Djibouti. On May 29, 2009, the Djiboutian Labour Union (*Union djiboutienne du travail* – UDT) and the General Union of Djiboutian Workers (*Union générale des travailleurs djiboutiens* – UGTD) submitted a complaint to the Credentials Committee for the 98th ILO Conference for violation of paragraphs 5, 8 and 9 of Article 3 of the ILO Constitution regulating the nomination of workers' delegates. Indeed, in 2009, as in previous years, the Government sent representatives of phantom organisations under the control of the

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7/ This trial was initiated in 2007 following the publication by the President of LDDH of a briefing note on the discovery of a mass grave in the village of Day, which included the bodies of seven civilians who were killed by Government forces in 1994.

8/ The hearing on January 17, 2010 was then postponed to January 31, 2010 then postponed again *sine die*. The reason given was that the court was being transferred to another location.

9/ Proceedings against Djibouti have been ongoing for the last ten years, started by several trade unions including the Djiboutian Labour Union (UDT), the General Union of Djiboutian Workers (UGTD), the Secondary Education Teachers' Union (*Union des professeurs du secondaire*) and the Primary Education Teachers' Union (SEP) following the unfair dismissal of union members.

authorities to the International Labour Conference. The dispute concerning the composition of the Djiboutian delegation has continued since 1997<sup>10</sup>. On June 8, 2009, the two confederations filed an additional complaint after they had learned the names of the members of the official delegation, who did not belong to the union movement and therefore were not workers' representatives<sup>11</sup>. Furthermore, on October 13, 2009, the forces of order entered the People's Palace where UDT was holding a training seminar, interrupted the seminar proceedings and brutally dispersed the participants. Two members of the UDT Executive Board, Mr. **Anouar Mohamed Ali**, Secretary General of the Djibouti Electricity Workers' Union (*Syndicat des travailleurs d'électricité de Djibouti* – STED), and Mr. **Abdourachid Mohamed Arreh**, a member of the Primary Education Teachers' Union (*Syndicat des enseignants du primaire* – SEP), were arrested and taken to the criminal brigade premises for questioning, before being released the same day with no charge brought against them<sup>12</sup>. On the same day, the management of the Djibouti Sheraton Hotel informed UDT that the conference room booking for the union's fourth ordinary congress, scheduled for October 14 and 15, 2009, had been automatically cancelled by order of the President's office and that written permission from the Ministry of the Interior was required. The UDT officials went to the Ministry of the Interior on the same day and were informed that all conferences and seminars organised by the two union confederations were now banned<sup>13</sup>. Moreover, on October 14, 2009, two police officers banned Mr. **Adan Mohamed Abdou**, Secretary of the UDT, from entering UDT headquarters under Article 215 of the Labour Code in force since January 2006, due to "the union's failure to register correctly". On November 8, 2009, the UDT filed a complaint with the ILO for "obstruction of organisation rights" and "prohibition of union activity"<sup>14</sup>. On December 29, 2009, the UDT filed a new complaint with the ILO for "obstruction of organisation rights", "prohibition of union activity" and "arbitrary interference with correspondence". In this complaint, in addition to the problems relating to the organisation of its congress, the UDT also

10 / Although the International Labour Conference did not recommend invalidation of the credentials of the workers' delegation, it nonetheless did not exclude taking this course of action in the future. See International Labour Conference, *Provisional record 4C, 98th session, Reports on Credentials, Second Report of the Credentials Committee*, 2009, especially paragraph 55.

11 / See UDT/UGDT Inter-Union Committee, *plainte additionnelle à celle du 29 mai 2009 destinée à la Commission de vérification des pouvoirs de la 98<sup>e</sup> conférence de l'OIT à Genève du 2 juin au 19 juin 2009*, June 8, 2009.

12 / See LDDH.

13 / *Idem*.

14 / See UDT, *plainte déposée auprès de l'OIT pour obstruction aux droits d'organisations et interdiction de l'activité syndicale*, November 8, 2009.



denounced the illegal appropriation during the 98th International Labour Conference of a letter addressed to the UDT from a shared pigeonhole by a member of the delegation of Djibouti and the confiscation of the key to a letter box in which the UDT receives its mail<sup>15</sup>.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Mr. Jean-Paul Noël Abdi	Judicial harassment	Closed Letter to the authorities	March 12, 2009
	Arrest / Conditional release / Judicial harassment	Urgent Appeal DJI 001/0409/OBS 058	April 6, 2009
		Open Letter to the authorities	April 17, 2009

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# ETHIOPIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In the perspective of the May 2010 general elections, the first since the contested 2005 elections that were marred by a severe repression of civil society, the Ethiopian Government sought in 2009 to muzzle all forms of opposition against Mr. Meles Zenawi's Ethiopian People's Revolutionary Democratic Front (EPRDF), particularly political opponents, journalists and human rights defenders. Thus, while the opposition sought to build a common front before the elections<sup>1</sup>, opposition parties alleged in November 2009 that nearly 450 of their members were jailed to stop them running as candidates<sup>2</sup>. Additionally, the EPRDF's ethnic federalism did not curb conflicts, but rather increased competition among groups over natural resources and power. In rebellion-torn areas like the Oromia and Ogaden regions, ethnic federalism remained artificial and the rebellion remained active.

On July 7, 2009, the Parliament adopted a drastic Anti-Terrorism Law, which allows for severe restrictions of freedom of expression, freedom of assembly and the right to a fair trial. It provides for a broad definition of the terrorist act and peaceful and legitimate dissent with the current administration, including political opposition as well as criticism by independent human rights groups, could fall within the definition provided by the law. A street protest against Government policies could be qualified as terrorist activity if, for example, private property is damaged in the course of the protest. Protesters as well as its organisers could face sentences up to 15 years to life imprisonment or even death. In addition, the Amharic-language weekly *Addis Neger*, known for being outspoken, announced on December 4, 2009 that its 28 November issue would be the last one until further notice. The management said it was forced to take this decision because of the Government's intention to prosecute the newspaper and its staff under the Anti-Terrorism Law<sup>3</sup>.

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1/ In June 2008, the Unity for Democracy and Justice Party was created by some of the opposition leaders who were imprisoned between 2005 and 2007.

2/ See Human Rights Watch Report, *One Hundred Ways of Putting Pressure, Violations of Freedom of Expression and Association in Ethiopia*, March 24, 2010.

3/ See Reporters Without Borders.

In 2009, the Ethiopian authorities also used the Freedom of the Mass Media and Access to Information Proclamation<sup>4</sup> to silence journalists<sup>5</sup> and, in January 2009, a Government agency, the Ethiopian Broadcasting Authority, was given exclusive authority over media regulation. The authority immediately issued directives not included in the Media Law stripping any media executive with more than two percent ownership share of any editorial authority in order to “avoid homogeneity of news and viewpoints”. In April 2009, the agency denied licenses to three journalists under the pretext that they had been convicted of “treason, outrages against the Constitution and incitement to armed conspiracy” in 2007 after covering the crackdown consecutive to the 2005 elections. In June 2009, it ordered private *Sheger Radio* to stop carrying programs for *Voice of America*<sup>6</sup>.

### **Adoption of legislative reforms restricting the environment for human rights activities and successive closure of several NGOs**

In the run-up to the general elections, the Ethiopian administration completed the existing restrictive legal framework with the adoption by the Parliament, on January 6, 2009, of the “Charities and Societies Proclamation Law” No. 621/2009 (CSO Law), which creates a very restrictive environment for human rights defenders and sharply restricts the activities of most civil society organisations, including foreign and domestic human rights NGOs. The text extends the definition of “foreign NGO” to all NGOs in Ethiopia receiving more than 10% of foreign funding, and bans such NGOs from carrying out a high number of human rights related activities, including women and children’s rights, disabled persons, ethnic issues, conflict settlement and resolution, governance, and democratisation. In a country where 95% of Ethiopian NGOs currently receive more than 10% of foreign funding and where local funding sources are virtually non-existent, this new legislation deeply undermines the civil society’s capacities of action. The new piece of legislation also provides for the creation of the Government-appointed “Charities and Societies Agency” (CSA) – with wide-ranging discretionary powers related to the registration, functioning and dissolution of NGOs. Before the new law, the Ministry of Justice decided on registration. In case of refusal, the applicant organisation had the possibility to appeal this decision before a court. With the new legislation, any application for the registration of a “foreign NGO” is

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4/ The law was adopted by Parliament on July 1, 2008. It stiffened existing penalties for libel and granted Government prosecutors the exclusive discretion to summarily block any publication for national security, but banned pre-trial detentions of journalists, at least in principle.

5/ For instance, four editors of Amharic-language weeklies were detained from three to 16 days on criminal charges in 2009.

6/ See Committee to Protect Journalists.

submitted to the CSA, and any refusal of registration can only be appealed before the board of this agency. A second refusal by this body is deemed a final decision. The agency has also exclusive competence with regard to the dissolution of “foreign NGOs”. The possibilities of appeal will be the same as these applied to registration. The agency has also the power to appoint and remove executive members sitting in such organisations. Moreover, the CSO Law imposes disproportionate criminal penalties for minor administrative breaches of the law, stating that executive members of all charities and societies who allocate more than 30% of their budget to administrative expenses shall be subjected to fines or imprisonment.

Since the adoption of this draconian law, most of local NGOs have been obliged to abandon their human rights activities so as to continue receiving foreign funds<sup>7</sup>. About eleven have chosen to re-register as “human rights” organisations, running the risk to face dissolution<sup>8</sup>. Additionally, the Ethiopian Human Rights Council (EHRCO) was forced to change its name because the CSA claimed that it should have branches in five regional States although the CSO Law only requires that membership-based charitable societies have their membership distributed in five regional States, which EHRCO fulfilled. The CSA also forced EHRCO to amend some provisions of its statute such as removing the monitoring of elections and provision of voter education, although this was in violation of the CSO Law<sup>9</sup>. On December 11, EHRCO was finally re-registered. In spite of these requirements and delays, the bank accounts of EHRCO and the Ethiopian Women Lawyers Association (EWLA) were frozen by the Agency on December 8, 2009 although the funds were from pre-existing grants and the law was not due to take effect until February 2010. CSA officials informed EHRCO staff that as an “Ethiopian organisation” under the CSO Law, this retroactive application of the law was legitimate, despite the CSO law provides the CSA with no such powers. Although EWLA appealed to the Prime Minister to unfreeze its bank account, at the end of 2009 the account remained frozen. As a consequence, on December 18,

7/ Among them the African Initiative for a Democratic World Order (AIDWO), the Action Professionals Association for People (APAP), the Organisation for Social Justice in Ethiopia (OSJE), the Society for the Advancement of Human Rights Education (SAHRE), the Ethiopian Human Right & Civic Education Promotion Association (EHRCEPA), the Centre for the Advancement of Peace & Democracy in Ethiopia (CAPDE), the Ethiopian Federation of Persons with Disabilities (EFPD), the Research Centre for Civic & Human Rights Education, “Hundee” (Roots), “Zega le-Idget”, “Zema Setoch Leftih” and Kembatta Women’s Self-Help Center Ethiopia Association.

8/ Among them the Ethiopian Human Rights Council (EHRCO), the Ethiopian Women Lawyers’ Association (EWLA) and the Ethiopian Bar Association (EBA). The three were finally re-registered.

9/ The Electoral Law adopted in 2007 was also used to restrict the activities of human rights organisations in the electoral process. Indeed, those willing to undertake election monitoring or voter education now have to obtain a specific license from the Ethiopian National Board, which was not granted to all of them.

EHRCO had to close nine of its 12 field offices, and had to lay off 44 of its staff, several of whom also had to flee the country.

Moreover, in July 2009, the activities of 42 NGOs were reportedly suspended by the Ethiopian authorities, allegedly because their activities overtook their mandate and represented a threat to peace and development in southern Ethiopia. Most of the NGOs were engaged in the preservation of culture and environment, which was deemed as a threat to the ruling party as their action was considered a potential threat to State monopoly of land ownership. Regional authorities also ordered the bank accounts of these NGOs to be frozen and vowed to continue taking similar actions on others. However, Ethiopia's Southern Regional State Justice Office Chief, Mr. Yilma Meresa, refused to disclose the name of the suspended organisations<sup>10</sup>.

### **Obstacles to human rights defenders' access to information in zones of rebellion and arbitrary arrests**

Over the past years, the Government has remained suspicious of anyone who tried to collect information on human rights violations in zones of rebellion, in particular in the Oromia and Somali regions<sup>11</sup>, and arbitrary arrests continued to be a tool of repression used by the authorities in 2009. The access to the armed conflicts zones like Ogaden also remained tightly monitored and forbidden to human rights defenders and humanitarian organisations, which have been compelled to leave the area over the past years. For example, Mr. **Paulos Abebe**, Head of EHRCO Arbaminch branch office (South region), was arrested in Derashe Special District and detained in Gidole police station without food, water and clothes from January 14 to 17, 2009, while conducting an investigation in Derashe, Southern Nation Nationalities of Peoples Region. He was arrested by Wereda officials on the ground that he had failed to report his visit to Derashe to the local authorities, although he had a letter explaining his mission and could not deliver it because the officials in charge were not available. On January 17, he was released on bail and the investigation was ongoing at the end of 2009. Further, by mid-2009, Mr. Abebe received death threats while investigating the acts of torture inflicted on prisoners in February 2009 in Arbaminch prison and was constantly followed, prevented from going to the prison and meeting victims of human rights violations. He subsequently fled to Addis Ababa but was pursued by plain

10 / See World Alliance for Citizen Participation (CIVICUS) Press Release, July 24, 2009.

11 / For instance, Mr. **Abdi Abate**, an EHRCO member, was arrested in July 2007 in Nektme and charged with "supporting the Oromo Liberation Front (OLF)". On May 4, 2009, the Federal High Court eventually dismissed the charges against him, and ordered his release.

clothes security agents who also tried to abduct him on August 26, and his two sources of information were imprisoned after he fled his home town. Fearing for his safety, he had to flee the country on October 4, 2009. **Mr. Muguleta Fentaw**, Head of EHRCO in Dessie (Ahmara region), as well as **Ms. Elsabet Gizaw**, a member of EHRCO, also faced hindrances in 2009 in relation with their human rights activities.

### **Human rights activities hampered by a prevailing climate of fear and of surveillance**

In 2009, the major obstacle faced by human rights defenders remained the climate of fear prevailing in the country because of the continuous intimidation and threat of detention and prosecution made by senior Government officials in the State media, especially following the issuance of the annual human rights reports by the US State Department and Human Rights Watch in February 2009. For instance, **Ms. Madhere Paulos**, Director of EWLA, fled the country, fearing prosecution following the Ministry of Foreign Affairs statements against US State Department's annual human rights report, which cited EWLA and EHRCO. Furthermore, human rights defenders' communications by phone and email were routinely under surveillance and the authorities sought to control information by blocking access to the websites of human rights organisations. Because of this climate of fear and of Government repression, many human rights defenders had not other option than to flee the country in 2009, for fear of reprisals against their human rights activities, as was the case for Messrs. **Yoseph Mulugeta**, EHRCO Secretary General, **Abiy Mesfin**, Editor of *Addis Neger*, **Manyawkal Mekonnen**, Director of the Organisation for Social Justice in Ethiopia (OSJE), and **Mr. Kassahun**, Programme Officer of the Peace and Development Committee.

### **Use of years-old criminal cases to silence journalists reporting on human rights violations**

The Ethiopian Government resumed in 2009 its long-standing practice of reviving years-old criminal cases, some of them seemingly dormant, as a way to silence critical journalists reporting on human rights violations. Thus, on August 24, 2009, **Mr. Ibrahim Mohamed Ali**, Editor of the weekly newspaper *Salafiyya*, and **Mr. Asrat Wedajo**, former Editor of *Seife Nebelbal*, a weekly that was banned amid the 2005 Government crackdown on the press, were sentenced to one year of prison and convicted under the Criminal Code and the 1992 Press Law, amended by the Freedom of the Mass Media and Access to Information Proclamation of 2008, in connection with coverage of sensitive topics dating back several years. **Mr. Wedajo** was charged in connection with a 2004 story alleging human rights violations against the Oromos. **Mr. Ali** was charged in con-

nection with a piece written by a guest columnist and published in 2007, criticising the Ministry of Education's proposal to restrict headscarves for female Muslim students at public education institutions. Mr. Ali returned to court in September 2009 to face more charges over coverage of religious issues. Both announced that they intended to appeal the verdict and, as of the end of 2009, remained detained at Kality prison, outside Addis Ababa. At the end of 2009, the appeal was still pending. Likewise, on June 4, 2009, Mr. **Abebe Worke**, EHRCO Chairperson and *Voice of America* correspondent in Addis Ababa, and Mr. **Ababa Meleskachew Amaha**, Reporter for *Voice of America*, were arrested for alleged "illegal use of radio equipments" and "trying to sell equipment illegally". The equipment in question was imported by Addis Broadcasting Company (ABC) with a grant from the Government of Norway a few years ago, hoping that it would secure the licence to operate a radio station. In May 2009, the Government shut down ABC and accused Messrs. Worke and Meleskachew, ABC shareholders, of illegally owning broadcasting equipment. Messrs. Worke and Meleskachew were taken to court on June 5, 2009 and the judge remanded them in custody until June 15, granting a request of police for more time to conduct investigation. They were held at the premises of the customs authority in Addis Ababa. Messrs. Worke and Meleskachew were released on bail on June 12, 2009 after the Federal First Instance Court ruled on the bail application on June 11, 2009<sup>12</sup>. On July 15, Mr. Meleskachew was acquitted and Mr. Worke was convicted. Mr. Worke filed an appeal, which was pending at the end of 2009.

### **Urgent Intervention issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
	Obstacles to freedom of association	Press Release	January 9, 2009

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# THE GAMBIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

Since the attempted coup d'état in 2006, the Gambian Government has increasingly disregarded fundamental freedoms and international obligations despite being the host of the African Commission on Human and Peoples' Rights (ACHPR). In particular, the Government continued to arrest political opponents, journalists or human rights defenders over the year, and prisoners were subjected to abuses, acts of torture and ill-treatments as well as poor conditions of detention.

Furthermore, in 2009, the deterioration of the country's media environment continued. The Gambian press, limited to private newspapers subject to close governmental scrutiny, attempted to survive in a climate in which the least incident was severely punished. Arbitrary arrests, threats, judicial harassment and police brutality against journalists were again commonplace in 2009 and translated into a culture of threat and silence. As a consequence, public protests ceased, self-censorship of the media predominated and individuals remained silent when their human rights were violated<sup>1</sup>. Several journalists also reportedly went into hiding from fear of Government retaliation. Nonetheless, opposition views regularly appeared in the independent press, and there was frequent criticism of the Government in the private media. In addition, on May 22, 2009, President Jammeh threatened immediate legal action against any media which reported on remarks made by the Iman of Kanifing, Baba Leigh, an opponent of the regime. On July 22, on the occasion of the 15th anniversary of the coup that brought him to power, Mr. Jammeh reiterated his threats against journalists<sup>2</sup>. And, as of the end of 2009, Mr. Ebrima Manneh, a journalist with the privately-owned daily *The Point*, was still missing<sup>3</sup>.

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1/ See Amnesty International Report, *Fear rules: Gambia*, November 11, 2008.

2/ See Reporters Without Borders (RSF) Press Release, July 29, 2009.

3/ Mr. Manneh was arrested by members of the National Intelligence Agency on July 7, 2006. The reason for his arrest never came to light and the Government has always refused to disclose his whereabouts, health or legal status. He was reportedly arrested because he had tried to re-publish a *BBC* story critical of President Jammeh or because of his reporting on the 2005 killing of Ghanaian immigrants in the Gambia. During an April 6, 2009 address to the National Assembly, the Attorney General and Justice Minister denied that "Chief" Ebrima Manneh was in State custody. See Committee to Protect Journalists Report, *Attacks on the Press 2009*, February 2010 and Media Foundation for West Africa Statement, July 7, 2010.



In this context, it was extremely difficult for human rights defenders to operate, in particular as denouncing any human rights violation remained to be seen as a criticism to the regime.

### **Death threats by President Jammeh against human rights defenders**

On September 21, 2009, appearing on State-owned *Gambia Radio and Television Services* (GRTS), President Jammeh publicly threatened to kill human rights defenders, together with anyone who sought to “destabilise the country”, adding that “We are not going to condone people posing as human rights defenders to the detriment of the country. If you are affiliated with any human rights group, be rest assured that your security, and personal safety would not be guaranteed by my Government. We are ready to kill saboteurs”. In his address, President Jammeh also claimed that he was aware of human rights defenders being used to tarnish the image of his Government and added that “troublemakers [should] keep away from the country”. He warned that cooperating with human rights groups was no guarantee of protection”. As a consequence, on October 9, the United Nations Special Rapporteur on the Situation of Human Rights Defenders, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the ACHPR Special Rapporteur on the Situation of Human Rights Defenders in Africa issued a joint statement to express their concern for human rights defenders. Moreover, the ACHPR, meeting at its extraordinary session in Dakar from October 5 – 11, called on the African Union (AU) to intervene and ensure that President Jammeh withdrew threats made in his statement, which he refused. On October 11, the ACHPR adopted a resolution which called on the AU to consider relocating the Secretariat of the Commission from Banjul, due to the escalation of human rights violations such as hindrance to freedom of expression, arbitrary arrests and detentions, murder and judicial harassment of journalists and human rights defenders. The ACHPR also asked the AU to provide extra-budgetary resources to the African Commission to ensure that its 46th session would be held in November in Addis Ababa, Ethiopia, or any other member State of the AU. However, the request was disregarded by the AU and the session was held from November 11 to 25 in Banjul headquarters, in which the FIDH and OMCT refused to participate, urging the President to reconsider its statements. Though no incident marred the session, the President’s statements strengthened the feeling of fear prevailing in the country.

## Ongoing acts of reprisals against journalists who denounce human rights violations

In 2009, journalists who reported on sensitive issues were on various occasions arrested and subjected to acts of reprisals, in particular when they denounced human rights violations. For instance, on June 15, Ms. **Sarata Jabbi-Dibba**, Mr. **Emil Touray** and Mr. **Pa Modou Faal**, respectively Vice-President, Secretary General and Treasurer of the Gambian Press Union (GPU), were summoned for questioning by the National Intelligence Agency (NIA) in Banjul in relation to the statement published by the GPU in *The Point* and *Foroyaa* on June 12 calling on President Yahya Jammeh to accept the Government's responsibility in the 2004 murder of Mr. **Deyda Hydara**, Editor and co-Founder of *The Point*, which remains unpunished as of today<sup>4</sup>. They were subsequently arrested. The GPU statement that prompted their arrest criticised Gambian President Yahya Jammeh in relation to comments he had made on June 8 on Government television *GRTS*, denying any State implication in Mr. Hydara's murder. The GPU statement also denounced numerous instances of harassment and intimidation of journalists by the Gambian authorities, and deplored the state of media freedom in the country. Four other journalists were also arrested by NIA officers in plain clothes on June 15, namely Mr. **Sam Sarr**, Editor of the opposition newspaper *Foroyaa*, Mr. **Abubacarr Saidykhan**, journalist for *Foroyaa*, Mr. **Ebrima Sawaneh**, News Editor at *The Point*, and Mr. **Pap Saine**, Editor of *The Point* and *Reuters* correspondent in The Gambia. Messrs. Ebrima Sawaneh and Pap Saine are also GPU members. On June 18, the seven journalists appeared at Kanifing Police Court and were subsequently charged with "seditious publication". Messrs. Emil Touray, Pa Modou Fall, Pap Saine and Ebrima Sawaneh, Sam Sarr and Abubacarr Saidykhan were then imprisoned in Banjul's Mile Two jail. Only Ms. Sarata Jabbi-Dibba, mother of a young child, was released on a bail of 200,000 dalasis (about 5,400 euros). On June 22, 2009, Messrs. Emil Touray, Pa Modou Fall, Pap Saine, Ebrima Sawaneh, Sam Sarr and Abubacarr Saidykhan were brought to Kanifing Police Court and all were released on a bail of 200,000 dalasis. In addition, on June 22, Mr. **Augustine Kanjia**, journalist of *The Point*, was arrested while covering the appearance in court of the six journalists, allegedly for taking pictures of the hearing. On June 24, Mr. Kanjia was released on a bail of 50,000 dalasis (about 1,350 euros). On July 3, 2009, the seven

4/ Mr. Deyda Hydara, also a correspondent in Gambia for *Agence France-Presse* and Reporters Without Borders was shot dead on December 16, 2004, while driving his car in Banjul. Mr. Hydara was known in particular for his commitment to the freedom of the press and to human rights, and had notably, a few days prior to his death, published two articles in his paper criticising the adoption of two particularly restrictive laws of the press that were secretly signed in December 2004 by the President of the Republic.

journalists were summoned to appear before Banjul High Court, charged with the initial charges of sedition and three other counts of defamation. The Court then revoked their initial bail conditions, and sent them back to Mile Two State central prison. Hours later, Ms. Sarata Jabbi-Dibba was released with a bail of 400,000 dalasis (about 10,600 euros). On July 6, Messrs. Emil Touray, Pa Modou Fall, Pap Saine and Ebrima Sawaneh, Sam Sarr and Abubacarr Saïdykhan were released on a bail of 400,000 dalasis. On July 28, Mr. Saïdykhan was acquitted and discharged over “wrong” charges by the High Court. On August 6, Ms. Sarata Jabbi Dibba and Messrs. Emil Touray, Pa Modou Faal, Pap Saine, Ebrima Sawaneh and Sam Sarr were convicted and sentenced by Banjul High Court to two years’ imprisonment and to a 250,000 dalasis (about 6,625 euros) fine each upon charges of “sedition” and “defamation”. All were transferred to serve their sentence in Mile Two State central prison. On September 3, the six journalists were released following presidential pardon.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Ms. Sarata Jabbi-Dibba, Messrs. Emil Touray, Pa Modou Faal, Pap Saine, Abubacarr Saïdykhan, Ebrima Sawaneh, Sam Sarr and Deyda Hydara	Arbitrary detention / Release on bail / Judicial harassment	Urgent Appeal GMB 001/0609/OBS 088	June 24, 2009
Ms. Sarata Jabbi-Dibba, Messrs. Emil Touray, Pa Modou Faal, Pap Saine, Ebrima Sawaneh and Sam Sarr	Sentencing / Arbitrary detention	Urgent Appeal GMB 001/0609/OBS 088.1	August 10, 2009
	Release	Urgent Appeal GMB 001/0609/OBS 088.2	September 11, 2009
Human rights defenders	Death threats	Joint Press Release	September 25, 2009

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# GUINEA BISSAU

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

On March 2, 2009, President João Bernardo Vieira was shot by renegade soldiers, the day after a bomb attack killed the army's chief, General Batista Tagmé Na Waié. These killings removed two very powerful political rival figures who had escaped several assassination attempts since the November 2008 parliamentary elections. The assassinations appeared to be related to political tension stemming from old rivalries, ethnic divisions and instability in the military ranks, and the ever-increasing presence of drug trafficking interests in the country<sup>1</sup>. On June 5, 2009, a few weeks ahead of the presidential election, political violence against high-profile personalities resurged when armed men killed presidential candidate Mr. Baciro Dabó and Mr. Helder Proença, a former Minister and Member of Parliament. As of the end of 2009, there had been no progress in the investigation into those assassinations, though in March the Government had convened a national commission of inquiry into the killings, mainly because of the lack of independence of the judicial system and the lack of collaboration of the military authorities<sup>2</sup>.

Despite these tensions, the presidential election took place peacefully on June 28, 2009. After a run-off on July 26, 2009, Mr. Malam Bacai Sanhá of the ruling African Party for the Independence of Guinea and Cape Verde (*Partido Africano da Independência da Guiné e Cabo Verde* – PAIGC) won the election with 63 percent of the votes and was inaugurated as President on September, 8, 2009. The international community welcomed the commitment of the new President to combat impunity, foster national reconciliation and achieve socio-economic development<sup>3</sup>.

## Threats against defenders denouncing the abuses of the armed forces

In 2009, the context of political tension and the presence of the military in all aspects of public life continued to make it difficult for human rights defenders to work, in particular when they criticised the influence of the military, denounced human rights violations committed by them or acts of corruption. For instance, on April 1, 2009, an unidentified individual

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1/ See European Parliament Resolution P6\_TA-PROV(2009)0143 on Guinea-Bissau, March 12, 2009.

2/ See Guinean League for Human Rights (LGDH).

3/ *Idem*.

dressed in civilian clothes and armed with a gun visited the Guinean League for Human Rights (*Liga Guineense dos Direitos Humanos* – LGDH) offices and asked for Mr. **Luis Vaz Martins**, lawyer and President of the organisation with a threatening tone. Mr. Vaz Martins was out of the office at that moment. The man reportedly asked for his residential address and stated that he wanted to kill him because the organisation was “too talkative”. No action was taken during the year against those responsible for those threats. This visit came a few hours after the issuance of a press release denouncing the serious human rights violations committed by elements of the Bissau-Guinean military the weeks before. The press release referred in particular to the attack sustained by Dr. **Francisco José Fadul**, leader of the opposition Party for Democracy, Development and Citizenship (*Partido para a Democracia Desenvolvimento e Cidadania* – PADEC) and President of the Court of Public Auditors, on April 1, 2009, when he was beaten at his home by four military officials who hit him with the butts of their firearms, after he denounced the growing influence of the military in public life and called on the Government to hold the military accountable for corruption and other crimes during a press conference on March 30, 2009. As of the end of 2009, no action had been taken against those responsible for Mr. Francisco José Fadul’s torture and abuses. LGDH had also denounced the torture suffered from March 23 to 26, 2009 by Mr. Pedro Infanda, the lawyer of the former chief of the armed forces José Américo Bubo Na Tchute, currently in exile, after he had expressed, at a press conference held on March 23, 2009, his client’s opinion that the newly appointed Chief of Staff of the Armed Forces was not competent for the post.

### **Urgent Intervention issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Messrs. <b>Luis Vaz Martins</b> , <b>Bubacar Ture</b> and Dr. <b>Francisco José Fadul</b> / Guinean League for Human Rights (LGDH)	Threats	Press Release	April 2, 2009

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# KENYA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In 2009, the country had still not recovered from the political violence that followed the December 2007 general elections<sup>1</sup> and had yet to implement the reforms set out under the National Accord and Reconciliation Act 2008. Following the political agreement decided by President Kibaki and Prime Minister Odinga on December 17, 2008, and in accordance with the recommendations of the Waki Commission<sup>2</sup>, a special tribunal to try the crimes and human rights violations committed during the post-elections violence should have been established by January 30, 2009. However, Parliamentarians rejected it twice, on January 29 and February 13, 2009, after a constitutional amendment motion to institute the tribunal by the Government was defeated. Although the Kenyan authorities announced in July 2009 that they would carry out accelerated police, prosecution and judicial reforms to ensure investigation and prosecution of perpetrators, they provided no time-frame and further specified that they would not support the establishment of such tribunal. As a result, on November 5, the Prosecutor of the International Criminal Court (ICC) announced the ICC would get involved and submit a request under Article 15(3) of the Rome Statute for the authorisation to open an investigation. On November 6, pursuant to the Rome Statute, the Presidency of the ICC assigned the situation to Pre Trial Chamber II to call upon the opening of an investigation<sup>3</sup>. At the end of 2009, the request for authorisation was still pending<sup>4</sup>. The European Union also called upon Kenya to urgently

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1/ The December 2007 Presidential elections were marred by serious irregularities and set off a wave of violence throughout Kenya until the end of February 2008, which claimed over 1,000 lives and displaced over 300,000 people. Serious human rights violations included organised violence by militia, gender-based violence, and spontaneous, disorganised uprisings of mobs protesting the flaws, during which there was a disproportionate and excessive use of force by the police against protesters, mainly in opposition strongholds.

2/ Following the election violence, a Commission of Inquiry led by Justice Philip Waki was set up to investigate the violations.

3/ See ICC Press Release ICC-CPI-20091106-PR473, November 6, 2009.

4/ See ICC Press Release ICC-CPI-20100219-PR497, February 19, 2010. On March 31, 2010, Pre-Trial Chamber II authorised the Prosecutor to investigate crimes against humanity committed in Kenya between June 1, 2005 (date of entry into force of the Rome Statute for Kenya) and November 26, 2009.

adopt measures to end impunity and fight corruption and to ensure full respect for human rights<sup>5</sup>.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, who conducted a fact-finding mission in the country from 16 to 25 February, reported “the existence of systematic, widespread, and carefully planned extrajudicial executions undertaken on a regular basis by the Kenyan police”, and a complete lack of accountability that prevails in an overwhelming majority of cases. The report concluded that there were no independent police internal affairs unit to investigate police killings and reliably assess the legality of the use of force, and also denounced the existence of opaque appointments, and “extraordinary levels” of corruption made the judiciary unable to address such issues. The Rapporteur also denounced a systematic attempt to silence criticism voiced against the security forces, in particular in the Mount Elgon district<sup>6</sup>, where from 2006 to 2008, both the Sabaot Land Defence Forces (SLDF) and the Government’s security forces engaged in widespread brutality, including torture and unlawful killings, against the civil population<sup>7</sup>. Detailed reports from a broad range of sources documenting these abuses were not seriously investigated by the police or the military.

Moreover, on January 2, 2009, President Mwai Kibaki signed into law a controversial media law that imposes new restrictions on the press despite mobilisation at local and international level. Indeed, the Kenya Communications (Amendment) Act (2009) provides for heavy fines and prison sentences for press offences, gives the information and internal security ministries the authority over the issuing of broadcast licences and the production and content of news programmes, as well as search and surveillance powers. Following a concerted campaign by civil society, on May 9, 2009, the Kenyan Government published amendments to the Communications Act, which will delete a controversial clause that allows the Government to raid broadcasting houses and destroy or confiscate equipment in the name of “public safety”. The amendments will also get

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5 / See EU Declaration by the Presidency on behalf of the European Union on Kenya, October 1, 2009.

6 / See Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions Philip Alston, Addendum - Mission to Kenya*, UN Document A/HRC/11/2/Add.6, May 26, 2009.

7 / SLDF is a guerrilla militia operating in the Mount Elgon district of Kenya (western province of Kenya) since 2005. A large scale military assault in March 2008 has resulted in allegations of serious human rights abuses by the Kenyan army, including murder, torture, rape, and arbitrary detention. According to the Kenyan NGO Independent Medico-Legal Unit (IMLU), the military operation reportedly resulted in mass arrests and subsequent prosecution of over 1,200 persons with most of the persons arrested raising complaints of torture.

rid of provisions granting the Government power to control content on TV and radio. The task will now fall under a new Broadcast Content Advisory Council, which will include the Permanent Secretary in the Ministry of Information and six other members to be appointed by the Information Minister. The amendments were agreed upon between the media and the Government as interim measures pending a further and more elaborate review of the law governing communications and the media. At the end of 2009, the Parliament had still not examined the amendments.

### **Reprisals against human rights defenders who denounced human rights violations by the police forces**

In the context of total impunity of police and military forces, human rights defenders who denounced human rights violations committed by those forces faced acts of reprisals in 2009. For instance, on September 15, 2009, Messrs. **Samson Owimba Ojiayo** and **Godwin Kamau Wangoe**, members of the grass-roots movement “Bunge La Mwananchi”, which aims at fighting social injustice and promotes accountable leadership in Kenya, were arrested in Nairobi by plain clothes police officers after they had been campaigning to end impunity for serious economic crimes and extrajudicial killings. Their abduction came weeks after the replacement of controversial police chief, Mr. Mohamed Hussein Ali, who had been widely criticised for his role in the post-election violence. During their detention, Messrs. Kamau Wangoe and Owimba Ojiayo were reportedly denied access to a lawyer and Mr. Wangoe was subjected to ill-treatment. On September 16, Mr. Owimba Ojiayo was released without charge and Mr. Kamau Wangoe was brought before a Nairobi magistrate, charged with “belonging to an illegal organisation” and released on bail on September 18. Following their release, Messrs. Wangoe and Ojiayo as well as their families were subjected to threats and harassment from the security forces. On September 16, the same day Mr. Ojiayo was released, unidentified men approached his 12-year-old daughter and asked her about her fathers’ whereabouts. Police officers in plain clothes also visited their respective homes twice asking about two defenders<sup>8</sup>. As of the end of 2009, no further information could be obtained regarding the status of the proceedings against Mr. Wangoe. Moreover, in 2009, after the Kenya National Commission on Human Rights (KNCHR) publicly released the testimony of a police whistle-blower, Mr. Bernard Kiriinya Ikunyua, who acted as a driver for one of the police death squads that are operating in Nairobi and Central Province with the explicit mandate to exterminate suspected Mungiki<sup>9</sup> members, and was killed in October 2008 after he testified on

8/ See Kenyan Human Rights Commission (KCHR).

9/ An organised crime sect.



how the police extra-judicially executed some 58 suspects whom they had arrested<sup>10</sup>, the police issued a statement questioning the reason why the KNCHR had released the statement as well as KNCHR's commitment to human rights, and intimating that KNCHR officers receive payments from the Mungiki. In the past, the KNCHR had already faced similar reaction from the police because of its investigations into alleged executions and disappearance of persons attributed to the police.

In particular, many of the human rights defenders who testified before the Special Rapporteur on extrajudicial, summary or arbitrary executions during his mission reported they were threatened and harassed by members of the security forces and other Government officials. Thus, two activists who had been particularly active in reporting on police death squads were murdered just two weeks after the mission ended. Mr. **Oscar Kamau King'ara**, lawyer and Chief Executive Officer of the Oscar Foundation Free Legal Aid Clinic Kenya (OFFLACK), and Mr. **John Paul Oulu**, OFFLACK Communications and Advocacy Officer, an organisation providing free legal services in Kenya, were murdered on March 5, 2009. The Oscar Foundation had carried out research on police brutality in urban areas of Kenya, as well as on corruption in the police force and in prisons. On February 18, it had presented its findings on ongoing extrajudicial killings in Kenya to the Ministry of Education for use in a parliamentary debate. The organisation had also provided information to the Special Rapporteur on extrajudicial, summary or arbitrary executions during his mission. Furthermore, the Oscar Foundation had presented a report on extrajudicial killings, entitled *The Killing Fields*, to the KNCHR and a report on organised gangs to the Kioni Committee of the Kenyan Parliament. Although an investigation was opened immediately into the murder of Messrs. King'ara and Oulu, the Government declined the assistance offered by the Federal Bureau of Investigation (FBI) and police Spokesperson Eric Kiraithe alleged that Mr. King'ara's murder might have been the result of rivalries within the Mungiki sect. As of the end of 2009, the investigation was ongoing.

### **Intimidation of human right defenders who denounced corruption**

Human rights defenders denouncing corruption also remained subjected to harassment in 2009. On January 15, 2009, Mr. **George Nyongesa**, a community organiser who works with Bunge la Mwananchi, was attacked in Nairobi by four men, three of whom had guns. He was severely beaten and his assailants took his laptop, camera, and other valuables before

leaving him within 100 meters of the gate of his house. Mr. Nyongesa reported the assault to the central police station and later recorded a statement with the Criminal Investigations Department. However, since that date, the police has not contacted Mr. Nyongesa<sup>11</sup>. On January 29, 2009, Mr. Francis Nyaruri, a journalist who wrote on corruption cases for the private *Weekly Citizen* under the pen name Mong'are Mokuu, and who had been missing since January 15, was found decapitated and with evidence of torture to his body in Koder Forest near his home-town of Nyamira. Mr. Nyaruri had written a series of articles that exposed financial scams and other malpractice by the local police department, and had reportedly told his colleagues of unspecified threats by police officers related to articles he had written in the *Weekly Citizen*. An investigation was immediately opened, which was still ongoing at the end of 2009<sup>12</sup>.

### **Intimidation of human rights defenders who denounced human rights violations in Mount Elgon district**

In Mount Elgon, both the SLDF and the Government's security forces remained in 2009 in denial of abuses they are said to have committed, and their response to systematic civil society reporting was to methodically intimidate human rights defenders and witnesses. In particular, before, during and after the visit of the UN Special Rapporteur in February, human rights defenders were systematically intimidated by the police, military and Government officials in an attempt to silence all those who held information on human rights violations committed in this district by the authorities. In its report, the Special Rapporteur mentions that human rights defenders were told not to bring witnesses or victims to meet with him, and not to personally testify about abuses committed by the police or military, but to speak only about abuses by the SLDF armed group. They were further warned by text message, telephone calls, and in person. In one instance, officials addressed an internally displaced persons (IDP) camp, saying that the residents should tell the Special Rapporteur about killings by the SLDF only and that if they did not follow these instructions, they would no longer receive food aid from the Government. During the Special Rapporteur's visit to Mount Elgon, National Security Intelligence Officers unsuccessfully attempted to obtain from NGOs the list of witnesses whom he was going to meet with. Civil society organisations were also repeatedly harassed for them to provide information about the programme and schedule of the Special Rapporteur, as well as details of the NGOs' involvement in the mission. During meetings, the Special Rapporteur was alerted to the nearby presence of intelligence officers. Subsequent to the Special

11/ See KCHR.

12/ See Committee to Protect Journalists Press Release, January 30, 2009.

Rapporteur's meetings with witnesses, police, military and Government officials went to the homes and workplaces of human rights defenders, in an attempt to obtain lists of those who had testified before the Special Rapporteur. Individuals were told that they would be arrested if they did not hand over the list of names. This led a number of specifically targeted individuals from the Western Kenya Human Rights Watch and Muratikho Torture Survivor's Organisation to flee the area. They were delivered further messages by telephone to "keep away" and "not come back". Following the Special Rapporteur's press statement, demonstrations were held in Mount Elgon against NGOs, and individuals were told that they would be denied their food assistance if they did not participate<sup>13</sup>. Furthermore, on October 9, 2009, Mr. **Ken Wafula**, a journalist and the Director of the Centre for Human Rights and Democracy (CHRD), was arrested, interrogated by the local police in Eldoret and released the same day but told not to leave the city. Between October 10 and 15, Mr. Wafula was summoned at least three times to report to the police station, where he was obliged to give further statements on allegations of inciting the public and causing national disturbance. On October 23, Mr Wafula was charged with "incitement". On October 7, Mr Wafula had reported on the clandestine re-arming of communities in the Rift Valley with the support of Government officials for their communities, partly in anticipation of violence during the 2012 parliamentary poll. His report received widespread coverage. As of the end of 2009, the charges held against him were still pending. During the same period of time, the police reportedly tried to trap Mr. Wafula. On October 15, 2009, a retired senior police officer by the name of Mr. Paul Sugutt came to CHRD office claiming that on October 10, 2009, a consignment of 300 guns and 3,000 rounds of ammunition was seen in Eldoret going towards Nakuru from Lwakhakha, and insisting that he would like to work with Mr. Ken Wafula to ensure that the guns are eliminated. However, despite the fact that he was formerly a senior police officer, Mr. Sugutt had not reported this information to the police, and called CHRD's offices up to four times a day during several days. Additionally, a person who identified himself as a human rights activist active in the SLDF also called and asked if he and Mr. Wafula could meet outside the city of Eldoret in order to give Mr. Wafula a report with information that SLDF members were being trained. Within minutes, Officer Sugutt had also called with the same information and to vouch for the human rights activist, but the activist has not been heard from again since Mr. Wafula suggested that they meet only in Eldoret<sup>14</sup>.

13/ See Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Addendum - Mission to Kenya*, UN Document A/HRC/11/2/Add.6, May 26, 2009.

14/ See Front Line Statement, October 19, 2009.

## Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Messrs. Oscar Kamau King'ara and John Paul Oulu	Assassination	Urgent Appeal KEN 001/0309/OBS 043	March 9, 2009
		Joint Open Letter to the authorities	April 20, 2009

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# MAURITANIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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The situation that arose from the coup d'état of August 6, 2008, which overthrew the President of the Republic and the Government installed in office after the presidential election in March 2007, was brought back to normal with the presidential elections based on the Dakar Agreement. Under this Agreement, which was signed on June 2, 2009, the three major poles of Mauritanian political life – the National Front for the Defence of Democracy (*Front national de défense de la démocratie* – FNDD), the Assembly of Democratic Forces (*Rassemblement des forces démocratiques* – RFD) and the Union for the Republic (*Union pour la République* – UPR) – committed to setting up a Transitional Government of National Unity, to establishing an Independent National Election Commission (*Commission électorale nationale indépendante* – CENI) and to organising presidential elections on July 18, 2009. The latter brought the putsch General, Mr. Mohamed Ould Abdel Aziz, to office. The opposition denounced fraud such as the distribution of pre-marked specimen and official ballot papers and the massive police presence in and around the polling stations. International observers, such as the International Organisation of the Francophonie (*Organisation internationale de la Francophonie* – OIF), also noted irregularities, though they considered that these did not call into question the final result<sup>1</sup>.

This year saw international progress in the fight against impunity, with repercussions at national level. On March 30, 2009, the European Court of Human Rights confirmed the Nîmes Criminal Court ruling of July 2005, sentencing, for the first time in France on the basis of universal jurisdiction, Mr. Ely Ould Dah, a captain in the Mauritanian army, for acts of torture committed in Mauritania against Mauritanian citizens. Even before publication of this decision, which was long-awaited by the authorities, the State had hastily organised a conference in Kaedi on the “humani-

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1/ See Press Release by the OIF Observation Mission to the presidential elections in Mauritania, July 21, 2009 and the Declaration by the Presidency on behalf of the European Union, July 23, 2009.

tarian backlog”<sup>2</sup>, following which General Mohamed Ould Abdel Aziz, then President of the High State Council (*Haut conseil d’Etat* – HCE), announced on March 24 that consideration of the humanitarian backlog and human rights violations in the 1990s<sup>3</sup> was “permanently closed”. However, the problems related to the humanitarian backlog are far from resolved: the police have continued to use brutality and torture with total impunity, the land problem remains intact and the Mauritanian deportees who were repatriated with the assistance of the High Commission for Refugees (HCR) have had to cope with administrative obstacles to obtain official civil status and the return of their lands<sup>4</sup>.

In addition, the United Nations Special Rapporteur on Contemporary Forms of Slavery, Ms. Gulnara Shahinian, during a press conference in Nouakchott on November 3, 2009 at the end of her visit to Mauritania from October 24 to November 4, denounced the persistence in the country of slavery practices such as “serfdom and domestic slavery”, whose victims are “utterly deprived of their basic human rights”<sup>5</sup>, in spite of the existing Law No. 2007-48 “criminalising slavery and repressing slavery practices” adopted by the Mauritanian National Assembly in August 2007.

Furthermore, in 2009, several foreigners were abducted in Mauritania. Three humanitarian workers belonging to the Spanish NGO “Solidarity Caravan” (*Caravana Solidaria*) were abducted on November 29, 2009. Al Qaeda in the Islamic Maghreb (AQIM) claimed responsibility for the abduction in a recording sent to the *Al Jazeera* channel on December 8, 2009. On December 18, 2009, two Italian travellers were also kidnapped in the south of the country. At the end of 2009, AQIM was holding a total of six hostages and demanded the release of detainees in Mali and sums of money<sup>6</sup>.

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2/ The objective of the conference was to convince victims to withdraw their complaints filed in Mauritania with the help of the Collective of Organisations for the Victims of Repression in Mauritania (*Coordination des organisations des victimes de la répression en Mauritanie* - COVIRE), a collective that brings together surviving widows and military fugitives to obtain symbolic compensation rather than to establish a transitional justice procedure (such as the establishment of a truth and reconciliation body that is sought by many civil society organisations). See Mauritanian Human Rights Association (*Association mauritanienne des droits de l’Homme* - AMDH).

3/ At the beginning of the 1990s, tens of thousands of negro-Mauritanians were deported beyond the borders; those who were in the army and civil administration were arrested and tortured.

4/ See AMDH.

5/ See United Nations Special Rapporteur on Contemporary Forms of Slavery, Including its Causes and Consequences Press Release, November 4, 2009.

6/ In the same recording the group claimed responsibility for the abduction of a French citizen in Mali on November 25, 2009. See AMDH.

Since the coup d'état, threats intensified in the press, on the Internet, during sermons in mosques, or by telephone against those who denounced the putsch (journalists, NGO representatives or members of the opposition). Indeed, those civil society movements were held responsible for the sanctions adopted by the international community against the ruling junta and any criticism of the Government was considered as a form of political opposition. Normalisation of the political climate through the presidential elections did not change this situation. Defenders continued to be marginalised with regard to State activities, just as did the political movements that are independent of the junta, which grouped together within the Coordination of Democratic Opposition (*Coordination de l'opposition démocratique* – COD) since December 2009<sup>7</sup>. This was in particular demonstrated by the lack of consultation with civil society and smear campaigns against its representatives, and by the repression and banning of demonstrations. As an example, on December 17, a demonstration organised in Nouakchott by the families of Islamic business men who were detained and accused of misappropriation of public funds, which called for their release, was repressed. Several women were beaten and injured by the police forces, especially by the anti-riot police and the court-house police<sup>8</sup>.

### **Repression of the freedom of peaceful assembly in the framework of institutional crisis**

While, after the coup d'état, many civil society movements, including members of human rights NGOs and union members, took part in peaceful demonstrations to call for the return of constitutional order and respect for economic and social rights and to protest against the imposition of an electoral calendar, the junta banned many peaceful assemblies and demonstrations<sup>9</sup>. Several of these demonstrations were brutally repressed by the security forces, and police and gendarmes were deployed even for authorised demonstrations. The national guard was in charge of patrolling the poor neighbourhoods and breaking up any social meetings. For instance, on April 2, 2009, Mr. **Boubacar Messaoud**, President of SOS-Slaves (*SOS-Esclaves*) and a member of OMCT General Assembly, after expressing the opinion that the Government should support respect for fundamental freedoms, was severely beaten by the police during a peaceful demonstration organised by the Coordination of Democratic Forces

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7/ The coalition of nine opposition parties officially signed a policy statement on December 10, 2009.

8/ See AMDH.

9/ On May 21, 2009, HCE banned any demonstration until the presidential election, which at that time was scheduled for June 6, 2009, before being postponed until July. At the end of 2009, demonstrations continued to be regularly banned or repressed by the authorities.

(*Coordination des forces démocratiques* – CFD), which brings together opposition political parties and civil society organisations, including human rights organisations. Already known to the police services, he was attacked by Police Superintendent Ould Nejib and his colleagues from the court-house police station who had come to back up the anti-riot police. The police officers were trying to put Mr. Messaoud in the boot of a car when they were challenged by two women who managed to make them run off. At the same demonstration, around a dozen people were beaten and seriously injured by the police. Similarly, on April 19, 2009, a peaceful demonstration by women Members of Parliament, which had been called by the FNDD and the RFD in front of United Nations headquarters in Nouakchott to protest against the date of elections and the lack of a return to constitutional order, was also harshly repressed. Several women were beaten by members of the police forces, including the anti-riot brigade<sup>10</sup>.

### **Judicial harassment of journalists who denounce human rights violations**

In 2009, several trials were opened against journalists who were independent from the Government and who had denounced human rights violations. As an example, on June 17, 2009, following a complaint filed on May 22 by a presidential election candidate, Mr. Ibrahima Moctar Sarr, a member of the Alliance for Justice and Democracy / Movement for Renovation (*Alliance pour la justice et la démocratie / Mouvement pour la rénovation* – AJD/MR), opposition party, the journalist Mr. **Hanevy Ould Dehah**, Director of the electronic newspaper *Taqadoumy*, was arrested<sup>11</sup>. The complaint followed the journalist's publication of an article on the candidate's purchase of a villa and his "sudden" fortune. On August 19, 2009, Mr. Hanevy Ould Dehah was sentenced to six months in prison for "publications contrary to Islam and decent behaviour" by the Nouakchott Court Correctional Tribunal, a sentence that was upheld in appeal on November 24. Mr. Hanevy was due to be released on December 24, 2009 but the prosecution, which had called for a sentence of five months in prison and a fine of five million ouguiyas (12,500 euros), asked the Supreme Court to suspend his release until the criminal chamber of the Supreme Court had ruled on its appeal. In reaction to this situation, Mr. Hanevy, who was detained at Dar Naim prison in Nouakchott, went on hunger strike for two weeks, seriously endangering his health. On January 14, 2010, the Supreme Court quashed the ruling and sent the case before an

10/ See AMDH.

11/ See AMDH, Association of Women Heads of Families (*Association des femmes chef de famille* - AFCF) and SOS-Slaves Alert, June 22, 2009.



examining magistrate<sup>12</sup>. Furthermore, on March 15, 2009, access to the electronic newspaper *Taqadoumy* was blocked to Mauritanian Internet users and, following the publication on March 15 of an article in which he denounced the violations committed by the junta, one of its editors, **Mr. Abou El Abass Ould Braham**, was arrested on March 17 for “defamation” and “attempt to destabilise the country”, before being released without being charged on March 19, 2009. He was also criticised for other articles that had been published on November 18 and 26 and December 27, 2008, relating to the putsch and the army’s obligation to declare the personal assets of its generals<sup>13</sup>.

### **Harassment of defenders who denounce the persistent practice of slavery**

Denunciation of the persistent practice of slavery in the country in 2009 caused the authorities to put increased pressure on human rights defenders who fight against slavery. For example, since taking part in the conference entitled “Slavery in the land of Islam: why don’t Mauritanian masters free their slaves?”, organised on February 17, 2009 at the Foreign Press Centre (*Centre d’accueil de la presse étrangère* – CAPE) in Paris, **Mr. Biram Ould Dah Ould Abeid**, Advisor to the Mauritanian National Human Rights Commission (*Commission nationale mauritanienne des droits de l’Homme*), President of the Initiative for the Resurgence of the Abolitionist Movement in Mauritania (*Initiative de résurgence du mouvement abolitionniste en Mauritanie* – IRA) and a representative of SOS-Slaves, was the focus of particular attention from the Mauritanian authorities. During the conference, he had in particular condemned the persistence of slavery and its legitimisation through the application of Sharia Law in Mauritania, and his statements had been repeated in several African newspapers. Acts of harassment against Mr. Biram Ould Dah Ould Abeid intensified following the press conference given on November 3, 2009 by the United Nations Special Rapporteur on Contemporary Forms of Slavery at the end of her visit to Mauritania. The authorities criticised Mr. Biram Ould Dah Ould Abeid for having informed the Rapporteur of the persistence of slavery practices and the seriousness of the problem in Mauritania. As an example, in November 2009, an anonymous article that included defamatory statements against him, in particular alleging that he had links with the Israeli secret services, was published on the *elbidaya.net* news website and picked up by a considerable number of Mauritanian websites. During

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12 / Mr. Hanevy was released on February 26, 2010 when President Mohamed Ould Abdel Aziz granted a presidential pardon to around one hundred prisoners to mark the festival of Mawlid (the Prophet Mohammed’s birthday). See AMDH and SOS-Slaves.

13 / See AMDH, AFCF and SOS-Slaves Alert, June 22, 2009.

the same period, an unidentified individual tried to enter his home before making his escape. In addition, on November 23, 2009, the Minister of the Interior warned Mr. Biram Ould Dah Ould Abeid via a person who was close to him that he had been given “a mandate by the President of the Republic to deal with him” and also ordered him to “put an end to any statement and action to fight against slavery” and to “come to him to present any case of slavery he knew of”.

### **Urgent Intervention issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Mr. Boubacar Messaoud	Attack / Attempted abduction	Press Release	April 6, 2009

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# NIGER

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

The announcement made on May 5, 2009 by President Mamadou Tandja of his intention to call a referendum to permit him to extend his term of office by three years, contrary to the provisions of the Constitution and when his term of office was due to end on December 22, 2009, was largely damaging to the process of setting up the democratic institutions provided for by the Constitution of the 5th Republic, promulgated on August 9, 1999 after several years of political instability. Based on supposedly spontaneous popular demonstrations calling for his re-election<sup>1</sup>, Mr. Mamadou Tandja did all he could to organise the referendum: the National Assembly was dissolved on May 26, 2009; the Constitutional Court was dismissed on June 29, 2009<sup>2</sup>; and he granted himself exceptional powers on June 26, 2009<sup>3</sup>. All these measures were denounced and strongly condemned by civil society and the political opposition, despite the repression to which they were subject. On July 8, 2009, President Tandja also modified Law 2006-24 on the Organisation, Attribution and Function of the Higher Council for Communication (*Conseil supérieur de la communication* – CSC), granting the CSC Chairman discretionary powers to suspend any “organ of the press that broadcasts or publishes information likely to disturb public order or to harm the safety of the State”.

In spite of the condemnations and threats of sanctions expressed by the international community, in particular the African Union, the European Union<sup>4</sup>, the Economic Community of West African States (ECOWAS)<sup>5</sup>

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1/ The demonstrations of support referred to by the President to justify his intention to modify the Constitution to permit him to seek a third term of office were in reality just demonstrations organised by the authorities that were given broad media coverage on national radio and TV.

2/ On May 25, 2009, after being petitioned by a group of Members of Parliament, the Constitutional Court had issued a favourable opinion on the possibility of holding a referendum on the adoption of a new constitution. Following the signature, on June 5, 2009, of Decree No. 2009-178/PRN/MI/SP/D calling the electorate to a referendum on the Constitution of the 6th Republic, several political opposition groups seized the Constitutional Court with a remedy for ultra vires. The Court issued a ruling that the decree of June 12, 2009 was unconstitutional.

3/ In application of Article 53 of the Constitution.

4/ On July 11, 2009, the EU decided to block the transfer of budgetary aid for Niger to put pressure on President Tandja to suspend the referendum.

5/ In a Resolution on September 22, 2009, the ECOWAS Parliament condemned the referendum organised in Niger.

and also the International Organisation of the Francophonie (*Organisation internationale de la Francophonie*)<sup>6</sup>, the referendum on reform of the Constitution was organised on August 4, 2009. Boycotted by the opposition, the “yes” vote accounted for nearly 90% of the poll according to official sources. On August 18, 2009, a new constitution was promulgated, establishing the principle of an unlimited number of possible presidential mandates, increasing the current presidential mandate by three years as from December 22, 2009, and moving from a semi-presidential to a full presidential regime.

There has been an increase in the obstacles to fundamental freedoms since the constitutional reform. Statements, interviews, statements and other press briefings in opposition to the referendum were regularly censored by the national press. The private media that published these opinions were subject to judicial or administrative harassment. Additionally, all applications by the opposition parties to demonstrate were systematically banned, and demonstrations organised in spite of the bans led to acts of repression against members of the opposition. During the month of August 2009, several demonstrations that aimed to denounce the reform of the Constitution were brutally repressed by the forces of order, leading to numerous arrests. On August 23, 2009 for example, a demonstration organised by the opposition parties in the streets of Niamey led to the arrest and detention of 157 people, both in Niamey and the rest of the country. All these people were subsequently released. On August 30, 2009, violent clashes broke out between the forces of order and former parliamentary deputies who were on their way to Parliament in order to take their seats again in protest against the dissolution of the National Assembly; several people were injured.

The parliamentary elections organised on October 20, 2009, which were boycotted by the opposition, saw the overwhelming victory of the ruling party, the National Movement for the Society of Development (*Mouvement national pour la société de développement* – MNSD)<sup>7</sup>. They were denounced by national and international NGOs and the international community and, on October 21, 2009, ECOWAS, which had called for the

6 / See Statement of the Secretary General of the International Organisation of the Francophonie on July 1, 2009 and the Resolution of the 73rd session of the OIF Permanent Council, July 10, 2009.

7 / MNSD obtained 76 of the 113 seats in Parliament, according to the Independent Electoral Commission. The opposition boycott permitted MNSD to increase its seats, since it only held 47 in the previous Parliament, which was dissolved by President Mamadou Tandja because of its opposition to him remaining in power beyond the end of his term of office in December 2009. Despite the accusations of massive fraud made by the opposition and the international community, the Constitutional Court validated these results at its hearing on November 10, 2009.

elections to be postponed, suspended its bodies from its bodies since it did not recognise the election results and accused Niamey of having violated community texts on democracy. On December 22, 2009, ECOWAS also took note “of the [sanction] on December 22, 2009 of the legal end of the mandate” of President Mamadou Tandja<sup>8</sup>. Similarly, on November 6, 2009, the EU suspended its development aid to Niger and gave the Niamey authorities a delay of one month to begin “consultations” with a view to returning to “constitutional order”. On December 23, 2009, the American administration also suspended its non-humanitarian aid to Niger and imposed restrictions on the movements of several Government officials to sanction the refusal of President Mamadou Tandja to renounce his mandate. In spite of the opposition boycott and the disapproval expressed by the international community, municipal elections were also held on December 27, 2009.

With regard to the conflict in the region of Agadez, in the north of the country, on October 23, 2009, a decree was promulgated for a general amnesty for all acts resulting from the armed rebellion. Amongst other things, this marked the end of proceedings against the journalist Mr. Moussa Kaka, a correspondent with *Radio France internationale* and Director of the *Radio Saraouniy* private radio station, who had become a symbol of media muzzling after he was detained from September 20, 2007 to October 6, 2008<sup>9</sup> and accused of “complicity in a conspiracy against State authority” for having had regular contact, as part of his professional activity, with the rebel Tuareg faction of the Nigerien Justice Movement (*Movement des Nigériens pour la justice* – MNJ). The “state of alert”<sup>10</sup>, decreed on August 24, 2007 by President Tandja after MNJ began the armed rebellion<sup>11</sup> and which gave full power to the army in the Agadez region, was lifted on November 26, 2009, since the rebel movement seemed to have gone quiet following the constitutional reform. NGOs have restarted their activities in the region since then.

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8/ See ECOWAS Press Release, December 22, 2009.

9/ The Prosecution Chamber of the Niamey Appeal Court had indeed decided to requalify the charges against him to “actions liable to harm national defence”, no longer a crime, but an offence liable to five years in prison and a heavy fine.

10/ This measure is provided for in the Constitution of Niger and is an exceptional measure to restrict individual and collective freedoms.

11/ MNJ calls for respect for the 1995 agreements signed by the Government, improved distribution of wealth, especially the income from uranium, and measures to support families displaced due to the exploitation of the uranium deposits.

## Harassment of defenders who denounce the reform of the constitution

In 2009, human rights defenders and NGOs that criticised the concentration of power in the hands of the executive were seriously hindered in their work, with obstacles placed in particular on their freedom to protest. As an example, the Niger Civil Society Collective (*Collectif des organisations de la société civile* – CSCN) was on 16 occasions refused permission to organise or to convene peaceful marches calling for respect for the rule of law<sup>12</sup>. On June 29, 2009, Mr. Marou Amadou, President of the United Front for the Protection of Democracy (Front uni pour la sauvegarde des acquis démocratiques – FUSAD)<sup>13</sup>, the Independent Advisory and Orientation Committee for the Defence of Democratic Gains (*Comité de réflexion et d'orientation indépendant pour la sauvegarde des acquis démocratiques* – CROISADE), a member of the national board of the Network of Organisations for Transparency and Budget Analysis – Publish What You Pay (*Réseau des organisations pour la transparence et l'analyse budgétaire* – *Publiez ce que vous payez* – ROTAB PCQVP) and a civil society representative on the Independent National Election Committee (*Commission électorale nationale indépendante* – CENI), was arrested by the Niger police in Niamey. On June 30, he was accused of “inciting the defence and security forces to disobey”, “conspiracy against State authority” and “undertaking to demoralise the army” under Articles 76, 78 and 79 of the Criminal Code – crimes which are liable for capital punishment – as well as “flagrant press offences” (Article 48 of the Regulation on Freedom of the Press<sup>14</sup>). On July 2, 2009, Mr. Marou Amadou was released, but proceedings against him were still ongoing. However, he was arrested again on August 10, 2009 by the judicial police for “offence against the security of the State” after, in his capacity as President of FUSAD, he had read a statement on the tenth anniversary of the 5th Constitution of Niger on August 9, which in particular denounced the corrupt regime of President Tandja and the referendum on August 4, 2009 and recalled that the ruling of the Constitutional Court on June 12, 2009 had declared the referendum to be illegal. On August 11, 2009, Mr. Amadou was discharged

12/ See Niger Human Rights Defence Association (*Association nigérienne pour la défense des droits de l'Homme* - ANDDH).

13/ FUSAD is a network of civil society organisations established to preserve democratic structures in the context of Niger's political crisis.

14/ These accusations came after Mr. Amadou spoke during a programme broadcast on the Dounia television channel on June 29, when he referred to a statement by the Front for the Defence of Democracy (*Front de défense de la démocratie* - FDD) calling on the army to respect Article 13 of Niger's Constitution, which stipulates that “nobody shall be permitted to carry out any apparently illegal order”. Furthermore, on June 30, 2009, the radio and TV group *Dounia* was closed by order of the CSC President for having broadcast “a statement calling for an insurrection by the defence and security forces”, following Mr. Amadou's TV appearance. On July 2, 2009, the Summary Magistrate annulled the suspension of the *Dounia* group and ordered the immediate resumption of its activities.

by the Niamey High Criminal Court (*Tribunal de grande instance "hors classe"* – TGI). While several members of Nigerien civil society ad met in front of the Niamey civil prison were waiting for the formalities for Mr. Amadou's release to be completed, two vehicles belonging to the National Intervention and Security Forces (*Forces nationales d'intervention et de sécurité*) took him away and drove him back to Niamey civil prison at around 9 pm. Mr. Amadou was then charged with the "creation and/or administration of a non-declared association", as FUSAD did not have legal identity, a crime that carries a one year prison sentence. On September 1, 2009, the Public Ministry appealed against the ruling, provisionally releasing Mr. Marou Amadou. On September 15, 2009, the Niamey Appeal Court Prosecution Chamber confirmed the application for provisional release granted by the Senior Magistrate on September 1, 2009 and which had been blocked by the Niamey Court since that date<sup>15</sup>. In addition, on August 22, 2009, Mr. **Wada Maman**, Secretary General of the Nigerien Association for the Fight against Corruption (*Association nigérienne de lutte contre la corruption* – ANLC), an active member of ROTAB PCQVP and Secretary General of FUSAD, was arrested in Niamey by members of the Republican guard and taken to the Niamey police camp, without having access to a lawyer; he was accused of taking part in the illegal demonstration that had been organised on the same day by the opposition parties to denounce the amendments to the Constitution, despite Mr. Maman asserting that he had not taken part in this demonstration. At the end of the day of August 26, Mr. Maman was granted a provisional release. However, proceedings against him continued for "participation in an unauthorised demonstration" and "destruction of a bridge, public monuments and an administrative vehicle". At the end of 2009, the case of Mr. Wada Maman remained pending at the office of the Senior Examining Magistrate of the Niamey High Criminal Court.

### Repression of journalists who denounce corruption

In 2009, journalists who denounced Government corruption were subject to harassment. As an example, on August 1, 2009, the police arrested and questioned the directors of eight private weekly publications, Messrs. **Abdoulaye Tiemogo**, of *Canard déchaîné*, **Ali Soumana**, of *Courrier*, **Assane Sadou**, of *Démocrate*, **Ibrahim Souley**, of *l'Enquêteur*, **Moussa Askar**, of *l'Événement*, **Zakari Alzouma**, of *l'Opinion*, **Omar Lalo Keita**, of *Républicain* and **Abarad Moudour Zakara**, of *l'Actualité*, for implicating the son of President Tandja in a case of corruption relating to the

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15/ On January 25, 2010, the Niamey Appeal Court sentenced Mr. Marou Amadou to a suspended three months' prison sentence for "regionalist propaganda". The lawyers introduced an appeal against this ruling before the Supreme Court.

signing of a mining contract. They were all released without charge on the same day, except for Mr. Ali Soumana, who was released at a later date to wait for his trial, which had still not taken place as of the end of 2009, and Mr. Abdoulaye Tiemogo, who was kept in custody for four days at the Niamey central police station. On August 18, 2009, the Niamey High Criminal Court sentenced Mr. Tiemogo to three months in prison for “throwing discredit on a jurisdictional act” after he had appeared on July 30, 2009 on the *Dounia* TV channel and commented on the Prosecutor’s decision to issue an international arrest warrant against former Prime Minister Hama Amadou, who lives abroad and is accused of corruption<sup>16</sup>. On August 31, 2009, the journalist, who appealed against the decision, was forcibly transferred despite his poor state of health to the prison in Ouallam, 100 km to the north of Niamey. On October 26, the Niamey Appeal Court decided to reduce the sentence of Mr. Abdoulaye Tiemogo to two months in prison, at the same time confirming the charge. Since he had already spent 86 days in detention, he was released on the same day<sup>17</sup>. On September 20, 2009, Mr. **Ibrahim Soumana Gaoh**, Editor-in-chief of the independent weekly *Le Témoin*, was arrested by the police and charged with “defamation” on September 22, 2009 after the publication of an article announcing that the former Communications Minister, Mr. Mohamed Ben Omar, was the target of a criminal investigation for corruption, following the findings of a parliamentary commission of enquiry in 2008 that revealed the misappropriation of more than two billion CFA francs (around 3.12 million euros) by the Nigerien Telecommunications Company (*Société nigérienne des télécommunications* – SONITEL), leading to the arrest of several of its directors. Arrested after a complaint was filed by Mr. Mohamed Ben Omar, he was finally released on September 30, 2009 after the latter withdrew his complaint<sup>18</sup>.

### Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Marou Amadou	Arbitrary detention / Judicial harassment / Closure of premises	Urgent Appeal NER 001/0709/OBS 095	July 1, 2009
	Provisional release	Urgent Appeal NER 001/0709/OBS 095.1	July 2, 2009
	Arbitrary arrest	Urgent Appeal NER 001/0709/OBS 095.2	August 10, 2009

16/ See ANDDH.

17/ *Idem*.

18/ *Idem*.



<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
	Arbitrary detention	Urgent Appeal NER 001/0709/OBS 095.3	August 10, 2009
	Discharged / Enforced disappearance	Urgent Appeal NER 001/0709/OBS 095.4	August 11, 2009
	Arbitrary detention / Judicial harassment	Urgent Appeal NER 001/0709/OBS 095.5	August 12, 2009
		Urgent Appeal NER 001/0709/OBS 095.6	September 15, 2009
	Provisional release / Judicial harassment	Urgent Appeal NER 001/0709/OBS 095.7	September 16, 2009
<b>Mr. Wada Maman</b>	Arbitrary detention / Provisional release / Judicial harassment	Urgent Appeal NER 002/0809/OBS 128	August 27, 2009

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# REPUBLIC OF THE CONGO

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

On July 12, 2009, the presidential elections were held in a tense climate, marked by high abstention and many irregularities<sup>1</sup>. There was considerable tension after the official results announcing, with no surprise, the victory of the incumbent President Denis Sassou Nguesso, in power since 1997, with over 78 % of the votes. During a peaceful protest march, organised by the opposition on July 15, 2009, the same day the results were published, the security forces brutally attacked demonstrators and international journalists present in Brazzaville. Real bullets were fired at the demonstrators, injuring at least one person. Broadcasting equipment belonging to journalists from the international press who were covering the event, such as Mr. Arnaud Zajtman and Ms. Marlène Rabaud, special correspondents for the French TV channel *France 24*, and Mr. Thomas Fessy, correspondent for *BBC* radio, was broken or confiscated<sup>2</sup>. Members of the Government had criticised the international media on several occasions, accusing them of transmitting false information<sup>3</sup>.

Furthermore, the authorities once again did not consult civil society on decisions relating to the management of resources, particularly forestry resources, regardless of the mechanisms set up to do so, and the rights of indigenous peoples on their lands, especially the Pygmies, continued to be flouted. More generally, the situation regarding negotiation of the Partnership Agreements between the Republic of the Congo and the European Union were symbolic of the Government's failure to take civil

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1/ See Congolese Observatory of Human Rights (OCDH) Press Release, July 13, 2009. The OCDH termed the election as barely credible and denounced irregularities such as multiple votes, ballot box stuffing, and the swelling of voting numbers.

2/ See Journalists In Danger (*Journalistes en danger* - JED) Annual Report 2009, *Liberté de la presse au quotidien : entre la peur et la survie. L'état de la liberté de la presse en Afrique centrale*, December 15, 2009.

3/ See OCDH.

society concerns into account, even when required by treaties<sup>4</sup>. On March 23, 2009, the United Nations Committee on the Elimination of Racial Discrimination confirmed this tendency in its report on the situation in the Congo<sup>5</sup>.

### **Intimidation of defenders who denounced irregularities in the holding of the presidential elections**

In 2009, human rights defenders who denounced voting conditions in the July election were threatened and harassed, including by the authorities in office. As an example, the Territorial Surveillance Directorate (*Direction générale de la surveillance du territoire*) refused permission for the FIDH pre-election observation mission to enter the Republic of the Congo in June 2009, requesting that it be postponed until after the vote on the presidency. There was no response to the letter addressed by the Congolese Observatory of Human Rights (*Observatoire congolais des droits de l'Homme* – OCDH) to the officials of the Territorial Surveillance Directorate on June 24, 2009 requesting an explanation for this refusal<sup>6</sup>. As a result, OCDH was the only truly independent organisation that was able to observe the presidential vote. On July 13, 2009, OCDH Executive Director, Mr. **Roger Bouka Owoko**, received anonymous telephone calls on the same day that OCDH published its communiqué after its observation of the election vote. One of the messages told him: “Keep on selling your country to the outside world; you’ll see what will happen to you, say whatever you like”. In addition, on July 15, 2009, at the end of a demonstration organised by the opposition, two people who introduced themselves under a false identity as members of Mr. Bouka’s family went to OCDH offices to meet him. He was away and they promised to come back. On the next day, they phoned to ask to meet Mr. Bouka privately to

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4/ In February 2009, the Platform of Civil Society Organisations for the Sustainable Management of Forests in the Republic of the Congo (*Plateforme des organisations de la société civile pour la gestion durable des forêts en République du Congo*) called for postponement of the agreement negotiation session scheduled to take place in Brussels from February 16 to 19, 2009, on the grounds that the civil society consultation procedure and the rights of local communities and indigenous peoples had not been respected. See Position Paper of the Association for the Defence and Promotion of the Rights of Indigenous People (*Association de défense et de promotion des droits des peuples autochtones* - ADDPA), OCDH, the Junior Legal Desk (*Comptoir juridique junior* - CJJ), the Organisation for Development and Human Rights in the Congo (*Organisation pour le développement et les droits humains au Congo* - ODDHC) and the Forum for Governance and Human Rights (*Forum pour la gouvernance et les droits de l'Homme* - FGDH), February 11, 2009.

5/ See Committee for the Elimination of Racial Discrimination, *Concluding Observations of the Committee for the Elimination of Racial Discrimination*, United Nations Document CERD/COG/CO/9, March 23, 2009.

6/ See OCDH Letter to the authorities, June 24, 2009. A copy of this letter was sent to the Minister of Security.

discuss the OCDH stand in the election and hinted at the possibility of working together. There was no follow-up. Furthermore, on July 13, the Committee to Monitor Peace and Reconstruction in the Congo (*Comité de suivi pour la paix et la reconstruction du Congo*), a body that accredits national organisations to observe the election, ordered OCDH to give it the election observation report so that it could be published in the body's summary report. The aim of this manoeuvre was to make sure that OCDH would not be able to take a stand in opposition to the official position.

### Reprisals against defenders who denounce corruption

Any criticism also remained a risky activity: people who denounced cases of corruption and poor management of natural resources also continued to pay a high price, as illustrated by the death in suspicious circumstances of Mr. **Bruno Ossébi**, a journalist and reporter for the on-line newspaper *Mwindu*, who died on February 2, 2009 following a fire that took place at his home on January 21. On the same day, an identical incident took place at the home of the Congolese political dissident in exile in France, Mr. Benjamin Toundamani. These fires occurred three days after *Mwindu* published an exclusive interview with Mr. Toundamani in which the latter accused the President of corruption. Mr. Ossébi was known for his criticism of the Congolese Government and his involvement in cases of corruption. Mr. Ossébi and Mr. Toundamani both envisaged filing civil party complaints against Mr. Sassou-Nguesso and the Presidents of Equatorial Guinea and Gabon concerning "ill-gotten gains" in France. In January 2009, Mr. Ossébi had also revealed that the National Petroleum Company of the Congo had applied for funding amounting to 100 million U.S. dollars from a French bank because of poor management of petroleum profits by the Congolese Government. While a post-mortem was not carried out, the committee of investigation appointed by the Examining Magistrate on February 25, 2009, which was supposed to publish its findings within one week, has never issued a report and, as of the end of 2009, there had been no progress in the investigation<sup>7</sup>. In addition, based on an article that appeared in the French weekly magazine *Le Point* on July 30, 2009, which discussed NGO transparency and asked questions about NGO involvement in the ill-gotten gains affair, two editorials on August 25 and 26, 2009 appeared in the daily paper *Les dépêches de Brazzaville*, attacking both international and local NGOs, accusing them of trying to "destabilise the African Governments" and appealing to the same Governments to

7/ See Reporters Without Borders and JED Report, *République du Congo, Mort du journaliste franco-congolais Bruno Jacquet Ossébi : mystères et négligences*, July 2009 and JED Annual Report 2009, *Liberté de la presse au quotidien : entre la peur et la survie. L'état de la liberté de la presse en Afrique centrale*, December 15, 2009.

make the battle for transparency for NGOs that “harass them” a priority for action. The campaign was aimed in particular at international NGOs such as Transparency International, Survival (*Survie*), Global Witness and Sherpa, which are involved in denouncing the corruption of certain African leaders and their ill-gotten gains in Europe<sup>8</sup>. Defenders working on the issue of the conditions that should be required in response to the request to cancel the debt of the Congolese State were particular targets, including Mr. **Christian Mounzé**, President of the NGO Meeting for Peace and Human Rights (*Rencontre pour la paix et les droits de l’Homme* – RPDH), and Mr. **Brice Makosso**, Permanent Secretary to the “Justice and Peace” Episcopal Commission (*Commission épiscopale “justice et paix”*), who had already been harassed in 2006 for their participation in the “Publish What You Pay” Coalition (coalition “Publiez ce que vous payez”), as well as Mr. Mounzé’s French lawyer, Mr. **William Bourdon**. During programmes broadcast by national television on August 4, 5, 6 and 7, 2009, which repeated these accusations, Mr. William Bourdon was directly mentioned as President of Sherpa and Mr. Mounzé’s lawyer, Mr. Makosso and Mr. Mounzé were presented as henchmen of these international organisations and as dangerous elements whose intention was to destabilise the country<sup>9</sup>. In addition, on November 6, 2009, Mr. Mounzé received calls from advisors to the Minister of Mines and Geology and the Finance Minister while he was about to travel to Milan and Berlin for publication of a report on respect for human rights in the Italian Petroleum Company’s (*Ente Nazionale Idrocarburi* – ENI) new investment projects on tar sands and biofuel. The advisors to the two Ministers, who did not understand why this report might be published before they had seen it and given their permission for publication, dissuaded him from leaving as that “could be dangerous” for the country and for himself. When Mr. Mounzé returned, he continued to receive anonymous threatening phone calls<sup>10</sup>.

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8/ See Meeting for Peace and Human Rights (RPDH).

9/ RPDH tried, unsuccessfully, to obtain a copy of the programme and was therefore not able to file a complaint. See RPDH.

10/ See RPDH.

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# SENEGAL

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

The elections that took place on March 22, 2009 saw the slide of the “Sopi” (“change” in the Wolof language) Coalition led by President Abdoulaye Wade, in office since 2000, and several large towns, including the capital, Dakar, fell to the opposition. In this new context, the Senegalese President took some steps towards normalising relations with the press, which was often considered to side with the opposition. In particular, he re-launched consultations on the de-criminalisation of press offences, as the current Press Code, dating from 1996, established a climate of self-censorship by putting pressure on journalists who might denounce corruption or abuses by the authorities with the risk of being sentenced to imprisonment<sup>1</sup>. As an example, following a seminar on access to information organised on December 16 and 17, 2009 by the Panos Institute West Africa in partnership with the Civil Forum (*Forum civil*)<sup>2</sup>, a committee of eleven members<sup>3</sup> was set up to work on a Bill on the Access to Information<sup>4</sup>. A new Press Code was also due to be adopted in 2010. However, these efforts did not prevent new sentences being passed on journalists, and newspapers from being suspended<sup>5</sup>. In addi-

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1/ See Committee to Protect Journalists (CPJ) Press Release, October 26, 2009.

2/ The Civil Forum is the local branch of the NGO Transparency International, created in Senegal to promote, amongst other things, global participative democracy, transparency, good governance and the fight against corruption.

3/ Including representatives of Forum civil, the Panos Institute, ARTICLE 19, the Ministry of Information and Communication, the Council for Ethics and Deontology (*Comité d'observation des règles éthiques et de déontologie* - CORED), journalists from community radios and a local elected official.

4/ See International Freedom of Expression eXchange (IFEX) Press Release, January 6, 2010.

5/ Messrs. Pape Samba Sène and Abdou Dia, respectively correspondents for the daily newspaper *L'AS and Radio futures media (RFM)* in the Kaolack and Kaffrine regions, were arrested on September 18, 2009 and detained following a complaint made by the Governor of the Kaffrine region for “defamation”, “publishing false news” and “criminal conspiracy” after the publication of articles denouncing the misappropriation by the Governor of peanut seed intended for peasant farmers. They were finally granted provisional release on September 30, 2009. Furthermore, on November 3, 2009, the Dakar District Court handed down a three months’ suspended prison sentence for Mr. Abdoulatif Coulibaly, Publication Director of the magazine *La Gazette*, and Mr. Cheikh Fadel Barro, a reporter with *La Gazette*, for “publishing false news”, and ordered the magazine to pay one million CFA francs in damages and interest to the Senegalese National Lottery (*Loterie nationale sénégalaise* - LONASE) after an article published in the April 2-9, 2009 edition of *La Gazette* highlighted the LONASE deficit and its debts to its French partners. However, the suit of LONASE Executive Director, Mr. Baïla Alioune Wane, who had sought 50 million CFA francs in personal damages and interest, was dismissed and the two journalists were discharged of the offences of “defamation” and “public insult”. The latter appealed the decision.

tion, at the end of the year the competent authorities refused to attribute a frequency to the *Télévision futurs médias* (TFM) TV channel although all the administrative conditions had been met, demonstrating how hostile the Government is to the private press, especially to media that are independent of the Government<sup>6</sup>.

The year was also marked by official statements that were hostile to international justice and by the lack of will in the case of Hissène Habré, the former dictator of Chad who had taken refuge in Senegal and who is presumed responsible for mass crimes when he was in power. On May 18, 2009, President Abdoulaye Wade declared that “Africa must withdraw its membership until the International Criminal Court (ICC) becomes democratic, fair and equitable”, as part of a disinformation campaign against the ICC and its Prosecutor led by the African Union and certain Heads of State, including Senegal<sup>7</sup>. Furthermore, no tangible progress in the Hissène Habré affair was noted in 2009 and the Senegalese authorities held their ground that they will not organise the trial of the former Chadian dictator until they have received the total amount of funding, which they have estimated at 27.4 million euros, including eight million euros to renovate a law court<sup>8</sup>. Further grey areas were the recurrence of torture, a structural practice during custody, particularly at the level of police stations and gendarmerie brigades, and the impunity that continued to surround violations of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment<sup>9</sup>.

### **Continued harassment of journalists who denounce human rights violations and corruption**

Although human rights defenders now seem to operate in a healthier working environment, unexpected summons to the Criminal Investigation Division (*Division des investigations criminelles* – DIC) without any judicial consequences were still used too frequently against journalists and other media personnel who are critical of the Government, especially when

6/ See Amnesty International-Senegal, the African Assembly for the Defence of Human Rights (*Rencontre africaine pour la défense des droits de l'Homme* - RADDHO) and the National Human Rights Organisation (*Organisation nationale des droits de l'Homme* - ONDH) Press Conference, November 30, 2009.

7/ See Amnesty International - Senegal, RADDHO, Action of Christians for the Abolition of Torture (ACAT) Senegal, ONDH and the African Network for Integrated Development (*Réseau africain pour le développement intégré* - RADII) Joint Press Release, June 5, 2009.

8/ Although the European Union, Chad, France, Switzerland, Belgium and the Netherlands have already agreed to assist Senegal to finance the trial, at the end of 2009 they were still waiting for a credible budget. In addition, international practice is to finance this kind of trial in stages year-by-year.

9/ See ONDH and RADDHO. However, defenders who work on these issues seem not to be subjected to harassment.

they denounce human rights violations. As an example, on September 17, 2009, Mr. **Mody Niang**, the author of several works that were critical of the President, and who is known for his virulent columns about the Government, was summoned to the DIC after a complaint was filed by Mr. Cheikh Amar, a businessman, for “defamation and publishing false news”. At a press briefing during the conference on economic governance organised by the National Alliance of Managerial Staff (*Alliance nationale des cadres pour le progrès* – ANCP) on September 10, Mr. Mody Niang had made references to State favours that the businessman would have enjoyed for the construction of presidential villas. The case was finally dismissed for lack of evidence after the plaintiff withdrew his complaint on September 18, 2009<sup>10</sup>. In other cases, people with close links to the Government attacked the media with total impunity, bringing accusation against them. For example, on September 25, 2009, disciples of the religious leader Mr. Serigne Modou Kara Mbacké burst into the premises of the daily newspaper *Wal-Fadjri*, attacking the staff and wrecking equipment, following the publication of an article in the paper and referred to in the daily review of the press on radio *Walf FM*, according to which a religious leader was supporting the President of the Republic in exchange for “services”. The Chief Executive Officer, Mr. **Sidy Lamine Niasse**, was forcibly taken to a private property before being released a few minutes later. Mr. Niasse did not file a complaint but an enquiry was opened, based in particular on film taken by the *Wal-Fadjri* cameramen who were on the premises. On September 28, 2009, the DIC interviewed the younger brother of Mr. Serigne Modou, Mr. Mame Thierno Mbacké, who was accused of being behind these actions. No progress has been made in the enquiry since then<sup>11</sup>. Finally, on February 23, 2009, the Dakar Appeal Court upheld the ruling of the Dakar Special Regional Court which, on September 12, 2008, had sentenced the Publishing Director of the private daily newspaper *24 Heures Chrono*, Mr. **El Malick Seck**, to three years’ imprisonment, in particular for “publishing false news” after his paper had stated that President Abdoulaye Wade and his son were involved in laundering money from the hold-up against the Central Bank of West African States (*Banque centrale des Etats de l’Afrique de l’ouest* – BCEAO) in Bouake, Côte d’Ivoire, in August 2002. He was held at the Dakar prison camp for eight months and then released on April 24, 2009 following a presidential pardon that also applied to the people responsible for wrecking the offices of the daily paper in August 2008<sup>12</sup>.

10/ See ONDH and RADDHO.

11/ See Amnesty International-Senegal, RADDHO and ARTICLE 19 Press Release, September 27, 2009.

12/ See Observatory Annual Report 2009.



## Attacks on freedom of peaceful assembly

In 2009, sanctions were also imposed on freedom of peaceful assembly. As an example, on December 23, 2008, the security forces brutally repressed a march organised in Kédougou to protest against the economic situation of the inhabitants of the region, causing the death of Mr. **Mamadou Sina Sidibé** and injuring several people<sup>13</sup>. On January 9, 2009, the Tambacounda District Court handed down sentences of between five and ten years in prison to 19 demonstrators for “violence and assault and battery against agents of the public forces”, “voluntary destruction and damage of goods belonging to another person and to the State”, “looting and burning public buildings” and “organising an unauthorised demonstration”<sup>14</sup>. These people were held at Tambacounda remand and detention centre before being released on March 17, 2009, following a presidential pardon<sup>15</sup>.

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13 / This march took place after a three-day forum organised by the Association of Pupils and Students (*Association des élèves et des étudiants*) from Kédougou district to debate on their living conditions and the poverty of the inhabitants of the area, which nevertheless has an abundance of mineral resources that are exploited by foreign companies.

14 / Including Alphousseynou Diallo, Saloum Taouda, Amadou Tidiane Diallo, Kaly Samuel Boubane, Ithiar Bundia, Jeremy Bianquich, Souleymane Diallo and Assane Diallo (sentenced to ten years in prison); Aliou Manékhata and Issa Diallo (sentenced to seven years in prison); Youssef Sidibé, Mady Kanté, Mamadou Dian Diallo, Fatim Bâ, Lamanara Diallo and Boubacar Médoune Diop (sentenced to five years in prison).

15 / See ONDH and RADDHO.

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# SUDAN

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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Despite the Comprehensive Peace Agreement signed in 2005 brought an end to twenty years of civil war between the Sudanese Government and the Sudan's People Liberation Army, violence resumed in 2009, stemming from multiple and sometimes overlapping sources including conflicts within joint north-south military units and between southern tribes as well as from attacks by the rebel Lord's Resistance Army. In 2009, the Sudanese population particularly suffered the consequences of the governmental decision to evict international humanitarian agencies in March and of the resuming of the attacks launched either by the authorities or the rebels since September 2009 in Korma, Meliet, Jebal Moo, Jebal Mediob and eastern Jebal Marra in North Darfur State. Heavy military equipments including fighter planes and artillery were used intensively causing indiscriminate damage on civilian targets. Widespread burning of dwellings and destruction of social facilities followed by organised looting of goods and livestock from the villagers were reported in many places. In 2009 alone, at least 2,500 people were killed and more than 390,000 were displaced<sup>1</sup>.

Those who challenged the President's achievements, including its human rights records, were even more at risk in 2009 considering the upcoming 2010 presidential elections to which President Omar Al Beshir is a candidate despite the international arrest warrant issued by the International Criminal Court (ICC) on March 4, 2009 for "war crimes" and "crimes against humanity" in Darfur. Indeed, to be in a position to win the elections, Mr. Al Beshir did everything possible to silence all opposition and criticism. In December 2009, several peaceful demonstrations organised by the Juba Declaration Forces, which aimed at presenting a petition to Parliament detailing needed legislative changes and demanding the establishment of an enabling environment for free and fair national elections, were violently repressed across Sudan. On December 7, 2009, the riot police used violence against tens of thousands engaged in peaceful protests in Omdurman, Greater Khartoum North, and other cities across Sudan. Rubber bullets and tear gas were fired into crowds, and security agents confiscated cameras from the international media. In Khartoum, over

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1/ As of the end of 2009, the Internal Displacement Monitoring Centre (IDMC) counted 4.9 million of internally displaced people (IDP) in the country. See IDMC, *Estimates for the total number of IDPs for all of Sudan*, January 2010.

250 people were arrested, including prominent lawyers, students, journalists and opposition figures. Dozens of people were also seriously injured. Similarly, on December 14, 2009, the security forces violently dispersed another peaceful protest, which led to at least seven people being seriously injured and the arrest of hundred of people<sup>2</sup>.

Furthermore, the National Intelligence and Security Services (NISS) continued to operate against all dissenting voices<sup>3</sup>. In particular, newspapers worked under incredible duress in 2009, as it was a daily practice for NISS officers to monitor daily censorship of publications and remove articles or paragraphs at their discretion, without providing any motive, often making it impossible to publish the newspaper at all. This policy affected several newspapers including in particular *Al-Meedan*, *Agras Al-Horreya*, *Ray' ilShaab* and *Al-Akhbar*<sup>4</sup>. In addition, on December 20, 2009, the Parliament passed the new controversial National Security Act, under which the NISS retain the power to conduct arrest and confiscation of property<sup>5</sup>, and NISS officers enjoy full immunity, which can only be removed by the NISS Director. In the current context, it is feared that this law will be used to continue harassing human rights defenders. Moreover, on June 8, 2009, the Press and Publications Act of 2009 was adopted by the National Assembly and despite the opposition of 168 members of the Assembly, entrusting Government authorities with the power to impose restrictions on the press on vague grounds related to national security and public order and gives the Press Council<sup>6</sup> the power to ban newspapers for a period of three days without judicial mandate. The law appears to be in contradiction with the 2005 Interim Constitution of Sudan, which includes important safeguards for freedom of expression, especially as sensitive issues like the ICC, corruption, Darfur and the elections will probably continue to be subjected to censorship<sup>7</sup>.

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2/ See African Centre for Justice and Peace Studies (ACJPS).

3/ For instance, on February 15, 2009, the Khartoum North Criminal Court sentenced Mr. Kamal Omer Abd-Alsalam to six months in prison for "defamation" after he wrote an article in *Ray-Elshaab* newspaper in 2007, which alleged that the NISS excluded Darfurians from its ranks. Mr. Omer spent two months in Omdurman prison before being released.

4/ See Arab Network for Human Rights.

5/ Under the previous law, the NISS had the power to detain people for three months, renewable for another six months after getting permission from the National Security Council. Under the new law, the NISS may only detain people for one month, renewable once by the NISS Director without judicial supervision.

6/ The Press Council is controlled by the State, and consists of 21 members, six of whom are appointed by the President himself.

7/ See ACJPS, *Report on the situation of the freedom of expression and the freedom of the press in Sudan, January 1, 2009 - September 30, 2009*, October 19, 2009.

On a positive note, on April 21, 2009 the Parliament passed the National Human Rights Commission Act, which contains many strong elements in line with the Paris Principles related to the status of national human rights institutions. However, as of the end of 2009, the Commission had not been set up yet.

### Ongoing attacks against humanitarian workers

In 2009, humanitarian workers continued to work in a very difficult environment and face attacks. In particular, several of them were kidnapped throughout the year<sup>8</sup>. Thus, on March 11, 2009, five staff members of Doctors Without Borders-Belgium (*Médecins sans frontières* – MSF), three international and two national, were kidnapped in Saraf Umra in North Darfur. All five were subsequently released, one national staff the same day, and the others on March 14<sup>9</sup>. On April 4, 2009, four NGO workers were kidnapped near Edd al-Fursan, South Darfur. Two were released the following day, and the other two were released later<sup>10</sup>. On October 22, 2009, Mr. **Gauthier Lefevre**, a French national working for the International Committee of the Red Cross (ICRC), was abducted in West Darfur, near the border with Chad, by gunned men a few kilometres away from the city of El Geneina<sup>11</sup>. And while on October 18, 2009, Ms. **Sharon Commins** and Ms. **Hilda Kawuki**, from the Irish humanitarian NGO Goal, were released following 107 days of detention<sup>12</sup>, as of the end of 2009, two civil workers of the African Union/United Nations Hybrid Operation in Darfur (UNAMID) remained abducted<sup>13</sup>.

Furthermore, on March 4, 2009, Sudanese authorities ordered thirteen foreign aid NGOs to leave the country, including Action Against Hunger (*Action contre la faim* – ACF), Care International, CHF International, the International Rescue Committee (IRC), Mercy Corps, the French and Dutch branches of MSF, the Norwegian Refugee Council, Oxfam GB, Solidarity, PATCO and Save the Children Fund of both the United Kingdom and the United States. Government officials acting on orders entered aid agency compounds and took property from the NGOs. The seizures were aimed only at laptops and communications equipment. According to the United Nations, roughly 6,500 national and international personnel, which equates to 40 percent of aid workers in Darfur, had to

8/ Kidnapping is seen by some groups as a source of money and by others as a way to limit international scrutiny on human rights violations.

9/ See ACJPS, *Sudan Human Rights Monitor, Issue No.1*, March-May 2009.

10/ *Idem*.

11/ Mr. Lefevre was released on March 18, 2010. See ICRC Press Release, March 19, 2010.

12/ See ICRC Press Release, October 18, 2009.

13/ See UNAMID Press Release, November 30, 2009.

depart in the wake of the Sudan Government's decision<sup>14</sup>. At the end of 2009, these organisations remained closed down.

### **Crackdown against human rights defenders fighting against impunity, in particular on the eve of the ICC international arrest warrant**

In 2009, those who denounced human rights and humanitarian violations and their impunity as well as the unwillingness of the authorities to cooperate with the ICC faced State repression. Indeed, following the application on July 14, 2008 by the ICC Prosecutor for an international arrest warrant against President Al Beshir, the Sudanese administration launched a major attack against human rights defenders, with the aim of attempting to paralyse the human rights movement within Sudan. This trend increased in the weeks leading to the issue of the arrest warrant on March 4, 2009. On February 26, 2009, the General Director of the NISS, Mr. Salah "Gosh" Abdalla, gave a strong warning that "we will cut the hands, heads and body parts of whoever gets involved in implementing ICC plans because this is an issue beyond any compromise". On February 19, 2009, the bank account of the Khartoum Centre for Human Rights and Environmental Development (KCHRED) was frozen by decision of the Khartoum State's Humanitarian Aid Commissioner. This was accompanied by several acts of intimidation and harassment against KCHRED staff members, who were subjected to numerous summons for interrogation on the nature of KCHRED work and sources of funding. They were also defamed and targeted on numerous occasions in newspapers, such as Mr. **Amir Mohamed Suliman**, Chairperson, who was referred to as a traitor in the newspaper *Al Ra'id* on January 13, 2009, in relation to his alleged participation in a seminar on international justice. In February 2009, KCHRED was also subjected to a number of sudden raids carried out without prior notice by agents of the Federal and Khartoum State Humanitarian Aid Commissions (HAC). On March 1, 2009, the Minister of Social Affairs of Khartoum State issued Ministerial Decree No. 2/2009, in which he confirmed the recommendation of the Khartoum State's Humanitarian Aid Commissioner to cancel the registration of the KCHRED and to close it down. On the same day, the Federal HAC issued an order calling for the closure of KCHRED and two organisations operating in Darfur, the Sudan Social Development Organisation (SUDO)<sup>15</sup> and the El Fashir and Nyala branches of the Amal Centre for the Rehabilitation of Victims of

14/ See UNICEF Press Release, March 6, 2009.

15/ SUDO was one of the largest national organisations undertaking humanitarian and development assistance through ten offices across Sudan.

Torture<sup>16</sup>. On March 4, 2009, the NISS and the police broke the doors of KCHRED offices and SUDO offices in Nyala and Zalingei and removed everything from the offices. On March 5, 2009, the *National Radio of Omdurman* reported that KCHRED had been closed down because of its alleged cooperation with the ICC, and that all of its staff and, in particular, its “leader with dual nationality”, whose name was not given, would face trial for “crimes against the State”. On January 13, 2010, the Governor of Khartoum State rejected the appeal filed by the KCHRED<sup>17</sup> and, at the end of 2009, SUDO’s appeal was pending before the Administrative Court. Simultaneously, on March 3, 2009, Dr. **Ibrahim Adam Mudawi**, Chairperson of SUDO, was notified of a court case filed against him by the Federal and Khartoum State HAC for alleged “embezzlement” of 40,000 USD by SUDO in 2004<sup>18</sup>. On March 3, 2009, Sudanese national security agents raided the home of Mr. **Mossaad Mohammed Ali**, former Director of the Amal Centre in Nyala. His brother-in-law, who was in the house at the time of the raid, was questioned about his whereabouts, and Mr. Ali’s private car was confiscated by the security forces. On the same day, the father of Mr. **Mohamed Badawi**, former Director of the Amal Centre in El Fashir, was arrested and questioned about the whereabouts of his son. He was released a few hours later<sup>19</sup>.

### **Acts of harassment against lawyers providing support to victims of the conflict in Darfur<sup>20</sup>**

In 2009, several lawyers providing support to victims of the conflict in Darfur were harassed by the NISS. On March 28, 2009, Mr. **Abu Talib Hassan Emam**, a Sudanese lawyer from El Geneina, in Western Darfur, and a member of the Darfur Bar Association, was arrested by the NISS at his private house. He was immediately taken to the airport and transported to Khartoum. On March 30, 2009, he was released on bail, after the NISS had opened a criminal case against him for “crimes against the State”. Mr. Abu Talib Hassan Emam left the country on August 18, 2009 and at the end of 2009, the case was still pending. On March 6 and 8, 2009, Mr. **Ahmed Juma**, a legal aid lawyer formerly associated with the Amal Centre in El Fashir, and who represented many victims of human rights violations, including rape cases, before the national judicial system, received five threatening phone calls from NISS officers telling him that

16 / The Amal Centre was the major national NGO in North and South Darfur providing legal aid and psychosocial support to victims of human rights violations, with a special focus on torture and rape victims. It was handling more than 750 cases.

17 / An appeal was to be filed before the Administrative Court in 2010.

18 / On March 16, 2010, the Khartoum Central Criminal Court found Dr. Mudawi innocent.

19 / See ACJPS.

20 / *Idem*.

they would arrest him due to his work with the Amal Centre. Fearing for his safety, he was forced to leave the country on May 29, 2009. On April 1, 2009, Mr. **Muneer Mohamed Khater**, a legal aid lawyer who has provided legal aid services to victims of human rights violations in the Kutum area since 2008 and was formerly associated to the Amal Centre in El Fashir, attempted to board a UNAMID flight to Kutum town in North Darfur to conduct a field mission when he was stopped by the NISS. Mr. Khater then returned home followed by NISS officers, who continued to follow him for several days. On April 11, 2009, the NISS arrested Mr. **Mohamed Al-Mahjoub Abdalah abd Alwahab**, lawyer and Coordinator of the North Darfur branch of the Amal Centre, at his house in El Fashir. He was detained incommunicado for seven days and subjected to torture and to ill-treatment in the NISS premises in El Fashir, before being released without charge. None of his lawyers nor his family was able to visit him during his detention. On March 5, 2009, Mr. Al-Mahjoub had been ordered by the NISS not to leave El Fashir, on the basis of the National Security Forces Act 1999. This requirement was still in force as of the end of 2009. Also on April 11, 2009, Mr. **Suliman Ahmed Abd Elrahman Arbab**, a paralegal at the Abu Shook Justice and Confidence Centre (JCC) in North Darfur working in the Boyhood IDP camp, was arrested inside Abu Shook camp by police and NISS officials. Mr. Arbab was severely tortured in the NISS offices in El Fashir during his detention. He was released without charge after ten days of detention on April 21, 2009. Additionally, Mr. **Barood Sandal**, a prominent human rights lawyer who had represented Darfuri victims of arbitrary detention and torture in northern Sudan, was released on April 23, 2009 after eleven months of detention without trial. He had been detained by the NISS since May 12, 2008. Once ten months had elapsed, the NISS had filed a police complaint against him under the Criminal Act and Anti-Terrorism Act, alleging he had “undermined State security”. A criminal investigation then commenced and he was transferred from NISS to police detention. On April 5, 2009, a prosecutor dismissed the case for lack of evidence and ordered his immediate release. Instead, the NISS re-arrested him and held him without charge until his final release.

### **Repression of civil society activities promoting fair, transparent and free electoral processes**

In 2009, the NISS disrupted several events related to the 2010 elections and arrested several activists promoting fair and free electoral processes. For example, on September 8, 2009, the NISS ordered “Journalists for Unity”, a coalition of northern and southern journalists, to cancel a press conference that intended to address issues related to the upcoming elections and the referendum. On the same day, the NISS also prevented three

human rights organisations, the Asma organisation, the Maa Society and the Sudan Research and Development Organisation, from holding a symposium on elections to be held at Khartoum University<sup>21</sup>. On December 6, 2009, in Omdurman, Messrs. **Muhnad Umar** and **Hazim Khalifa**, two students and human rights activists, were approached by security forces while they were distributing fliers for “Grifna”, a campaign calling for free elections. The security forces chased the two students and fired shots into the air in order to force them to stop. When they stopped, they were arrested. Mr. Khalifa was beaten with the butt of a rifle by security agents and was knocked unconscious at the scene. They were then taken to the NISS offices, near the railway station in Khartoum, before being released late in the night without charge. Similarly, Ms. **Butheina Omar Al Sadiq**, Ms. **Randa Yousif** and Ms. **Nafisa Al-Nur Hajar**, lawyers promoting the holding of fair, transparent and pluralist elections at the Bar Association, were arrested on December 8, 2009 at the Al Kalakla Court complex in Khartoum for posting on behalf of the Lawyers’ Democratic Front fliers urging lawyers to renew their membership at the Bar Association and pay the related fees in order to be entitled to vote at the next Bar Association elections scheduled in January 2010. The lawyers were interrogated by the police and released the same day without being charged. However, immediately upon their release, NISS agents re-arrested them outside the police station, and took them to the NISS office in the Abu Adam area in Al Kalakla district, where the women remained in custody without access to their lawyers and families. They were again released the same day without charge.

### Harassment of journalists reporting on human rights violations<sup>22</sup>

In 2009, journalists continued to be harassed when they addressed sensitive human rights related issues. For instance, on February 28, 2009, Sudanese authorities expelled Ms. **Hiba Ali**, a Canadian-Egyptian journalist, for reporting on the Darfur crisis and the arms industry in Sudan. A freelance reporter for several news organisations including *Bloomberg*, the UN humanitarian news organisation *IRIN* and *The Christian Science Monitor*, Ms. Ali had reported from Sudan since June 2008. Sudan’s security services accused her of immigration violations, as her press accreditation ran out in January and she had not been able to renew it, despite repeated applications to the National Press Council. On March 1, 2009, Mr. **Zuhair Latif**, a resident Tunisian journalist working for the Arabic-language website of television news channel *France 24* and the London-based pan-Arab newspaper *Al-Hayat*, was detained for two days

21/ *Idem*.

22/ *Idem*.



and expelled from the country. NISS agents stormed his apartment in Khartoum and confiscated his camera, tapes, and cell phones, before arresting him. Sudanese authorities had claimed that Mr. Latif had been expelled because he had “violated immigration procedures”, without specifying the violations. Before his expulsion, Mr. Latif had visited Darfur, where he had taken pictures and interviewed victims about the conflict. Moreover, Ms. **Ammal Habani**, a journalist for *Ajras Al-Hureya* newspaper and a defender of women’s rights in Sudan, faced judicial prosecution following the publication on July 12, 2009 of an article she wrote in defence of Ms. Lubna Ahmad Hussein, who was condemned for wearing “indecent clothing” to 40 lashes. In her article, Ms. Ammal Habani had criticised the restrictions in law and practice on women’s rights and freedoms in Sudan. On the same day, she had called for general support for Ms. Lubna Ahmad Hussein and attended her court hearing in solidarity. The police had also detained reporters from *Reuters*, *Al-Hurra* channel, *Al-Meedan* and *Agras Al-Horrey* who had congregated in front of the courthouse to cover the case of Ms. Hussein. On July 20, 2009, Ms. Habani was summonsed by the Press and Media Prosecutor and then charged with “defaming the Public Order Police (POP)”, in violation of Article 159 of the Criminal Code. The law suit that was brought by the POP seeks that she pays ten million Sudanese pounds (about 3.26 million euros) in compensation. As of the end of 2009, the date of the trial had not been scheduled yet<sup>23</sup>.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Khartoum Centre for Human Rights and Environmental Development (KCHRED) / Mr. Amir Mohamed Suliman	Closure of an NGO / Freezing of bank account / Harassment / Campaign of intimidation	Urgent Appeal SDN 001/0309/OBS 037	March 4, 2009
Amal Centre for the Rehabilitation of Victims of Torture, Sudan Social Development Organisation (SUDO), KCHRED and 10 aid foreign NGOS / Mr. Ibrahim Adam Mudawi	Closure of NGOs / Eviction of relief and humanitarian NGOs / Confiscation of material and equipment / Harassment	Urgent Appeal SDN 001/0309/OBS 037.1	March 11, 2009
Mr. Mohamed Al Mahgoub / Amal Centre for the Rehabilitation of Victims of Torture	Incommunicado detention	Press Release	April 14, 2009
	Release	Press Release	April 21, 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Ms. Butheina Omar Al Sadiq, Ms. Randa Yousif and Ms. Nafisa Al-Nur Hajar	Arbitrary detention	Urgent Appeal SDN 002/1209/OBS 186	December 10, 2009
	Release	Urgent Appeal SDN 002/1209/OBS 186.1	December 23, 2009
Messrs. Muhnad Umar and Hazim Khalifa	Arbitrary arrest / Release / Ill-treatments	Urgent Appeal SDN 003/1209/OBS 187	December 10, 2009
Messrs. Hatem Salah, Adel Bakhit, Elshafeee Eldao and Amro Kamal Khalil	Obstacles to the freedom of assembly / Intimidation	Urgent Appeal SDN 004/1209/OBS 194	December 18, 2009

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# TOGO

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

The early years of Mr. Faure Gnassingbé's presidency were marked by some progress in the respect of human rights, as evidenced by the abolition of the death penalty on December 10, 2008, the greater freedom of expression or the establishment on May 27, 2009 of the Commission for Truth, Justice and Reconciliation (*Commission vérité, justice et réconciliation*) to shed light on the political violence and serious human rights violations perpetrated since 2005<sup>1</sup>. However, the prospect of presidential elections in March 2010<sup>2</sup> revealed underlying tensions and sharply curtailed freedoms. Important debates surround the composition of the Independent National Electoral Commission (*Commission électorale nationale indépendante* – CENI) to organise the 2010 elections. Under Article 15 of the Electoral Code, the CENI is composed of 17 members, including three elected by the National Assembly on behalf of civil society and accredited to monitor all phases of the electoral process. Nonetheless, political parties have sought to instrumentalise civil society organisations<sup>3</sup>. Indeed, at a meeting on July 28, 2009 in Ouagadougou with the facilitator Blaise Compaoré, the three parties represented in the National Assembly<sup>4</sup> agreed on the choice of civil society members to sit before the CENI, contrary to the principle of impartiality.

In this pre-election context, freedom of the press was also undermined. Yet Togo is one of the few African countries that has decriminalised press offences<sup>5</sup>, and public support to the media, although insufficient, was adopted last year<sup>6</sup>. However, following the events of April 2009 involving

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1/ After the events of 2005, major political parties in Togo established a programme of political transition under the auspices of an international mediator, Mr. Blaise Compaoré, President of Burkina Faso, which included the creation of this commission.

2/ The elections were held on March 4, 2010 and resulted in the victory of Mr. Faure Gnassingbé with 60.9% of the vote. The conditions of the electoral process were strongly contested by opposition parties.

3/ See Group of Thinking and Action Women, Democracy and Development (*Groupe de réflexion et d'action femmes, démocratie et développement* - GF2D).

4/ The Rally of the Togolese People (*Rassemblement du peuple togolais* - RPT), the Union of Forces for Change (*Union des forces de changement* - UFC) and the Action Committee for Renewal (*Comité d'action pour le renouveau* - CAR).

5/ Togo decriminalised press offences on August 27, 2004 with the signature of 22 commitments made by the Togolese Government to the European Union on April 14, 2004.

6/ In 2009, 45 newspapers, 34 radios and four television stations benefited from this.

the President's family<sup>7</sup>, the authorities were extremely sensitive to media reporting. On April 17, 2009, the High Authority of Audiovisual and Communication (*Haute autorité de l'audiovisuel et de la communication* – HAAC) decided to “suspend any interactive program [...] until further notice on all radio and television” under threat of disciplinary sanctions in response to an alleged attempt to destabilise the institutions of the Republic<sup>8</sup>. Moreover, the adoption by the National Assembly on December 15, 2009 of a bill amending the functions of the HAAC and giving it the power to impose sanctions (including financial penalties, temporary or permanent, partial or total suspension of the programme, reducing the duration of the authorisation, the antenna input, withdrawal of authorisation) was denounced by civil society organisations as an illiberal law that reflected clear determination of those in power to muzzle the private press on the eve of presidential elections in 2010<sup>9</sup>.

Furthermore, in a report published in March 2009 following her visit to the country in 2008, the UN Special Rapporteur on the Situation of Human Rights Defenders expressed concern about the fate of women defenders and difficulties inherent in their activities, including unjustified delays in issuing certificates of registration to NGOs, illegitimate restrictions on freedom of peaceful assembly and freedom of opinion and expression, and impunity for past abuses against defenders<sup>10</sup>.

### Acts of harassment against an NGO fighting impunity

In 2009, the Collective of Local Associations Against Impunity in Togo (*Collectif des associations contre l'impunité au Togo* – CACIT), which provides assistance to victims of grave human rights violations, was burgled twice. The first time occurred in the night of August 28 to 29, 2009, and all computer equipment was stolen, raising concerns about the use that might be made of data collected by CACIT through its pursuit of accompanying victims. Following the burglary, on August 29, 2009, CACIT went to the police headquarters in the city of Lomé, which dispatched an agent

7/ On April 15, 2009, Mr. Kpatcha Gnassingbé, Deputy, former Defence Minister and brother of President Fauré Gnassingbé, was arrested by the Togolese authorities. During the search of his home, an entire arsenal, including sniper rifles and satellite phones, were discovered. Twenty officers from the army and another brother of the Head of State, Mr. Essolizam Gnassingbé, were also arrested. On April 17, 2009, during a speech on national television, President Faure Gnassingbé denounced an attempt to “destabilise the Republican institutions” and “coup d'état”.

8/ See HAAC Press Release, April 17, 2009.

9/ See Togolese League of Human Rights (*Ligue togolaise des droits de l'Homme* - LTDH) Statement, November 3, 2009.

10/ See Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders*, Margaret Sekaggya - Addendum - Mission to Togo, United Nations Document A/HRC/10/12/Add.2, March 4, 2009.

to examine the premises. However, the investigation yielded no results. In the night of October 7 to 8, 2009, the offices were again burgled. CACIT representatives filed a complaint and an investigation was opened but, as of the end of 2009, it had led to no results. On October 8, 2009, members of CACIT informed Mr. Yacoubou Hamadou, Minister for Human Rights, the Consolidation of Democracy and Civic Education, Mr. Koffi Kounte, President of the National Human Rights Commission (NHRC), and the Office of the United Nations High Commissioner for Human Rights (OHCHR). Thereafter, the NHRC and OHCHR visited CACIT representatives and the Minister of Human Rights expressed solidarity, while alleging that as a representative of the executive and under the separation of powers, he was unable to promote the investigation. On November 26, 2009, OHCHR agreed to provide financial support to CACIT for an exceptional twelve months to enable it to lease new premises. Beginning January 2010, the CACIT moved to new and more secure premises.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Collective of Local Associations Against Impunity in Togo (CACIT)	Burglary	Urgent Appeal TGO 001/0909/OBS 131	September 2, 2009
		Urgent Appeal TGO 001/0909/OBS 131.1	October 13, 2009

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# ZIMBABWE

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

Due to ministerial differences between their respective political parties, the power-sharing agreement reached in September 2008 between Mr. Robert Mugabe, who has been President for 29 years, and opposition leader Mr. Morgan Tsvangirai, in which Mr. Mugabe remained President and Mr. Tsvangirai became Prime Minister, was not implemented until February 13, 2009. Despite this political achievement, there was little progress in 2009 in instituting any of the promised human rights reforms, in demonstrating respect for the rule of law and in charting a new political direction for the country. In addition, the first year of the power-sharing was greatly affected by the dispute over the arrest and prosecution of Mr. Roy Bennett, Deputy Minister of Agriculture who was appointed on February 10, 2009 by Mr. Tsvangirai<sup>1</sup>. The inaction of the new Government was due to an absence of political will as President Mugabe's Zimbabwe African National Union – Patriotic Front (ZANU-PF) retained control of all senior ministries including the Ministries of Defence, Justice, State Security and Foreign Affairs; and it co-chaired Home Affairs. The party therefore wielded significantly more power than Mr. Tsvangirai's Movement for Democratic Change (MDC) in the Government, and was unwilling to institute human rights and governance reforms. Although the MDC has formal control of some ministries, President Mugabe unilaterally appointed permanent secretaries to all ministries, ensuring that ZANU-PF maintains control of them. Lacking real political power to effect reforms, the MDC was unable to push for human rights reforms and appeared to be giving ground to ZANU-PF in order to ensure the survival of the power-sharing Government. One year after the signing of the Global Political Agreement (GPA) in Zimbabwe, ZANU-PF supporters continued to commit abuses against their perceived political opponents. Indeed, political discrimina-

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1/ Mr. Bennett was charged with "treason" in February 2009. Charges were later replaced with "conspiring to acquire arms with a view to disrupting essential services". When a magistrate ordered Mr. Bennett's release, the magistrate himself was arrested because "he has passed a judgment that is not popular with the State". Mr. Bennett was released from remand on March 12, 2009, but was ordered back on October 14, 2009. On October 16, 2009, Judge Hungwe instructed the prison to release him on his old bail conditions. On October 26, 2009, Mr. Tsvangirai announced that he suspended all contacts with Mr. Mugabe after Mr. Bennett was remanded into custody and indicted on terrorism charges on October 13, 2009. The trial opened on November 9, 2009 and was ongoing at the end of 2009. See Zimbabwe Human Rights Association (ZIMRIGHTS).

tion, intimidation and victimisation remained a major concern as violence across the political divide continued. MDC supporters and human rights activists remained exposed to the abuses by Government agents to protect the interests of the ruling elite<sup>2</sup>. The deportation on October 28-29, 2009 of Mr. Manfred Nowak, UN Special Rapporteur on Torture, as he was on his way to conduct a fact-finding mission from October 28 to November 4, 2009 is another example of this lack of political will<sup>3</sup>.

Access to information and freedoms of expression and assembly remained heavily restricted in 2009. Senior members of the Government and State-run media continued to use disparaging language to describe the MDC and civil society, although several MDC members and civil society activists who were prosecuted were acquitted at the end of the year, which restored a sense of confidence in the administration of justice and denoted some steps were taken towards the independence of the judiciary. 2009 also saw an intense harassment of legal practitioners by the police and Government, notably the Attorney General<sup>4</sup>, which later subsided after a demonstration on May 16, 2009 and the presentation of a petition to the Ministry of Justice on the same day<sup>5</sup>.

### **Judicial harassment of several defenders and their lawyers in the post-electoral context**

In 2009, several human rights defenders who had been abducted and detained incommunicado in 2008 in the aftermath of the results of the March 29, 2008 general elections after they had denounced political violence were prosecuted in 2009 for “terrorism” and “sabotage” charges. Lawyers who were involved in their defence also came under pressure. The most emblematic case was that of Ms. **Jestina Mukoko**, Executive Director of the Zimbabwe Peace Project (ZPP) and Board Member of the Zimbabwe Human Rights NGO Forum, and her colleagues, Messrs. **Broderick Takawira**, ZPP Provincial Coordinator, and **Pascal Gonzo**, ZPP driver, and Mr. **Andrisson Manyere**, a freelance journalist, who were abducted in December 2008 together with MDC activists and only

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2/ For instance, on October 27, 2009, Mr. Pasco Gwezere, MDC Transport Manager, was abducted by armed men from his home and detained at Marimba police station. He alleged that he was tortured since the time of his abduction and displayed serious injuries on his head, wrist, mouth, ear, feet, leg, buttocks back and genitals.

3/ See Press Release of the UN Special Rapporteur on Torture, Mr. Manfred Nowak, October 29, 2009.

4/ The latest victim was Mr. Mordekai Mahlangu, a lawyer who was arrested for representing Mr. Peter Hitchman, a witness in the trial of Mr. Roy Bennet, who through Mr. Mahlangu had written an affidavit that was sent to the Attorney General stating that he had no intention to testify as a State witness as he had no evidence to adduce which could assist the State case. See ZIMRIGHTS.

5/ See ZIMRIGHTS.

re-appeared on December 24, 2008 after weeks of incommunicado detention. During her detention, Ms. Mukoko was subjected to simulated drowning, locked in a freezer and beaten as the security forces tried to make her confess to plotting to overthrow Mr. Mugabe. On February 6 and 26, March 2 and April 9 respectively, Mr. Pascal Gonzo, Mr. Broderick Tarawira, Ms. Jestina Mukoko and Mr. Andrisson Manyere were released on bail<sup>6</sup>. On May 4, Magistrate Catherine Chimwanda granted the State leave to indict Ms. Mukoko, Mr. Takawira, Mr. Manyere as well as 12 MDC political activists for “terrorism and sabotage” and remanded the accused in custody. The indictment was opposed on the basis that there was an appeal pending before the Constitutional Court, in which Ms. Mukoko alleged a breach of her constitutional right to be afforded the full protection of the law. On May 6, the Court granted some activists, including Ms. Mukoko and Mr. Takawira, bail of 600 USD under the condition that they surrender their passports and report to police once a week. On September 28, 2009, the Constitutional Court decided to grant a permanent stay of prosecution in favour of Ms. Jestina Mukoko due to the violation of several of her fundamental rights by State agents. All charges pending against her were therefore withdrawn. As Ms. Mukoko was the sole applicant in the Constitutional Court case, other ex-abductees did not benefit from the stay of prosecution and were still facing criminal charges as of the end of 2009. They therefore lodged constitutional applications with the Supreme Court alleging the same violations of their rights as Ms. Mukoko and seeking permanent stays of their trials. At the end of 2009, the matter was still to be heard by the Supreme Court. Moreover, on May 6, 2009, Mr. **Alec Muchadehama**, who represented several victims of State-sponsored abduction and torture, including Ms. Mukoko and Mr. Manyere, was arrested by officers of the Law and Order Section of the police at the Rotten Row Magistrates Court and accused of “contempt of court”, after having reportedly secured the “unlawful release” on bail of Mr. Manyere and two MDC officials who had been granted bail by High Court Judge Justice Charles Hungwe on April 9, 2009<sup>7</sup>. On May 15, 2009, he was released on bail after payment of 100 USD (approximately 69,66 euros). Throughout the proceedings, the trial was adjourned, postponed and restarted several times. On December 10, 2009, Mr. Muchadehama was finally acquitted by the Harare Rotten Row Magistrates

6/ Subsequently, Mr. Gonzo was not charged of any offense.

7/ The State alleged that Mr. Muchadehama “unlawfully and intentionally impaired the dignity, reputation or authority of a court or realising that there was real risk or possibility of impairing the dignity, reputation or authority of a court” by causing the release of the three ex-abductees while he was aware of Justice Bhunu’s judgment in which he granted the State leave to appeal against an earlier bail order by Justice Charles Hungwe.



Court, as the prosecutors failed to prove the essential elements of the crime, notably as the State did not file its appeal against Justice Hungwe's order granting bail to Mr. Manyere and the two MDC officials<sup>8</sup>.

### **Ongoing obstacles to peaceful assembly and the holding of meetings**

In 2009, several human rights activists, including trade unionists, who participated in peaceful protests were again arrested and charged either under the notorious Public Order and Security Act (POSA) – despite a High Court ruling prohibiting the use of POSA against trade unions and despite numerous calls by NGOs to repeal the POSA; under Sections 37 (1a) and 37 (1b) of the Criminal Law (Codification and Reform) Act – which relates to “any person [who] [...] in any place or at any meeting performs any action, utters any words or distributes or displays any writing, sign or other visible representation that is obscene, threatening, abusive or insulting, intending thereby to provoke a breach of the peace or realising that there is a risk or possibility that a breach of the peace may be provoked” – or Section 13 (1a) of the Act related to disturbing the peace; or under Section 46 (2) (v) of the Third Schedule to the Criminal Law (Codification and Reform) Act – which relates to anybody who “employs any means whatsoever which are likely materially to interfere with the ordinary comfort, convenience, peace or quiet of the public or any section of the public, or does any act which is likely to create a nuisance or obstruction”.

In particular, peaceful demonstrations that were organised throughout the year by Women of Zimbabwe Arise (WOZA) and Men of Zimbabwe Arise (MOZA) led to systematic violence and arrests by the police. For example, on February 10, 2009, approximately 600 members of WOZA and MOZA took part in a peaceful demonstration outside the Parliament building in Harare in order to call upon Zimbabweans to keep demanding social justice. On the same day, Ms. **Nelia Hambarume**, Ms. **Clara Bongwe**, Ms. **Auxilia Tarumbwa**, Ms. **Gracy Mutambachirimo**, Ms. **Linda Moyo**, Ms. **Keure Chikomo**, Ms. **Edina Saidi** and Ms. **Kundai Mupfukudzwa**, all of them WOZA members, as well as of Ms. **Roselyn Hanzi** and Mr. **Tawanda Zhuwarara**, two lawyers and members of Zimbabwe Lawyers for Human Rights (ZLHR), were arrested by the Zimbabwe Republic Police (ZRP). The group remained in custody over night without being told what the reason of their arrest was. Three of the women were beaten in police custody. On February 11, 2009, they were all subjected to interrogation and were finally allowed access to ZLHR lawyers. On February 12, 2009, they

were all released on free bail but remained charged with “causing a breach of peace”, an offence under the POSA. On February 14 and June 17, 2009, the police also violently repressed peaceful protests organised by WOZA respectively in Harare to deliver a petition to the Minister of Education urging “to put children’s education first”, and six peaceful protests organised in Harare and four in Bulawayo held to commemorate International Refugee Day<sup>9</sup>. Ms. **Jennifer Williams**, WOZA National Coordinator, and her Deputy, Ms. **Magodonga Mahlangu**, also faced intensive judicial harassment throughout the year following their participation in a peaceful march organised by WOZA on October 16, 2008 to denounce the alarming economic and social situation. They had been arrested on the same day, charged for allegedly “disturbing the peace, security or order of the public” and released on bail on November 6, 2008. Ms. Williams and Ms. Mahlangu had to appear in court on remand 21 times for these charges. On December 21, 2009, the Bulawayo Magistrate’s Court refused their request to remove them off remand, and they were further remanded to February 24, 2010. Furthermore, on October 25, 2009, Ms. **Dadirai Chikwengo**, Board Chairperson of the National Association of Non Governmental Organisations (NANGO), and Mr. **Cephus Zinhumwe**, NANGO Chief Executive Officer, were arrested at the airport of Victoria Falls by members of the ZRP and the Central Intelligence Organisation after participating in the Annual NGO Directors Summer School<sup>10</sup> in this resort town, allegedly for contravening Section 25(1)(b) of the POSA by holding a “public and/or political meeting without police clearance”<sup>11</sup>. On October 27, 2009, Ms. Chikwengo and Mr. Zinhumwe were remanded out of custody on a USD 100 (approximately 69,66 euros) bail each, following decision of the Victoria Falls Court who ruled that the State had failed to clarify what regulation they had violated under POSA. On November 25, 2009, Ms. Chikwengo and Mr. Zinhumwe were summoned to appear before the Victoria Falls Magistrates Court and were acquitted on all charges<sup>12</sup>. On October 28, 2009, Messrs. **Thulani Ndhlovu** and **Ndodana Ndhlovu**, Zimbabwe Election Support Network (ZESN)<sup>13</sup> staff

9/ See WOZA.

10/ The Directors’ Summer School is an annual event organised by NANGO and bringing together directors from NGOs in Zimbabwe to reflect on their work, discuss the way forward for civil society, and issue statements targeted at the development of Zimbabwe. In 2009, the Summer School was officially opened by the Minister of Public Service and Social Welfare.

11/ The charges against Ms. Chikwengo and Mr. Zinhumwe would be linked to the statement issued by 120 NGO leaders at the close of the Summer School, in which they called for the intervention of Southern African Development Community (SADC) and the African Union (AU) to ensure that the GPA between Zimbabwe’s ruling coalition parties was honoured.

12/ See ZLHR.

13/ ZESN is a coalition of NGOs formed to co-ordinate activities pertaining to elections in Zimbabwe. ZESN promotes free and fair elections as well as democratic processes in general.

members in Hwange, were arrested in Dete, Hwange, for conducting a public outreach workshop on election education and constitutional reform, allegedly without police clearance. They were arrested after the workshop despite the fact that police had been present throughout. Mr. Ndodana Ndhlovu was released later on the same day while Mr. Thulani Ndhlovu remained in custody until he was released on bail on October 30, 2009. Mr. Thulani Ndhlovu was charged under Section 24 of the POSA<sup>14</sup> and was due to appear again in court on November 26, 2009, when he was further remanded to February 4, 2010, and then to March 30<sup>15</sup>.

Trade unions were not spared by this repression. For instance, on November 8, 2009, Mr. **Lovemore Matombo**, President of the Zimbabwe Congress of Trade Unions (ZCTU), and four members of his staff, Messrs. **Michael Kandukutu**, **Dumisani Ncube**, **Nawu Ndlovu** and **Percy Mcijo**, were arrested in Victoria Falls by officers from the Criminal Investigations Department (CID) whilst Mr. Matombo was addressing members of the ZCTU Victoria Falls District Executive, purportedly for failing to comply with POSA under which the police has to be informed of any public meeting. Mr. Matombo and his four colleagues remained in police custody at Victoria Falls police station beyond the prescribed 48-hour period, after police issued a warrant of further detention without notice to the five men or their lawyers. The ZCTU leaders were finally brought before Victoria Falls Magistrates Court on November 10, 2009, but only after their lawyers of ZLHR had filed an Urgent Chamber Application in the High Court in Harare on November 9, 2009 seeking the immediate release of the trade unionists. The lawyers also wanted the arrest and detention of the ZCTU leaders to be declared unlawful and the warrant of further detention to be declared invalid and set aside. On November 12, 2009, the Court finally held that the meeting convened by the ZCTU in Victoria Falls was a bona fide meeting of the labour union and that the police must carefully read the laws before arresting individuals. In throwing out the charges, the Court criticised the police for their over-zealous behaviour and stipulated that the POSA does not apply to trade unions. The five human rights defenders were released on the same day<sup>16</sup>.

### **Harassment of journalists denouncing human rights violations**

In 2009, journalists covering sensitive issues remained subject to harassment. For instance, on October 8, 2009 freelance photo-journalist **Annie**

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14 / Section 24 of POSA stipulates that an organiser shall notify the regulatory authority of intention to hold a public gathering.

15 / See ZESN.

16 / See ZLHR.

**Mpalume** was arrested in Manicaland province on allegations of unlawfully entering a protected area without a pass in violation of the Protected Areas Act, as she was filming and taking photographs in Chiadzwa diamond fields where the Zimbabwe army and police are facing accusations of mass murder in a crackdown on illegal diamond mining. On October 12, 2009, she was granted a USD 30 (approximately 21 euros) bail and on October 26, 2009, she was further remanded out of custody to December 14, 2009. However, at the end of 2009, she remained prosecuted<sup>17</sup>.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Ms. Jestina Mukoko, and Messrs. Broderick Takawira and Pascal Gonzo	Arbitrary detention / Torture / Ill-treatments / Judicial harassment	Urgent Appeal ZWE 008/1208/OBS 206.2	January 6, 2009
	Release on bail	Urgent Appeal ZWE 008/1208/OBS 206.3	March 9, 2009
Ms. Jestina Mukoko, and Messrs. Broderick Takawira and Andrisson Manyere	Re-arrest / Indictment / Release on bail	Urgent Appeal ZWE 008/1208/OBS 206.4	May 6, 2009
	Stay of prosecution / Judicial harassment / Ill-treatments	Urgent Appeal ZWE 008/1208/OBS 206.5	September 30, 2009
Women of Zimbabwe Arise (WOZA) / Ms. Nelia Hambarume, Ms. Clara Bongwe, Ms. Auxilia Tarumbwa, Ms. Gracy Mutambachirimo, Ms. Linda Moyo, Ms. Keure Chikomo, Ms. Edina Saidi, Ms. Kundai Mupfukudzwa, Ms. Roselyn Hanzi, and Mr. Tawanda Zhuwarara	Arbitrary detention / Ill-treatments / Release on bail / Judicial proceedings	Urgent Appeal ZWE 001/0209/OBS 024	February 13, 2009
Mr. Alec Muchadehema and Ms. Jestina Mukoko	Judicial harassment	Urgent Appeal ZWE 002/1009/OBS 147	October 13, 2009
Ms. Dadirai Chikwengo and Mr. Cephus Zinhumwe	Arbitrary arrest / Judicial harassment / Release on bail	Urgent Appeal ZWE 003/1009/OBS 156	October 28, 2009

17/ See Media Institute of Southern Africa (MISA).



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# AMERICAS

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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# REGIONAL ANALYSIS AMERICAS

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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In 2009, the American continent was shaken by the first coup d'état that has taken place on American soil since the fall of the military dictatorships during the 1980s. Whilst the June 28, 2009 coup in *Honduras* took the entire continent by surprise, it also reminded us that the past is never far enough behind us and that building democracy is a constant challenge. Latin America celebrates two centuries of independence and democratic consolidation efforts and respect for freedoms; this process has cost the lives of tens of millions of victims and the Honduras' coup d'état has revived the shadows of a tragedy that it was thought the continent had overcome. Those who opposed the coup were violently repressed. Furthermore, the coup d'état also reminded us of the fragility of the democracies in the region. In addition, the extreme polarisation of political forces can have serious consequences for civil society and human rights defenders, who, in general and particularly in certain States, are not able to criticise the established power structures without risking to be accused of being "enemies of the Government and democracy". In *Nicaragua*, following the manipulation of the elections to ensure that Mr. Daniel Ortega remained in power, both defenders and journalists have become the object of violence orchestrated by those in power. In several countries, serious hostility between Government supporters and the opposition continued (*Argentina, Bolivia*) and, on numerous occasions, activities related to the defence and promotion of human rights were delegitimised and declared to be partisan, to be acting against State interests, to be corrupt and were even subject to assault by shock troops (*Bolivia, Nicaragua*). Statements were also frequently made by Government officials and supporters of specific political powers that delegitimised human rights activities.

In 2009, historic sentencings were pronounced, that define the before and after of a long history of impunity in the continent. On April 7, 2009, Mr. Alberto Fujimori was sentenced to 25 years in prison in *Peru*; the first time that a democratically elected Latin American Head of State was pronounced guilty of crimes against humanity. Furthermore, in *Guatemala*, Mr. Felipe Cusanero, a military officer, and others were sentenced for the crime of enforced disappearance. Various countries promoted laws to bring an end to the impunity for crimes carried out during the dictator-

ships (*Argentina, Brazil, Guatemala*). Furthermore, on January 16, 2010, *El Salvador* officially recognised the State's international responsibility for crimes committed between 1980 and 1992 and asked the victims of this conflict and their families for forgiveness. *El Salvador* also announced that a commission would be established to evaluate moral, symbolic and material reparation measures for victims and their families. It was disappointing that the referendum to revoke the law known as the "Impunity Law" in *Uruguay* – a civil initiative – did not receive sufficient support for its approval in the 2009 elections, whose first round took place on October 25, 2009. Furthermore, the introduction of a National Truth Commission at the beginning of 2010 to shed light on the crimes of the Brazilian military dictatorship was the subject of numerous debates during 2009. However, levels of impunity continued to be high in the region (*Colombia, Cuba, Guatemala, México, Venezuela*) and it was of concern that, in spite of numerous recommendations, some countries maintained laws that favour impunity (*Argentina, Chile, México*) or questioned international court rulings (*Venezuela*) and, in the case of *Cuba*, simply do not ratify or maintain reservations on international human rights treaties and conventions.

Throughout 2009, protest movements related to land rights, the exploitation of natural resources and protection of the environment continued (*Bolivia, Brazil, Chile, Colombia, El Salvador, Guatemala, Mexico, Peru*). Peasant and indigenous peoples were most affected by the strategic interests in their land shown by certain companies, in particular mining and agro-fuel companies.

Violence kept increasing in several countries (*Brazil, Colombia, El Salvador, Guatemala, Mexico*), related to the activities of groups linked to drug trafficking and other illegal activities. The use of military intervention to fight drug trafficking had serious consequences in terms of human rights violations by the army and the police, which has put defenders who report human rights violations committed in this context at risk (*Brazil, Colombia, Guatemala, Mexico*). In spite of this, the United States signed a military agreement with Colombia that allows military personnel and advisors to use seven military bases in which they would be given impunity on national territory and which generated considerable controversy in neighbouring countries in the region.

The situation of human rights and their defenders in the Americas and the Caribbean remained serious. Human rights defenders who work to protect and promote human rights continued to be subjected to attacks against their freedom of expression in most countries in the region (*Bolivia, Chile, Cuba, Ecuador, Haiti, Mexico, Nicaragua, Venezuela*), freedom



of association (*Cuba, Venezuela*), freedoms of peaceful assembly and of movement (*Cuba*), as well as to defamation and discrediting campaigns (*Argentina, Colombia, Peru, Venezuela*), judicial harassment (*Brazil, Chile, Colombia, Ecuador, Guatemala, México, Nicaragua, Peru, Venezuela*), arbitrary detention (*Argentina, Chile, Cuba, Colombia, Ecuador, Mexico, Venezuela*), threats (*Argentina, Bolivia, Brazil, Colombia, Guatemala, Mexico, Peru*), disappearances (*Colombia*), attacks, ill-treatment and attempts on their lives (*Argentina, Bolivia, Brazil, Colombia, Guatemala, Mexico, Nicaragua*), and ultimately to assassinations (*Brazil, Colombia, El Salvador, Guatemala, Mexico*).

### **Ongoing threats against human rights defenders who fight against impunity**

Whilst some States on the continent showed their willingness to bring to justice those responsible for the crimes committed during the dictatorships, defenders and organisations fighting against impunity continued to be subjected to threats, including death threats that aim to hinder their demands for justice (*Argentina, Chile, Colombia, Guatemala, Honduras, Mexico, Peru*). In *Chile, Colombia* and *Peru*, justice was regularly used to bring proceedings against lawyers and members of the legal profession who fight to shed light on crimes against humanity. In *Colombia*, justice for crimes committed by the paramilitaries should be borne to mind, not only because of its impact on the continent, but also because of the threats against human rights defenders involved in the fight against impunity for crimes often committed by paramilitary groups without an adequate response from the State.

### **Repression and criminalisation of defenders of the environment and of indigenous and peasant populations**

One of the characteristics of the entire Latin American continent is the presence of indigenous communities. The importance of these communities varies according to each State, but they are subject to violations of their land rights and their right to access natural resources in their territories, or are violently expelled from regions that are of economic interest, particularly for the extractive industry. These violations were clearly demonstrated in practices that include the criminalisation of social protest and arbitrary detentions (*Brazil, Chile, Ecuador, Guatemala, Peru*), threats (*Guatemala, Mexico, Peru*), and even ill-treatment and assassinations of defenders and community leaders (*Chile, El Salvador, Guatemala, Mexico, Peru*). The assassination and torture of two defenders from Guerrero State is only one example of the violence suffered by indigenous rights defenders in *Mexico*. In *Chile*, defenders of the Mapuche people continued to be subject to judicial harassment.

Defenders of environmental and land rights also remained victims reprisals (*Brazil, El Salvador, Guatemala, Honduras, Mexico, Peru*), particularly when they directly confronted the economic interests of large multinational companies that exploit natural resources without taking the rights of those who live on the land into account, neither do they respect the environment. Furthermore, in *Brazil*, the Landless Workers' Movement (*Movimiento dos Trabalhadores Rurais Sem Terra – MST*) continued to be in the limelight in spite of a ruling by the Inter-American Court of Human Rights (IACtHR), in August 2009, against the Brazilian State for violations of the right of association and the lack of respect for the private lives of members of the MST. Moreover, in *Peru*, 35 environmental defenders were subjected to judicial harassment, accused of “terrorism”. In *Ecuador*, the repression of environmental defenders became more acute following the adoption of the Law on Mining Activities in January 2009, without consultation or participation of the communities affected by this law. Various protest marches against the law were violently repressed and several defenders were the object of judicial persecution- accused of “terrorism” and “sabotage”. Defenders who work for organisations that, for years, have opposed large scale mining projects by multinational companies and national mining companies whose activities have a negative impact on the environment and on the communities that live there became key targets of this type of repression. On January 5, 2009, Mr. **Vicente Zhunio Samaniego**, President of the Limón Indanza Peasants' Association (*Asociación Campesina de Limón Indanza*), a platform that defends environmental rights in rural areas threatened by Government mining projects, was arrested and assaulted by the police during a police operation. On January 20, he was transferred to the Macas prison and released without charge on February 5, 2009, when a provisional stay of proceedings was ruled in his favour. On the same January 5, Ms. **Yolanda Gutama**, Ms. **Virginia Chuñir** and Ms. **Etelvina Misacango**, leaders of the Pachamama Women Defenders' Front (*Frente de Mujeres Defensoras de la Pachamama*), were arrested before being released the following day. However, the Cuenca Provincial Court overturned their release and issued arrest warrants so that, at the end of 2009, they were fugitives and the proceedings were at a standstill awaiting their arrest or that they give themselves up. Another decision within this context was the order given that the Environmental Action (*Acción Ecológica*) association was to be dissolved by decree on March 2, 2009 for “not having respected the objectives for which it was created”. This decision was finally overruled by the Government after a short time and, as of the end of 2009, the organisation was functioning normally. The mining exploitation carried out in Cabañas, *El Salvador*, also resulted in various incidents against human rights defenders, particularly the death of Mr. **Gustavo Marcelo Rivera**,

co-founder and Director of the Friends Association of San Isidro Cabañas (*Asociación Amigos de San Isidro Cabañas* – AISC), on June 30, 2009. On July 27, 2009, three Radio Victoria journalists, a local community radio station that had reported on the campaign against mining and had called for justice for Mr. Rivera's death, were threatened and had to leave the area. One of them returned to work under police protection. On August 7, 2009, another leader of the campaign against gold mining in the area, Mr. **Ramiro Rivera**, Vice-President of the Cabañas Environmental Committee (*Comité Ambiental de Cabañas* – CAC), was shot eight times. On this occasion, the police caught the culprit. However, on December 20, 2009, Mr. Ramiro Rivera was assassinated. Furthermore, on December 26, 2009, Ms. **Dora Alicia Recinos Sorto**, also a member of CAC, was assassinated when she was coming back from washing clothes in the river in the Trinidad canton, in the town of Sensuntepeque, Cabañas department. In Guatemala, environmental defenders that oppose major economic interests run great risks, as shown by the repression of members of the Resistance Front Against DEOCSA Abuse (*Frente de Resistencia de los Abusos de DEOCSA – Distribuidora de Electricidad de Occidente SA*) in Malacatán, subsidiary of the Spanish multinational Unión FEOSA, which resulted in the assassination of one of them in October 2009.

### **Ongoing repression of the fight for trade union and workers' rights**

In some countries of the American continent, the defence of labour rights remained a very risky business (*Colombia, Guatemala, Honduras, Venezuela*). *Colombia* was once more the most dangerous country in the world to be a trade unionist. According to the United Workers' Federation (*Central Unitaria de Trabajadores* – CUT), 46 trade union leaders were assassinated in 2009. However, assassinations of trade union leaders were not limited to Colombia. The assassination and harassment of trade union leaders also persisted in *Guatemala*, with 84 attacks registered by the Unit for Protection of Human Rights Defenders in Guatemala (*Unidad de Protección a Defensores y Defensoras de Derechos Humanos de Guatemala* – UDEFEGUA) in 2009, to such an extent that it has become a real repression mechanism against social protest. In addition, the assassinations and threats against trade unions were committed with total impunity. In *Honduras*, the coup d'état contributed to the repression of trade union leaders who were opposed to the civil-military coup. In *Venezuela*, a progressive increase in the repression of peaceful protests and the continuity of a State policy aimed at criminalising social protest through the opening of criminal proceedings against protestors was noted. Defenders of labour rights are to be found in the group of human rights defenders at risk in this situation, as they face insecurity, are subject to criminalisation because of their protests and are harassed as a result of the demands they make that rights be respected.

## Acts of reprisal against women's and LGBT rights defenders

Women human rights defenders were once more the subject of attacks and threats, particularly those who reported violence against women and worked on demanding respect for sexual and reproductive rights (*Colombia, Guatemala, Mexico, Nicaragua*). Furthermore, in *Nicaragua*, where therapeutic abortion is a criminal offence, women's rights organisations remained subjected to judicial harassment, threats and assaults. A clear example was that of the nine defenders, against whom there was still a complaint pending for various crimes at the end of 2009, and which was lodged in response to their accompaniment of a nine-year-old girl, pregnant after being raped and who they accompanied in the process to have an abortion in order to save her life. Furthermore, during 2009, there continued to be high numbers of cases of violence against women in *Mexico* and *Guatemala*, where crimes of "feminicide" continued to be reported and women human rights defenders, particularly those who reported violence against women, have themselves become victims of human rights violations, such as in the case of the organisation Survivors (*Sobrevivientes*) in *Guatemala* and of two female journalists in *Mexico*. In *Colombia*, female displaced women were particularly targeted.

Moreover, defenders of lesbians, gays, bisexuals y transsexuals (LGBT) rights were victims of violence and suffered as the result of the lack of State commitment to guarantee their right to freedom of expression and to ensure their protection, particularly in *Colombia* and *Honduras*.

## Obstacles to freedom of expression and reprisals against journalists who denounce human rights violations and corruption

In 2009, the lack of security faced by journalists committed to reporting human rights violations and corruption was of particular concern in some Latin American countries (*Bolivia, Ecuador, Haiti, Mexico, Nicaragua, Venezuela*). In *Nicaragua*, the authorities continued to harass – including at the judicial level – journalists who worked on human rights issues. In *Bolivia*, journalists who covered the violent events throughout the country were subjected to threats, particularly through the use of "black lists". In *Mexico*, journalists were assassinated for reporting on police, abuse of authority, the increasing insecurity and the authorities' response to the situation. Freedom of expression was also a subject of concern in *Venezuela*, where several administrative regulations were implemented to limit radio access to the public airwaves and where various journalists who reported on local corruption and police abuse were assassinated. In *Ecuador*, Mr. Milton Chacaguasay Flores reported on corruption of the judiciary and, after completing a prison sentence for slander, returned to prison on

July 9, 2009 on the same charges<sup>1</sup>. In *Haiti*, reporting on corruption in the media carried a high price, as shown by the intimidation of various journalists from Port de Paix, in the north-western department, after they reported on the corruption scandal between the judiciary and the police that came to light on November 12, 2008, during the house search of the alleged drug trafficker Alain Désir<sup>2</sup>.

### **Ongoing threats against defenders who report abuse by the police, the army and paramilitaries**

In an increasingly militarised environment, human rights defenders who denounced arbitrary actions and abuse by the police and the army as well as the existence and actions of illegal security forces remained subject to serious threats (*Brazil, Colombia, Guatemala, Honduras, Mexico*). In 2009, there were two assassination attempts in Brazil against Members of Parliament and a human rights defender in relation to investigations into the increase in the para-police militia and death squads in the country. Moreover, in *Guatemala*, the organisations that work to dismantle clandestine security groups in the country received death threats. In addition, within the context of the armed conflict that is devastating *Colombia*, human rights defenders continued to be threatened by paramilitary groups who frequently declared them to be “military targets” via text messages and emails. It was of particular concern that human rights defenders who denounced violations by the military in *Mexico* were especially vulnerable to threats and assaults, to the point of having to leave their homes for security reasons. It is also important to highlight the particularly serious repression against human rights defenders who denounced human rights violations committed by the police during the demonstrations against the coup d'état in *Honduras*.

### **Urgent Interventions issued by The Observatory in 2009 on countries of the region for which there is no country fact-sheet**

COUNTRY	Names	Violations / Follow-up	Reference	Date of Issuance
ECUADOR	Mr. Vicente Zhunio Samaniego, Ms. Yolanda Gutama, Ms Virginia Chuñir and Ms Etelvina Misacango	Judicial harassment	Urgent Appeal ECU 001/02/09/OBS 028	February 17, 2009
ECUADOR	Environmental Action	Obstacles to freedom of association	Press Release	March 11, 2009

1/ See Reporters Without Borders Press Release, July 16, 2009.

2/ See Lawyer's Committee for the Respect of Individual Freedoms (*Comité des avocats pour le respect des libertés individuelles* - CARLI) Press Release, September 26, 2009.

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# ARGENTINA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

During 2009, the conflict that had begun the previous year between the Government and the “Liaison Committee” (*Mesa de Enlace*), comprised of the Rural Society (*Sociedad Rural*), the Argentinean Rural Confederations (*Confederaciones Rurales Argentinas*), the Farming and Agricultural Cooperatives Confederation (*Confederación Intercooperativas Agropecuarias* – CONINAGRO) and the Agricultural Federation (*Federación Agraria*), organisations that bring together the largest rural producers in the country, continued. The dispute began because of an increase to the raw material exports, including soya, which is one of the most important products on the world market and is, therefore, an important source of profit for exporters. This conflict resulted in a increasing polarisation of the society between those who support and those who oppose the Government measures. At the same time, the economic conditions of the poverty stricken sectors of society deteriorated in 2009, resulting in an increase in social protests.

In this context, parliamentary elections took place in June. The defeat of the Government party candidates in the largest cities of the country was perceived as a deterioration of the national Government’s political power. This change in the political forces in Congress could have an impact on the way in which human rights defenders work. There have been warning signs of a lack of institutional capacity while the civil society, regardless of political or social differences, has been increasingly demanding greater transparency and accountability from State bodies.

In spite of the unfavourable scenario, the executive pushed forward a new law to regulate and democratise communication, which revealed a high concentration of media ownership and the lack of consensus on freedom of expression. Furthermore, it caused high levels of tension between those who promoted the law<sup>1</sup> and the media owners. It is important to highlight the fact that the new law replaces the former regulatory framework established by the last military dictatorship. Therefore, 2009 became a benchmark in the process to improve the legal framework for freedom of expression in

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1/ The law passed is the product of years of discussion between sectors of civil society, universities, professionals and organisations from various communication associations.

Argentina insofar as, in addition to the Law on Audio-Visual Services, the law that eliminates certain forms of libel and slander that were provided for in the Criminal Code was also passed. This law provides that “in no case statements on matters of public interest or those that are not assertive will be considered to be libellous” and that “the crime of slander will not be considered to be damage to honour when [the expression] is related to an issue of public interest”. In May 2008, the Inter-American Court of Human Rights had urged the Argentinean State to reform these provisions<sup>2</sup>.

The lack of security issue, which was pushed for by various political and social sectors, was once again at the centre of public attention. Discussions regarding the reduction in the age of legal responsibility, the criminalisation of social protest or the strengthening of the powers of the police remerged. The increase in cases of torture, cruel or degrading treatment in detention centres – police stations and prisons – was also of great concern<sup>3</sup>. The lack of adequate investigation and administrative and legal sanctions reinforce these practices within a framework of institutional impunity.

It is worth highlighting that, throughout 2009, the Argentinean State continued with the process initiated in 2005 related to the trial of those responsible for crimes against humanity committed during the military dictatorship<sup>4</sup>. In this context, two laws were passed: the first law allows judges instructing cases of minor wrongful appropriations to obtain DNA samples in cases of child kidnapping<sup>5</sup> “by various means other than body exams, such as from objects that contain cells from the body”. The DNA analyses enable the victims of child kidnapping to reinstate their true identity<sup>6</sup>. The second law allows legally registered human rights organisations

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2/ See Inter-American Court of Human Rights, *Caso Kimel Vs. Argentina. Fondo, Reparaciones y Costas. Serie C No.177*. The journalist Eduardo Kimel was found guilty in criminal and civil proceedings by Argentinean justice for having carried out an investigation into a crime committed during the last military dictatorship in Argentina - the assassination of five catholic priests in 1976.

3/ See Document presented by the Legal and Social Studies Centre (*Centro de Estudios Legales y Sociales* - CELS) in the hearing about the Situation of Persons Deprived of their Freedom in Buenos Aires Province, Argentina, March 24, 2009.

4/ For more detailed information about the justice process for the crimes committed during the last dictatorship, see CELS Report, *Informe Anual 2010*, April 2010.

5/ The systematic kidnapping of boys and girls of those detained or disappeared was another practice of the dictatorship.

6/ However, according to the Peace and Justice Service (*Servicio Paz y Justicia* - SERPAJ), this law has some drawbacks, such as the fact that the National Bank for Genetic Information Data (*Banco Nacional de Datos Genéticos*) will only be used for cases related to the dictatorship and it will stop functioning as a public service for the wider population. Furthermore, people whose identity is reinstated will have their identity documents confiscated, forcing them to apply for new ones at their cost. Similarly, they will not have the right to compensation for the disappearance of their parents if the State has already

to act as the complainant in judicial procedures in which crimes against humanity are being investigated. However, although the participation of the organisations is a key element, the legal system does not allow the direct participation of victims. Rather, it obliges them to be represented by a body or a lawyer in order for them to be taken into account during the trial.

Moreover, the witness protection policy is not effective. The failure to investigate threats against witnesses is a factor that favours impunity for the crimes committed during the dictatorship. In addition, Argentinean legislation still does not include a provision for the crime of enforced disappearance.

In December 2009, scarcely 6% of the 1,179 people charged for crimes carried out during the dictatorship had been sentenced (68 sentences and seven acquittals) and only two of these sentences were confirmed<sup>7</sup>. In spite of the fact that there are approximately 330 ongoing cases across the country, justice continues to be excessively slow and with a variable media access, depending on the courts and the regions where they take place. The limited levels of publicity on these trials in some areas of the country – primarily in the federal capital – does not contribute to create a favourable public opinion of the justice process, nor does it contribute to the improvement of the protection of human rights defenders involved in the trials. In addition, the disappearance of surviving witness Julio López three years ago has not been resolved yet<sup>8</sup>. The existence of threats and the level of impunity related to the acts of harassment show that links between the repressive bodies of the dictatorship and the police in a democracy continue to exist.

### **Intimidation of human rights defenders involved in the judicial proceedings for crimes committed during the last dictatorship**

Several of the human rights defenders involved in trials of crimes committed during the last dictatorship were victims of threats this year. Ms. **María Soledad Laruffa**, a member of the Merlo branch of the Argentinean Human Rights League (*Liga Argentina por los Derechos del Hombre* – LADH), received threats because of her activities to support the trial for the assassination of Floreal Avellaneda. These threats were reported to the Moron Federal Court, Buenos Aires province, on March 27. A request to include Ms. Laruffa in the National Programme for the

7/ See CELS Report, *Informe Anual 2010*, April 2010.

8/ Mr. Jorge Julio López disappeared on September 18, 2006 after having testified in one of the first hearings following the reopening of the trial. To date, it is not known what happened.



Protection of Witnesses and Defendants (*Programa Nacional de Protección de Testigos e Imputados*) was also sent to the national Government. The human rights defender Ms. **Laura Figueroa** filed a police report for the threats she received last year and she was therefore accepted onto the National Programme for Protection, Truth and Justice (*Programa Nacional de Protección Verdad y Justicia*). Furthermore, on November 21, 2009, Mr. **Mario Bosch**, complainants' lawyer in cases of crimes against humanity was arrested under the pretext of a speeding control and he was taken to a police station where he was detained for several hours. Mr. Bosch was injured after being handcuffed and he was refused permission to call someone. The police who detained him referred to him as "the human rights lawyer". Mr. Mario Bosch is the complainants' representative in the "Caballero" case in which the activities of the "police gangs" during the dictatorship that operated in the Clandestine Detention and Torture Centre that was part of the Investigations Brigade are investigated. Furthermore, it is important to highlight the fact that his detention took place just before an important phase of the trial of the Margarita Belén's Massacre<sup>9</sup> began, in which Mr. Mario Bosch is key given that he is the complainants' representative. Mr. Bosch filed a report of the facts before the main police station in Chaco province.

The criminal operation carried out against a member of the Buenos Aires Province Human Rights Department, Ms. **Sara Derotier de Cobacho**, should also be mentioned. On December 30, 2009, two armed men broke in the Buenos Aires Province Human Rights Department. Ms. Sara Derotier de Cobacho and seven other people who were in the office at that time were tied up and threatened with guns. The men stole material related to crimes against humanity committed during the dictatorship and investigative documents carried out by the Department related to crimes in which the provincial police are involved, as well as Ms. Derotier de Cobacho's personal computer, mobile telephones and almost eight thousand pesos. The victims were able to identify one of the intruders, an ex-police officer in Buenos Aires, who was arrested on January 1, 2010 at his home, where the stolen money was found. On January 5, 2010, Ms. Derotier de Cobacho's personal computer that contained information about crimes committed by serving police officers was recovered. However, as of the end of 2009, the material related to the crimes against humanity during the dictatorship had not been found.

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9/ In the "Margarita Belén massacre", 22 political prisoners were tortured and executed in the joint Argentinean army and Chaco police operation during the night of December 12-13, 1976, in a place close to Margarita Belén, Chaco province.

## Harassment of defenders of economic and social rights

Throughout 2009, members of various organisations that belong to the Children of the Nation National Movement (*Movimiento Nacional Chicos del Pueblo*) continued to be subjected to acts of harassment, which took place within the framework of their campaign “Hunger is a crime. Not a child more” (“*El hambre es un crimen. Ni un pibe menos*”), in which more than 400 non-governmental organisations that belong to the Movement denounced and fought against child malnutrition. It is worth recalling that the Children of the Nation National Movement, together with the Argentinean Workers’ Federation (*Central de Trabajadores Argentinos* – CTA), organised a protest march that brought together approximately 50,000 people in Buenos Aires on December 12, 2008. This protest turned into a national protest against hunger in which claims were made to receive a subsidy for each child in the household in order to put an end to child malnutrition. The kidnapping of activists by groups of individuals with their faces covered and the mistreatment during the time they were held were the methods used to intimidate the members of this movement<sup>10</sup>. Specifically, in July 2009, a young teacher<sup>11</sup> at the Juan XXIII Home, a 21 year-old who belongs to the Don Orión congregation, and a woman<sup>12</sup> who worked at the Juan Salvador Gaviota Home, part of the “Pelota de Trapo” Foundation (*Fundación Pelota de Trapo*), were subjected to this practice. The organisations where they both work are members of the Movement. All of these events were reported to the relevant authorities but, as of the end of 2009, those responsible had not been identified. Given the situation, the organisations requested protection from the State, which the authorities denied them, alleging a lack of material and technical resources, and providing minimal protection with intermittent guards at the kidnapped activists’ places of work<sup>13</sup>. Furthermore, Ms. **Milagro Sala**, leader of the social organisation Tupac Amaru<sup>14</sup>, was a victim of defamation as a result of statements made by the then President of the Radical Civic Union (*Unión Cívica Radical* – UCR), Mr. Gerardo Morales, who had been assaulted on October 16, 2009 by picketers during a conference about the “control of State resources destined for social organisations” that took place in the

10/ Between September 2008 and July 2009, eight kidnappings of members of organisations that belong to the Children of the Nation National Movement were reported.

11/ For security reasons, the name of the teacher cannot be disclosed. He was victim of two further kidnappings on September 26, 2008 and November 27, 2008.

12/ For security reasons, the name of the collaborator cannot be disclosed.

13/ It is worth clarifying the fact that the guards themselves state that they are not prepared for such attacks.

14/ Tupac Amaru is a Jujuy neighbourhood organisation that focuses primarily on the promotion of health, education, housing, employment, and poverty eradication.

Jujuy Accountants Professional School. Mr. Morales accused Ms. Sala of heading up a structure linked to drug and arms trafficking<sup>15</sup>.

Finally, the incomplete investigation carried out into the assassination of Mr. **Carlos Fuentealba**, teacher and member of the Association of Neuquén Educational Workers (*Asociación de Trabajadores de la Educación de Neuquén* – ATEN)<sup>16</sup>, who was assassinated during a wage strike in Neuquén on April 4, 2007, shows the difficulty of access to justice for those who are victims of criminalisation for their participation in social protests.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
<b>Ms. María Soledad Laruffa</b>	Threats / Harassment / Impunity	Urgent Appeal ARG 001/0309/OBS 053	March 30, 2009
		Urgent Appeal ARG 001/0309/OBS 053.1	April 8, 2009
A teacher from the Juan XXIII Home and a collaborator from the Juan Salvador Gaviota Home; Mr. <b>Alberto Morlachetti</b> ; Members of the “Pelota de Trapo” Foundation and of the Children of the Nation National Movement	Abduction / Release / Threats	Urgent Appeal ARG 002/0709/OBS 111	July 31, 2009
<b>Mr. Carlos Fuentealba</b>	Impunity / Assassination	Urgent Appeal ARG 003/1209/OBS 177	December 2, 2009
<b>Mr. Mario Bosch</b>	Arbitrary arrest	Urgent Appeal ARG 004/1209/OBS 181	December 4, 2009

15 / See CELS Report, *Informe Anual 2010*, April 2010.

16 / The strikes for better pay carried out by Neuquén teachers have been taking place since March 2007, due to the lack of agreement with the Government about the teachers' employment situation. They allege that the pay increase was insufficient and they complain about a lack of a written commitment to resolve the salary and employment situation of the assistants and administrative staff in the Provincial Education Council (*Consejo Provincial de Educación* - CPE).

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# BOLIVIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

Throughout 2009, the central Government continued to make significant progress in terms of structural changes, which began in 2005 when President Evo Morales came to power. Although less virulent, confrontations between those who support the Government and those who do not agree with its policies continued. While those who support the Government are, to a large extent, indigenous groups, peasants, and members of the working class, as well as a growing number of professionals and members of the middle class, those who oppose them are members of the ruling class and live in the so-called “Media Luna”. This area is made up of the eastern departments of Tarija, Santa Cruz, Beni and Pando, where there is much more economic growth and the main energy resources, such as gas and petroleum, are found.

In early 2009, under very hostile circumstances, a referendum<sup>1</sup> was held on whether the new Constitution<sup>2</sup> should be approved. A large majority endorsed the motion and the new Constitution came into effect on February 7. The new Constitution makes it possible for indigenous communities to have a greater say in Government matters and institutions<sup>3</sup> and grants the State control over all of the country's natural resources, thus establishing a series of measures that favour greater political participation and protect the most vulnerable sectors in society<sup>4</sup>. Furthermore, an important legal framework was established, which forbids discrimination “based on sex, race, age, sexual orientation, gender identity, origin, culture, nationality, citizenship, language, religion, ideology, political or philosophical affiliation, marital status, economic or social status, type of occupation, level of

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1/ It is important to clarify that this process to get approval of the new Carta Magna was not free of high social tension, since it was - and is - resisted by the political leaders who hold power in the regions of Santa Cruz, Tarija, Chuquisaca, Beni and Prado.

2/ The new Constitution was passed by the Bolivian National Congress in October 2008.

3/ However, the Electoral Court still demands a military service ID as a prerequisite for voting. Since some indigenous communities do not cut their hair, and this is considered unacceptable for military service, these communities are, in a sense, disqualified from participating in electoral disputes.

4/ It is estimated that between 3.8 and 5 million Bolivians participated in the referendum and that more than 300 international observers from more than 11 countries were summoned - in particular, observers from the Organisation of American States (OAS), the European Union, the Union of South American Nations (UNASUR) and the Carter Centre from the United States were present.

education, disability, pregnancy, or other reasons that strive to or result in the lack of recognition or limited recognition, enjoyment or exercise of the equal rights of all people”<sup>5</sup>. The Vice Ministry of Decolonisation, which depends on the Ministry of Culture, announced that it would adopt drastic measures to punish those who commit acts of racism and discrimination in the country<sup>6</sup>. Although this legal framework is very recent, the implications of its implementation can be already seen, since it represents a significant step forwards in terms of human rights. It should also help facilitate and protect the work of human rights defenders in Bolivia<sup>7</sup>.

According to what was stated in the new Constitution, Congress was supposed to approve a new Electoral Code that would allow general elections to be held on December 6, 2009. After the opposition refused to approve the electoral reform, the President gathered a group of 12 peasant union leaders and social leaders and began a hunger strike. Finally, after five days of protest, Congress approved the new law<sup>8</sup>. Despite the tension between Government supporters and the opposition, elections were held on December 6 and the current President, Mr. Evo Morales, received the support of 63% of registered voters.

One can welcome the improvement in terms of accountability in the investigation and explanation of crimes committed during the dictatorship insofar as, at the end of 2009, the Prosecutor General’s Office called for the investigations into the deaths of Messrs. Marcelo Quiroga Santa Cruz, Renato Ticona and Juan Carlos Flores, among others, to be reopened so that their deaths may be explained and their remains found<sup>9</sup>. Furthermore,

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5/ Article 14, paragraph II of the plurinational Constitution.

6/ See Bolivian Chapter of Human Rights, Democracy and Development and Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen - Mission to Bolivia*, United Nations Document A/HRC/11/11, February 18, 2009.

7/ It should be noted, however, that certain regions of the country are still polarised between the supporters of Mr. Evo Morales on one side and the opposition on the other. This polarisation places both the work and even the physical well-being of many human rights defenders who work in these areas at risk as soon as they are linked to or identified as Government supporters by opposition groups.

8/ The law confirmed general elections on December 6, 2009, a regional referendum in the provinces of Gran Chaco, La Paz, Oruro, Potosí, Cochabamba and Chuquisaca. Congress also approved the elaboration of new voter registration with biometric registration and overseas voting (so that for the first time in Bolivian history, emigrants will be able to vote). Furthermore, it should be noted that Law 4021 of the Temporary Voting System negated important indigenous rights that are established in the Constitution.

9/ See Bolivian Chapter of Human Rights, Democracy and Development. Mr. Marcelo Quiroga Santa Cruz was a journalist and writer linked to the Bolivian Workers’ Centre (*Central Obrera Boliviana* - COB); Mr. Juan Carlos Flores Bedregal was a national representative of the Revolutionary Workers’ Party (*Partido Obrero Revolucionario* - POR); and Mr. Renato Ticono Estrado was a teacher and university student. The three disappeared during Meza’s dictatorship in 1980.

the Ministry of National Defence approved a resolution that states that the army must grant access of its archives to the family members of those who disappeared during the military dictatorships<sup>10</sup>.

Nevertheless, at the end of 2009, some leaders of indigenous groups, mainly the Aymara and Quechua, as well as NGOs that defend the rights of indigenous peoples, were still being politically persecuted, discouraged and threatened by opposition groups, mainly in departments of the “Media Luna”, the setting of political debate prior to the presidential elections on December 6. Because of their support for the so-called “process of change” public policies, various leaders suffered acts of intimidation, slander and libel that were diffused through private channels of communication. These people were targeted for being associated with the party in power, the Movement for Socialism (*Movimiento al Socialismo* – MAS), even though they are not actually supporters of the party<sup>11</sup>.

In addition, the existence of “blacklists” in these areas of the country came to the public light. These lists are written by groups with ties to the opposition and include the names of activists, defenders and journalists whose work upsets these groups. Although the Government publicly condemned such acts, real investigations were not carried and protection was not provided for the victims.

### Threats against human rights defenders

In 2009, there was no significant change and attacks against human rights defenders considered “followers” of President Morales continued. Those who defend the rights of vulnerable groups, mainly indigenous ones, were publicly discredited because their independent work is understood as part of Mr. Morales’s campaign for the common good. A clear example of this was the attempted assassination of Mr. **Miguel Gonzáles**, the Regional Head of the Centre for Legal Studies and Social Research (*Centro de Estudios Jurídicos e Investigación Social* – CEJIS)<sup>12</sup>, in Trinidad, the capital of Beni. On February 27, 2009, Mr. Gonzáles was the victim of a firearm attack as he was driving in one of the organisation’s vehicles. Strangers fired at him from a motorcycle just a few blocks away from the CEJIS regional office in Trinidad, but the bullet did not hit him. The next day, the incident was reported to the Prosecutor’s Office in Trinidad. The victim’s vehicle remained in police custody so that the gunshots could

10/ See Bolivian Chapter of Human Rights, Democracy and Development.

11/ See Permanent Assembly for Human Rights in Bolivia (APDHB).

12/ The CEJIS works in the field of human rights from a social-legal perspective, in favour of democracy and justice. It is currently working mainly with indigenous people and peasants.

be examined, but an examination was never carried out and the car was returned to the CEJIS. The investigation into the attack was not taken seriously and the police concluded that it was a marble that had hit the car window. In late 2009, the police had yet to identify a suspect in the attack and the case was filed away because of a lack of evidence, according to the Public Ministry. On March 10, 2010, the Inter-American Commission on Human Rights (IACHR) received a request to extend the precautionary measures in favour of the CEJIS members at the office in Riberalta who were threatened and attacked in 2006<sup>13</sup>, and to expand these measures to the members at the office in Trinidad. The IACHR granted the requested extension so that the Bolivian State would protect those who worked for the organisation. Afterwards, members of the CEJIS held meetings with the Police Chief of Department, the Commander of the Special Forces in the Fight Against Crime (*Fuerza Especial de la Lucha Contra el Crimen* – FELCC) and the Chief of Citizen Security at the Prefecture in Beni. However, the public servants said that it would be impossible to provide effective protection for lack of personnel and financial resources, which would be needed to hire a bodyguard for Mr. Gonzáles. They indicated that the CEJIS would have to cover these costs itself<sup>14</sup>. Furthermore, Mr. **Tito Pérez**, the lawyer who brought the case of Guarani lawyer Ramiro Valle<sup>15</sup> to court, reported that on September 13, 2009, he was identified and pointed at by groups of landowners, cattle farmers, civic and municipal authorities during his stay in the city of Camiri. Fearing that he would be followed, Mr. Pérez fled to the main square and hid amongst the crowd. The next day, Mr. Pérez reported the incident; however, the police did not pay any attention to him<sup>16</sup>. The defenders who fight against impunity in the massacre of peasants that occurred on September 11, 2008 in Porvenir, Pando department, were also victims of persecution and harassment. For example, members of the Steering Committee for the Trial Against Mr. Leopoldo Fernández (*Comité Impulsor para el Juicio contra el Sr. Leopoldo Fernández*)<sup>17</sup>, which consists of the Permanent Assembly for Human Rights in Bolivia (*Asamblea Permanente de Derechos Humanos de Bolivia* – APDHB), the Association for Relatives of the Detained-Disappeared (*Asociación de Familiares de Detenidos-Desaparecidos* –

13/ There were attacks on members of the CEJIS in 2006, after which the Organisation of American States (OAS) IACHR granted precautionary measures so that the Bolivian State would protect CEJIS workers.

14/ See CEJIS.

15/ Mr. Ramiro Valle was one of the victims who was kidnapped and tortured on April 13, 2008 by a violent group of landowners, cattle farmers, and civic and municipal authorities from the town of Cuevo in Chaco Cruceño.

16/ See CEJIS.

17/ Mr. Leopoldo Fernández was the Prefect of Pando when the massacre occurred. He is currently being detained and was charged with the murder of at least 13 people.

ASOFAM) and the Bolivian Chapter of Human Rights, Democracy and Development (*Capítulo Boliviano de Derechos Humanos, Democracia y Desarrollo* – CBDHDD) were constantly harassed in 2009 for investigating and compiling information from witnesses of the massacre<sup>18</sup>.

### Threats against journalists

Journalists dedicated to investigating and reporting on the various violent incidents that have kept occurring in Bolivia were also persecuted in 2009. The method of intimidation was usually through the use of threats. For example, one of the ways in which the press was harassed was through “blacklists”, which include the names of the journalists whose work bothers certain sectors of society. The threat to the physical well-being and even the lives of the people whose names appear on these lists constitutes in itself a serious restriction to the freedom of the press. A clear example of this was the resignation of Mr. **Andrés Rojas** from his job as Editor-in-Chief of *Channel 57 Virgen de Copacabana* after his name appeared on one of these “blacklists”. The addition of his name was motivated by his journalistic work on the massacre that occurred at the hands of the army in October 2003, under Mr. Gonzalo Sánchez de Losada’s Government, in the area around the city of El Alto. It should be noted that Mr. Rojas had made statements that indicate that, even though the Government authorities expressed their solidarity, there were no efforts to uncover those responsible for the threats<sup>19</sup>. In 2009, there were also repeated deaths threats against the Editor-in-Chief of the newspaper *La Prensa*, Mr. **Carlos Morales**, and his publisher, Mr. **Rafael Ramírez**, through calls to their mobile and home phone numbers from strangers who warned them to stop “publishing lies” because they knew where they lived and were going to kill them. These threats occurred following the publication of an article that denounced the alleged link between a member of the Bolivian Government and “organised gangs” in Pando<sup>20</sup>.

### Urgent Intervention issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Miguel Gonzáles / Centre for Legal Studies and Social Research (CEJIS)	Assassination attempt	Urgent Appeal BOL 001/0309/OBS 035	March 4, 2009

18/ See APDHB.

19/ See Reporters Without Borders (RSF) Press Release, April 16, 2009.

20/ *Idem*.



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# BRAZIL

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## Political context

Brazil is one of the most socially unequal societies in Latin America<sup>1</sup>. Since 2002, one of the main objectives of President Luiz Inácio Lula da Silva Government has been to change this situation. The extensive land mass in Brazil means that vulnerable groups differ according to the regions. Broadly speaking, the most vulnerable groups are the rural workers, the “quilombola” communities, the indigenous people and those who work in “slavery”<sup>2</sup>. In spite of the regional differences, the struggle for land rights is common across all Brazilian States.

Brazil is marked by an intense, violent police and parapolice context; the militia are seen to be the main problem. These groups, comprised of private and official security agents, have the political and economic support to act without fear of being brought to justice. Another serious problem of the violence in Brazil is generated by death squads, in which the police also take part, as well as hired assassins, who are contracted by gangs, economic groups, landowners or corrupt politicians to carry out assassinations. These death squads are also responsible for assassinations of landless workers and indigenous people in the context of the fight for land rights. Following his visit to Brazil, the United Nations Special Rapporteur for Extrajudicial Executions stated in his report that Brazil has the highest homicide rate in the world<sup>3</sup>.

However, it is worth mentioning that, in December 2009, the executive developed a bill to create a National Truth Commission (*Comissão Nacional da Verdade*) to investigate human rights violations committed during the military dictatorship. This body aims to recover the files that

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1/ The Gini Index for Brazil in 2009 was 55, ahead of Honduras (55.3), Bolivia (58.2), Colombia (58.5) and Haiti (59.5). See United Nations Development Programme (UNDP), *Human Development Report*, 2009.

2/ The concept of slavery is related to the idea of labour exploitation by coercion and deprivation of liberty.

3/ See Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston*, United Nations Document A/HRC/11/2/Add.2, March 23, 2009. For the São Paulo executions, see the report produced by various civil society organisations, *Mapas do extermínio: execuções extrajudiciais e mortes pela omissão do Estado de São Paulo*, November 25, 2009.

are still held by the military and that are essential to throw light on the crimes committed during the *de facto* regime<sup>4</sup>.

With regard to freedom of expression, two events related to freedom of the press stand out in 2009. Although the Press Law 5.250/67 – passed in 1967 during the last military dictatorship and which regulated the press and allowed journalists to be imprisoned as a result of their publications – was rescinded in April, in July, a federal judge banned the publication in the *Estado de São Paulo* newspaper of an investigation of alleged corruption involving Mr. Fernando Sarney, the son of Senate President José Sarney. This prior censorship was justified by the Federal High Court as being a protection of constitutional guarantees<sup>5</sup>.

The work of the National Protection Programme for Human Rights Defenders (*Programa Nacional de Proteção aos Defensores de Direitos Humanos* – PPDDH), created five years ago by the Federal Government, continued during 2009. However, civil society pointed out that there continues to be a need to develop and strengthen this programme, both at the Federal and State levels, for reasons that include a lack of continuity in the implementation of the agreements, bureaucracy and the lack of coordination between the actors involved, in order to achieve effective protection of the defenders<sup>6</sup>.

### Violence against and judicial harassment of land rights defenders

2009 was a symbolic year as it was the 25th anniversary of the Landless Rural Workers' Movement (*Movimento dos Trabalhadores Rurais Sem Terra* – MST) and was marked by a worsening in the tendency to stigmatisate and criminalise members of social organisations and movements in Brazil. The MST and defenders that work with them were one of the main targets of this campaign carried out by sectors of the mass media, landowners and legislators with interests in the agricultural business<sup>7</sup>. This practice of criminalisation of social movements is characterised by

4/ Furthermore, on March 26, 2009, a petition was presented to the Inter-American Court on Human Rights (IACtHR) on crimes committed during the Brazilian dictatorship (Case No. 11.552, *Julia Gomes Lund y otros*), that will oblige the Brazilian State to adopt a position related to the amnesty laws in the country. See Inter-American Commission on Human Rights (IACHR) Press Release No 16/09, April 8, 2009.

5/ See Observatory of the Right to Communication (*Observatório do Direito à Comunicação*) Press Release, December 11, 2009.

6/ See Letter to the authorities of the Brazilian Committee of Human Rights Defenders (*Comitê Brasileiro de Defensores e Defensoras de Direitos Humanos*), together with 15 other NGOs, including Global Justice (Justiça Global), Never Again Torture Group (*Grupo Tortura Nunca Más*) and the National Human Rights Movement (*Movimento Nacional de Direitos Humanos*), November 13, 2009.

7/ See Never Again Torture Group and Global Justice.

an attempt to convert the activities of these movements into illegal actions and thereby delegitimize them so that they lose their political power when they are considered to be “criminals” and “agitators”. One of the most common strategies is the creation of parliamentary investigation commissions against agricultural movements with the aim of investigating possible embezzlement of funds or other types of financial problems. In 2009, the Rural Bench (*Bancada Ruralista*) pushed through the creation of a Mixed Parliamentary Investigation Commission (*Comissão Parlamentar Mista de Inquérito* – CPMI) – with the participation of Members of Parliament and Senators – in order to “investigate the MST”. In spite of the wider objective of the CPMI – determination of the causes, conditions and responsibilities related to the deviation of funds and irregularities in the agreements and contracts of the agrarian reform and development organisations or bodies; investigation into the clandestine funding and deviation of funds for land invasions; analysis and assessment of the structure of Brazilian agriculture, specifically the promotion and application of the agrarian reform – the latter was named and called the “MST CPMI” by the mass media in an obvious attempt to stigmatise the movement. During 2009, more than 20 bills were presented with the aim – either direct or indirect – to criminalise agrarian movements or prevent the development of agricultural policies<sup>8</sup>.

The economic incentives provided to agricultural businesses (including biodiesel, soya, cattle rearing and eucalyptus) encourage a lack of planning and control of the expansion of land use in areas that are protected because of their natural resources or because they are indigenous territories. Irregular security companies have spread across these regions where they act as illegal militia at the service of landowners. Brazilian rural workers and social movements continue to be victims of repression by these companies, as shown by the violent evictions ordered by landowners and the militarised police across Brazilian States, often carried out with the collusion of local politicians and judiciary. On August 6, 2009, the Inter-American Court of Human Rights (IACtHR) condemned the Brazilian State for political persecution of the MST; the sentence was backed by the Presidential Human Rights Department. The IACtHR condemned the police officer from the Paraná State for violating the right to organise and the right to privacy of the MST leaders<sup>9</sup>. The proceedings before the IACtHR were handled by the NGO Global Justice (Justiça Global), following telephone tapping carried out by the police in 1999 of a cooperative and a rural workers organisation linked to MST. In addition to the statement made by the National Human Rights Department, at the end

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8/ See Land Pastoral Commission (CPT) 2009 Report, *Conflitos No Campo Brasil 2009*, April 2010.

9/ See Global Justice.

of 2009, it was still not clear whether the Brazilian State would implement any measures. The IACtHR ruling against the Brazilian State was good news in a hostile context for rural small holders and organisations fighting for land rights given that State sectors try to criminalise and stigmatise them using means such as a report presented by the Public Ministry in 2008 against members of MST in which it was claimed that they were a threat to the political system and the creation of the CPMI to inspect the transfer of funds to MST from NGOs<sup>10</sup>. However, this ruling did not prevent acts of harassment being carried out against MST in 2009.

In this context, since June 2008, Mr. **José Batista Gonçalves Afonso**, a member of the Land Pastoral Commission (*Comissão Pastoral de Terra* – CPT) for Marabá, Pará State, one of the most violent States in Brazil<sup>11</sup>, has had a two year and five month prison sentence hanging over him for the crime of “kidnapping”. Although an appeal was lodged on January 21, 2009, the Attorney General ruled in favour of the sentence. Following this, Mr. Batista Gonçalves Afonso presented an appeal before the Brasília Federal Judge. However, as of the end of 2009, the result of the appeal was unknown and Mr. Batista Gonçalves Afonso remained free pending trial.

### Harassment and threats against environmental defenders

Environmental defenders continued to be subject to threats and assassinations in 2009. For example, the French biologist **Pierre Edward Jauffret** was severely beaten when he was at home in the San Antonio de Tauá reserve, Pará State. He died two weeks later, on December 14, 2009, as the result of a blow to the head during the assault. His son, who shared his father’s struggle, said that they had both been threatened for over a year

10 / *Idem*.

11 / Mr. Batista Gonçalves Afonso is also one of the national coordinators of the National Network of Popular Lawyers (*Rede Nacional de Advogados e Advogadas Populares* - RENAP) and belongs to the Human Rights Commission of the Brazilian Lawyers’ Order (*Orden dos Advogados do Brasil*), Pará section. The conflict began in March 1999 when rural workers from the Federation of Agricultural Workers (*Federação dos Trabalhadores na Agricultura* - FETAGRI) and MST of south and southeast of Pará State camped outside the headquarters of the National Institute of Colonisation and Agrarian Reform (*Instituto Nacional de Colonização e Reforma Agrária* - INCRA) in the Marabá municipality, Pará, to show their disagreement with the slow pace INCRA is solving the problem of settlement of thousands of landless families that were camping out and the precariousness of the existing settlements. On April 4, 1999, representatives of the Federal Government and the Pará State Government met at INCRA with workers and 120 leaders of associations and trade unions to negotiate. Towards 10 pm, given that there was no response to their demands, the workers went into the offices and refused to allow the negotiation team to leave that night and the morning of the following day. Mr. José Batista Gonçalves Afonso, who was advising MST and FETAGRI at that time, tried to mediate the conflict between INCRA and the workers. However, he was subsequently accused by the Federal General Prosecutor’s Office of having prevented the INCRA representatives from leaving the building.

because of their denunciations of deforestation in the area. The victim's family reported that there were attempts to show that what happened was the result of a fight between the biologist and local drunks<sup>12</sup>. Likewise, in 2009, a representative of Rio de Janeiro artisanal fishermen decided not to make any more reports about the setting up of industrial fishing companies that destroy the environment, following more than a year of death threats against him and his family. The latest threat he received was from a known assassin from the region who is a member of the militia. For security reasons, his name and whereabouts are not being disclosed<sup>13</sup>.

### **Reprisals against defenders who denounce police and parapolice violence**

Human rights defenders face a wide range of repressive measures from demoralisation and defamation to threats, harassment and even assassinations<sup>14</sup>. State security policies expose them to arbitrary action by the police and parapolice. On January 24, 2009, Mr. **Manoel Bezerra de Mattos**, a human rights defender, lawyer and Councillor of Itamé city, Paraíba, was assassinated. He had been benefiting from Inter-American Commission of Human Rights (IACHR) precautionary measures since 2002, even though Brazil had not implemented them. Mr. Bezerra de Mattos had publicly denounced the actions of extermination groups in Paraíba and Pernambuco States in north-eastern Brazil. Mr. Bezerra de Mattos' statements contributed to the work of the Parliamentary Investigative Committee (*Comissão Parlamentar de Inquérito – CPI*) about gunmen in Brazil. His assassination was condemned by the IACHR<sup>15</sup>. On June 24, 2009, a request was made to Federal Justice to transfer the investigation and trial for the assassination of Mr. Manoel Bezerra de Mattos given that the Paraíba Governor himself, the members of the Pernambuco Government and the State Human Rights Council publicly recognised that the Federal States did not have the capacity to handle the case. In August 2009, the Attorney General of the Republic accepted the transfer request and, as of the end of 2009, the decision on the case was depending on the Supreme Court of Justice. In the meantime, of the five accused, only three were still imprisoned at the end of 2009 and it is expected that a public hearing will be held in 2010

12/ See Legal Project (*Projeto Legal*), Action by Christians for the Abolition of Torture - Brazil (ACAT-Brazil) and CPT Press Release, December 16, 2009.

13/ See National Association of Human Rights, Teaching and Postgraduates (*Associação Nacional de Direitos Humanos Ensino e Pós-Graduação - ANDHEP*), *National Assessment of the Situation of Human Rights Defenders for the National and Special Human Rights Department of the Human Rights Defenders Protection Programme*, November 2009.

14/ *Idem*.

132 15/ See IACHR Press Release No. 04/09, February 6, 2009.

to discuss the federalisation of the investigations related to Mr. Manoel Bezerra de Mattos' assassination<sup>16</sup>.

The parapolice violence also affected Rio de Janeiro Members of Parliament. For instance, Mr. **Marcelo Freixo** and his advisor, Mr. **Vinicius George**, received death threats in May 2009 following Mr. Freixo's nomination as President of the Investigative Parliamentary Commission related to the increase in militia presence. The information provided by a witness enabled the plans against the lives of the functionaries to be foiled. Since the denouncement, both of them have special protection<sup>17</sup>.

### **Urgent Intervention issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Mr. José Batista Gonçalves Afonso	Judicial harassment	Open Letter to the authorities	February 10, 2009

16/ See "Direitos Humanos" Press Release, January 25, 2009 and Global Justice.

17/ See Global Justice.

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# CHILE

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In December 2009, presidential elections were held in Chile, in which Mr. Sebastián Piñera, the candidate from the opposition alliance, and Mr. Eduardo Frei, the candidate from the ruling political party, went on to the second round of elections that took place in January 2010<sup>1</sup>. Meetings between the opposition leader and eventual winner, Mr. Piñera, and individuals linked to the military dictatorship were worrisome, as were some of the ambiguous statements that Mr. Piñera made, including an announcement that he might apply the statute of limitations to try members of the military involved in the repression of the last military Government.

Before ending her term in office, President Michele Bachelet promulgated the Law for the implementation of the National Institute for Human Rights<sup>2</sup> and inaugurated the National Museum of Memory. During its first Universal Periodic Review before the UN Human Rights Council, the Chilean Government emphasised the need to prosecute the crimes against humanity that were committed during the 17-year military dictatorship, as well as reparations for the victims<sup>3</sup>. Although the report was valued, the Human Rights Council found in its more than 75 recommendations deficiencies that still exist in Chile's current institutions, such as the lack of an Ombudsman as well as a more democratic electoral system. Furthermore, the Council brought attention to the situation of indigenous peoples, as well as to the situation of women, children, and migrants' rights<sup>4</sup>.

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1/ In January 2010, Mr. Sebastián Piñera, a businessman and the representative of the Chilean right, was elected President in the second round of elections. The new President did not announce any human rights programme to implement during his presidency.

2/ The Institute seeks to promote and defend human rights and will be able to appear as a plaintiff when these rights are violated.

3/ According to Chile's report before the Council, there are 338 cases that are investigating for the military's involvement in repression, covering a total of 1,128 victims. Chile also reported that there are approximately 750 former members of the armed forces among the prosecuted and convicted. See Human Rights Council Working Group on the Universal Periodic Review, *National Report presented by Chile*, United Nations Document A/HRC/WG.6/5/CHL/1, February 16, 2009.

4/ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Chile*, United Nations Document A/HRC/12/10, June 4, 2009.

In 2009, Chile was also reviewed by the UN Committee Against Torture, which reiterated measures it had already demanded, such as the repeal of the Amnesty Decree-Law, the modification of the Code of Military Justice (which allows civilians to be prosecuted) and the creation of a new commission to investigate crimes committed during the dictatorship. The Committee also urged the Chilean State to end the current statute of limitations for the crime of torture<sup>5</sup>.

Furthermore, although the International Labour Organisation (ILO) Convention No. 169 concerning indigenous and tribal peoples was ratified in September 2008 and came into effect in September 2009, policemen continued to use violence against the Mapuche people, who claim their ancestral lands and oppose investment programmes that threaten their scarce lands<sup>6</sup>. The “Mapuche conflict” is often alluded to in Chile, as a result of the Mapuche community’s land claims and demands for the respect for their human rights. Since these demands first began, only indigenous people have reported fatalities, injuries, torture and other violations of their rights. Policemen and landowners rarely suffer any consequences, which are always minor and usually involve property. Activists and members of the Mapuche community often end up being detained, injured or even dead in confrontations with the police<sup>7</sup>. A serious assault occurred in October 2009 when police (*carabineros*) brutally attacked Mapuche children, some of whom were wounded by gunshot<sup>8</sup>. The UN Committee on the Elimination of Racial Discrimination has addressed the conflict between the State and the Mapuche communities in its assessment of the report on Chile<sup>9</sup>,

5/ See Committee Against Torture, *Final Observations of the Committee Against Torture - Chile*, United Nations Document CAT/C/CHL/CO/5, May 14, 2009.

6/ Reports from civil society organisations have recorded more than 25 police operations in Mapuche territory, mostly in rural communities. Cases of torture, cruel, inhuman and degrading treatment against 55 Mapuche were reported. See Citizens’ Observatory (*Observatorio Ciudadano*).

7/ During one of these confrontations in August 2009, Mr. Jaime Mendoza Collio, a young Mapuche from the Requén Pillán community, was killed when he was shot by uniformed policemen who were evicting people from a lot that had been claimed by his community in the town of Ercilla (Araucanía region). See Corporation for the Promotion and the Defence of the Rights of People (*Corporación de Promoción y Defensa de los Derechos del Pueblo* - CODEPU) and Citizens’ Observatory.

8/ Álvaro Huentecol and Felipe Marillán, minors from the Temucuicui community, were shot, leaving both with serious injuries. Another minor, Francisco Painevilo, was brutally assaulted by policemen who wounded him with gunshots, beat him, and placed him in a helicopter, threatening to throw him out into the abyss if he did not provide them with information on his community. The cases appeared in civil courts, which declared themselves incapable of trying acts committed by policemen and thus referred the cases to military courts. See CODEPU and Citizens’ Observatory.

9/ See Committee on the Elimination of Racial Discrimination, *Final Observations of the Committee on the Elimination of Racial Discrimination, Chile*, United Nations Document CERD/C/CHL/CO/15-18, September 7, 2009.



as did the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People<sup>10</sup>. However, Chilean authorities did not properly implement the recommendations made by international human rights organisations and President Bachelet's special policy of "Re-cognition" did not generate the desired dialogue<sup>11</sup>.

Moreover, part of the problem is that Chilean authorities invoke the Anti-Terrorism Act in order to justify prosecuting people who defend the rights of the Mapuche communities<sup>12</sup>. At the end of 2009, there was a total of 47 Mapuche and their sympathisers in prison, most of whom were on remand and accused with committing crimes under the Anti-Terrorism Act<sup>13</sup>. There is a stark contrast between the State's criminal prosecution of the Mapuche and the impunity enjoyed by policemen who have committed crimes against indigenous people. It should also be noted that, in its Final Observations from May 14, 2009, the UN Committee Against Torture noted with concern the abuse committed against Mapuche communities<sup>14</sup>.

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10 / The UN Special Rapporteur on the Situation of the Rights and Fundamental Freedoms of the Indigenous People visited Chile from April 5 to 9, 2009 in order to carry out consultations on the constitutional reform at the suggestion of Ms. Bachelet's Government. See Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, The situation of indigenous peoples in Chile*, United Nations Document A/HRC/12/34/Add.6, October 5, 2009.

11 / In 2008, under the slogan "Re-cognition: A Social Pact for Multi-Culturality", President Bachelet proposed creating guidelines for her Government in relation to indigenous peoples during the second half of her term. Besides looking at legal changes for the recognition of indigenous rights in the Constitution and strengthening legislation, it committed to acquiring lands for 115 Mapuche communities that were prioritised by the Council of the National Corporation for Indigenous Development (*Corporación Nacional del Desarrollo Indígena* - CONADI). At the end of 2009, they still had not been granted constitutional recognition and only 47 communities had acquired lands through the Lands Fund (*Fondo de Tierras*).

12 / The Anti-Terrorism Act was put in place during General Pinochet's dictatorship. It sought to criminalise certain forms of expression and opposition to the de facto Government. The law was not revoked with the advent of democracy and is still in effect. It is important to note that the spirit of the law did not change even though it was subjected to minor modifications. See Committee on the Elimination of Racial Discrimination, *Final Observations of the Committee on the Elimination of Racial Discrimination, Chile*, United Nations Document CERD/C/CHL/CO/15-17, September 7, 2009, and Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Chile*, United Nations Document A/HRC/12/10, June 4, 2009.

13 / See CODEPU and Citizens' Observatory.

14 / See Committee Against Torture, *Final Observations of the Committee Against Torture*, United Nations Document CAT/C/CHL/CO/5, May 14, 2009.

## Harassment of defenders of the rights of indigenous communities

In 2009, repression against defenders of the rights of indigenous communities were carried out through attacks. Ms. **Juana Calfunao Paillalef**, *lonko* (traditional authority) of the Juan Paillalef Mapuche community, remained detained in the Temuco Women's Penitentiary, where she has been held since November 16, 2006. Ms. Calfunao Paillalef was accused of committing minor offences, such as "attacking an authority", "threatening policemen on duty" and "public disorder". The latter offence was committed on her own private property in her community. While detained in 2006, Ms. Calfunao Paillalef was tortured and harassed by police personnel and other inmates. This incident was reported to the Public Ministry, courts and supervisory courts, but there have been no investigations into the case even though Ms. Calfunao Paillalef is still subjected to abuse. Similarly, Ms. **Patricia Roxana Troncoso Robles** and Mr. **José Huenchunao**, Mapuche leaders who have been imprisoned since 2004, remained detained at the Angol Study and Work Centre (*Centro de Estudio y Trabajo – CET*)<sup>15</sup>. Furthermore, although Messrs. **Jaime Marileo Saravia** and **Juan Patricio Marileo Saravia**, Mapuche leaders who were detained at the same time as Ms. Troncoso Robles and Mr. Huenchunao, were set free during the day, they still had to spend their nights at the prison in Collipulle<sup>16</sup>.

People who are somehow linked to indigenous groups were also detained and imprisoned, as illustrated by the detention of Mr. **Marcelo Garay Vergara**, a journalist, and Ms. **Elena Varela**, a documentary maker. On May 17, 2009, Mr. Garay Vergara was accused of "trespassing on private property" and arrested by a policeman (*carabinero*) while he was working in the autonomous community of Juan Quintremil, a commune in Padre las Casas. Although he was released after just a few hours, his photographic equipment and cell phone were confiscated. After being released, the journalist reported being followed, harassed and photographed by plain-clothes policemen. As for Ms. Varela, she was working on a documentary about the Mapuche people when she was arrested on May 7, 2008 and accused of having planned two violent armed robberies and belonging to an illegal crime organisation. After spending almost a hundred days on remand, Ms. Varela was finally released. Yet, as of the end of 2009, charges remained pending against Ms. Varela and the trial against her had been postponed several times. Besides being arrested and charged, she was not able to

15 / In July 2009, Mr. Huenchunao was moved from the prison in Angol to the CET in Angol, and was allowed to leave for seven days every three months.

16 / On August 21, 2004, the four were sentenced to ten years and one day in prison for "terrorist arson", a crime under the Anti-Terrorism Law No. 18.314, on land owned by the Mininco lumber company, on December 19, 2001.

recover her film, which included 200 tapes, and which could be damaged<sup>17</sup>. It should also be emphasised that during the Universal Periodic Review of Chile in May 2009, the UN Human Rights Council expressed concern about Ms. Varela's situation and asked the Chilean Government to "fully investigate the alleged cases of arrest and deportation of journalists and filmmakers depicting the problems of the Mapuche people"<sup>18</sup>.

Moreover, another method of intimidation involved breaking into the offices of defenders when they were not present, as shown by the attacks on the offices of Messrs. **José Lincoqueo** and **Richard Caifal**, both Mapuche lawyers. In October 2009, Mr. Lincoqueo's office was rifled through, important documents (about 350 files on land claim proceedings) and his professional diploma were stolen, and a typewriter and computers were destroyed. Both the Temuco Public Prosecutor as well as Temuco Supervisory Tribunal denounced this act, although no investigation was ever conducted into the matter. The lawyer filed a civil suit before a Santiago tribunal, requesting compensation for damages but, as of the end of 2009, the lawsuit was still being processed. Similarly, on November 2, 2009, a group of strangers entered into the private office of Mr. Caifal, forcing the door, and searching through copies of legal files, many of which were related to defending the Mapuche and their communities. This event was reported to the Public Prosecutor, but no investigation was ever conducted.

### **Criminalising social protest**

Indigenous communities were not the only victims of the criminalisation of social protest in 2009. Student protests in 2008 exposed police violence in repressing demonstrations. There was also abuse and legal harassment of groups of people with housing debts in 2009. Various wood and construction workers who had mobilised in the capital in November 2009 were repressed – some were arrested and four were injured<sup>19</sup>. The actions of groups linked to environmental issues were constantly being criminalised. For example, in October 2009, a group of 14 people who were participating in cultural activities in the street, protesting against the

17 / See Citizens' Observatory, *Boletín N° 8*, first semester 2009.

18 / See Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Chile*, United Nations Document A/HRC/12/10, June 4, 2009.

19 / The detained were from the National Federation of Workers in Construction, Wood, Services, and Allied Sectors (*Federación Nacional de Sindicatos de Trabajadores de la Construcción, Madera, Áridos, Servicios y Otros* - FETRAMA-Chile). They were detained so that their names could be recorded and

hydroelectric project in Coyhaique, a region of Aysén, were arrested and later released without any charges being pressed<sup>20</sup>. Similarly, protests held by some indigenous communities and peasants against mining, forestry and electric companies were also the targets of violence. For example, in Mehuín, an area of San José, some members of the Committee for the Defence of the Sea (*Comité de Defensa del Mar*)<sup>21</sup>, who oppose an Angelini national group cellulose factory that is trying to impinge on a community of fisherman and Mapuche, also suffered from constant aggression. For instance, one member of this Committee, Mr. Estanis Paillan Pacheco, was constantly threatened and physically assaulted in 2009, most recently during the month of July<sup>22</sup>.

The Chilean Congress also debated in 2009 various bills that would limit social protest<sup>23</sup>. One of these bills, which has been in the second constitutional phase of the Senate of the Republic since December 2008, is intended to criminally punish those who verbally abuse the police. Under another bill, the organisers and promoters of demonstrations would have to provide financial or some sort of community work as a form of compensation for any damages done to public or private property during authorised marches. This bill was in the Chamber of Deputies at the end of 2009<sup>24</sup>.

### Obstacles to human rights defenders involved in the fight against impunity

The defenders who oppose the impunity of crimes committed during the Chilean military dictatorship were also harassed in 2009. Former military official Edwin Dimter Bianchi sued Ms. **Pascale Bonnefoy**, an independent journalist, for libel and slander after she identified him as the so-called “Prince” of Chile Stadium<sup>25</sup> in the days following the military coup in 1973. In an article that was partially published in the Chilean newspaper *La Nación*, and published in its entirety in *Estocolmo.se*, *El Mostrador*, *PiensaChile* and *El Siglo* in May 2006, Ms. Bonnefoy revealed the findings of her investigation, confirming that the abusive “Prince” of Chile Stadium was none other than former military official Edwin Dimter Bianchi.

20 / See CODEPU and Citizens' Observatory.

21 / The Committee for the Defence of the Sea was formed in 2006, after the Government announced that a cellulose factory would dump its waste in the sea.

22 / See CODEPU and Citizens' Observatory.

23 / These bills are Bulletins 5969 and 4932. See Diego Portales University Centre for Human Rights (*Centro de Derechos Humanos de la Universidad Diego Portales*), *Informe Anual sobre Derechos Humanos en Chile 2009*, 2009.

24 / See CODEPU and Citizens' Observatory.

25 / Following the coup d'état on September 11, 1973, the sports facility was used as a detention centre, where coup officials held political prisoners.

The trial against Ms. Bonnefoy was supposed to begin on November 4, 2009, but was postponed due to various motions made by the parties: an allegation of implication of a judge, a request for a witness to declare from her office; and the absence of some of the accused, etc<sup>26</sup>.

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26 / On January 14, 15 and 18, 2010, hearings were held before the Seventh Court of Santiago Tribunal, at the end of which Magistrate Freddy Cubillos declared that the journalist did not “intend to slander”. Ms. Bonnefoy was later absolved of libel and slander under Law No. 19.733 on freedom of opinion, information and journalistic practice. The plaintiff lodged a nullity appeal, which was still pending.

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# COLOMBIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

During 2009, Colombia continued to be subjected to violent confrontations between guerrilla and paramilitary groups and the armed forces as a result of the internal armed conflict and drug trafficking activities. These confrontations affected the civil population either directly or indirectly, thereby violating their fundamental rights. The occurrence of serious human rights violations like extrajudicial executions, known as “false positives”, the links between members of the State and paramilitaries and the lack of investigation of these and other crimes remained issues that have moulded social and political life in the country for many years.

The armed conflict continued to increase the forced displacement figures, a phenomenon that contributes to the lack of social cohesion and an ever increasing lack of socio-economic equality. According to the Consultancy on Human Rights and Displacement (*Consultoría para los Derechos Humanos y el Desplazamiento* – CODHES), 2,412,834 people were displaced between 2002 and 2009, which indicates that of the approximate total number of displaced people in Colombia over the past 25 years, 4,915,579, or 49%, were displaced during President Uribe’s term of Government. In 2009, afro Colombians and indigenous people were once more those most affected by this phenomenon<sup>1</sup>.

Indigenous people not only continued to suffer from alarming levels of forced displacement, they were also victims of homicides, lack of food and other serious problems as a result of factors that include the internal armed conflict<sup>2</sup>. The peasants (*campesino*) way of life continued to disappear because of the internal armed conflict and the rural development policy that prioritises single crop cultivation for agro fuels, as well

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1/ According to CODHES, 83% of mass displacements that took place in 2009 were of ethnic groups (afro Colombians and indigenous people). See CODHES Newsletter No. 76, *Salto Estratégico o Salto al Vacío?*, January 27, 2010.

2/ In 2009, the Constitutional Court pointed out that numerous indigenous peoples throughout the country were threatened with “cultural and physical extinction” and called for a comprehensive and effective response to these challenges by the Government. See Decree 004/09 of the Colombian Constitutional Court, January 26, 2009.

as mining and oil and coal exploitation<sup>3</sup>. According to CODHES, forced displacement and forced eviction impact on food sovereignty and increase the vulnerability of displaced peasants.

In the national political context, various Colombian human rights organisations objected to Bill 1354 of 2009, which proposed a constitutional referendum on the reform that would allow for a second presidential re-election in the elections that were due to take place in May 2010. According to these organisations, the continuity of the Democratic Security Policy, established by President Uribe, could further affect the already delicate human rights situation in the country. Furthermore, the ongoing persecution of the Supreme Court judges by President Uribe did not stop; rather it increased further when the judges showed their reluctance to elect a Prosecutor General from the three candidates proposed by President Uribe himself. Another of the issues of concern for civil society organisations was the signing of a military agreement on October 30, 2009 that will facilitate access by United States soldiers and advisors to at least seven Colombian military bases.

At the end of 2009, negotiations to come to an agreement on the National Human Rights and International Humanitarian Law Action Plan remained suspended, whilst the Guarantees Committee process, which was established to debate the vulnerability of Colombian human rights defenders, continued. Throughout this process, new threats against various participating defenders were reported<sup>4</sup>. In its latest 2009 Annual Report, the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Colombia recommended that the Colombian Government implement the commitments provided for in this process<sup>5</sup>.

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3/ Between 2005 and 2009, 994,000 peasants left their land for these reasons. See CODHES Newsletter No. 76, *Salto Estratégico o Salto al Vacío?*, January 27, 2010.

4/ The National Guarantees Process began in March 2009 following demands made by the Peace, Human Rights, Democracy and Development Platforms (*Plataformas de Paz, Derechos Humanos, Democracia y Desarrollo*) and social sectors that were participating in meetings with the national Government in order to come to an agreement on the National Human Rights and International Humanitarian Law Action Plan (*Plan Nacional de Acción en Derechos Humanos y Derecho Internacional Humanitario* - PNADHDIH) due to the vulnerable situation of human rights defenders. The process included the confirmation of a national working group and 14 regional hearings with Government and civil society participation and accompanied by the international community. The objective is to broach the issue of the working conditions of human rights defenders, to assess the risk situation, to adopt measures that enable future harassments to be prevented, to protect and guarantee human rights activities and to progress in establishing trust between the two parties to encourage dialogue. See Corporation for the Defence and Promotion of Human Rights (REINICIAR).

5/ See OHCHR, *Annual Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, United Nations Document A/HRC/13/72, March 4, 2010.

In addition, torture continued to be high and follow specific patterns that indicate a generalised use of this practice in Colombia. The United Nations Committee Against Torture (CAT), in its observations on the examination of Colombia that took place between November 2 and 20, 2009, expressed serious concerns about what appears to be an increase in the number of torture cases that involve State agents. According to CAT, those who are deprived of their freedom, including defenders and leaders who have been subject to unfounded legal investigations, are detained in extremely vulnerable conditions. Furthermore, the Committee was concerned about the frequent attacks against defenders and the lack of effective protection measures<sup>6</sup>. It was also of particular concern that human rights defenders who report on the situation in prisons were criminalised and harassed<sup>7</sup>.

Human rights defenders, journalists, leaders of trade unions, peasants, afro Colombian, indigenous and social movements, or those who lead student and displaced persons organisations were all subject to different forms of harassment during 2009, including assassinations. This continued to be one of the major problems they faced, as was pointed out by international and regional bodies and organisations that publicly expressed their concern<sup>8</sup>. According to the “We are Defenders” (*Somos Defensores*) programme, 174 human rights defenders were assaulted in 2009; 32 of them were assassinated. Between 2002 and 2009, only in 2003 were there a greater number of assaults<sup>9</sup>.

### **False accusations and illegal intelligence activities carried out by Government employees and departments**

It has become known that the Administrative Security Department (*Departamento Administrativo de Seguridad – DAS*), the Colombian State intelligence agency that reports to the President’s Office, implemented an

6/ The Committee also showed serious concern about the security situation for defenders in Colombia. Its final report highlights the high number of human rights violations and points out the lack of State protection for the activists. Furthermore, the human rights defenders’ community was concerned about the Colombian Government’s announcement of its intention to privatise the Human Rights Defenders Protection Programme run by the Interior and Justice Ministry. See Committee Against Torture, *Concluding Observations of the Committee Against Torture - Colombia*, United Nations Document CAT/C/COL/CO/4, May 4, 2009.

7/ See Colombian Coalition Against Torture (comprised of various Colombian organisations and OMCT) Report, *Informe Alternativo sobre Tortura, Tratos Crueles, Inhumanos o Degradantes Colombia 2003-2009*, November 2009.

8/ See UN Special Rapporteur on the Situation of Human Rights Defenders Press Release, September 18, 2009, and Press Releases No. R67/09 and No. R21/09 of the Special Rapporteur for Freedom of Expression from the Inter-American Commission on Human Rights (IACHR), September 25 and April 29, 2009.

9/ See “We are Defenders” Report, *Informe 2009*, April 30, 2010.



espionage plan against human rights defenders, journalists, members of the opposition, and also judges and members of international organisations. It was reported that special groups based within the DAS carried out telephone tapping, monitoring and surveillance and they even planned threats against human rights defenders. Human rights organisations expressed their concern about these events and fear that some threats and attacks against them may have been carried out using information obtained by these groups<sup>10</sup>. Various defenders were victims of illegal surveillance, including Ms. **Ana Teresa Bernal**, a member of the National Network of Initiatives for Peace and Against War (*Red Nacional de Iniciativas por la Paz y contra la Guerra* – REDEPAZ), Mr. **Gustavo Gallón Giraldo**, Director of the Colombian Commission of Jurists (*Comisión Colombiana de Juristas* – CCJ), CODHES, the Research and Popular Education Centre (*Centro de Investigaciones y Educación Popular* – CINEP) and particularly the priest **Javier Giraldo S. J.**, member of CINEP, and the José Alvear Restrepo Lawyer's Collective (*Colectivo de Abogados "José Alvear Restrepo"* – CCAJAR). In particular, Mr. **Alirio Uribe Muñoz**, the then President of CCAJAR, was one of the main victims of a specific operation called "Transmilenio" that consisted of gathering information about his finances, but also the movements of CCAJAR staff members, the composition of their family and their means of transport. Orders were also given to infiltrate the organisation, to sabotage its work, to threaten daughters who were minors, to invent criminal proof against members of the organisation, to libel them, to influence the organisation's funding sources, and to pursue them in their travels outside of the country, as well as other actions aiming to "neutralise" or destroy its work. It was also known that the journalist **Hollman Morris** was a victim of surveillance and telephone tapping. Furthermore, the DAS files contained information about Ms. **Jahel Quiroga Carrillo**, Director of the Corporation for the Defence and Protection of Human Rights Reiniciar (*Corporación para la Defensa y Promoción de los Derechos Humanos Reiniciar*), who was also investigated by army intelligence services. The DAS files claim links between her and the Colombian Revolutionary Armed Forces (*Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo* – FARC-EP) and reveal an attempt to build proof against her. Moreover, Supreme Court judges reported harassment, surveillance and telephone tapping over the course of the past few years. Employees of the DAS obtained details about their estate, bank accounts, means of payment for mobile telephone bills

10 / See CCAJAR Statement, May 4, 2009, IACHR Press Releases No. 09/09 and No. 59/09, 26 February and August 13, 2009 and FIDH, *Colombia: Actividades ilegales del DAS*, May 2010.

and about the judges, and their families, lives in general. Telephone and email tapping, as well as personal surveillance of Senators and members of an opposition political party, critical of the current Government's policies were also reported.

As in 2008, statements made by Colombian Government employees about the activities of journalists, human rights leaders and defenders stigmatising their activities and, in many cases, suggesting that their work is linked to the defence of terrorism, were a serious cause for concern at both the national and international levels. In February 2009, Mr. Hollman Morris, who was producing a documentary about the release of three policemen and a soldier by the FARC, was arrested and subjected to interrogation by the army and high-ranking Government officials who demanded that he hand over the material he had collected<sup>11</sup>. Furthermore, President Uribe publicly accused him of alleged links with the insurgent group. Following this accusation made by the President, the journalist received multiple death threats. Statements of this kind not only represent condemnation of the work of human rights defenders, but also put their life at serious risk<sup>12</sup>.

The United Nations Special Rapporteur on the Situation of Human Rights Defenders, one of the four United Nations Special Procedures that visited Colombia during 2009<sup>13</sup>, expressed particular concern both about the illegal intelligence activities and the stigmatisation and branding of human rights defenders, which according to her is a prime reason of their insecurity<sup>14</sup>. In this context, various organisations expressed serious reser-

11 / It is of concern that the events described led to the Government opening an investigation against Mr. Hollman Morris "to establish if the crime of illegal obstruction, threat or any other crime had taken place during the events that the soldiers experienced prior to the release". At the end of 2009, the investigation had been filed as the charges were not typified, which means that it could be reopened at any time. Mr. Morris filed several complaints as the victim, in particular following threats he received after the statements of President Uribe in February 2009 and because of persecution by intelligence agents. As of the end of 2009, the investigations into these proceedings were still open.

12 / See Joint Press Release No. R05/09 by the UN and IACHR Special Rapporteurs for Freedom of Expression, February 9, 2009 and UN Special Rapporteur on the Situation of Human Rights Defenders Press Release, September 18, 2009.

13 / In addition, the UN Special Rapporteur for Extrajudicial Executions visited Colombia in June 2009, the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People in July 2009 and the UN Special Rapporteur on the Independence of Judges and Lawyers in December 2009.

14 / See UN Special Rapporteur on the Situation of Human Rights Defenders Press Release, September 18, 2009.

variations about the Intelligence and Counter-Intelligence Law approved in March 2009<sup>15</sup>.

### **Assassinations, threats and serious assaults against leaders and members of trade union organisations**

The situation for trade unionists did not improve in 2009 and they continued to be among the most repressed defenders in Colombia. According to the United Workers' Federation (*Central Unitaria de Trabajadores* – CUT), 46 trade union leaders were assassinated in 2009<sup>16</sup>. The following cases clearly show the situation faced by Colombian defenders. Mr. **Leovigildo Mejía**, trade union member of the Santander Agricultural Association (*Asociación Agraria de Santander*), disappeared on January 28, 2009 and was then assassinated. As of the end of 2009, the case was under investigation. Three other leaders were assassinated in February 2009: Mr. **Luis Alberto Arango Crespo**, President of the El Llanito Fishermen and Agricultural Workers' Association (*Asociación de Pescadores y Agricultores de El Llanito*) and leader of the Magdalena Medio Artisan Fishermen's Association (*Asociación de Pescadores Artesanales del Magdalena Medio*) – the case was still open as of the end of 2009 – ; Mr. **Guillermo Antonio Ramírez**, Deputy Director of the Risaralda Teachers' Trade Union (*Sindicato de Educadores de Risaralda*), and Mr. **Leoncio Gutiérrez**, member of the Valle Teachers' Trade Union (*Sindicato Único de Trabajadores de la Educación del Valle*). Mr. **Asdrúbal Sánchez Pérez**, a member of the National Prison Institute Workers' Trade Union (*Asociación Sindical de Empleados del Instituto Nacional Penitenciario y Carcelario*), was also assassinated on April 18, 2009. Mr. **Edgar Martínez**, a member of the Sur de Bolívar Agro-Mining Federation (*Federación Agrominera del Sur de Bolívar*), and Mr. **Víctor Franco Franco**, a member of United Caldas Teachers (*Educadores Unidos de Caldas* – EDUCAL), were both assassinated on April 18 and 22 respectively. The last two cases were also still under investigation as of the end of 2009. Similarly, on May 9, 2009, Ms. **Vilma Cárcamo Blanco**, trade union leader and member of the Board of the Association of Colombian Hospital Workers (*Asociación Nacional de Trabajadores Hospitalarios* – ANTHOC) Magangué, and who worked in the Complaints Commission, was assassinated in the Belisario sector of the Magangué municipality, Bolívar depart-

15/ On March 5, 2010, the Colombian Commission of Jurists (CCJ) and Reiniciar filed an unconstitutionality lawsuit against Law 1288 of 2009 or the Intelligence and Counter-Intelligence Law. The OMCT signed an "amicus curiae" related to this lawsuit. See Reiniciar Report, *La Inteligencia Estatal como Mecanismo de Persecución Política y Sabotaje a la Defensa de los Derechos Humanos: Es Idónea la Ley de Inteligencia para Erradicar Esta Práctica Sistemática?*, September 2009.

16/ See CUT. The International Trade Union Confederation (ITUC) reported 48 trade unionist assassinations. See ITUC, *Annual Survey of Trade Union Rights 2010*, June 9, 2010.

ment. The trade union leader, together with the Board of ANTHOC Magangué, were leading protest days demanding the overdue payment of salaries and the negotiation of the “List of Respectful Requests”, which had been postponed several times. As of the end of 2009, her assassination was being investigated. The armed assault against Mr. **José Jair Valencia Agudelo**, a member of EDUCAL, who was attacked by hired assassins on a motorbike on February 26, 2009 and seriously injured, as well as the assassination of teacher **Milton Blanco Leguizamón** on April 24, 2009 confirm that the education sector is also gravely affected by anti trade union violence. By the end of 2009, the judicial proceedings on this case continued.

In addition to assassinations, trade unionists were also subjected to multiple threats. During the month of November 2009, various trade union leaders received death threats. On November 22, 2009, Mr. **Jairo Méndez** found a death threat against the National Food Workers’ Union (*Sindicato Nacional de Trabajadores de la Industria de Alimentos – SINALTRAINAL*) in his home, in which various leaders and members of this trade union and who work for Nestlé Colombia S.A. and Coca Cola were mentioned. The threat arrived at a time when the union was in conflict with the National Soft Drink Industry Company – Coca Cola – as the latter did not want to sign the work collective agreement, in spite of the fact that they had reached an agreement on the list of requests presented to the company.

### **Assassinations, threats and serious assaults against indigenous and peasant leaders**

The indigenous and peasant leaders who defend their land rights were often victims of serious threats and even assassinations. On February 15, 2009, Ms. **Alba Nelly Murillo**, President of the Community Action Committee (*Junta Acción Comunal*) for the La Esmeralda hamlet, in the El Castillo municipality, Meta department, disappeared. On May 7, 2008, following a meeting with the community in which reports of human rights violations committed by the national army were documented, various soldiers had asked after Ms. Murillo and accused the peasant farmers of having links with the guerrilla. At the end of 2009, Ms. Alba Nelly Murillo remained disappeared and the investigation into her disappearance was still open. The difficult situation experienced by peasant leaders was also illustrated by the assassination of Mr. **Erasmo Cubides**, an outstanding peasant and community leader, who was assassinated on his farm, in the Las Gaviotas hamlet, Arauquita municipality, Arauca department. Shortly before, an armed group had been threatening members of the Departmental Peasant Association (*Asociación Departamental de Usuarios Campesinos – ADUC*), of which Mr. Cubides was a del-

egate, and had declared its members to be military targets. Furthermore, members of the Social and Community Indigenous Resistance Group (*Minga de Resistencia Social y Comunitaria*) were seriously threatened in 2009. On May 11, 2009, the twelve year-old daughter of the indigenous leader Ms. **Aida Quilcué**, Representative of the Cauca Regional Indigenous Council (*Consejo Regional Indígena del Cauca*) and delegate of the National Indigenous Organisation of Colombia (*Organización Nacional Indígena de Colombia* – ONIC), was approached by four men opposite her house who pointed guns at her. The day before, four people, who claimed to belong to the Colombian Welfare Institute (*Instituto Colombiano de Bienestar Familiar* – ICBF), tried to get into the school where the girl studied and would have gone to visit her at her home later that day. Ms. Aida Quilcué had suffered an attack in December 2008, resulting in the death of her husband, Mr. Edwin Legarda. In June 2009, an arrest warrant was issued for Ms. Aida Quilcué and Mr. **Feliciano Valencia**, Spokespersons for the Social and Community Indigenous Resistance Group (*Minga de Resistencia Social y Comunitaria*) as well as for Mr. **Daniel Piñacue**, indigenous Governor, and two members of the local community, Messrs. **José Daniel Ramos Yatacúe** and **Mario Yalanda Tombé**, reportedly two indigenous guards. The four of them were accused of “aggravated kidnapping and causing serious personal injuries” against Mr. Danilo Chaparral Santiago, an Army Captain attached to the 15th Counter-Guerrilla Unit “Libertadores”. This member of the army had infiltrated the Social and Community Indigenous Resistance Group meeting that took place in the María indigenous territory in Piendamó, bringing objects with him that could have been used to discredit the Social and Community Indigenous Resistance Group. Mr. Chaparral was arrested by the indigenous authorities and put on trial according to the customs of the Assembly, in accordance with indigenous jurisdiction within their territories, as recognised by the Colombian Constitution. The indigenous leaders for whom an arrest warrant was issued ensured the principles of due process were abided by in the proceedings against Mr. Chaparral to ensure that his rights were respected. By the end of 2009, the investigation was still open and the issuance of a new arrest warrant could not be ruled out.

### **Human rights defenders once more victims of paramilitary threats**

Violence against human rights defenders by paramilitary groups has taken place for many years, yet is still far from over. The Colombian State

has been incapable of preventing the systematic violence against defenders<sup>17</sup> carried out by the so-called “emerging groups” – armed groups that have appeared following the alleged demobilisation of the paramilitary groups through the implementation of the Justice and Peace Law, an initiative of President Uribe’s Government approved in 2005.

A means of conditioning the work carried out by human rights defenders was intimidation, including through numerous death threats. Throughout 2009, some of the victims of threats were Ms. **Blanca Irene López** and Ms. **Claudia Erazo**, lawyers and members of the Yira Castro Legal Corporation (*Corporación Jurídica Yira Castro* – CJYC), and Mr. **Rigoberto Jiménez**, leader of the National Displaced Persons Organisation (*Coordinación Nacional de Desplazados* – CND)<sup>18</sup>, who received death threats via emails on February 4 and March 26 sent by the Black Eagles (*Águilas Negras*) and the United Self-Defence Forces of Colombia – Capital Block (*Bloque Capital de Autodefensa Unidas de Colombia* – AUC). By the end of 2009, the Prosecutor General’s Office had not only filed the case, but had ordered to certify the documents needed in order to begin investigations into the complainants for the alleged crime of false complaints. Another case in which threats were used to intimidate human rights defenders took place in March, when the CCJ received a fax sent on March 2, 2009 by a paramilitary group declaring Ms. **Lina Paola Malagón Díaz**, a lawyer at the Commission<sup>19</sup>, to be a “military target”. Another member of the Commission was also threatened in the fax, whose name was not disclosed, and who had to leave the country. By the end of 2009, no progress had been made in the investigation of this threat. Mass emails sent to NGOs were frequently used by these new paramilitary groups. A clear example being the death threats sent by the Bucaramanga metropolitan block called “New Generation Black Eagles” (*Nueva Generación Águilas Negras*) on February 2, 2009 to a large group of

17/ The lack of Government action following protection requests made by human rights defenders is telling. Proof of this is the letter sent by Mr. Jorge Molano Rodríguez, member of the Non-Institutionalised Defenders Network (*Red de Defensores No Institucionalizados*) to the highest national authorities requesting protection for his activities as a human rights lawyer. Whilst there has been a partial response to this protection request, the lawyer’s security situation continues to be precarious because of the cases he represents.

18/ It is important to highlight the ongoing acts of intimidation that have been carried out against members of both organisations since 2007, events that were denounced and received no response from official authorities.

19/ Ms. Malagón Díaz produced a report on the impunity that exists for crimes committed against trade unionists. This report was important in the hearing that took place in the US Congress and during which the situation of Colombian workers’ rights and anti-trade unionist violence was analysed. This event led to statements by the Colombian President who accused participants in the meeting of distorting the truth, motivated by “political hatred”.

human rights organisations, including the Association of Family Members of the Detained and Disappeared (*Asociación de Familiares de Detenidos Desaparecidos de Colombia* – ASFADDES), the Colombian Association for Peace (*Asociación por la Paz de Colombia* – ASOPAZ), the Feminine Popular Organisation (*Organización Femenina Popular* – OFP) and the Foundation Committee for Solidarity with Political Prisoners (*Fundación Comité de Solidaridad con los Presos Políticos* – FCSP). Similarly, another paramilitary group that fits into the same category, known as “Los Rastrojos”, sent a press release to the following organisations on November 3, 2009: CREAR, New Rainbow Corporation (*Corporación Nuevo Arco Iris*), the Departmental Human Rights Committee (Comité Departamental de Derechos Humanos), the Development and Peace Foundation (*Fundación Desarrollo y Paz* – FUNDEPAZ), the National Victims of State Crimes Movement (*Movimiento Nacional de Víctimas de Crímenes de Estado* – MOVICE), the United Nations Development Programme (UNDP), the Pastos School (*Escuela de los Pastos*), Tumaco Pastoral Aid (*Pastoral Social de Tumaco*), the Indigenous Unity for the Awa People (*Unidad Indígena del Pueblo Awá* – UNIPA) and the Ricaurte Elders’ Council (*Cabildo Mayor Awá de Ricaurte* – CAMAWARI) in the Nariño department, declaring them to be a “military target”.

### **Arbitrary detentions and judicial harassment against defenders fighting for truth, justice and reparation**

In addition to the violence carried out by paramilitary groups, human rights defenders fighting for truth, justice and reparation faced judicial harassment, used by the Colombian State as a means of intimidation. Detentions for no reason, on several occasions as the result of tip offs made by paid informants working for the security services, the police or the army, the opening of judicial proceedings or the threat of doing so, constitute serious harassment whose aim is to dissuade those who carry out human rights activities. An example worthy of mention is the reopening of the investigations against the priest Father Javier Giraldo S. J. and Mr. **Elkin Ramírez Jaramillo**, lawyer and Director of the Corporation Judicial Freedom (*Corporación Jurídica Libertad*), ordered by the Bogotá Public Prosecutor’s Office 216 on February 13, 2009 for the crimes of “slander”, “libel” and “false reports”, following allegations made by a member of the Colombian army. By the end of 2009, the investigation of slander and libel had concluded because of lack of evidence. On April 8, 2009, the Public Prosecutor’s Office 188 delegated to Bogotá criminal magistrates courts also took the decision to conclude the investigation of “false reports”. However, after an appeal, on October 22, 2009, the Public Prosecutors Office 11 delegated to the Bogotá Superior Court revoked the decision to conclude the investigation, ordering the Public Prosecutor’s Office

188 to continue the investigation and requesting also a preliminary inquiry of Father Javier Giraldo S.J and in so doing, linking him to the process. By the end of 2009, the investigation remained open, the delays in the criminal proceedings against the human rights defenders resulting in consequences for their work. Furthermore, at the end of 2009, Mr. **Carmelo Agámez Berrio** remained arbitrarily detained in Sincelejo jail, in the Sucre department, since November 15, 2008. Mr. Agámez is a member of the Sucre branch of MOVICE and was accused of “conspiracy to commit a crime” for allegedly participating in a meeting in the Verrugas hamlet, San Onofre municipality, in 2002 and to have presented himself as a candidate in local council elections in the 2003-2007 period, with the support of paramilitary structures. It was reported that this is an entirely false accusation, given that Mr. Agámez has been a member of the opposition and his supporters and support bases were systematically threatened by those same paramilitary structures. On May 13, 2009, Mr. **Martín Sandoval**, President of the Arauca office of the Permanent Committee for the Defence of Human Rights (*Comité Permanente por la Defensa de los Derechos Humanos* – CPDH), who was accused of “rebellion” at the end of 2008, was freed and pronounced innocent by the Saravena Public Prosecutor’s First Office after six months of arbitrary detention. The harassment of human rights defenders was also illustrated by the detention in unclear circumstances of Messrs. **Winston Gallego** and **Jorge Meneses**, members of the Sumapaz Foundation (*Fundación Sumapaz*), in the framework of an investigation against various organisations. The said investigation was founded on intelligence reports produced jointly by the Army Regional Military Intelligence Unit (*Regional de Inteligencia Militar del Ejército* – RIME) and the Prosecutor General’s Office Technical Investigation Unit (*Cuerpo Técnico de Investigaciones* – CTI), which consider the activities carried out by these organisations to be criminal. The accusations were also based on the statements of two witnesses, demobilised members of the paramilitary groups, who as students at Antioquia University carry out intelligence activities for the Fourth Brigade on the university campus. While Mr. Jorge Meneses was subsequently released, as of the end of 2009, Mr. Winston Gallego remained detained in the Doña Juana prison, La Dorada Caldas department<sup>20</sup>, and the investigation against both of them continued in the Medellín 74th Public Prosecutor’s Office, delegated to the Fourth Brigade. Similarly, on March 2, 2009, Mr. **Gabriel Henao** and Mr. **Narciso Beleño**, respectively Acting President and Treasurer

20 / Mr. Gallego was released pending trial in May 2010. Until that time, Mr. Gallego continued his work as a human rights defender denouncing, together with other social prisoners, human rights violations in the prison, particularly cruel, inhuman and degrading treatment to prisoners by agents of the National Prisons Institute (*Instituto Nacional Penitenciario y Carcelario* - INPEC).



of the Farmers and Mining Federation of Southern Bolívar (*Federación Agrominera del Sur de Bolívar*), and Mr. **Víctor Acuña**, Spokesman for the Southern Bolívar Working Group (*Mesa de Interlocución del Sur de Bolívar*), were arrested without an arrest warrant, a few days after their meeting with high ranking officials of the Colombian Government about the human rights situation and impunity in the southern Bolívar region<sup>21</sup>. The three of them were transferred to the National Intelligence and Legal Investigations Service (*Servicio de Investigaciones Judiciales e Inteligencia Nacional* – SIJIN) in Bucaramanga, where they were interrogated, their fingerprints were taken and they were asked to sign a document confirming that they had been treated well, which they refused to do. They were released the same day, and at no time were they informed as to why they had been detained. The events were reported to the relevant authorities and a right to petition was filed to find out why they had been detained. When the national police failed to respond to the right to petition, a writ for the protection of their rights was filed and the Supreme Court ordered that a response be provided. On July 8, 2009, they were informed that they were detained for reasons including “a response to a telephone call made by a citizen”.

### Assassination of a defender of LGBT rights

Defenders of Lesbian, Gay, Bi-sexual and Transgender (LGBT) rights were also victims of threats and repeated attacks during 2009. The assassination of Mr. **Álvaro Miguel Rivera Linares** in his apartment on March 6, 2009 particularly moved the international community<sup>22</sup>. Like other human rights defenders who were assassinated, Mr. Rivera Linares had received threats on a number of occasions. Furthermore, on April 30, 2009, various computers were stolen from *Radio Diversa*, one of the radio stations that reports on the LGBT community situation in Bogotá since February 2008. Shortly afterwards, on May 5, 2009, a group called “the Organisation” (*La Organización*) sent a threatening email to Mr. **Carlos Serrano**, a Chilean based in Colombia for five years and Director of Radio Diversa, as well as the employees of the radio station. The message announced an alleged attack against the radio station if Mr. Serrano did not leave the country within a week.

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21/ At the same time, lawyer **Leonardo Jaimes Marín**, a member of the Foundation Committee for Solidarity with Political Prisoners (FCSPP), was threatened by the police when he tried to intervene to ensure that the rights of arrested leaders were respected.

152 22/ The assassination of Mr. Linares was included in IACHR Press Release No. 11/09, March 12, 2009.

## Threats against women's rights defenders

Throughout 2009, there were frequent threats, harassments against and even assassinations of women human rights defenders, including those who defend women's rights<sup>23</sup>. For example, on June 13, 2009, a number of suspicious looking men watched the Centre for Comprehensive Promotion for Women and Families "Open Workshop" (*Centro de Promoción Integral para la Mujer y la Familia "Taller Abierto"*)<sup>24</sup> in Jamundí municipality, Valle del Cauca, where a community workshop was being held for women leaders<sup>25</sup>. This was not the first incident of harassment of the Open Workshop leaders and, as previously, the situation was reported to the Prosecutor General's Office, but no progress was made in the investigation. Women's human rights organisations were also victims of threats sent via email by paramilitary groups. On October 29, 2009, the Soacha Dialogue and Management Group (*Mesa de Interlocución y Gestión de Soacha*) and the National Support Group for Displaced Persons Organisations (*Mesa Nacional de Fortalecimiento a Organizaciones de Población Desplazada*) received a pamphlet in their inboxes entitled "Fifth Black Eagles Bulletin", in which various displaced women were declared a target of this paramilitary group, all of them leaders in Bogotá and Cundinamarca municipalities. Furthermore, the message contained both death threats against the women and against leaders of the displaced persons organisations that comprise the Soacha Dialogue and Management Group and the National Support Group for Displaced Persons Organisations and the announcement of an "extermination plan" of those who run these organisations<sup>26</sup>. They also received text message along the same lines. For example, on November 21, 2009, Ms. Yolanda Guzmán, Ms. Clara Feijoo and Ms. Nidia Isaza, three displaced population leaders in Cundinamarca working with the Human Rights Observatory for Displaced Women in Colombia "in armed conflict situations, women also have rights" (*Observatorio de Derechos Humanos de las Mujeres en Colombia "en situaciones de conflicto armado las mujeres también tienen derechos"*) initiative, which works on training, advocacy and monitoring processes of the human rights situation of displaced women,

23/ According to the Women and Conflict Committee (*Mesa de Mujer y Conflicto*), from July 1996 to May 2009, at least 40 human rights defenders were victims of violations of the right to life. Of them, six were victims of enforced disappearance. In one of the cases of enforced disappearance, the victim was freed. See Women and Conflict Committee Report, *IX Informe sobre Violencia Sociopolítica Contra Mujeres, Jóvenes y Niñas en Colombia*, December 2009.

24/ Since it was founded, the Centre for Comprehensive Promotion for Women and Families "Open Workshop" has focused on promoting empowerment, rights promotion and defence processes, the prevention of HIV/AIDS, the promotion of self-organisation and civil participation of women, particularly displaced women, young people and indigenous communities in the Valle and Cauca departments.

25/ See Sisma Mujer Corporation (*Corporación Sisma Mujer*).

26/ See CCJ and Sisma Mujer Corporation and Human Rights Observatory for Displaced Women in Colombia "in armed conflict situations, women also have rights" Press Release, November 17, 2009.

received a threatening text message that was also sent to two women who are not members of the Observatory<sup>27</sup>. Previously, the three same leaders had been victims of threats against their lives, which were reported to the authorities. Investigations were carried out by the Prosecutor General's Office, although there was no concrete result by the end of 2009.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Mr. Carmelo Agámez Berrío	Arbitrary detention / Fear for personal security and integrity	Urgent Appeal COL 021/1108/OBS 202.1	January 8, 2009
	Arbitrary detention / Judicial proceedings / Threats	Urgent Appeal COL 021/1108/OBS 202.2	November 19, 2009
Mr. Yuri Neira	Harassment / House raid / Attack / Fear for security	Urgent Appeal COL 001/0109/OBS 014	January 23, 2009
Yira Castro Legal Corporation (CJYC) / Ms. Blanca Irene López, Ms. Claudia Erazo and Mr. Rigoberto Jiménez	Threats / Harassment / Intimidation	Urgent Appeal COL 003/0209/OBS 030	February 18, 2009
	New threats	Urgent Appeal COL 003/0209/OBS 030.1	March 30, 2009
Mr. Martín Sandoval	Arbitrary detention / Judicial harassment	Open Letter to the authorities	February 18, 2009
Mr. Hollman Morris	Death threats / Harassment	Urgent Appeal COL 004/0209/OBS 031	February 19, 2009
Association of Family Members of the Detained and Disappeared (ASFADDES), Association for Peace in Colombia (ASOPAZ), Feminine Popular Organisation (OFP), Worker's Union (USO), Foundation Committee for Solidarity with Political Prisoners (FCSP) and United Worker's Federation (CUT)	Death threats / Harassment	Urgent Appeal COL 005/0209/OBS 032	February 19, 2009
Ms. Alba Nelly Murillo	Presumed enforced disappearance	Urgent Appeal COL 006/0209/OBS 034	February 27, 2009
Ms. Lina Paola Malagón Díaz and Mr. José Luciano Sanín Vásquez	Death threats	Urgent Appeal COL 007/0309/OBS 036	March 4, 2009

27/ See Sisma Mujer Corporation. The Human Rights Observatory for Displaced Women in Colombia "in armed conflict situations, women also have rights" is an initiative in which training, advocacy and monitoring processes related to the situation of displaced women are being developed. 600 displaced women and 60 leaders are currently members of the Observatory. They belong to approximately 75 displaced persons organisations (mixed and women) in six regions of the country.

Names	Violations / Follow-up	Reference	Date of Issuance
Messrs. Leovigildo Mejía, Luis Alberto Arango Crespo, Guillermo Antonio Ramírez Ramírez, Leoncio Gutiérrez and José Jair Valencia Agudelo	Assassinations / Attempted assassination	Urgent Appeal COL 008/0309/OBS 039	March 4, 2009
Messrs. Gabriel Henao, Narciso Beleño, Víctor Acuña and Leonardo Jaimes Marín	Arbitrary detention / Judicial harassment	Urgent Appeal COL 009/0309/OBS 041	March 5, 2009
Mr. Álvaro Miguel Rivera Linares	Assassination	Urgent Appeal COL 010/0309/OBS 046	March 10, 2009
Father Javier Giraldo S.J and Mr. Elkin Ramírez Jaramillo	Judicial harassment	Urgent Appeal COL 011/0309/OBS 048	March 13, 2009
Mr. Edgar Martínez	Assassination	Urgent Appeal COL 012/0409/OBS 066	April 27, 2009
Ms. Ana Teresa Bernal, National Network of Initiatives for Peace and Against War (REDEPAZ), Mr. Gustavo Gallón, Mr. Hollman Morris and Mr. Alirio Uribe, Colombian Commission of Jurists (CCJ), Consultancy on Human Rights and Displacement (CODHES), Research and Popular Education Centre (CINEP) and José Alvear Restrepo Lawyer's Collective (CCAJAR)	Espionage / Harassment	Open Letter to the authorities	May 4, 2009
Ms. Aída Quilcué	Death threats / Harassment	Urgent Appeal COL 013/0509/OBS 076	May 14, 2009
Mr. Asdrúbal Sánchez Pérez, Mr. Edgar Martínez, Mr. Víctor Franco Franco, Mr. Milton Blanco Leguizamón and Ms. Vilma Cárcamo Blanco	Assassinations	Open Letter to the authorities	May 14, 2009
Ms. Aida Quilcué and Mr. Feliciano Valencia, Mr. Daniel Piñacue, Mr. José Daniel Ramos Yatacúe and Mr. Mario Yalanda Tombé	Judicial harassment	Urgent Appeal COL 014/0609/OBS 083	June 16, 2009
CCAJAR / Ms. Ana Teresa Bernal, Mr. Gustavo Gallón, Ms. Shirin Ebadi, Mr. Sidiki Kaba, Mr. Antoine Bernard, Father Javier Giraldo and Mr. Alirio Uribe	Surveillance / Espionage / Harassment	Press Release	June 23, 2009
Mr. Winston Gallego Pamplona and Mr. Jorge Meneses	Arbitrary detention / harassment	Urgent Appeal COL 015/0609/OBS 089	June 24, 2009
	Ongoing arbitrary detention / Arbitrary transfer / Judicial harassment	Urgent Appeal COL 015/0609/OBS 089.1	December 17, 2009

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
<b>Mr. Erasmo Cubides</b>	Assassination	Urgent Appeal COL 016/0909/OBS 138	September 23, 2009
<b>Mr. Augusto León Lugo</b>	Attempted assassination	Urgent Appeal COL 017/1009/OBS 148	October 14, 2009
CREAR, New Rainbow Organisation, the Departmental Human Rights Committee, the Development and Peace Foundation (FUNDEPAZ), the National Victims Movement (MOVICE), the United Nations Development Programme (UNDP), the Pastos School, Tumaco Pastoral Aid, the Indigenous Unity for the Awa People (UNIPA) and the Ricaurte Elders Council (CAMAWARI)	Death threats	Urgent Appeal COL 018/1109/OBS 160	November 5, 2009
<b>Mr. John Smith Porras Bernal</b>	Death threats / Harassment	Urgent Appeal COL 019/1109/OBS 168	November 17, 2009
<b>Ms. Ingrid Vergara</b>	Death threats / Harassment	Urgent Appeal COL 019/1109/OBS 169	November 18, 2009
<b>Mr. Jorge Eliécer Molano Rodríguez</b>	Harassment / Intimidation	Urgent Appeal COL 020/1209/OBS 180	December 4, 2009
<b>Ms. Nubia Patricia Acosta, Mr. Jhon Jairo Betancour, Ms. Luz Marina Arroyabe, Father Javier Giraldo S.J., Mr. Abilio Peña, Mr. Danilo Rueda, Mr. Rodrigo Montoya and Ms. Marcela Montoya / Inter-Church Justice and Peace Commission</b>	Threats / Defamation / Intimidation	Urgent Appeal COL 021/1209/OBS 188	December 14, 2009
<b>National Union of Food Industry Workers (SINALTRAINAL) / Messrs. Luis Javier Correa Suárez, Luis Eduardo García, Jairo Méndez, David Flores, Cesar Plazas, José García Pedro Nel Taguado, Luis Sánchez Pedro Zorrilla, Hebert Arredondo, Edgar Paez and El Mono Olaya</b>	Death threats / Intimidation	Urgent Appeal COL 022/1209/OBS 190	December 15, 2009

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# CUBA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

Two years have passed since Mr. Fidel Castro stepped down from power and yet the situation in Cuba has not changed very much. At the international level, with the election of a new American President came the hope that the US-Cuban relations might improve, but no changes were seen in 2009. As such, the economic embargo that has been in place since 1962, with very serious consequences on access to food and health in Cuba, remained in force. On October 28, 2009, the UN General Assembly condemned the United States for not ending the economic embargo against Cuba<sup>1</sup>, which continued to be basic pretext for political repression and for limiting fundamental freedoms on the island.

As a member of the UN Human Rights Council<sup>2</sup>, Cuba was subjected to the Universal Periodic Review in February 2009. This review led to more than 80 recommendations, 60 of which Cuba accepted<sup>3</sup>. These recommendations, including those on the ratification of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and other treaties related to the prohibition of torture, still had to be implemented. Furthermore, Cuba also still had to follow up on recommendations to invite all UN Special Rapporteurs to the island, especially those on human rights defenders and freedom of expression.

At the regional level, on June 3, 2009, the Organisation of American States (OAS) adopted Resolution AG/RES. 2438 (XXXIX-O/09), which rendered null and void the 1962 Resolution to exclude the Cuban Government from participating in the inter-American system.

At the national level, serious violations of civil and political rights persisted. Cuba continued to harass human rights defenders and disregard the

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1/ See Resolution A/RES/64/6 from October 28, 2009. This resolution was supported by the 187 countries that voted against the embargo. In December 2009, the States present at the XIX Ibero-American Summit also demanded that the US Government ends its economic, commercial and financial blockade against Cuba, as well as stops applying the Helms-Burton Law.

2/ On May 12, 2009, Cuba was re-elected as a member of the Human Rights Council for another three-year term.

3/ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Cuba*, United Nations Document A/HRC/11/22, May 29, 2009.

legitimacy of their activities, to repress political dissidents, and to hinder freedoms of movement, association, expression and peaceful assembly. In 2009, the number of prisoners of conscience remained high, reaching a total of 201 cases documented by the Cuban Commission for Human Rights and National Reconciliation (*Comisión Cubana de Derechos Humanos y Reconciliación Nacional* – CCDHRN)<sup>4</sup>. The majority of detainees were accused of terrorism or other acts against State security, including attack, contempt, slander of institutions and organisations of heroes and martyrs, public disorder, being “socially dangerous with a disposition to commit a crime” (*peligrosidad social pre-delictiva*), insubordination, disgraceful conduct, illegally exiting the country, espionage and pirating. Among the people detained for these crimes are also independent journalists<sup>5</sup>. Prisoners of conscience suffer from deplorable prison conditions that affect their physical integrity. The case of Mr. Orlando Zapata Tamayo, a member of the Alternative Republican Movement (*Movimiento Alternativa Republicana*) and the National Civic Resistance Committee (*Consejo Nacional de Resistencia Cívica*), who began a hunger strike on December 3, 2009 to protest against his arbitrary detention and poor treatment in prison, is very telling of the situation<sup>6</sup>.

When it was announced that the UN Special Rapporteur on Torture would be visiting the country, Cuba began to make a series of changes to its prison policy. Facilities were altered, some prison rules were changed<sup>7</sup>, some inmates were transferred to lower security detention centres, while others were transferred to closed labour camps in the mountains, “where they can enjoy the air and sun, but are subjected to rigorous agricultural labour all

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4/ See CCDHRN Report, *Cuba a Inicios del 2010: Continúa Empeorando la Situación de Derechos Humanos*, January 19, 2010. The 201 documented cases show a similar level to that of 2008, when 205 cases were recorded.

5/ The work of journalists is constrained by the “Law for the Protection of National Independence and the Economy of Cuba” under which people can be detained for up to 20 years for making commentaries that the State believes will help the “enemy”. Similarly, under the “Enemy Propaganda Law”, a person can serve up to 15 years in prison for spoken or written propaganda. In addition, access to the Internet is limited in Cuba, thus being one more obstacle to freedom of expression.

6/ Mr. Orlando Zapata Tamayo died on February 23, 2010 at the “Hermanos Ameijeiras” hospital in Havana, as a result of the various types of mistreatment and abuse that he suffered while in detention. The effects of this mistreatment worsened during his hunger strike and, according to reports, did so because of a lack of proper medical attention.

7/ According to the Cuban Council of Human Rights Rapporteurs (CRDHC), some of the changes to prison regulations include allowing prisoners to wear watches and rings, etc. Furthermore, in some cases, officials distributed certain goods to prisoners, such as a pair of underpants per prisoner, toilet paper, a toothbrush and a disposable razor, among other things.

day long and are paid meagre wages. This allowed the authorities to clear out the penitentiaries, eliminating overcrowding and other deficiencies”<sup>8</sup>.

Moreover, it should be noted that some NGOs in Cuba were still not recognised by the Government, although they tried to register themselves as stipulated by the law. The CCDHRN, for example, has sought this recognition since 1987 in accordance with the Law on Association, but in vain. The State does not respond to certain requests so that these organisations remain “illegal” and so that the Criminal Code can be used against their members<sup>9</sup>. Likewise, the crime of being “socially dangerous with a disposition to commit a crime”<sup>10</sup>, used to harass defenders, remained in effect.

### “Ongoing and low profile” repression

The policy of “ongoing and low profile” repression of human rights defenders is based on constant harassment and monitoring, systematic arrests that last either a few hours or a few days, threats, and short but abusive interrogations. Human rights defenders were threatened with having to leave Havana, being sentenced up to twenty years in prison or facing restrictions to their freedom of movement, among other things.

For instance, the Ladies in White (*Las Damas de Blanco*) continued to suffer from constant monitoring, harassment and threats from agents from the Department of State Security (*Departamento de la Seguridad del Estado* – DSE) and Committees for the Defence of the Revolution (*Comités de Defensa de la Revolución*)<sup>11</sup>. For example, on December 9 and 10, 2009, the Ladies in White were visited by State Security agents, threatened and then brutally beaten in the streets of Havana as they were organising a peaceful demonstration to celebrate Human Rights Day<sup>12</sup>.

The members of the Cuban Council of Human Rights Rapporteurs (*Consejo de Relatores de Derechos Humanos de Cuba* – CRDHC) as well as the people who work with them were also victims of the

8/ See CRDHC Bulletin, March 2009.

9/ See Cuban Democratic Directory.

10/ Articles 72 to 84 of the Criminal Code. There are no exact figures but, according to the CCDHRN, several thousands of Cubans are imprisoned for this crime, including human rights defenders.

11/ The Ladies in White have suffered various acts of harassment because of their fight for the release of their family members, spouses, fathers, brothers, sons, nephews, and even friends, who were arrested during a period known as the Black Spring of 2003. Between March 18 and 20, 2003, 75 Cuban opponents were detained and, a few weeks later, were charged with “attacking the State’s independence” and given long sentences. The majority of these people are considered prisoners of conscience because they did not commit any crime, but are being punished for having peacefully exercised their fundamental freedoms.

12/ See Cuban Democratic Directory.



State's approach to permanent, low profile repression. In January 2009, Mr. **Sergio Díaz Larrastegui**, a visually impaired English professor, was fired from the Copextel company for hosting the CRDHC in his home as well as receiving Mr. **Juan Carlos González Leiva**, Secretary General of the CRDHC, and Ms. **Tania Maceda Guerra**, an independent journalist from the CRDHC. On May 8, 2009, Mr. Díaz Larrastegui was detained for the entire afternoon at the police station in Luyanó, Havana. Although he is blind, deaf and diabetic, he was placed in an isolated cell, where he was subjected to a long, severe interrogation and was mistreated by State Security officials. Members of the DSE pressured him to cooperate with them, allowing them to put microphones and cameras in his home, and to inform them of the people passing through his house. They also told him that the people he was hosting in his house were counterrevolutionaries and should therefore leave. On May 13, 2009, Mr. Sergio Díaz Larrastegui, Mr. Juan Carlos González Leiva and Ms. Tania Maceda Guerra were summoned to appear before a DSE and national police official at the police station. There they received a fine of 4,500 pesos and were told to leave Mr. Díaz Larrastegui's house and return to their native province of Ciego de Ávila. On August 14, 2009, Ms. **Doralis Álvarez Soto** and Ms. **Yudelmis Fonseca Rondón**, reporters for the CRDHC Information Centre, were summoned and arrested by DSE agents, who subjected them to cold temperatures for four hours<sup>13</sup>. Both were threatened with prison time and exile from Havana. Furthermore, on August 14, 2009, Cuban Military Intelligence Services cut the Information Centre's phone line for five days. Two weeks earlier, their email address had been disabled. This harassment of the Council of Human Rights Rapporteurs continued throughout 2009.

In addition, the policy of rejecting visas to leave the country remained in effect. For instance, Mr. **Oscar Mario González Pérez**, an independent journalist from the CRDHC, was not granted a visa to leave the country in order to visit his daughter in Sweden. He has been denied this visa for more than ten years, which prevents him from leaving the country<sup>14</sup>.

### Obstacles to freedom of assembly

The legal framework is not the only obstacle to legalising human rights organisations – their members were also subjected to threats and constant harassment, thus impeding their freedom of assembly. For example, the Ladies in White received threats that prevented them from holding meetings. On February 10, 2009, a DSE agent came to Ms. **Ariana Montoya**

13/ Confinement to a cell or office with air conditioning placed on full blast is a systematic method of mistreatment used by Cuban State security in prisons.

14/ See CRDHC Bulletin, January 2009.

**Aguilar's** house and strictly forbade her from going to Saint Rita of Cascia Church, one of the places where the Ladies in White often gather. On March 8, 2009, the authorities tried to prevent various Ladies in White from participating in an International Women's Day event in Havana. **Ms. Maritza Castro**, **Ms. Ivonne Mayeza Galonne** and **Ms. Neris Castillo**, were arrested before being released three hours later, while other Ladies, whose names were not disclosed, were prevented from leaving their houses to attend the event.

The peaceful demonstrations that were organised in honour of the International Human Rights Day were also repressed by the State. Thus, the CCDHRN published an incomplete list of the names of 73 people who were either detained by the police or kept in their houses without any warrant on December 10, 2009<sup>15</sup>.

In terms of independent journalists, on November 6, 2009, **Ms. Yoani Sánchez**, a well-known blogger, and **Mr. Orlando Luis Pardo Lazo**, a writer, were detained and beaten in the middle of Havana to prevent them from attending an anti-violence event organised by independent artists. The event involved a march down a central avenue of the Cuban capital in protest of all forms of violence in Cuban society, including State violence. The participants were going to carry signs that read the slogan "Join in and say no to violence". Other bloggers, such as **Ms. Claudia Cadelo**, were also detained to prevent them from participating in the march. The detainees were forced to get into State Security vehicles with unusual license plates and were released a few hours later<sup>16</sup>.

### Ongoing arbitrary detention of several human rights defenders

In 2009, the Cuban Government continued to arbitrarily detain and prosecute human rights defenders<sup>17</sup>. For instance, **Mr. Darsi Ferrer Ramírez**, Director of the "Juan Bruno Zayas" Health and Human Rights Centre (*Centro de Salud y Derechos Humanos*), was arrested on July 21, 2009 and accused of having bought illegal materials for his house. A few days earlier, he and his wife had been arrested for a few hours in order to prevent them from attending a peaceful march for freedom of expression in Havana. While under arrest, both were interrogated and **Mr. Ferrer Ramírez** was handcuffed and beaten by eight policemen. At the end of 2009, **Mr. Ferrer Ramírez** remained detained in a high security prison

15 / A complete list is available at [www.misclaneasdecuba.net/web/article.asp?artID=24808](http://www.misclaneasdecuba.net/web/article.asp?artID=24808).

16 / See Cuban Democratic Directory.

17 / See CRDHC Report, *Informe Sobre la Situación de Derechos Humanos en Cuba: enero a diciembre de 2009*, January 26, 2010.

for inmates convicted of violent crimes<sup>18</sup>. The prevalence of this sort of detention represents a step backwards for human rights defenders in Cuba.

Similarly, the human rights defenders and independent journalists who were arrested in March 2003 remained imprisoned at the end of 2009, including Messrs. **Normando Hernández González**, Director of Camagüey's College of Journalists (*Colegio de Periodistas de Camagüey*), and **Oscar Elías Biscet**, Founder and President of the Lawton Foundation (*Fundación Lawton*). In addition, Messrs. **Juan Bermúdez Toranzo** and **José Luis Rodríguez Chávez**, respectively National Vice-President and Vice-President of the Cuban Foundation for Human Rights (*Fundación Cubana de Derechos Humanos*), as well as Mr. **Julían Antonio Monés Borrero**, President of the "Miguel Valdés Tamayo" Cuban Movement for Human Rights (*Movimiento Cubano por los Derechos Humanos "Miguel Valdés Tamayo"*), remained in prison as of the end of 2009 after being arrested in 2008. Likewise, Mr. **Ramón Velázquez Toranzo**, a journalist for the independent agency *Libertad*, was still being held at "La Piedra" forced labour camp, after being arrested on January 16, 2007 for peacefully demonstrating for freedom of expression on December 10, 2006<sup>19</sup>. Mr. **Leodán Mangana López**, Municipal Delegate of the Cuban Foundation for Human Rights, was released from prison in 2009 after he served part of his sentence, on the basis of the Cuban law, which makes provision for the crime of being "socially dangerous with a disposition to commit a crime".

### Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Ladies in White / Ms. Maritza Castro, Ms. Ivonne Mayesa Galano, Ms. Neris Castillo and Ms. Ariana Montoya Aguilar	Threats / Harassment	Urgent Appeal CUB 001/0308/OBS 042.2	March 10, 2009
Mr. Juan Carlos González Leiva, Mr. Sergio Díaz Larrastegui and Ms. Tania Maceda Guerra	Threats / Harassment	Urgent Appeal CUB 001/0509/OBS 073	May 14, 2009
Cuban Council of Human Rights Rapporteurs Information Centre / Ms. Doralis Álvarez Soto, Ms. Yudelmis Fonseca Rondón, Ms. Tania Maceda Guerra, Mr. Juan Carlos González Leiva and Mr. Virgilio Mantilla Arango	Threats / Harassment / Detention	Urgent Appeal CUB 002/0809/OBS 124	August 25, 2009

18 / See CCDHRN Report, August 2009.

162 19 / Mr. Ramón Velázquez Toranzo was released from prison on January 19, 2010.

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# GUATEMALA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In 2009, Guatemala continued to experience alarming levels of violence and assassinations<sup>1</sup>, with a level of impunity that reached 98 per cent<sup>2</sup>. According to the Guatemala Human Rights Attorney General, this year was the bloodiest in the country's history with 6,498 murders<sup>3</sup>. This increased violence seriously affected human rights defenders. The Unit for Protection of Human Rights Defenders in Guatemala (*Unidad de Protección a Defensores y Defensoras de Derechos Humanos de Guatemala* – UDEFEGUA) registered 353 acts of aggression, the highest levels of violence over the decade<sup>4</sup>.

The serious problems related to the administration of justice resulted in impunity remaining intact as well as corruption and the existence of illegal groups and clandestine security structures<sup>5</sup> embedded in the official machinery, generating a vicious circle of violence. To resolve this situation, the International Commission Against Impunity in Guatemala (*Comisión Internacional Contra la Impunidad en Guatemala* – CICIG) was established in 2007 and its mandate was renewed in 2009. By the end of 2009, the work of the CICIG had resulted in the following laws being passed: the Law on Arms and Munitions (April 2009), the Law on the Strengthening of Criminal Prosecution (April 2009) and the Law on Criminal Competence in High Risk Proceedings (November 2009). However, both the implementation of these laws and advances in the investigation and criminal prosecution of the cases taken on by the CICIG

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1/ See Human Rights Council, *Report of the Special Representative of the Secretary General on the situation of human rights defenders*, Hina Jilani - Addendum - Mission to Guatemala, United Nations Document A/HRC/10/12/Add.3, February 16, 2009.

2/ See Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Philip Alston follow up to country recommendations - Guatemala, United Nations Document A/HRC/11/2/Add.7, May 4, 2009.

3/ During the bloodiest years of the Guatemalan conflict, from 1982 to 1983, 3,629 people were assassinated. See Guatemalan Human Rights Commission (*Comisión de Derechos Humanos de Guatemala* - CDHG).

4/ See UDEFEGUA Report, *Violencia, respuesta a 10 años de lucha: Informe sobre situación de Defensores y Defensoras de Derechos Humanos Enero-Diciembre de 2009*, February 2010.

5/ See International Commission Against Impunity in Guatemala (CICIG) Report, *Informe de dos años de actividades, 2007 a 2009 a la Comisión Interamericana de Derechos Humanos*, November 2009.

remain to be seen, as well as whether the authorities take its recommendations into account.

Moreover, following various Government decisions, the country was once more becoming militarised. In 2009, the Government significantly increased the military budget, increasing the number of soldiers by 5,000. It is also of concern that the current Government is the first to form military detachments since the Peace Agreements in 1996, primarily in the areas where the internal conflict is most intense<sup>6</sup>, where, surprisingly, the crime levels are low compared to the rest of the country but, at the same time, there are strong economic interests and substantial social resistance in these areas<sup>7</sup>, which could mean greater risks for human rights defenders. Community, peasant farmers and indigenous leaders in these departments could face increased repression by the military when they carry out protests. Furthermore, the tendency to criminalise social protest could become more acute.

The Human Rights Prosecutor's Office responsible for carrying out investigations into the crimes committed during the armed conflict, particularly the genocide and enforced and involuntary disappearances that took place between 1960 and 1996, does not have sufficient material or human resources<sup>8</sup>. In spite of this, the complainants and the Prosecutor in the genocide case were able to convince the judge to order the declassification of four military plans. The army handed over two of the four documents to the judge in charge of the case.

Yet, this year, Guatemala condemned Army Commissioner Felipe Cusanero Coj, who was sentenced to 150 years in prison for the disappearance of six people<sup>9</sup>. On December 3, 2009, this sentence was followed by that of retired Colonel Marco Antonio Sánchez Samayoa and three ex-Army Commissioners Mr. José Domingo Ríos, Mr. Gabriel Álvarez Ramos and Mr. Salomón Maldonado Ríos who were all sentenced to 40 years in prison for the crime of enforced disappearance and to 13 years and four months for the crime of illegal detention of eight people in the village of El Jute, Chiquimula<sup>10</sup>. However, the justice and peace process was accompanied by threats against victims and witnesses and particularly against

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6/ Playa Grande, El Quiché, Sacapulas, Joyabaj, San Marcos, Puerto Barrios, Izabal, Fray Bartolomé de Las Casas, Alta Verapaz, Santa Bárbara, San Juan Cotzal, Quiché, Rabinal, Baja Verapaz.

7/ See UDEFEGUA.

8/ See Inter-American Commission on Human Rights (IACHR) Press Release No. 35/09, July 12, 2009.

9/ See UDEFEGUA, *Informe mensual julio-agosto 2009*, September 2009. The Mutual Support Group (*Grupo de Apoyo Mutuo - GAM*) reported on the Jute case proceedings in November 2009.

10/ See UDEFEGUA.

defenders. In this context, human rights defenders working on the search for truth were the most threatened in the country<sup>11</sup>.

Furthermore, Guatemala experienced high levels of social exclusion that affect the indigenous people most seriously<sup>12</sup>, who are also victims of evictions and expropriation of their lands to guarantee low land costs for the exploitation of natural resources by large companies, thereby increasing the loss of land and conditions of poverty. This situation made the defenders of these communities vulnerable and they suffered from threats and violence. Trade unionists, particularly those who work on the rights of peasant communities and workers themselves, also continued to be victims of serious human rights violations.

Moreover, in spite of the fact the Law Against Femicide and Other Forms of Violence Against Women was passed in 2008, there continued to be high numbers of cases of violence against women in 2009. According to the Attorney General's Office, there were 708 "femicides" over the murders committed during the year<sup>13</sup>. In addition, the Government did not implement measures to prevent these assassinations nor were they investigated by the justice system.

Finally, it is important to point out that Guatemala does not have the means to analyse the patterns of violence and assaults that would enable more efficient investigation of the complaints in order to confront the harassment and threats faced by human rights defenders<sup>14</sup>. In terms of criminal prosecution, the Instance for the Analysis of Attacks Against Human Rights Defenders (*Instancia de Análisis de Ataques contra Defensores de Derechos Humanos*), which is a mixed Government-civil society body, has received support from the Public Ministry since 2008. This instance, which analyses patterns in order to support the investigations carried out by the Public Ministry and the national police force has made progress in the analysis and substantiation of 33 cases. However, by the end of 2009, not a single case had been resolved<sup>15</sup>.

11/ See UDEFEGUA Report, *Violencia, respuesta a 10 años de lucha: Informe sobre la situación de Defensores y Defensoras de Derechos Humanos Enero-Diciembre de 2009*, February 2010.

12/ The IACHR Rapporteur for Guatemala and on the Rights of Indigenous Peoples was informed that the Guatemalan State had granted approximately 88 concessions for dams to be built on indigenous territories without prior consultation of those affected. See IACHR Press Release No. 35/09, June 12, 2009.

13/ See Article of the Survivors Foundation (*Fundación Sobrevivientes*), December 31, 2009.

14/ See IACHR Press Release No. 35/09, June 12, 2009.

15/ See UDEFEGUA Report, *Estado de los Casos denunciados por defensoras y defensores de derechos humanos*, October 2009.

## Defenders fighting against impunity of crimes committed during the Guatemalan armed conflict were once more the object of threats and violence

Defenders who fight against impunity of the crimes committed during the 1960-1996 conflict in Guatemala continued to be victims of repeated threats and violence. In 2009, UDEFEGUA registered 92 cases of violence against defenders who work on the search for truth. For example, the Guatemalan Forensic Anthropology Foundation (*Fundación de Antropología Forense de Guatemala* – FAFG)<sup>16</sup> and its members, particularly Mr. **Fredy Peccerely**, FAFG Executive Director, and Mr. **Omar Bertoni Girón**, Head of the laboratory at the Foundation, once more received death threats against them and their families between January and May 2009. Likewise, on August 6, 2009, Mr. **Raúl Figueroa Sarti**, Head of F&G Editores, the publisher responsible for printing the *Guatemala Memoria del Silencio* Report by the Commission for Historical Clarification (*Comisión para el Esclarecimiento Histórico* – CEH), and the publication of three books about the human rights situation in Guatemala that include specific chapters about the CEH report, was sentenced by the Seventh Criminal, Drug Trafficking and Crimes Against the Environment Court to a year in prison deferred on payment of a fine of 25 quetzals (2.12 euros) a day, plus payment of 50,000 quetzals (4,266 euros) for legal costs. The investigation and sentence against Mr. Figueroa Sarti was solely based on a complaint presented by Mr. Mardo Arturo Escobar, Commissioner of the Fourth Criminal Court of the Judicial Body in August 2007, accusing Mr. Raúl Figueroa Sarti of crimes of violation of copyright and associated rights for publishing photos of the complainant. During the trial, Mr. Escobar admitted that Mr. Raúl Figueroa Sarti had not stolen his photos. However, the Court rejected this claim and sentenced Mr. Figueroa Sarti. Furthermore, the sentence passed contains a series of contradictions such as the date on which Mr. Mardo Escobar went to the publisher. Mr. Figueroa and his wife were victims of threats and harassment throughout the trial to the extent that his wife went into exile. It is also worth mentioning that the environment is so tense that each publication issued by Mr. Figueroa Sarti's publisher has brought with it incidents and threats against him.

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16 / FAFG is an NGO, founded in 1992, that recovers human remains through anthropological research, makes efforts to establish identities, tries to establish the cause of death and furthermore, through research into the fundamental right to life and in cases of unsolved murders, contributes evidence and expert witnesses to support the administration of justice.

## Ongoing serious violations against trade union leaders

The murder and harassment of trade union leaders persisted in Guatemala with 84 assaults recorded by UDEFEGUA in 2009, to such an extent that this has become a real repression mechanism against social protest. In addition, murders and threats against trade unionists continued in total impunity. For example, Mr. **Amado Corazón Monzón** was murdered on January 12, 2009 by a group of hired killers that shot him three times in the head. Mr. Monzón was an independent lawyer and advisor to the United Peasants' Committee (*Comité de Unidad Campesina*) and to the Streets of Coatepeque United Traders' Movement (*Movimiento de Comerciantes Unidos de las Calles de Coatepeque*), and had led the protest movement against the project that aimed to move the Coatepeque traditional businesses to the new wholesale centre. The traders were opposed to his move as it would affect their work places. Furthermore, the new site was polluted, which put the worker's health at risk. Prior to this, on December 23, 2008, Mr. **Armando Donald Sánchez Betancurt**, leader of the Streets of Coatepeque United Traders' Movement, was murdered with four gunshots by hired killers, following the failed negotiation between the traders' movement and the municipality, and two days after the Mayor threatened them stating on two local radio stations that the "traders will have a lovely surprise on the 23rd or 24th"<sup>17</sup>. By the end of 2009, an investigation into the events was still open and those responsible had not been identified. In October and November 2009, two leaders and members of the Guatemalan Trade Union, Indigenous and Peasants' Movement (*Movimiento Sindical, Indígena y Campesino Guatemalteco* – MSICG) were assassinated: on October 13, 2009, Mr. **Miguel Chacaj Jax** died from the consequences of a gunshot wound on October 6, 2009, allegedly fired by State security forces in an eviction attempt. He was a founding member of the Coatepeque Trade Workers' Union (*Sindicato de Trabajadores del Comercio de Coatepeque*), affiliated to the General Central Confederation of Guatemalan Workers (*Confederación Central General de Trabajadores de Guatemala* – CGTG) and MSICG. On November 29, 2009, Mr. **Pedro Ramírez de la Cruz**, a member of the Board of the Verapaces Indigenous Peoples Ombudsman as well as of the National Indigenous, Peasants' and Popular Council (*Consejo Nacional Indígena, Campesino y Popular* – CNAICP) and MSICG, was also assassinated. At the end of 2009, the investigation into the murder of Mr. Pedro Ramírez was continuing.

17/ The conflict related to the future location of the municipal market goes back to 1993 and will affect more than 5,000 traders. By the end of 2009, various eviction orders had been issued and the traders had responded with numerous appeals.



Furthermore, Ms. **Irma Judith Montes**, Secretary General of the Coatepeque Municipality Workers' Union (*Sindicato de Trabajadores de la Municipalidad de Coatepeque*), Quetzaltenango department, began to be harassed and receive death threats when she began to defend the demands of the workers in this municipality<sup>18</sup>. On one occasion, the threats were made by an unidentified person with a gun. This man had been previously reported, as for instance in the case of Mr. Armando Donaldo Sánchez Betancurt's assassination. By the end of 2009, the investigation had not produced any results. Mr. **Leocadio Juracan Jalomé**, trade union leader and human rights defender of peasant communities, also received threats on February 26, 2009. Mr. Leocadio Juracan Jalomé is the Coordinator of the High Plain Peasants' Committee (*Comité Campesino del Altiplano – CCDA*)<sup>19</sup> and is a member of MSICG political council. As such, he has carried out actions related to labour and peasants rights and demands. By the end of 2009, no progress had been made in the investigation into these threats.

### **Assassinations and judicial harassment of defenders of indigenous communities, environmental defenders and defenders of economic, social and cultural rights in relation to large companies**

In 2009, defenders of the indigenous communities and environmental rights within the framework of the conflict related to ownership and exploitation of land were once more victims of judicial harassment, threats and assassinations, in retaliation to their activities. This was clearly illustrated in the case of persecution of Reverend **José Pilar Álvarez Cabrera**, a Pastor in the Guatemalan Lutheran Church (*Iglesia Luterana de Guatemala – ILGUA*) and a supporter of the Association for the Defence and Protection of the Las Granadillas Mountain (*Asociación para la Defensa y Protección de la Montaña Las Granadillas*)<sup>20</sup>, and against Mr. **Rubén de Jesús Aldana Guzmán**, Treasurer of the Association for the Defence and Protection of the Las Granadillas Mountain, and Mr. **Eduardo Álvarez Cabrera**, the Reverend's brother and member of the same association, based in

18/ By the end of 2009, the municipal authorities had not paid the workers' contributions, which constitutes a violation of the labour and human rights of those affected. Furthermore, on January 16, 2009, 66 workers were fired by the municipal authorities. The Coatepeque municipality had drafted three statements against Ms. Judith Montes, each one coinciding with the timing of her meetings with workers on union issues, and that were later sent to the Inspections Department.

19/ The CCDA works on matters related to rural development and support for the work of Guatemalan peasant farmers.

20/ The Association for the Defence and Protection of the Las Granadillas Mountain comprises 22 communities that live close to the mountain and are responsible for its protection and conservation as a water source. The communities have been working on reforestation projects in recent years, as well as on a dialogue to prevent tree felling, which puts the water from the Granadillas at risk; this is the source of water for the town of Zacapa and the surrounding areas.

Zacapa. On January 25, 2009, plain-clothes agents from the National Police Crime Investigation Division (*División de Investigación contra el Crimen* – DINC) and the Public Ministry armed with an arrest warrant for the crime of “disturbance of private property” arrested Reverend José Pilar Álvarez Cabrera. The same arrest warrant included Messrs. **Rubén de Jesús Aldana Guzmán** and **Eduardo Álvarez Cabrera** who, in order to avoid reprisals, hid whilst a lawyer arranged for the arrest warrant to be lifted. This warrant was linked to the land occupation carried out by inhabitants of Zapaca to protect the Granadillas mountain range. Previously, on January 3, 2009, the communities in the area had protested about their situation. During this protest, the Reverend and his brother were threatened by Mr. Víctor Hugo Salguero, Peace Judge in Chiquimula, accompanied by armed men and a prosecutor from Zacapa. On February 6, 2009, the Judge freed Reverend José Pilar Álvarez Cabrera and, as requested by their defence, declared that the accusations against the three men were not merited.

In addition to defenders of indigenous communities, defenders of economic, social and cultural rights in general were victims of repression when they took a position against the interests of large companies. In some cases, the reprisals included murder of defenders of the communities, such as the assassination of Mr. **Adolfo Ich Chamán**, President of the La Unión Neighbourhood Committee (*Comité del Barrio La Unión*), leader of Las Nubes community, and defender of the rights of his community and school teacher. On September 28, 2009, Mr. Adolfo Ich Chamán was assassinated by security guards from the Guatemalan Nickel Company (*Compañía Guatemalteca de Níquel* – CGN). According to witnesses, whilst members of Las Nubes community were coming down to El Estor to meet with the community group from La Unión and El Chupón, the Wholers brothers, Oscar, Gustavo and Hugo<sup>21</sup>, stayed behind the members of the community and shot and killed two cows so that they could later tell the owner that the community was responsible for this crime and request the support of the company to repress them. The CGN security guards arrived and started to shoot, killing Mr. Ich Chamán. These events took place in the midst of a series of harassments of members of the Las Nubes community who live there, in spite of the fact that the ownership of the land has not been proven and the community maintains its claim to the historical ownership of the land. The Human Rights Attorney General took note of the events of September 28, 2009. At the beginning of 2010, the investigation into the events concluded that the chief of security at CGN should be

21/ The group named “Pro Defensa del Estor” is run by Messrs. Oscar, Gustavo and Hugo Wholers and acts as a paramilitary group in the region. There are various charges against them.

arrested, alleging his responsibility for Mr. Adolfo Ich Chamán's murder. The assassination of Mr. **Víctor Gálvez Pérez**, a member of the Resistance Front Against DEOCSA Abuse (*Frente de Resistencia de los Abusos de DEOCSA – Distribuidora de Electricidad de Occidente SA*) in Malacatán, a subsidiary of the Spanish multinational Unión FENOSA<sup>22</sup>, also fits the pattern of reprisals carried out against defenders of economic, social and cultural rights against the interests of large companies that are exploiting natural resources in this area. In the morning of October 24, 2009, Mr. Víctor Gálvez Pérez was murdered on leaving a meeting where he presented his analysis of the situation in the region, more specifically, on the presence of DEOCSA and the consequences of its activities for those who live in the region. Representatives of the national police force and the Public Ministry arrived on the scene of the crime, but did not carry out any forensic investigation. The intervention of the National Police Criminal Investigation Specialist Division Human Rights Unit (*Unidad de Derechos Humanos de la División Especializada de Investigaciones Criminales – DEIC*) in investigating the events was requested. However, no investigation was initiated; the reason given was that it was not possible to travel to where the events had taken place because they had no petrol. As a consequence, those responsible had still not been identified by the end of 2009. Previously, Mr. Víctor Gálvez Pérez had been the victim of threats and intimidation because of his activities in defence of the rights of Malacatán inhabitants affected by the activities of DEOCSA. At the beginning of 2010, a police investigation was being carried out, although a request had been made for the case to be investigated by the CICIG given that there is evidence that actors linked to local authorities, Congress and drug trafficking were involved.

### **Threats against human rights defenders who denounced corruption and parallel security structures**

Human rights defenders who reported corruption of the authorities and the existence and operation of illegal groups and clandestine security structures that have infiltrated the official machinery received strong threats against their lives in 2009. On April 1, 2009, on leaving work at the San Benito hospital, Mr. **Edgar Neftaly Aldana Valencia**, Secretary General of the San Benito chapter, El Petén, of the Guatemalan Healthworkers' Union (*Sindicato de Trabajadores de la Salud de Guatemala*), realised that two men were following him on a red motorbike, so he changed direction

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22 / For some years now, DEOCSA increased its prices in the Malacatán region, which caused thousands of complaints to be lodged by consumers about the quality of the service and the high costs. Given the numbers of complaints, the Resistance Front Against DEOCSA Abuse was set up and a complaints office was opened where consumers can go to be assessed by electricians.

and was able to escape. Minutes later his wife, Ms. **Karen Lucrecia Archila Lara**, a member of the same union, called him to warn him not to come home because two men on a red motorbike had fired nine times at their house. Fortunately, Ms. Archila Lara and their daughter were not injured. Mr. Aldana went to the Santa Elena Health Centre where he hid in one of the clinics. Later, Mr. Aldana received a telephone call from an unidentified man who threatened him. He also received four text messages within five minutes with clear threats against him and his wife. At the beginning of 2010, Mr. Edgar Neftaly Aldana Valencia was being protected by two policemen and was able to work normally. The El Petén Healthworkers' Union (*Union Sindicato de Trabajadores de la Salud en el Petén*) was legally registered in 2008 and since its creation has been fighting against corruption and human rights violations within the institution. Numerous complaints alleging corruption were lodged against some of its employees including the ex-Director, Mr. Jacinto Castellanos. Also in El Petén, Mr. **Herber Isai Mendez Diaz**, a local journalist, received on July 31, 2009 a text message that said: "You son of a bitch your family will die for getting involved with your boss and if you say anything tomorrow... and I forgot, the boss says that he knows you have a wife and that he won't do anything to her, but that he will take her for himself with or without her consent, be prepared for the surprise the boss has for you". This threat can be added to those received by other journalist colleagues who had also received telephone calls and messages threatening their families. These threats appear to be aimed at silencing the investigative journalism carried out to report on the misuse of funds by departmental authorities. By the end of 2009, the case had been transferred to the Unit for Crimes Committed Against Journalists and Trade Unionists in the Human Rights Section of the Prosecutor General's Office and was still waiting for concrete results<sup>23</sup>. Furthermore, between April 30 and May 5, 2009, representatives of the Association for the Study and Promotion of Security in a Democracy (*Asociación para el Estudio y la Promoción de la Seguridad en Democracia* – SEDEM) and UDEFEGUA received more than 40 slanderous text messages and threatening them with death. SEDEM has been involved in a case related to access to military files, the digitalization of the Presidential files and access to information in general for victims of the armed conflict. UDEFEGUA is an organisation that plays a role in the verification of attacks against human rights defenders. Given the characteristics of these events, it may be assumed that those responsible are part of a clandestine security operation with high levels of intelligence and with interest in past trials. At the end of 2009, the judicial proceedings were at a standstill.

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23/ See UDEFEGUA.

## Harassment of women's rights defenders

Harassment of women's rights defenders was noted in 2009. On July 6, 2009 for instance, Ms. **Juana Bacá Velasco**, Coordinator of the Ixhiles Women's Network (*Red de Mujeres Ixhiles*), an organisation that supports women victims of violence and that advocates for participation and the granting of power to women in Nebaj municipality, received an anonymous phone call from a man who informed her that he had been hired by people from the Nebaj municipality to kill her. On July 3, 2009, a municipal car from the Mayor's office drove towards Ms. Bacá Velasco's home when she was outside talking to friends. The car shone its lights on her face and shots were fired five times in the air. Ms. Bacá Velasco had already been the target of harassment and attacks. On March 30, 2009, she was attacked within the Nebaj municipality building, and was then hospitalised for two days and two nights. In spite of benefitting from precautionary measures from the Inter-American Court of Human Rights (IACtHR), she continues to be subject to threats and intimidation, as well as other members of the Ixhiles Women's Network. Likewise, the Survivors organisation (*Sobrevivientes*) was subjected to death threats in 2009 because of its work on a case of rape of a 13 year-old girl<sup>24</sup>.

## Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Fredy Peccerely, Mr. Omar Bertoni Girón, Mr. Gianni Peccerely and Ms. Bianka Peccerely	Death threats / Harassment	Urgent Appeal GTM 007/0507/OBS 055.3	January 14, 2009
Mr. Pedro Zamora	Arrest of alleged murderer	Urgent Appeal GTM 001/0107/OBS 004.1	January 19, 2009
Mr. Armando Donaldo Mr. Sánchez Betancurt and Mr. Amado Corazón Monzón	Assassination	Urgent Appeal GTM 001/0109/OBS 009	January 19, 2009
Mr. Jorge Luis López Sologastoa	Judicial harassment	Urgent Appeal GTM 002/0109/OBS 013	January 22, 2009
		Urgent Appeal GTM 002/0109/OBS 013.1	January 26, 2009
	Charges dropped	Urgent Appeal GTM 002/0109/OBS 013.2	September 30, 2009
Reverend José Pilar Álvarez Cabrera Mr. Rubén de Jesús Aldana Guzmán and Mr. Eduardo Álvarez Cabrera	Judicial harassment / Intimidation / threats	Urgent Appeal GTM 003/0109/OBS 019	January 29, 2009
	Release	Urgent Appeal GTM 003/0109/OBS 019.1	February 10, 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Ms. Irma Judith Montes	Death threats	Urgent Appeal GTM 004/0109/OBS 020	January 29, 2009
Mr. Leocadio Juracan Jalomé	Threats	Urgent Appeal GTM 006/0309/OBS 040	March 4, 2009
Ms. Gladys Monterroso, Dr. Sergio Morales and Mr. Luis Roberto Romero / Human Rights Attorney General's Office	Kidnapping / Torture / Death threats / Harassment / Assault	Press Release	March 27, 2009
Mr. Edgar Neftaly Aldana Valencia and Ms. Karen Lucrecia Archila Lara	Assassination attempt / Death threats / Harassment	Urgent Appeal GTM 007/0409/OBS 063	April 21, 2009
Members of the Association for the Study and Promotion of Security in a Democracy (SEDEM) and UDEFEGUA / Ms. Claudia Samayoa and Ms. Iduvina Estalinova Hernández Batres	Death threats / Harassment	Urgent Appeal GTM 008/0509/OBS 068	May 7, 2009
Ms. Juana Bacá Velasco	Attack / Death threats	Urgent Appeal GTM 009/0709/OBS 105	July 15, 2009
Mr. Raúl Figueroa Sarti	Threats / Judicial harassment	Urgent Appeal GTM 010/0809/OBS 129	August 27, 2009
Mr. Adolfo Ich Chamán	Assassination / Assault	Urgent Appeal GTM 011/1009/OBS 143	October 7, 2009
Mr. Víctor Gálvez Pérez	Assassination	Urgent Appeal GTM 012/1009/OBS 157	October 30, 2009
Guatemalan Trade Union, Indigenous and Peasant Farmers' Movement (MSICG) / Ms. Olga Marina Ramírez Sansé, Mr. Pedro Ramírez de la Cruz and Mr. Miguel Chacaj Jax	Assassinations	Open Letter to the authorities	December 14, 2009

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# HONDURAS

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In 2009, Honduras suffered from the first coup d'état in Latin America since the fall of the military dictatorships at the end of the 1980s. In the early morning of June 28, members of the armed forces kidnapped the constitutional President Manuel Zelaya Rosales and forced him into exile in Costa Rica. The President of Congress, Mr. Roberto Micheletti, participated in the coup and assumed Government control with complicity of the Supreme Court of Justice and the Attorney General. The coup took place to avoid a non-binding referendum that should have taken place the same day in order to ask citizens their opinion about the possibility of installing a fourth ballot box in the November 29 elections to vote on the feasibility of convening a Constitutional Assembly to reform the Constitution of the Republic of Honduras<sup>1</sup>.

A few hours after the attack on President Zelaya's house, various media organisations across the country that had reported extensively about the referendum and had invited the population to participate had their offices closed and placed under military surveillance<sup>2</sup>. On June, 30 2009, the *de facto* Government restricted constitutional rights through Executive Decree 011-2009, establishing a curfew and suspending the right to personal freedom, freedoms of association and assembly as well as the freedom to travel, leave, enter and remain in Honduran territory. On September 26,

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1/ Initiative known as the "fourth ballot box" (*la cuarta urna*). On May 26, 2009, via Executive Decree No. PCM-020-2009 and based on the Honduras Citizen Participation Law, President Zelaya agreed to commission the Honduras National Statistics Institute (*Instituto Nacional de Estadística de Honduras*) to carry out a "National Opinion Survey" about the convening of the National Constitutional Assembly.

2/ Those affected were *Canal 8*, *Canal 36*, *Maya TV* and *Radio Globo*. *Canal 8* reopened a few days later with new programmes and personnel; *Canal 36* reopened on July 6, 2009 and was closed again on September 28, 2009 for not accepting the conditions of the regime. It reopened again on October 19.

*Maya TV* reopened on June 29, 2009.

the *de facto* Government issued Decree PCM-M-016-2009 increasing these limitations<sup>3</sup>.

Serious human rights violations were registered as a result of this civil-military coup d'état, including in particular the violation of the right to peaceful protest, the disproportionate and excessive use of force by the police and the military to repress legitimate and peaceful demonstrations, as well as gender-based violence against women demonstrators, the violation of the rights to life, integrity and personal freedom<sup>4</sup>, as well as of freedoms of expression and movement. At the end of its on-site visit, the Inter-American Commission on Human Rights (IAHCR) "confirmed a pattern of disproportionate use of public force, arbitrary detentions, and the control of information aimed at limiting political participation by a sector of the citizenry"<sup>5</sup>. In a climate of acute political polarisation, brought about in part by the mass media, the majority of which demonstrated openly repressive positions inciting violence against supporters of the overthrown Government, the freedom of the press was subject to serious limitations and journalists critical of the *de facto* Government faced repeated acts of intimidation and harassment.

The legal administration, led at the highest levels by those responsible for the coup, as well as the National Human Rights Commissioner who justified it, left the civil population defenceless against the crimes perpetrated by those responsible for the coup d'état.

In the midst of this highly conflictive situation, lengthy negotiations took place between the various regional and international bodies, the leaders of the *de facto* Government, the deposed President and the countries in the region in order to try and reinstate the President in his legitimate role. On October 30, 2009, the efforts made by the various negotiators culminated in the signing of the Tegucigalpa / San José agreement that was neither respected by the *de facto* Government nor by the political forces behind

3/ Executive Decree No. PCM-016-2009 authorises the National Telecommunications Commission (*Comisión Nacional de Telecomunicaciones* - CONATEL), the army and the police to immediately interrupt the transmission of any radio station, television or cable channel that in its opinion "offends human dignity, public servants or attack the law and Government resolutions". Therefore, on September 28, 2009, military personnel closed *Canal 36* and *Radio Globo* for their position against the *de facto* Government. See Inter-American Commission on Human Rights (IACHR) Press Release No. R71/09, September 29, 2009. Furthermore, the Executive Decree 124-2009 that came into effect on October 7, 2009 authorises CONATEL to cancel the use of the licences granted to radio stations and TV channels. Invoking the decree, radio stations proceeded to cancel contracts with social organisations.

4/ According to the Committee of Relatives of Disappeared and Detainees in Honduras (COFADEH), between June 26 and October 15, 2009 there were more than 3,000 illegal arrests.

5/ See IACHR, *Preliminary Observations on the IACHR Visit to Honduras*, August 21, 2009.



the coup d'état. On November 29, 2009, the *de facto* Government carried out presidential elections, in which Mr. Porfirio Lobo Soza was elected, with no observation carried out either by the Organisation of American States (OAS) or the United Nations. Subsequently, on January 26, 2010, the political forces that carried out the coup d'état, of which the elected President forms part, passed an amnesty law that would exclude criminal responsibility of those responsible for the coup.

The violence suffered in the country as a result of the coup d'état has made for a delicate situation for human rights defenders. Although situations already existed in which they were at risk, the breaking with constitutional order and the subsequent unfolding of the repression against the whole of civil society had an immediate effect on the individuals and organisations that are fighting for the respect of human rights for the population of Honduras<sup>6</sup>.

### **Serious situation of human rights defenders and organisations after the coup d'état**

The long list of precautionary measures granted by the IACHR since June 29, 2009 shows the magnitude of the repression suffered by all those who opposed the coup d'état, particularly human rights defenders<sup>7</sup>. Most of the organisations that were receiving threats before the coup d'état continued to be threatened. However, the reform of the legal framework with the implementation of martial law and curfews further violated their rights and protection. The organisations that have reported being at risk include: the Committee for the Defence of Human Rights in Honduras (*Comité de Defensa de los Derechos Humanos de Honduras* – CODEH), the Prevention, Treatment, Rehabilitation Centre of Torture Victims and their Families (*Centro de Prevención, Tratamiento, Rehabilitación de las Víctimas de Tortura y sus Familiares* – CPTRT), the Arco Iris Association (*Asociación Arco Iris*), the Centre for Women's Studies (*Centro de Estudios de la Mujer* – CEM-H), the Committee of Relatives of Disappeared and Detainees in Honduras (*Comité de Familiares de Detenidos y Desaparecidos*

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6/ As a result of the coup d'état, the IACHR received information that indicated that numerous human rights defenders were at risk. Furthermore, some human rights organisations denounced to the IACHR the use of State means to harass defenders, including the initiation of police and judicial investigations, arbitrary detentions, attacks, intimidation, surveillance and monitoring. Reports were also received that some organisations had had their electricity cut off in their offices, their communication lines had been severed and their emails had been intercepted. Some headquarters were shot at from heavily armed men, and bombs were thrown, and others were searched. See IACHR Report, *Honduras: Human rights and the coup d'état*, December 30, 2009.

7/ See IACHR, *Precautionary measures granted by the IACHR during 2009*, at [www.cidh.org/medidas/2009.sp.htm](http://www.cidh.org/medidas/2009.sp.htm).

de Honduras – COFADEH), the Centre for Research and Promotion of Human Rights (*Centro de Investigación y Promoción de los Derechos Humanos* – CIPRODEH), the organisation “Vía Campesina”<sup>8</sup>, the *Kukulcan Association* (Asociación Kukulcán)<sup>9</sup>, the Committee for Freedom of Expression (*Comité por la Libre Expresión* – C-Libre)<sup>10</sup>, the Honduras Women’s Collective (*Colectivo de Mujeres de Honduras* – CODEMUH)<sup>11</sup> and workers organisations including the Trade Union for Workers at the National Children’s Council (*Sindicato de Trabajadores del Patronato Nacional de la Infancia* – SITRAPANI), the Industrial Drinks and Similar Workers’ Trade Union (*Sindicato de Trabajadores de la Industria, Bebidas y Similares* – STIBYS) and the National Agricultural Institute Workers’ Trade Union (*Sindicato de Trabajadores del Instituto Nacional Agrario* – SITRAINA). When the group of those who resisted the coup d’état was being formed, the *de facto* Government increased its repression against them: the offices of various media companies and social organisations were attacked with grenades and machine guns and received threats of attacks. For example, COFADEH was the victim of an attack on September 22, 2009 when officers from the preventive police threw two tear gas bombs at the COFADEH offices at a time when 170 people were seeking refuge there after the State security forces repressed the protestors in front of the Brazilian Embassy where President Manuel Zelaya was at the time<sup>12</sup>. On September 22, a verbal complaint was lodged with the Human Rights Public Prosecutor in the COFADEH offices and he was able to see evidence of the bombs thrown. By the end of 2009, no report on this situation had been received. Likewise, in the night of August 11, one hour after the curfew had started, unknown persons fired against the offices of the Vía Campesina organisation<sup>13</sup>. Also, the STIBYS trade union<sup>14</sup> was victim of an explosive artefact on July 26, 2009 at 10.30 am. A National Front of Resistance Against the Coup d’Etat (*Frente Nacional*

8/ Vía Campesina is an organisation that works on peasants’ rights.

9/ The Kukulcán Association works on the defence of Lesbians, Gays, Bisexuals and Transgender (LGBT) rights.

10/ C-Libre is an organisation that monitors and reports attacks on freedom of the press in Honduras.

11/ CODEMUH stands out for their fight against labour exploitation of women in the factories in the north of the country.

12/ See COFADEH Report, *Segundo Informe de Violaciones a Derechos Humanos en el Marco del Golpe de Estado en Honduras*, October 2009. At that moment, children and injured people were providing statements and receiving medical assistance, along with young beneficiaries of the Violence Prevention Programme. According to COFADEH, the action was motivated by the fact that it had been impossible to arrest those who were in the doorway of the institution.

13/ See COFADEH Report, *Segundo Informe de Violaciones a Derechos Humanos en el Marco del Golpe de Estado en Honduras*, October 2009.

14/ STIBYS is one of the founding and leading organisations of the Popular Block that opposed the coup d’état and forms part of the National Front of Resistance Against the Coup d’Etat.

de Resistencia Contra el Golpe de Estado) meeting was taking place that day, prior to the funeral of Pedro Magdiel Muñoz<sup>15</sup>. Similarly, on September 12, 2009, an explosive artefact was thrown at the offices of *Canal 36*. The explosive contained a propaganda leaflet to draw their attention to the General Álvarez Martínez National Armed Front (*Frente Armado Nacional General Álvarez Martínez*) and a list of names of various social leaders, who were warned of being under surveillance and threatened with death<sup>16</sup>. The owner-manager of the channel lodged a complaint with the Public Ministry, and the Human Rights Public Prosecutor recorded the facts. By the end of 2009, security measures for the owner and the channel had only been partially implemented, in spite of the fact that they have benefited from IACHR precautionary measures of protection since July 2009.

Furthermore, the offices of human rights organisations like Arcos Iris, CIPRODEH, CEM-H and CODEH were under permanent surveillance by police patrol and military officers<sup>17</sup>. CPTRT and six of its members, including its Director, Mr. **Juan Almendares**, were also victims of acts of intimidation, including threatening telephone calls, monitoring and surveillance of their homes<sup>18</sup>. Moreover, in the weekend of September 5 and 6, 2009, unknown individuals entered and searched the offices of the Committee for Freedom of Expression, forcing the locks of three desks<sup>19</sup>. On the whole, the ban on meetings for the opponents of the coup d'état resulted in violent harassment of human rights defenders.

### **Criminalisation of and violent repression during public protests**

Peaceful protests took place in a violent climate that served as a pretext to carry out mass arbitrary arrests, acts of harassments and be aggressive with the protestors. On July 30, 2009, the *de facto* regime announced and publicly threatened that it would take a series of measures including forced eviction of protesters who cause problems and the application of Article 331 of the Criminal Code to those who participate in protests, meet-

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15/ During the protest that took place on the border with Nicaragua when Mr. Zelaya tried to enter Honduras on July 25, 2009, Mr. Pedro Magdiel Salvador Muñoz, 24 years old and a member of the Front of Resistance Against the Coup d'Etat, was found assassinated near Beneficio Agrícola in the exit from Paraíso to Alauca. His body showed clear signs of torture when examined by the forensic doctors and 42 knife wounds. Eye witnesses confirmed that he was arrested by an army official whilst he was smoking in the shade of a tree at the end of the afternoon.

16/ See COFADEH Report, *Segundo Informe de Violaciones a Derechos Humanos en el Marco del Golpe de Estado en Honduras*, October 2009.

17/ See CIPRODEH Report, *Amenazas y Obstáculos a Defensores de Derechos Humanos Post Golpe de Estado en Honduras*, September 5, 2009.

18/ See CPTRT Report, *Informe Preliminar sobre Violaciones a los Derechos Humanos*, July 2009.

19/ See CIPRODEH Report, *Amenazas y Obstáculos a Defensores de Derechos Humanos Post Golpe de Estado en Honduras*, September 5, 2009.

ings and public parades that cause public disorders<sup>20</sup>. On July 31, 2009, Mr. **Carlos H. Reyes**, leader of STIBYS, of the National Popular Resistance Coordination (*Coordinadora Nacional de Resistencia Popular*) and of the National Front of Resistance Against the Coup d'Etat, was injured by members of the preventive police whilst he was participating in a protest against the coup d'état in the El Durazno area of the town of Tegucigalpa. The police officers shouted at him: "this is how we wanted to get you son of a bitch", they pushed him and hit him with a baton, making him fall over, fracturing his right arm. As of the end of 2009, Mr. Reyes had not been called to give a victim statement<sup>21</sup>. Furthermore, hundreds of people were detained in the police headquarters in July, August and September for having participated in protests against the coup. In addition, the judges who were diligent in granting the appeals for legal protection (*recurso de amparo*) and habeas corpus in favour of the protestors were the subject of police threats<sup>22</sup>. For instance, in the case of the repression in San Pedro Sula, on August 3, 2009, the Judge who granted the habeas corpus, Mr. **Osman Fajardo Morel**, was assaulted by the police and the Inspector of the police station No. 1, where he was going to verify the arrests of 37 people following the repression of a meeting of the National Front of Resistance<sup>23</sup>. Human rights defenders were also prosecuted for their participation in the marches and for defending dissidents victims of violent acts of repression. For example, Ms. **Gloria Guadalupe Oqueli**, a lawyer, was subjected to judicial harassment, accused of crimes of "libel and slander amounting to defamation in public demonstrations"<sup>24</sup>. Within the same context, on July 14, 2009, the National Feminist Network in Resistance (*Red de Feministas en Resistencia*) organised a peaceful protest in the National Women's Institute (*Instituto Nacional de la Mujer* – INAM). Two women members of CEM-H were badly beaten by police officers who were not wearing identification. Furthermore, they were verbally abused and intimidated. The same day, in the afternoon, one of the women was beaten and was victim of surveillance<sup>25</sup>. The women filed a complaint with the Public Ministry and, as they received no response, they took their complaint to the IACHR.

20 / See COFADEH Report, *Segundo Informe de Violaciones a Derechos Humanos en el Marco del Golpe de Estado en Honduras*, October 2009.

21 / See COFADEH.

22 / See COFADEH Report, *Segundo Informe de Violaciones a Derechos Humanos en el Marco del Golpe de Estado en Honduras*, October 2009. It is also worth highlighting that members of President Zelaya's cabinet were the subject to trials and arrest warrants.

23 / See COFADEH Report, *Segundo Informe de Violaciones a Derechos Humanos en el Marco del Golpe de Estado en Honduras*, October 2009.

24 / See CPTRT.

25 / See CPTRT Report, *Informe sobre las Violaciones a los Derechos Humanos*, 2009.

## Repression of human rights defenders who report violations committed immediately after the coup

Within the context of violent repression of those who oppose the coup d'état, defenders who denounced human rights violations committed during the protests or who tried to help demonstrators were also the victim of aggression. On July 3, 2009, Mr. **Gabriel Fino Noriega**, correspondent for *Radio América*, was assassinated as he was leaving *Radio Estelar* buildings, in San Juan Pueblo, Atlántida department<sup>26</sup>. Mr. Fino Noriega was disseminating information about the protests against the coup d'état and denouncing those who supported the coup d'état. Various human rights defenders were also assaulted for trying to protect the protestors or for trying to prevent the arbitrary arrests. On August 11, 2009, Mr. **Alex Matamoros**, a member of CIPRODEH, was arrested when he intervened with police officers to avoid the arrest of and aggression against a student from the Francisco Morazón National Teaching University (*Universidad Pedagógica Nacional Francisco Morazán – UPNFM*). Mr. Matamoros was taken to the police headquarters in Manchén and then to the metropolitan police headquarters No. 1, where he was detained without charge until his release at 4 am on August 12<sup>27</sup>. Ms. **Hedme Fátima Castro Vargas**, Human Rights Prosecutor, member of the Association for Participative Citizenship (*Asociación para una Ciudadanía Participativa – ACI-Participa*) and a collaborator of COFADEH, was subjected to surveillance and received threats by preventive police officers, undercover officers and activists of the National Party (*Partido Nacional*). On October 9, when a police officer was about to throw a tear gas canister at protesters, Ms. Castro asked him to wait until the elderly and children were not in the vicinity. The police officer aggressively questioned her authority to make such a request, at which Ms. Castro Vargas produced her Human Rights Prosecutor identity card. In response, she was hit on the back with a baton, and the identity card was pulled from around her neck. Then she was shoved out of the way. Ms. Castro Vargas has benefited from IACHR precautionary measures since August 21, but the Honduran authorities did not comply with them<sup>28</sup>.

26 / See Press Release No. R48/09, in which the Special Rapporteur for Freedom of Expression “condemn[ed] the assassination of journalist in Honduras”, July 6, 2009; and Press Release No. R66/09, in which the Special Rapporteur for Freedom of Expression “condemn[ed] restrictions to freedom of expression in Honduras”, September 24, 2009. See also COFADEH Report, *Segundo Informe de Violaciones a Derechos Humanos en el Marco del Golpe de Estado en Honduras*, October 2009 and CIPRODEH Report, *Amenazas y Obstáculos a Defensores de Derechos Humanos Post Golpe de Estado en Honduras*, September 5, 2009.

27 / See COFADEH Report, *Segundo Informe de Violaciones a Derechos Humanos en el Marco del Golpe de Estado en Honduras*, October 2009 and CIPRODEH Report, *Amenazas y Obstáculos a Defensores de Derechos Humanos Post Golpe de Estado en Honduras*, September 5, 2009.

28 / See COFADEH Report, *Segundo Informe de Violaciones a Derechos Humanos en el Marco del Golpe de Estado en Honduras*, October 2009.

As of the end of 2009, the measures granted to Ms. Hedme Fátima Castro Vargas had still not been implemented.

### **Worsening of the violence against defenders of LGBT rights**

The attacks against Lesbian, Gay, Transgender and Bisexual Rights (LGBT) activists have been a reality for some time in Honduras; however, as for other human rights defenders, the coup d'état has placed them in an even more precarious situation. On January 9, 2009, Ms. **Cynthia Nicole** was assassinated. She was an activist for transgender rights and leader of the Violet Collective (*Colectivo Violeta*), which works for the defence of transgender rights. She was shot by three unknown persons from a car. By the end of 2009, no investigation into the case had been open. Similarly, on July 4, 2009 at 12.30, Mr. **Fabio Zamora**, a member of "Renacer"<sup>29</sup>, was killed with six shots to the head. The LGBT Collective filed a complaint with the Public Ministry, but in spite of the fact that there were witnesses of the assassination, it is unlikely that anyone will testify for fear of reprisals. Furthermore, on December 13, 2009, Mr. **Walter Tróchez**, Secretary of Renacer, was assassinated. He was a member of the LGBT community and an active participant in the Resistance Front. Days before, he had been beaten and threatened with death after being kidnapped by four men. Following his kidnapping, Mr. Walter Tróchez filed reports with COFADEH, CIPRODEH and the Human Rights Attorney General's Office. The only advances made in the case have been the collection of the body and the autopsy carried out by the medical examiner.

### **Harassment of defenders fighting against impunity of the crimes from the last dictatorship**

Before the coup d'état, the harassment against those who were fighting against the impunity of crimes committed between 1980 and 1991 was continuing. On January 28, 2009, Ms. **Bertha Oliva de Nativí**, General Coordinator of COFADEH, received death threats via two text messages, and defamatory leaflets about her were also distributed in Tegucigalpa park, linking her name to guerrilla organisations. Ms. Bertha Oliva de Nativí is carrying out important work in COFADEH related to reconstructing Honduras' memory. It is worth highlighting the fact that the harassment against COFADEH has continued after the coup d'état. As a result of their work in collecting statements about human rights violations and for their opposition to the coup d'état, COFADEH and its members were placed under surveillance and were victims of harassment.

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29 / Renacer is an organisation that provides assistance for those who live with HIV-AIDS.

## Threats and harassment of defenders of the right to environment and of indigenous peoples' rights

In 2009, the defenders who protested against the exploitation of natural resources that affect environmental rights and the rights of indigenous peoples continued to be the victims of persecution and harassment. For several years now, Father **Andrés Tamayo** and members of his community have suffered persecution as a result of their participation in the Olancho Environmental Movement (*Movimiento Ambientalista de Olancho* – MAO). Furthermore, for denouncing the coup d'état, the *de facto* Government removed his Honduran citizenship – Father Tamayo is originally from El Salvador and has been living in Honduras for the past 26 years. He was deported to El Salvador in November 2009<sup>30</sup>. Furthermore, on January 6, 2010, the radio station *Faluma Bimetu*, based in Triunfo de la Cruz, on the Atlantic Coast, was looted and set on fire by a group of unidentified men. For more than a decade, the radio station had been denouncing the interests of financial groups that are trying to displace the Garifuna communities from their ancestral lands with the aim of developing tourism in the beaches in the region. Furthermore, the community radio opposed the June 28, 2009 coup d'état, which exposed it to reprisals.

## Threats and attacks against social leaders and defenders of workers' rights

Defenders of workers' rights are another vulnerable group in Honduras, as shown by the assassination attempt against Mr. **Fabio Evelio Ochoa Fernández**, who was attacked with firearms on June 23, 2009. Mr. Ochoa Fernández carries out a wide range of activities related to the defence of workers' rights and, at the time of the attack, he was a member of an organisation that supported President Zelaya's referendum initiative. It should be clarified that the attack against Mr. Ochoa Fernández took place in a context where the physical integrity and lives of various social leaders, human rights defenders and members of the opposition were at risk, as a result of threats and attacks carried out by the conservative sectors that opposed the initiative.

However, one should welcome the sentencing of the murderers of Mr. **Dionisio Díaz García** to 21 years of prison on March 19, 2009. Mr. Dionisio Díaz García was a member of the Association for a More Just Society (*Asociación para una Sociedad más Justa* – ASJ) and a lawyer for twelve security guards fired from Honduras Technical Security (*Seguridad*

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<sup>30</sup> / See Committee for Human Rights Defence (*Comité por la Defensa de los Derechos Humanos*) Press Release, November 2009.

*Técnica de Honduras* – SETECH). He was assassinated on December 4, 2006 in reprisal for his work in defence of the labour rights of the poor and of the twelve guards who lost their jobs. The prisoners' defence lawyer filed an appeal with the High Court, whilst the Human Rights Attorney General's Office also filed an appeal, requesting that the maximum penalty be imposed. At the end of 2009, the decision on both appeals was still pending.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Ms. Cynthia Nicole (César Noel Moreno)	Assassination	Urgent Appeal HND 001/0109/OBS 007	January 19, 2009
Ms. Bertha Oliva de Nativí	Death threats	Urgent Appeal HND 002/0209/OBS 023	February 5, 2009
Mr. Dionisio Díaz García	Assassination	Press Release	March 20, 2009
Mr. Fabio Evelio Ochoa Fernández	Assassination attempt	Urgent Appeal HND 003/0609/OBS 091	June 26, 2009
Father Andrés Tamayo	Intimidation	Urgent Appeal HDN 004/0709/OBS 104	July 13, 2009
Mr. Walter Tróchez	Assassination	Urgent Appeal HDN 005/1209/OBS 192	December 16, 2009



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# MEXICO

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In 2009, human rights policy was not a priority in Mexico, and former President Felipe Calderón continued with his strategy of using military forces in the fight against organised crime. This strategy included the participation of the army in operations – instead of the police – against drug trafficking. This generated a real *de facto* State in which the level of human rights violations increased without effective control by any civil body<sup>1</sup>. Torture, arbitrary detentions, disappearances, murders and other attacks committed by the security forces were not being investigated by the competent civil authorities and the use of the military justice to judge the abuses committed by the military contributed to maintaining impunity<sup>2</sup>. Furthermore, it is of serious concern that defenders who reported human rights violations were subjected to particularly violent repression, with the assassination of at least seven defenders in 2009. With regard to the abuses carried out by the police force, the Mexican Government has shown a lack of will to prevent the repetition of such abuses by naming Mr. Wilfrido Robledo as new Head of the Ministerial Federal Police, whereas the latter was involved in the planning and implementation of operations that resulted in serious human rights violations in San Salvador Atenco and Texcoco on May 3 and 4, 2006. Furthermore, Mexico continued to fail to accept its responsibility to investigate and punish those responsible for State crimes committed in the so-called “dirty war”, in spite of the Inter-American Court of Human Rights (IACtHR) ruling that

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1/ See Report by the Miguel Agustín Pro Juárez Human Rights Centre (*Centro de Derechos Humanos Miguel Agustín Pro Juárez* - Centro PRODH) for the UN Human Rights Committee, *Sin controles, sin castigo: las violaciones del Estado mexicano a los derechos civiles y políticos*, December 21, 2009.

2/ *Idem*.

recognised the existence of an environment of systematic human rights abuses at that time<sup>3</sup>.

The struggle for the rights of indigenous peoples and the exploitation of natural resources remained one of the most important issues on which defenders continued to work in Mexico. The repression of indigenous communities was particularly noticeable in the States of Chiapas, Oaxaca and Guerrero, where the highest levels of poverty were recorded and where a large part of the indigenous population lives. The community defenders were, therefore, one of the groups most affected by the violent repression.

Furthermore, as Mexico is a country of origin, transit and destination for migrants, it does not take an effective approach to the transnational networks of gangs that operate outside of the law, violating the fundamental rights of migrants, in many cases with the collusion of local, municipal, State and federal authorities. It is particularly alarming that, according to figures published by the National Human Rights Commission (*Comisión Nacional de los Derechos Humanos* – CNDH), approximately 18,000 migrants a year are kidnapped in Mexico by organised criminal gangs which the authorities either tolerate or collude with. These crimes take the form of torture, extortion, sexual abuse and in many cases, murders<sup>4</sup>. Impunity of human rights violations committed against migrants was widespread and civil society organisations that report the abuses against migrants were victims of intimidation and attacks<sup>5</sup>.

In February 2009, the Mexican State was examined by the United Nations Human Rights Council within the framework of the Universal

3/ See IACtHR Ruling, *Caso Radilla Pacheco vs. Estados Unidos Mexicanos*, November 23, 2009. The IACtHR condemned the Mexican State for the enforced disappearance of Mr. Rosendo Radilla Pacheco, an outstanding social leader from Guerrero who was illegally detained on August 25, 1974. Thirty-four years later, his whereabouts are still unknown. The ruling also reiterated that military justice does not guarantee impartiality in the investigation and trial of human rights violations committed by members of the military against civilians. As of the end of 2009, compliance with the IACtHR ruling was still pending. Moreover, on March 27, 2009, a Mexican collegial court confirmed a resolution exonerating the Mexican Federal Court that absolved former President Luis Echeverría Álvarez of genocide for the Tlatelolco slaughter, thereby closing the main trial still open for crimes committed during the dirty war. The slaughter occurred on October 2, 1968 when dozens of students died after soldiers and paramilitaries fired on them in the Tres Culturas square in Tlatelolco. At that time, Mr. Echeverría was the Governor's Secretary in President Gustavo Díaz Ordaz's Government.

4/ See National Human Rights Commission for Kidnapping Cases of Migrants (*Comisión Nacional de los Derechos Humanos sobre los Casos de Secuestro de Migrantes*) Report, *Informe Especial sobre los casos de secuestro en contra de migrantes*, June 15, 2009.

5/ See Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante, Mission to Mexico*, United Nations Document A/HRC/11/7/Add.2, March 24, 2009.

Periodic Review (UPR). The Council made a series of recommendations, including that the State take concrete action to improve the criminal justice system, the levels of torture and inhuman treatment, impunity, excessive use of force, arbitrary detentions, enforced disappearances, criminalisation of social protest, the situation of human rights defenders, Government action to guarantee the correct implementation of international treaties, as well as to evaluate the use of preventive detention (*“arraigo”*). Out of the 91 recommendations presented to the Mexican State, eight were not accepted, which were primarily related to military jurisdiction<sup>6</sup>.

On November 16, 2009, the IACtHR ruled against the Mexican State on the “Campo Algodonero” case that refers to the disappearance and murder of the following young people: Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez, whose bodies were found in a cotton field in Ciudad Juárez on November 6, 2001. This ruling highlights, among other issues, the failure of the Mexican State to act when faced with violence against women and the phenomenon of femicide in an environment of structural gender-based discrimination<sup>7</sup>.

### Ongoing repression of indigenous peoples and peasants’ rights

In Guerrero State, the enforced disappearance and assassination of Messrs. **Raúl Lucas Lucía**, President of the Organisation for the Future of the Mixteco People (*Organización para el Futuro del Pueblo Mixteco – OFPM*)<sup>8</sup>, and **Manuel Ponce Rosas**, OFPM Secretary, marked the beginning of 2009, setting out the violence faced by indigenous rights defenders in Mexico. On February 14, 2009, Messrs. Raúl Lucas Lucía and Manuel Ponce Rosas were arrested in the municipality of Ayutla de los Libres, State of Guerrero, by three individuals who identified themselves as police officers without presenting an arrest warrant. On the night of February 20, 2009, their lifeless bodies were found in las Cazuelas, in the municipality of Tecoaapa, in the coastal region Costa Chica of Guerrero. The victims

6 / See Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Mexico*, United Nations Document A/HRC/11/27, May 29, 2009.

7 / See IACtHR Ruling, *Caso González y otras (“Campo Algodonero”) vs. México*, November 16, 2009.

8 / Mr. Raúl Lucas Lucía worked on the defence of human rights of 32 “Mixteca” indigenous communities in the Costa Chica and Montaña region, Ayutla de los Libres municipality, for more than 10 years, coordinating his work with the “Tlachinollan” Mountain Human Rights Centre. In 1994, Mr. Luca Lucía created, together with Tlapaneco indigenous people, the Mixtecos and Tlapanecos Peoples’ Independent Organisation (*Organización Independiente de Pueblos Mixtecos y Tlapanecos*) through which they started to document and publicly and legally denounce the abuses committed in various communities by members of the Mexican army and police forces. Subsequently, in 2002, the two peoples decided to unite under the name of Organisation for the Development of the Mixteco People (*Organización para el Desarrollo del Pueblo Mixteco - ODPM*) with the aim of promoting the coordination of work in the region in demanding respect for the rights of the Mixteco people.

had reported abuses and rape committed by members of the Mexican army and police forces against indigenous communities in the area. On December 28, 2009, the CNDH issued a recommendation on this case in which the lack of response from the authorities following the request to investigate the disappearance, which resulted in an extrajudicial execution, was clear. At the end of 2009, the Federal Attorney General (*Procuraduría General de la República* – PGR) was continuing with the investigation into the assassination of the two leaders. The disappearance and assassination served to intimidate the other human rights defenders in the region. Furthermore, on March 17, 2009, Ms. **Obtilia Eugenio Manuel**, President of the Me'phaa Indigenous Peoples' Organisation (*Organización de los Pueblos Indígenas Me'phaa* – OPIM), in the State of Guerrero, received three text messages that said: “what happened to Raúl (Lucas) and Manuel (Ponce) will happen to you”. The threats were also directed towards her husband, Mr. **Cuauhtémoc Ramírez**, a member of OPIM. The couple had to leave the region a few days after the threat. However, the other members of OPIM who remained in their communities continue to be very exposed because of their membership to this organisation. The “Tlachinollan” Mountain Human Rights Centre (*Centro de Derechos Humanos de la Montaña “Tlachinollan”*) had to close its offices in the town of Ayutla de los Libres, in the State of Guerrero, because of the lack of minimal security conditions for their work. In April 2009, the IACtHR had to grant provisional measures to protect the life of 107 human rights defenders in Guerrero<sup>9</sup>. In addition, Mr. **Raúl Hernández Abundio**, also a member of OPIM, remained detained in the Social Rehabilitation Centre in the town of Ayutla de los Libres in spite of the fact that his defence has shown evidence of the inconsistencies and irregularities of his detention as well as sufficient evidence to prove his innocence<sup>10</sup>.

In the State of Chiapas, the “Fray Bartolomé de Las Casas, A.C” Human Rights Centre (*Centro de Derechos Humanos “Fray Bartolomé de Las Casas, A.C”* – Frayba) and its members continued to be victims of harassment and attacks. Between June 14 and 20, 2009, Mr. **Diego Cadenas Gordillo**, Director of Frayba, realised that he was being watched by people with their faces covered with hats and with a video camera. Another lawyer at the Frayba Centre, Mr. **Ricardo Lagunes Gasca**, was attacked on September 18, 2009 in the town of Ejido Jotolá, in the municipi-

9/ See IACtHR Resolution, *Asunto Fernández Ortega y otros*, April 30, 2009. The NGOs report that such measures were not effectively implemented by the Mexican State.

10/ Mr. Hernández Abundio was detained on April 17, 2008, following the issue of 15 arrest warrants for OPIM members, accused of assassinating Mr. Alejandro Feliciano García, an army informer, on January 1, 2008 in Ayutla de los Libres.

pality of Chilón, State of Chiapas, by members of the Organisation for the Defence of Indigenous and Peasants' Rights (*Organización para la Defensa de los Derechos Indígenas y Campesinos* – OPDDIC), a group that has been denounced as paramilitary. By the end of 2009, the judicial process was at a standstill and no progress had been made. Mr. Lagunes Gasca was heading towards the lower levels of Tila and he stopped in Ejido Jotolá to report on the judicial proceedings he is working on as the defence lawyer for the “ejidatarios”<sup>11</sup>. Furthermore, on November 8, 2009, around 20 police officers broke into the house of Mr. **Adolfo Guzmán Ordaz**, a member of the Connection, Communication and Training Organisation (*Organización Enlace, Comunicación y Capacitación, A.C* – Enlace CC)<sup>12</sup>, with an arrest warrant for the leaders of four different organisations. The police officers threatened Mr. Guzmán's wife with a gun, whilst Mr. Guzmán Ordaz was questioned about his activities in Enlace CC. The police officers also took photos of the house and recorded a video of the family. Subsequently, Mr. Guzmán and his family had to move house. Mr. Guzmán filed a complaint for the crimes of raid, torture, abuse of authority by the police. However, on December 14, 2009, Mr. Guzmán and his wife decided not to go to the hearing as they had received threats in the days leading up to the hearing. By the end of 2009, the authorities had not carried out the necessary investigations nor had they taken measures to shed light on the events.

Judicial harassment is another reprisal mechanism used against human rights defenders. On September 30, 2009, members of a joint operation carried out by the PGR and the Chiapas State Attorney General's Office (*Procuraduría General de Justicia del Estado de Chiapas* – PGJE) entered the “28 de Junio” community in the municipality of Venustiano Carranza, State of Chiapas, and arrested Mr. **José Manuel Hernández Martínez**, also known as “Don Chema”, a member of the Carranza Region Emiliano Zapata Peasants' Organisation (*Organización Campesina Emiliano Zapata* – OCEZ)<sup>13</sup> and outstanding social leader in the community. Mr. José Manuel Hernández Martínez was accused by the PGJE of “crimi-

11/ In Mexico, an “ejido” is a rural collective property that has been very important in agricultural life. When the agrarian revolution took place, a lot of land was appropriated from landowners and distributed among the poor; however, they did not have the right to sell them, only to work the lands. Furthermore, they are obliged to pass them on to their descendents. Those who work these lands are called “ejidatarios”.

12/ Connection CC is an organisation that promotes the prominence of popular groups, communities and peasant and indigenous organisations with the aim of developing alternative local development with a regional perspective and to build a more just and mutually supportive society from a gender perspective and by demanding respect for economic, social and cultural rights.

13/ OCEZ is a peasant organisation that fights for peasant land rights in the region. The organisation recently signed a Governance Pact with the Chiapas Government and has been holding discussions with Mr. Nemesio Ponce Sánchez, Deputy Secretary General of the Chiapas Government, in order to find solutions to the social, agricultural and legal demands of the peasants in the region.

nal association”, “aggravated eviction” and “damage”, for events that allegedly took place in 2003 in Venustiano Carranza. He was also accused of other crimes, including “attacks on symbols of the nation” and “conspiracy”. In October 2009, Mr. José Manuel Hernández Martínez was transferred, without notifying his lawyer or his family, by prison guards and with the support of the federal police to the Federal Social Rehabilitation Centre No. 4 (CEFERESO No. 4) in the State of Nayarit. He was released at the end of November following national and international pressure.

### **Assassinations and harassment of defenders who oppose projects that affect the environment**

Environmental defenders, particularly those who oppose projects promoted by big industry or by the Government, were victims of threats, which, in one case resulted in assassination. Mr. **Mariano Abarca Roblero**, a member of the Mexican Network of those Affected by Mining (*Red Mexicana de Afectados por la Minería* – REMA) and who was actively involved in denouncing the environmental effects caused by the Canadian mining company Blackfire Exploration Ltd, was assassinated on November 27, 2009. Mr. **Orlando Velásquez**, an active participant in the meetings organised by REMA, was also injured in the attack. On November 23, 2009, Mr. Mariano Abarca Roblero had presented a report to the Public Ministry in Chicomuselo, Chiapas State, on the threats received by employees of Blackfire. Furthermore, on August 17, 2009, Mr. Abarca Roblero had been arbitrarily detained and put in preventive detention (*arraigado*), accused of “attacks against peace”, “criminal association”, “attacks on roads” and “damage and prejudice” against the Blackfire Exploration Ltd mining company. However, he was released on August 26, 2009 given a lack of information to continue with the judicial proceedings, and due to national and international pressure. At the end of 2009, various people had been arrested for the assassination and Blackfire had denied all responsibility.

Moreover, on July 21, 2009 a paramilitary group called the Army of God (*Ejército de Dios*) ran down a group of “ejidatarios”, members of the Other Campaign (*Otra Campaña*)<sup>14</sup> and opponents to the construction of the road San Cristóbal de las Casas – Palenque, in Chiapas<sup>15</sup>. Mr. **Aurelio Díaz Hernández** died in the attack and Mr. **Javier Gomez Heredia** was injured.

14/ The Other Campaign is the name of an independent and political initiative for popular participation, promoted by the Zapatista National Liberation Army (*Ejército Zapatista de Liberación Nacional* - EZLN) and the Zapata Movement (*Movimiento Zapatista*). It aims at listening to the Mexican people, those who are organised and those who are not, in order to make positive change in society, bearing in mind certain anti-capitalist and equality principles.

15/ This road affects 40 hectares in the mountain (including pine and oak forests), ten hectares of fields and two wells.

Furthermore, the same day, Army of God members assaulted Messrs. **José Heredia** and **Fernando Heredia**, who are also opposed to the construction of the road and are members of the Other Campaign. By the end of 2009, only one of the paramilitaries involved had been arrested<sup>16</sup>.

Also, environmental defenders too faced judicial harassment, as illustrated by the arrests of Messrs. **Francisco Estrada Castro** and **Luis Gutiérrez Montiel** on August 24, 2009, both leaders of the opposition movement to the rubbish dump situated at the entrance to the village of San Antonio la Isla, Mexico State, as it does not comply with environmental standards<sup>17</sup>. Another example of judicial harassment was the arrest warrant issued in November 2009 against Messrs. **Juan Zamora González** and **Porfirio Méndez Martínez**, defenders of the people affected by the construction of the Cerro de Oro dam in the 1980s<sup>18</sup>.

Furthermore, it is worth remembering that in June 2009, the Mexican State was taken to the IACtHR regarding the case of arbitrary detention and torture of Mr. **Rodolfo Montiel** and Mr. **Teodoro Cabrera**, environmental farmers, in Guerrero State in 1999 by members of the military<sup>19</sup>. Mr. Montiel and Mr. Cabrera who were outstanding defenders of the forest in Petatlán and Coyuca de Catalán, Guerrero State, have still not been able to return to their communities because of the risks and the threats against them. Mr. Montiel went to exile in another country.

### **Assaults against defenders who denounce abuses committed by the armed forces**

Some defenders who denounced human rights violations carried out by the military were also victims of attacks during 2009. For instance, Mr. **Salomón Monárrez Meraz**, Secretary of the Sinaloa Civil Front (*Frente Cívico Sinaloense*) in Culiacán, Sinaloa State, whose work, in recent years, has focused on denouncing abuses committed by the military within the framework of the “operations” against organised crime, was seriously injured when he was shot on August 31, 2009 when unknown

16 / See PRODH Centre Report, *Sociedad amenazada. Violencia e impunidad, rostros del México actual*, February 2010.

17 / The rubbish dump was closed for lack of compliance with environmental standards. However, approximately 1,500 tons of rubbish is dumped there every day, including biological, infectious and industrial waste. See PRODH Centre Report, *Sociedad amenazada. Violencia e impunidad, rostros del México actual*, February 2010.

18 / This dam affects more than 26,000 people. See PRODH Centre Report, *Sociedad amenazada. Violencia e impunidad, rostros del México actual*, February 2010.

19 / See IACtHR, *Demanda ante la Corte Interamericana de Derechos Humanos en el caso de Teodoro Cabrera García y Rodolfo Montiel Flores (Caso 12.449) contra los Estados Unidos Mexicanos*, June 24, 2009.

persons broke into his house<sup>20</sup>. Similarly, Ms. **Mercedes Murillo Monge**, President of the Sinaloa Civil Front, was subjected to harassment and intimidation acts by more than twenty members of the military who turned up at her home on November 12, 2009. At least five of the military pointed their guns at her; they asked her to prove her identity and asked after members of her family<sup>21</sup>. Both events carried out against members of the Sinaloa Civil Front were reported, but by the end of 2009, no advances had been made in the investigations<sup>22</sup>. In addition, Mr. **Gustavo de la Rosa Hickerson**, Inspector for Victim Support and Special Projects of the Human Rights State Commission in Chihuahua State, was obliged to move abroad temporarily following threats and the high risk he faced during September 2009, as a result of his work receiving complaints against members of the army in Ciudad Juárez, Chihuahua State.

### Acts of harassment against defenders of migrant rights

In 2009, defenders of migrant rights were the subject of harassment and defamation<sup>23</sup>. Following the assassination in September 2009 of Ms. Perla Judith Quintero Caballero, allegedly by a young man from Honduras, the media claimed that the organisation “Bethlehem, Resting Place for the Migrant” (*Belén, Posada del Migrante*)<sup>24</sup> was responsible for the crime, focusing on the nationality and irregular status of the alleged murderer and arguing that the humanitarian aid provided by the shelter encouraged the presence of migrants with irregular status. In this context, various media channels carried out a smear campaign against Father **Pedro Pantoja Arreola**, founder of the shelter, and his collaborators, questioning the legality of the humanitarian aid activities and the actual existence of the shelter. Furthermore, repeated intimidation of the migrants and the organisation Bethlehem, Resting Place for the Migrant, took place<sup>25</sup>. This led

20 / See PRODH Centre Report, *Sociedad amenazada. Violencia e impunidad, rostros del México actual*, February 2010.

21 / See PRODH Centre Report, *Sin controles, sin castigo: las violaciones del Estado mexicano a los derechos civiles y políticos*, December 21, 2009.

22 / The Sinaloa Civic Front, together with the PRODH Centre and the Fundar organisation, represent the families of four victims of extrajudicial executions committed by the military that brings into question the fact that this case comes under military jurisdiction. Their demand has reached the Supreme Court of Justice.

23 / See Report on Human Rights Defenders produced by various Mexican civil society organisations for the 61st anniversary of the Universal Human Rights Declaration, December 10, 2009.

24 / Bethlehem, Resting Place for the Migrant is an organisation that has been providing humanitarian assistance and human rights advice to Central American migrants who come through Saltillo, Coahuila.

25 / For example, on October 25, 2009, around 2:30 am, a group of people threw stones against the building of the organisation, breaking some windows, and threatening the members of the organisation, shouting “we don’t want you here”. In addition, on October 28, 2009, two people tried to enter the premises of the organisation by jumping over the barrier, but on being seen, they left. Later, a group of people tried, and failed, to throw stones at the shelter again.



to the Public Security Department accepting the precautionary measures requested by the CNDH, which had still to be implemented effectively as of the end of 2009. Moreover, Father **Alejandro Solalinde**, Director of the shelter “Brothers on the Way” (*Hermanos en el Camino*) in Ixtépéc, Oaxaca State, continued to carry out his humanitarian work with migrants within a very unsafe environment.

### **Threats against defenders fighting against the impunity of human rights violations**

Fighting against impunity also affects the security of human rights defenders. In Oaxaca State, in May 2009, the following defenders received death threats: Ms. **Alba Cruz Ramos**, lawyer at the 25 November Committee (*Comité 25 de Noviembre*), Ms. **Yésica Sánchez Maya**, lawyer at the Parliamentary Dialogue and Equality Consortium (*Consortio para el Diálogo Parlamentario y la Equidad*) in Oaxaca, Ms. **Beatriz Casas Arellanes**, lawyer at the “Bartolomé Carrasco Briseño” Human Rights Centre (*Centro de Derechos Humanos “Bartolomé Carrasco Briseño”*), and Father **Romualdo Francisco Mayrén Peláez**, Coordinator of the Justice and Peace Dioceses Commission (*Comisión Diocesana de Justicia y Paz*), who were defending the case of Mr. Marcelino Coache Verano. The latter was a victim of alleged torture, ill-treatment, threats and arbitrary detention on various occasions for his activism with the People’s Assembly of Oaxaca Peoples (*Asamblea Popular de los Pueblos de Oaxaca – APPO*). Moreover, the defenders or family members of defenders who seek formal justice were exposed to new attacks. For example, on January 14, 2009, in the State of Michoacán, a Prosecutor from the State Attorney General’s Office harassed and threatened Ms. **Janahuy Paredes Lachino**, daughter of Mr. **Francisco Paredes Ruiz**, an activist at the Diego Lucero Foundation (*Fundación Diego Lucero*)<sup>26</sup> who was victim of enforced disappearance in September 2007, forcing her to make a statement under pressure, interrogating her about her travels in Mexico and abroad and asking her whether she knew if her father was a sympathiser of subversive groups, particularly the People’s Revolutionary Army (*Ejército Popular Revolucionario – EPR*).

### **Threats against journalists committed to the fight against corruption and for crimes to be investigated**

The situation of journalists committed to fighting against corruption and to investigating crimes was also of concern, as they were victims of numerous threats and even assassinations during 2009. For example, Mr. **Eliseo Barrón Hernández**, journalist for the *Opinión de Torreón* newspaper, was

26 / The Diego Lucero A.C. Foundation is a civil organisation that promotes and defends human rights, specialising in the fight for the life of the disappeared in Mexico.

assassinated in Durango on May 26, 2009. He had covered a case of alleged abuse of authority in the Torreón municipal police, which resulted in more than 300 police officers being suspended and five members of the “Zeta Group” being arrested on June 6, 2009<sup>27</sup>. On May 3, 2009, Mr. **Carlos Ortega Melo Samper**, journalist for the Durango *El Tiempo* newspaper was also assassinated in Durango; he frequently denounced activities of the authorities. Three months before his assassination, persons unknown had fired at his house and set fire to his van. Furthermore, just before his assassination, he had had an argument with the Municipal Mayor, which he publicised stating that he had received threats from the local authorities and had even published a column claiming that he held the Municipal Mayor responsible for any harm that he may come to<sup>28</sup>. Equally alarming was the assassination of Mr. **Norberto Miranda Madrid “El Gallito”**, Director of the digital newspaper *Radio Visión*, on September 23, 2009 in the municipality of Nuevo Casas Grandes, in Chihuahua<sup>29</sup>. Mr. Miranda Madrid had written various articles about the growing public insecurity in Casas Grandes, allegedly as a result of fights between gangs of drug traffickers. On September 5, 2009, Mr. Miranda Madrid had written about the capture of four members of the Juárez cartel<sup>30</sup>. Moreover, it is important to mention the judicial harassment faced by the *Contralínea* magazine, the intimidation suffered by its members and the withdrawal of official (governmental) advertising in reprisal for the reports published by the magazine about the levels of corruption in the Federal Government in relation to the parastatal organisation Mexican Oil (*Petróleos Mexicanos* – PEMEX)<sup>31</sup>.

### Threats and harassment acts against women’s rights defenders

Women’s rights defenders, particularly those who denounce violence against women, have themselves become victims of human rights violations. For instance, Ms. **Rosa Isela Pérez Torres**, a well-known journalist who has published numerous reports related to disappearances and assassinations of women in Ciudad Juárez, and an expert witness in the “Campo Algodonero” case, was subjected to serious threats by email and telephone

27 / See Reporters Without Borders (RSF) Press Releases, May 28 and June 16, 2009.

28 / See LIMEDDH.

29 / See CENCOS and Article 19 Press Release, September 25, 2009.

30 / In August 2009, the CNDH issued a general recommendation related to assaults on journalists and the prevailing impunity of these cases. The cases of Messrs. Juan Daniel Martínez Gil, Eliseo Barrón Hernández and Carlos Ortega Melo Samper are included in the CNDH General Recommendation. See CNDH, *Recomendación General 17 sobre los casos de agresiones a periodistas y la impunidad prevaleciente*, August 19, 2009. See also IACHR Press Releases No. 54/09, July 30, 2009, No. 34/09, May 29, 2009, No. 22/09, May 7 2009, and No. 70/09, September 29, 2009.

31 / See PRODH Centre.

that led to provisional measures being granted to her by the IACtHR<sup>32</sup>. Ms. Pérez Torres has received threats since 2000 and has been subject to constant surveillance and monitoring that has also affected members of her family. This harassment has become pronounced since she covered the events related to the murders of eight women in Campo Algodonero. At the end of 2009, Ms. Pérez Torres had fled the town for security reasons<sup>33</sup>. Likewise, Ms. **Lydia Cacho**, a journalist and human rights defender, continued to be subjected to harassment and serious threats. In July 2009, unidentified individuals patrolled and took photographs of Ms. Cacho's home. Shortly afterwards she received death threats. During the same period, members of the Integrated Support Centre for Women (*Centro Integral de Atención a la Mujer* – CIAM), which Ms. Cacho presides, also received death threats. As a result of these events, in August 2009, the IACHR granted precautionary measures to Ms. Cacho, her family and the members of CIAM.

### Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Francisco Paredes Ruiz	Threats / Enforced disappearance	Urgent Appeal MEX 001/0109/OBS 012	January 22, 2009
		Press Release / International Fact-Finding Mission Report	February 10, 2009
Mr. Raúl Lucas Lucía and Mr. Manuel Ponce Rosas	Enforced disappearance	Urgent Appeal MEX 002/0209/OBS 029	February 18, 2009
	Assassination	Urgent Appeal MEX 002/0209/OBS 029.1	February 25, 2009
Ms. Lourdes Argelia Rodríguez Lucero and Mr. Prometeo Jorge Rodríguez Lucero	Surveillance / Harassment / Assault / Threats	Urgent Appeal MEX 003/0309/OBS 047	March 13, 2009
Ms. Obtilia Eugenio Manuel and Messrs. Cuauhtémoc Ramírez Rodríguez, Raúl Lucas, Manuel Ponce, Natalio Ortega Cruz, Romualdo Santiago Enedina, Orlando Manzanarez Lorenzo, Manuel Cruz Victoriano, and Raúl Hernández Abundió / Me'phaa Indigenous Peoples' Organisation (OPIM) and the "Tlachinollan" Mountain Human Rights Centre	Threats / Harassment / Arrests / Releases	Urgent Appeal MEX 004/0309/OBS 055	March 30, 2009

32/ See IACtHR Resolution, July 6, 2009.

33/ See PRODH Centre.

Names	Violations / Follow-up	Reference	Date of Issuance
OPIM / Messrs. Cuauhtémoc Ramírez Rodríguez, Braulio Manzanares Lorenzo, José Eugenio Cruz, Félix Ortega Dolores, Merced Santiago Lorenzo and Raúl Hernández Abundio	Judicial harassment / Arbitrary detention / Mistreatment	Urgent Appeal MEX 004/0309/OBS 055.1	December 14, 2009
Ms. Alba Cruz Ramos, Ms. Yésica Sánchez Maya, Ms. Beatriz Casas Arellanes and Father Romualdo Francisco Mayrén Peláez	Threats / Harassment	Urgent Appeal MEX 005/0509/OBS 069	May 7, 2009
“Fray Bartolomé de Las Casas, A.C” Human Rights Centre (Frayba) / Messrs. Diego Cadenas Gordillo and Jorge Armando Gómez	Harassment	Urgent Appeal MEX 006/0609/OBS 086	June 23, 2009
Ms. Margarita Martín de las Nieves, Ms. Guadalupe Castro Morales and Mr. Santiago Ponce Lola	Assassination attempt	Urgent Appeal MEX 007/0609/OBS 092	June 26, 2009
Mr. José Emiliano Nandayapa Déciga	Arbitrary arrest / Assault	Urgent Appeal MEX 008/0709/OBS 100	July 7, 2009
Mr. Salomón Monárrez Meraz	Assault	Urgent Appeal MEX 009/0909/OBS 130	September 2, 2009
Mr. Ricardo Lagunes Gasca	Assault / Harassment	Urgent Appeal MEX 009/0909/OBS 139	September 24, 2009
	Risk of impunity / Harassment / Fear for physical and psychological integrity / Serious assault	Urgent Appeal MEX 009/0909/OBS 139.1	November 20, 2009
Mr. José Manuel Hernández Martínez	Detention / Harassment	Urgent Appeal MEX 010/1009/OBS 144	October 9, 2009
	Forced transfer	Urgent Appeal MEX 010/1009/OBS 144.1	October 22, 2009
Messrs. Roselio de la Cruz Gonzáles, José Manuel de la Torre Hernández, José Manuel Hernández Martínez and Ricardo Magdaleno Velasco	Arbitrary detention / Forced transfer / Harassment	Urgent Appeal MEX 010/1009/OBS 144.2	November 2, 2009
Bethlehem, Resting Place for the Migrant / Father Pedro Pantoja Arreola	Harassment / Defamation	Urgent Appeal MEX 011/1009/OBS 146	October 13, 2009
		Urgent Appeal MEX 011/1009/OBS 146.1	November 5, 2009
Mr. Mariano Abarca Roblero	Assassination	Urgent Appeal MEX 012/1209/OBS 182	December 4, 2009
Mr. Adolfo Guzmán Ordaz and his family	Death threats / Harassment / Intimidation / Abuse of authority / House raid	Urgent Appeal MEX 013/1209/OBS 193	December 18, 2009

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# NICARAGUA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

The violent climate of the municipal elections of November 2008 exposed the growing polarisation of Nicaraguan society prompted by President Daniel Ortega with the Sandinista National Liberation Front (*Frente Sandinista de Liberación Nacional* – FSLN). Furthermore, the FSLN has been taking over the State's institutions and using its power to dominate over other political parties and the opposition. In 2008, the Sandinista Renovation Movement (*Movimiento Renovador Sandinista* – MRS) and the Conservative Party (*Partido Conservador* – PC), political parties of the opposition, were prevented from participating in the municipal elections as their legal status was removed. 2009 ended with the decision of the Constitutional Chamber of the Nicaraguan Supreme Court to allow the re-election of President Ortega and the Sandinista mayors who were elected in November 2008<sup>1</sup>. This decision by the Constitutional Chamber as well as the irregularities in the process to constitute the Chamber revealed President Ortega's personal use of institutions<sup>2</sup>. One shall also note the lack of response of the Supreme Electoral Council and of the Supreme Court of Justice to, respectively, the motion for review filed by the PC and the MRS, which prevent these groups from directly participating in the 2010 regional elections.

To a large extent, the deterioration of the situation in terms of civil and political rights results from the current President's desire to stay in power, which sometimes encourages groups close to the Government to violently confront the opposition and the police to remain passive when faced with confrontations between Government supporters and the opposition. It should be noted that there were some progress in terms of economic, social, and cultural rights (especially in terms of food and education), which were neglected for more than a decade under previous governments. It must, however, be reiterated that rights are interdependent and that it is an international obligation to protect them as a whole.

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1/ Sentence No. 504 of the Constitutional Chamber of the Nicaraguan Supreme Court, October 19, 2009.

2/ The Court was questioned through President Ortega's appeal for legal protection, which was inappropriate given that none of the President's constitutional rights were being disrespected or threatened: re-election is not considered a fundamental right.

In this context, a real media campaign took place to discredit and harass those who criticised the Government, as illustrated – among other things – by the President’s aggressive language when describing or addressing social organisations and political opponents<sup>3</sup>; series of acts of harassment and assaults towards independent journalists; an increasing control of means of communication; closure of opposition radio stations<sup>4</sup>; and attacks on demonstrations held by members of civil society and political parties of the opposition. These attacks were carried out by groups close to the Government and the authorities remained passive.

In 2009, the UN Committee Against Torture (CAT) reviewed the situation of human rights in Nicaragua and declared: “The Committee notes with concern the information it has received on alleged cases of systematic harassment and death threats directed at human rights defenders, particularly female defenders of women’s rights. The Committee also notes with concern the criminal investigations instituted against women defending reproductive rights, as well as the de facto constraints that limit the enjoyment of the right to freedom of association by organizations of human rights defenders”. In addition, the CAT urged the State to take the necessary measures to combat the systemic harassment and death threats directed at human rights and women’s rights defenders, and to “[...] combat and prevent acts of violence against members of the political opposition, their sympathizers and representatives of NGOs”<sup>5</sup>.

### Harassment of human rights organisations and their leaders

In addition to the slander campaign that targeted the Government’s opponents, human rights organisations and their members were constantly being harassed. For instance, on October 22, 2009, Ms. **Leonor Martínez**, a member of the Nicaragua Youth Coalition (*Coalición de Jóvenes de Nicaragua*)<sup>6</sup>, was violently attacked by government-affiliated groups after

3/ According to the Nicaraguan Centre for Human Rights (CENIDH), during the hearing of the Inter-American Commission on Human Rights (IACHR) on November 2, 2009, “the Government representative qualified civil society organisations as groups that are dissatisfied because their political parties did not receive the people’s support during the elections”. President Ortega referred to civil society organisations and other political parties as the “oligarchy’s scraps” on several occasions.

4/ For example, *Radio Ley* was closed down without any warning on June 19, 2009 under the pretext that it had failed to fulfil some administrative resolutions, which violated journalist Santiago Aburto’s right to be heard and to defend his decision to publicly support the opposition in the municipal elections of 2008.

5/ See Committee Against Torture, *Concluding Observations of the Committee Against Torture*, United Nations Document CAT/C/NIC/CO/1, May 14, 2009.

6/ The Nicaragua Youth Coalition is made up of individuals, representatives of organisations and social movements who believe that young people should reach their full potential and that the rule of law, including the defence of youth rights, should be upheld.

attending a Civil Coordinating Committee (*Coordinadora Civil*)<sup>7</sup> meeting. Three men on a truck broke her arm, aimed a gun at her and threatened her with a knife, shouting death threats at her and her family and telling her “not to get involved in this”, referring to her work with the Youth Coalition, which has openly opposed the re-election of President Ortega<sup>8</sup>.

It should also be mentioned that the precautionary measures of protection granted by the Inter-American Commission on Human Rights (IACHR) following the various assaults in September and October 2008 on Ms. **Vilma Núñez de Escorcía**, President of the Nicaraguan Centre for Human Rights (*Centro Nicaragüense de Derechos Humanos – CENIDH*), and other CENIDH members, including Mr. **Héctor Calero**, Spokesperson, and Mr. **Norwin Solano**, lawyer, were not agreed with the petitioners until the General Directorate of the national police took the initiative to implement these measures. Furthermore, at the end of 2009, the investigations into the damage done to Ms. Núñez de Escorcía’s home on September 28, 2008 had not yet led to any result<sup>9</sup>.

Finally, the slander campaign and exclusion of civil society organisations continued as illustrated, among others, by the fact that the Nicaraguan authorities did not allow human rights organisations to participate in the General Assembly of the Organisation of American States (OAS), which took place in San Pedro Sula, Honduras, from June 1 to 3, 2009.

### Harassment of organisations that defend women’s rights

In 2009, organisations that defend women’s rights remained subjected to acts of judicial harassment, threats and assault. A clear example of this is that of the nine women rights defenders<sup>10</sup> who, at the end of 2009, were still being accused of several crimes, such as “concealment of rape”, “conspiracy to commit a crime” and “incitement to commit a crime”. These charges were laid in October 2007 as a result of their decision to accompany a nine-year-old girl in the process to get an abortion to save

7/ The Civil Coordinating Committee coordinates, arranges and articulates the organised sectors of civil society in Nicaragua, and is made up of individuals and non-profit civil organisations, such as NGOs, trade unions, social movements and cooperatives. The Civil Coordinating Committee works on human rights, among other things.

8/ See CENIDH at the IACHR hearing of November 2, 2009.

9/ See 2009 Annual Report.

10/ Ms. **Ana María Pizarro**, Ms. **Juana Antonia Jiménez**, Ms. **Lorna Norori Gutiérrez**, Ms. **Martha María Blandón**, Ms. **Luisa Molina Argüello**, Ms. **Martha Munguía Alvarado**, Ms. **Mayra Sirias**, Ms. **Yamileth Mejía Palma** and Ms. **Violeta Delgado Sarmiento** are members of the Network of Women Against Violence, the Feminist Movement (*Movimiento Feminista*), the Autonomous Women’s Movement (MAM), the Nicaraguan Children and Teenagers Coordinating Committee (*Coordinadora de la Niñez y Adolescencia en Nicaragua*), and the September 28 Campaign (*Campaña 28 de Septiembre*).

her life. The girl had become pregnant after being raped and her life was at risk<sup>11</sup>. At the end of 2009, the situation of the nine defenders was still up in the air, with the consequent encumbrance on their legal safety. Moreover, in October 2009, the Director of the Permanent Committee for the Defence of Human Rights (*Comisión Permanente de los Derechos Humanos* – CPDH), Mr. Marcos Carmona, denounced plans to intimidate and attack ten NGOs representatives who were critical of President Daniel Ortega's Government. Among the targets were Ms. **Azalea Solís**, Ms. **Juanita Jiménez** and Ms. **Sofía Montenegro**, all members of the Autonomous Women's Movement (*Movimiento Autónomo de Mujeres* – MAM)<sup>12</sup>. Members of the FSLN revealed to Mr. Carmona that the plans to intimidate and attack these women involved hiring delinquents from neighbourhoods such as Loma Linda, Acahualinca and Camilo Ortega to follow these NGO representatives 24 hours a day and carry out attacks disguised as common assaults and criminal scuffles in order to intimidate members of civil society who fight for human rights.

### **Acts of harassment and attacks by shock groups during demonstrations**

Since 2007, peaceful demonstrations by members of civil society have often been met with violence. According to CENIDH, the Government itself incites these acts of violence through civil groups that support it, who then attack protesters with clubs, stones, mortars, and even machetes. These attacks are characterised by a lack of a response from the police, both in the heat of the moment and when it comes the time to investigate or sanction those responsible<sup>13</sup>. The CAT expressed "concern at the information it has received regarding the violent suppression by some sectors of society, including civilian patrols allegedly supported by the Government, of collective demonstrations in which the political opposition and representatives of NGOs participated. A failure to punish acts of this sort is an inducement to the repetition of such abuse and would appear to indicate the tacit approval of the authorities"<sup>14</sup>.

On August 8, 2009 for example, a demonstration held by the Civil Coordinating Committee was violently repressed, resulting in the injury of more than 21 people. When the members of the Civil Coordinating

11/ Therapeutic abortions were legal in Nicaragua for 169 years until they were prohibited in 2006. Various appeals concerning the unconstitutional nature of the law that penalises therapeutic abortions were brought to the Supreme Court in 2007, but the court has yet to reach a verdict.

12/ See MAM Press Release, October 27, 2009.

13/ See CENIDH at the IACHR hearing of November 2, 2009.

14/ See Committee Against Torture, *Concluding Observations of the Committee Against Torture*, United Nations Document CAT/C/NIC/CO/1, May 14, 2009.



Committee wanted to march towards the cathedral to attend an arts festival that had been organised to conclude their General Assembly, they were attacked by 200 members of the Sandinista Youth (*Juventud Sandinista*), FSLN activists and others who had been hired to carry out the attacks. The aggressors were organised in paramilitary fashion and were armed with shovels and stones. They assaulted the demonstrators, not only trying to disrupt the march, but also trying to humiliate the demonstrators, hitting them, ripping their shirts and spitting on them. When Mr. Mario Sánchez, the public relations representative for the Civil Coordinating Committee, started to take out a camera, he was violently beaten. His aggressors tried to steal his cell phone and camera, and even took his shoes. Faced with violent armed groups and passive policemen, the demonstrators sought refuge in the cathedral, and the attackers finally went away when Vicar Bismarck Conde intervened. The State refused to punish the policemen who were present during the attacks. When consulted, Ms. Aminta Granera, First Commissioner, alleged that this was intended “to protect institutions”<sup>15</sup>. The impunity with which this sort of violence is met is of great concern, as is the authorities’ support of violent groups, which is apparent from the presence of public civil servants and members of the Citizens’ Power Council (*Consejo de Poder Ciudadano* – CPC), an organisation headed by the First Lady, in irregular armed groups.

The National Youth Movement (*Movimiento Juvenil Nacional* – MJN) recorded more than 20 public demonstrations held by various youth groups in order to promote the human rights of young people in Nicaragua that have been “prevented, obstructed and even attacked”. The No Group (*Grupo No*), the Bridge Movement (*Movimiento Puente*), the Nicaraguan Democratic Youth (*Juventud Democrática Nicaragüense* – JUDENIC), the Youth Coalition (*Coalición de Jóvenes*), the Nicaraguan Youth Network (*Red de Jóvenes Nicaragüita* – RJN), the Network of Women Against Violence (*Red de Mujeres contra la Violencia*) and the MJN<sup>16</sup> are among some of the groups that organised these protests. On November 9, 2009, pro-Government shock groups began throwing stones at a group of young people who were peacefully protesting in front of the Supreme Electoral Council against the fraud in the municipal elections of November 2008<sup>17</sup>. The march for democracy on November 21, 2009 as well as the march for the elimination of violence against women on November 25, 2009 and the march on December 10 organised to celebrate the Universal Declaration

15 / See CENIDH at IACHR hearing of November 2, 2009.

16 / See MJN Report, *Informe sobre violaciones al derecho a manifestación pública, movilización, asociación y libertad de expresión de la juventud nicaragüense durante el periodo 2007-2009*, August 2009.

17 / See CENIDH.

of Human Rights, all had to be protected by policemen in order to avoid confrontations with pro-Government irregular armed groups<sup>18</sup>.

### Harassment of journalists and obstacles to freedom of expression

In 2009, independent journalists who worked on human rights issued continued to be harassed by the Government, violating their right to freedom of expression. For instance, on August 14, 2009, Ms. **María Acuña**, a journalist, and Mr. **Santos Padilla**, cameraman for *Canal 10*, were assaulted and beaten by police officers under the orders of the Head of District V in the city of Managua, Commissioner Sergio Gutiérrez, while they were covering a peaceful demonstration against an eviction. Besides hitting the journalist and her cameraman, the police destroyed their video camera to prevent them from filming the repression of demonstrators<sup>19</sup>.

Furthermore, some journalists ended up in court based on accusations of “defamation and slander”. For example, Ms. **María Mercedes Urbina**, a journalist for *El Nagaroteño*, a local newspaper, was sued by Mr. Leopoldo Ibarra, who works in the Mayor’s Office in Nagarote – and whose Mayor belongs to the Government’s party – after she denounced the municipal authorities for corruption. On September 8, 2009, she was placed under house arrest by Judge Irene Hernández and told that she must appear before the court three times a week. According to Ms. María Mercedes Urbina, the Judge was out of line in ordering measures usually reserved for people accused of committing serious crimes such as murder and not “defamation and slander”. At the end of 2009, faced with the imminent possibility of a fine, the journalist opted for an apology and the charges were dropped<sup>20</sup>.

### Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
The Civil Coordinating Committee, Mr. <b>Mario Sánchez</b> , Ms. <b>Luisa Molina</b> , Mr. <b>Adolfo Acevedo</b> , Mr. <b>Irving Larios</b> , Mr. <b>Roberto Velásquez</b> , Mr. <b>Guillermo Rodríguez</b> and Ms. <b>Violeta Granera</b>	Attacks / Obstacles to freedom of assembly	Open Letter to the authorities	August 14, 2009
Nicaraguan and Venezuelan NGOs	Obstacles to freedom of association	Press Release	May 29, 2009
Ms. <b>Patricia Orozco</b> , Ms. <b>Lorna Norori</b> and Ms. <b>Ana Eveling</b>	Assault / Harassment	Urgent Appeal NIC 001/1109/OBS 159	November 4, 2009

18/ *Idem*.

19/ See CENIDH at IACHR hearing of November 2, 2009.

20/ *Idem*.

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# PERU

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

The trial and conviction of former President Alberto Fujimori made not only Peruvian history, but world history as well. After a 16-month trial, on April 7, 2009, Mr. Fujimori was sentenced to 25 years in prison, the maximum sentence allowed by the Peruvian Criminal Code for “voluntary manslaughter” and “serious injuries” in the Barrios Altos and La Cantuta cases, and “aggravated kidnapping” in the cases of Mr. Gustavo Gorriti and Mr. Samuel Dyer<sup>1</sup>. This was the first time that a democratically elected Latin American Head of State was declared guilty of committing crimes against humanity. It was also the first time that a former President was extradited to his country to face charges for such crimes. The sentence was ratified by the Supreme Court of Justice on December 30, 2009. Mr. Fujimori was also convicted of “corruption” and there are ongoing trials against him and his collaborators for human rights violations<sup>2</sup>.

Peru continued to experience severe social conflicts in 2009<sup>3</sup>. The most dramatic case was the Bagua conflict<sup>4</sup>. In March 2008, the legislative power granted the executive power the authority to adopt measures related to its development policy and the implementation of the Free Trade Agreement with the United States. The Government approved 101 decrees. Indigenous and peasant communities opposed several of these decrees because they feared that they would violate their right to be consulted on the use of their lands and/or infringe on human rights because of their impact on the environment, which would be in breach

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1/ See Association for Human Rights in Peru (APRODEH).

2/ On July 20, 2009, Mr. Alberto Fujimori was sentenced to seven and a half years in prison for serious crimes of corruption committed to the detriment of the country. In October 2009, Mr. Fujimori, Mr. Vladimiro Montesinos Torres and other members of the military were tried for the attack that killed journalist Melissa Alfaro on October 10, 1991. It should be noted that in order to try Mr. Fujimori, the Peruvian State had to make a request to the Chilean Supreme Court since these charges were not included in the Chilean Court's decision on September 21, 2007 to extradite Mr. Fujimori.

3/ See Ombudsman's Office, Division for the Prevention of Social Conflicts and Governance, *71° Reporte de Conflictos sociales, Conflictos sociales conocidos por la Defensoría del Pueblo*, January 31, 2010.

4/ See FIDH Report, *Perú: Bagua. Derramamiento de Sangre en el Contexto del Paro Amazónico. Urge abrir diálogo de buena fe*, October 2009 and APRODEH - FIDH, *Nota de Actualización*, February 22, 2010.

of Peru's international obligations<sup>5</sup>. As such, since April 9, 2009, several indigenous groups, led by the Interethnic Association for the Development of the Peruvian Rainforest (*Asociación Interétnica de Desarrollo de la Selva Peruana* – AIDESEP)<sup>6</sup> reignited protests that first began in 2008 with peaceful demonstrations, roadblocks, and sieges on the facilities of oil companies<sup>7</sup>. On May 10, 2009, the Peruvian Government declared a State of emergency in the areas where there were protests. Beginning on May 14, on three separate occasions, the Peruvian Congress postponed meetings to discuss the proposals put forward by the indigenous communities. On June 4, the ruling party postponed the debate once again. On June 5 and 6, 2009, there were confrontations between the national police and the Awajun and Wampis indigenous groups at the Petroperú ("Station N 6") facilities in the cities of Bagua Grande and Bagua Chica in the so-called "Devil's Bend" (*Curva del Diablo*) area, after the police tried to unblock the Fernando Belaúnde Terry highway. Although the indigenous groups were lifting the roadblock, the national police fired at them from helicopters. That day, ten civilians, including indigenous leaders, and 23 policemen died<sup>8</sup>, and the Head of the National Police, Mr. Felipe Bazán Soles, disappeared. Some 200 people, mostly civilians, were injured. The investigations that followed the confrontation were cause for concern since the guarantees of due process were not always respected, and on certain occasions, the investigations were used to incriminate indigenous leaders. Furthermore, although the judicial proceedings concerning the deaths of the policemen began immediately after the incident, at the end of 2009, the reports on civilian deaths and injuries had still not been formalised<sup>9</sup>, and the Parliamentary and Government commissions had not indicated either the legal or political responsibilities of the helicopter operation. On June 8, 2009, the Bagua Grande radio station *La Voz*, which had reported live on the events in Bagua, was closed. Its closure would silence the other radio stations in the region, according to the Rapporteur from the Organisation

5/ For example, International Labour Organisation (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples, which was ratified by Peru and the United Nations Declaration on Indigenous Peoples, which was supported by Peru when it was adopted. The Government established a Multi-Party Committee "to study and recommend solutions to the problems faced by indigenous peoples with the help of their representatives". The Ombudsman's Office and various members of the Multi-Party Committee questioned whether some of the decrees were in conformity with the Constitution. Some decrees were withdrawn, while others are still in effect.

6/ The AIDESEP has existed for more than 30 years and represents approximately 350,000 indigenous Peruvians who live in eight regions of Peru.

7/ Indigenous protests had begun in August 2008 with the first Amazonian strike and ended with the commitment of the then Minister Jorge del Castillo to review the decrees.

8/ See Ombudsman's Office, *Informe de Adjuntía No. 006-2009-DP/ADHPD*, 2009 and APRODEH.

9/ See APRODEH.

of American States (OAS)<sup>10</sup>. The severity of the events that took place in Bagua prompted the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People to make a special visit<sup>11</sup>.

### **Threats against and harassment of human rights defenders involved in the fight against impunity, particularly for the crimes committed under Mr. Fujimori's orders**

The defenders who fight against impunity for the crimes committed during Peru's armed conflict between 1980 and 2000 were harassed and discredited through a Government's national campaign. One tactic the conservative press used to confuse the population and polarise society was to compare those who oppose impunity for the crimes committed during the fight against terrorist organisations of the "Shining Path" (*Sendero Luminoso*) to the terrorists themselves. For example, on September 26, 2009, the newspaper *La Razón* published an article that likened Ms. **Gisela Ortiz Perea**, a well-known human rights activist and family member in the La Cantuta case, to a terrorist. The articles published in *La Razón*, which discredit both the legal process and the victims, led the Association for Human Rights in Peru (*Asociación Pro Derechos Humanos – APRODEH*) and the relatives of the Barrios Altos and La Cantuta victims to lodge a complaint before the Ethics Tribunal of the Peruvian Press Council (*Consejo de la Prensa Peruana – CPP*). On August 19, 2009, the Tribunal announced its decision, stating that the complaint was well founded and ordering that "this decision be published within eight days of notification". As of the end of 2009, the decision still had not been published.

Defenders, relatives of victims and some members of the judicial power also suffered threats and judicial harassment. For example, on April 6, 2009, the day before the sentencing of former President Fujimori, APRODEH received a call threatening to kill Mr. **Francisco Soberón**, Executive Director of APRODEH, Mr. **Carlos Rivera**, a lawyer from the

10 / See Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) Press Release No. R41/09, June 26, 2009. The repression in Bagua as well as the situation of human rights and fundamental freedoms of the indigenous people concerned the international community. See IACHR Press Release No. 35/09, June 8, 2009. It should also be noted that the Committee on the Elimination of Racial Discrimination (CERD) concluded that "the Committee is concerned at the racial discrimination directed against indigenous peoples and Afro-Peruvian communities in the media [...]". See CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination, Peru*, United Nations Document CERD/C/PER/CO/14-17, August 31, 2009.

11 / See Human Rights Council, *Informe del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas*, S. James Anaya - Adición - Observaciones sobre la Situación de los Pueblos Indígenas de la Amazonía y los Sucesos del 5 de junio y Días Posteriores en las Provincias de Bagua y Utcubamba, Perú, United Nations Document A/HRC/12/34/Add.8, August 31, 2009.

Legal Defence Institute (*Instituto de Defensa Legal* – IDL), Mr. **Ronald Gamarra**, Executive Secretary of the National Coordinating Committee of Human Rights (*Coordinadora Nacional de Derechos Humanos*), and Ms. **Gloria Cano**, a lawyer from APRODEH, all of whom were lawyers representing the civil party in the trial against Mr. Fujimori. The former President of the Truth and Reconciliation Commission (*Comisión de la Verdad y Reconciliación*), Mr. **Salomón Lerner Febres**, also received death threats on September 23, 2009. He reported the threats to the police and then was visited by agents from the Ministry of the Interior in order to jointly assess the facts and coordinate security measures. Furthermore, the fight against impunity for the crimes committed under Mr. Fujimori's Government also encountered obstacles from the State itself. For instance, Ms. **Cristina del Pilar Olazábal Ochoa**, the Supraprovincial Criminal Prosecutor for Ayacucho, was tried for investigating and reporting cases of serious human rights violations that occurred between 1980 and 2000. On January 5, 2010, the decision of the National Public Prosecutor's Office was published in the official newspaper *El Peruano*, stating that the complaint filed by Mr. Alan García Pérez, President of Peru, for the alleged crime of "prevarication", was founded. In December 2003, Ms. Olazábal Ochoa had been designated Provisional Prosecutor of the Provincial Public Prosecutor's Office Specialising in Human Rights, Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves for the department of Ayacucho<sup>12</sup>. On January 31, 2005, she had lodged a criminal complaint against Mr. García Pérez for "genocide" and "undue omission of the crime of murder", as well as against 29 soldiers from the army, who were directly involved in the incidents at Accomarca, for "voluntary manslaughter". The decision of the National Public Prosecutor's Office will be sent to the corresponding Prosecutor who will proceed to formalise the complaint. Then it will be up to the Criminal Judge to decide whether or not to open the trial against Ms. Olazábal Ochoa. It should also be noted that, besides potentially being tried, Ms. Olazábal Ochoa might also be relieved of her post as punishment.

In addition, the legislative framework allows impunity for State police groups that are responsible for human rights violations<sup>13</sup>. In this context, the lawyers of five women who were sexually abused in Cusco's "Quenqoro"

12/ Public Prosecutor's Office created as part of the Peruvian State's commitment to the IACHR when the investigations into the Accomarca case ended.

13/ For example, Decree-Law 982 modified Article 20 of the Peruvian Criminal Code and established new grounds for not being held criminally liable: "... is exempt from criminal responsibility: The members of the armed forces and national police who cause injury or death while doing their duty and using their weapons in accordance with regulations".

penitentiary were subjected to intimidation acts. On April 24, 2009, Ms. **Evelyn Ceballos Enríquez**, lawyer and Head of the Legal Division of the Association for Life and Human Dignity (*Asociación por la Vida y la Dignidad Humana* – APORVIDHA), and Mr. **Freddy Rodríguez Olivera**, a lawyer from the same division, were the victims of hostile, verbal attacks from a group of protesters, who appeared to be relatives of the tried penitentiary officials. They reported the incident to the Ombudsman's Office and police authorities but, as of the end of 2009, no investigations had been carried out and the reports were filed away.

### **Assault, assassination attempts and judicial harassment of environmental activists and defenders of indigenous communities that are affected by the exploitation of large companies**

Environmental activists continued to be assaulted for reporting cases of corruption and mismanagement of lands and natural resources by private companies that have Government authorisation. For instance, the President of the Front for the Defence of the Interests of the People of Moquegua (*Frente de Defensa de los Intereses del Pueblo de Moquegua*), Mr. **Zenón Cueva**, was shot in the leg by a stranger who rang the doorbell of his house early in the morning on May 7, 2009. In August 2008, Mr. Cueva had led a protest urging the Government to deliver its promise for better distribution of the “Oil Canon” (“*Canon Minero*”), which was in an agreement that had been signed the previous year<sup>14</sup>, and was being tried for coercion, extortion and disturbances, along with 23 other leaders and inhabitants<sup>15</sup>. A few days prior to the attack, Mr. Cueva had reported corruption in various Government institutions – including the Regional Government and Provincial Council – in the implementation of the Oil Canon. The person allegedly responsible for shooting Mr. Cueva was identified and, in late 2009, was being held in the Samegua – Moquegua penitentiary, while the trial continued. Moreover, the Prosecutor asked for a 35-year sentence for Mr. Cueva and two of the leaders, and for between

14/ The mining companies pay the State a “tax”, the so-called “canon”, for mining. This money is given to the regions for their own use, in accordance with “equitable” distribution. The inhabitants of the Moquegua region had been asking for a greater share of the canon for years and, in 2007, the Government promised to meet this demand within 60 days. In June 2008, a year after the empty promise was made, the first demonstration took place. Once again, the Government promised that there would be an increase in 30 days. However, when this commitment was not honoured, on October 28, 2008, there were more protests, which ended when Congress approved a new distribution of the canon that favoured Moquegua even more.

15/ The First Provincial Public Prosecutor's Office of Mariscal Nieto asked for a 35-year sentence for Mr. Cueva, as well as for the former regional President, Ms. Cristala Constantinides Rosado, the leader of the Front for the Defence of the Interests of the People (*Frente de Defensa de los Intereses del Pueblo - FEDIP*) of Moquegua, Ms. Katherine Maldonado, and 25 years in prison for lawyer Julio Araoz Anchaize, a FEDIP consultant and Mr. Cueva's lawyer.

10 and 25 years for the others. In 2009, Mr. **Andrés Luna Vargas**, a peasant landowner from Miramar and Vichayal-Paita-Piura, President of the National Convention of Peruvian Agriculture (*Convención Nacional del Agro Peruano* – CONVEAGRO)<sup>16</sup> and President of the Front for the Defence of Water and Natural Resources (*Frente de Defensa del Agua y de los Recursos Naturales*) in the Piura region, continued to be threatened for stating that he was against the Puerto de Paita agreement, because the contract did not meet the requirements for local development. On July 27, 2009, at the Bellavista Government in the province of Piura, Mr. Luna Vargas reported that he had received several death threats on his mobile phone, but at the end of 2009, there had still been no investigations into these phone calls. Mr. **Santiago Manuín Valera**, an Awajun indigenous leader, founder of the SAIPE Jesuit Social Centre and former President of the Aguaruna-Humabista Council (*Consejo Aguaruna-Huambista* – CAH) and the Struggle Committee for the Respect of the Indigenous Peoples of the Province of Condorcanqui, Amazonas (*Comité de Lucha por el Respeto de los Pueblos Indígenas de la Provincia de Condorcanqui – Amazonas*), was seriously injured after being shot by the National Division of Special Operations (*División Nacional de Operaciones Especiales* – DINOES)<sup>17</sup>. He was shot as he tried to break up the confrontation between law enforcement officials and indigenous people that occurred in the “Devil’s Bend” on June 5, 2009. In spite of this, on June 13, 2009, the Judge of the First Criminal Court of Utcubamba, Mr. Francisco Miranda Caramutti, ordered a search for Mr. Manuín Valera and asked that he be found, captured and transported because of his involvement in the conflict in Bagua. At the end of 2009, Mr. Valera was being tried, but was released on bail as long as he appeared at his hearings. However, the trial concerning Mr. Valera’s injuries had not begun.

Besides being physically assaulted and threatened, environmental activist and defenders of indigenous communities were also subjected to prosecution. Thirty-five environmental activists were tried for “terrorism” after they opposed the Río Blanco mining project (previously known as the Majaz project) in the town of Piura. Indeed, despite the opposition of local inhabitants, the Peruvian Government insisted on supporting the mineral

16 / CONVEAGRO is a pluralist forum for inspection, technical assessment and democratic agreement, which does not act as an union and is not affiliated with any political party. CONVEAGRO fosters the growth of rural institutions, agricultural unions and associations for farm producers, since these bodies are essential to developing agriculture.

17 / A police contingent that belongs to the elite unit of the Peruvian national police.



exploitation and even went as far as to prosecute environmental activists<sup>18</sup>. In northern Peru, environmental activists were arrested after a conflict with a private prawn company called Virazon S.A., which had lodged a complaint against Mr. **Julio Bustamante Soto**, Mr. **Jorge Luís Zapata Ato** and Mr. **José Antonio Torres Carranza**, respectively the President and leaders of “El Bendito” Town Centre Association (*Asociación Centro Poblado “El Bendito”*), Tumbes. All of the activists were released and their trials were filed away. On January 10, 2010, the Prosecutor formalised the criminal report on the alleged crimes that affected the means of transportation, and disturbed or impeded the public services of the Virazon S.A. company and the State. Mr. **Gabino Ángel Dioses Franco**, Mr. **José Miguel Duran Jiménez**, Mr. **José Filomeno Gálvez Sotillo**, Mr. **Jaime Jiménez Páucar** and Ms. **Betty Fernández Naval**, all members of the “El Bendito” Town Centre Association, were accused of crimes against the administration of justice, violence and resistance of authority. The “El Bendito” Town Centre Association is located in the National Tumbes Mangroves Sanctuary, on about 5,000 hectares, more than half of which were declared protected areas by the State. However, the prawn company Virazon S.A. operates in this area and its extractive activities pose a risk to the environment and the way of life of the local inhabitants. The “El Bendito” Town Centre Association had initiated a legal dispute against the prawn company, which, by changing the boundaries of its property, affected the inhabitants of “El Bendito”.

The leaders of AIDESEP also suffered judicial harassment. In May 2009, Mr. **Alberto Pizango Chota**, President of AIDESEP, was accused of “rebellion, sedition and conspiracy for rebellion, sedition or mutiny” against tranquillity and public peace, and of making a speech that insulted the Peruvian State<sup>19</sup>. Mr. Pizango sought refuge in Nicaragua and at the

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18 / Supreme Decree 024, published by the Peruvian Government on December 27, 2008, states that there is a “public need” for the concession of 35 mining claims to the Chinese merger Zijin, owner of the Río Blanco Cooper S.A. mining project. Its presence in Piura is illegal according to the Ombudsman’s Office and the Congress of the Republic, based on the fact that the Constitution prohibits foreigners from having properties or concessions within 50 kilometres of the border.

19 / Five other leaders of Amazonian indigenous communities were also accused of the same crimes: Mr. **Saúl Puerta Peña**, Précis Writer for the AIDESEP, Mr. **Marcial Mudarra Taki**, Coordinator of the Regional Coordinating Committee of the Indigenous Peoples of San Lorenzo (*Coordinadora Regional de los Pueblos Indígenas de San Lorenzo - COREPI-SL*), Mr. **Cervando Puerta Peña**, President of the Regional Organisation of Amazonian Indigenous Peoples of Northern Peru (*Organización Regional de Pueblos Indígenas Amazónicos del Norte del Perú - ORPIAN-P*), Mr. **Daniel Marzano Campos**, President of the Regional Organisation of Indigenous People of Atlaya (*Organización Regional Indígenas de Atlaya - OIRA*), and Ms. **Teresita Antazú López**, President of the National Unity of Ashaninkas and Yaneshas Communities (*Unidad Nacional de Pueblos Ashaninkas y Yaneshas - UNAY*). The crimes that these

end of 2009, remained in exile. Furthermore, following the events in Bagua, on June 11, 2009, the Ministry of Justice requested the dissolution of AIDESEP due to its alleged role in these events that were “contrary to public order”. The legal representative for AIDESEP was summoned to testify on November 5 in the Tenth Civil Provincial Public Prosecutor’s Office in Lima. On November 12, the Government withdrew its attempt to dissolve AIDESEP. But the case of AIDESEP was not the only example of judicial retaliation after the events in Bagua. Moreover, in addition to the need and obligation to find the guilty parties in the events, the judicial harassment of indigenous leaders put dialogue that began on June 22, 2009 at risk, as the Special Rapporteur, Mr. James Anaya, warned in his report on his special visit to Peru<sup>20</sup>.

### Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
35 environmental activists	Judicial harassment	Press Release	January 9, 2009
Mr. Julio Bustamante Soto, Mr. Jorge Luís Zapata Ato, Mr. José Antonio Torres Carranza, Mr. Gabino Ángel Diones Franco, Mr. José Miguel Duran Jiménez, Mr. José Filomeno Gálvez Sotillo, Mr. Jaime Jiménez Páucar and Ms. Betty Fernández Naval	Arbitrary detention / Judicial harassment	Urgent Appeal PER 001/0109/OBS 017	January 29, 2009
Association for Human Rights in Peru (APRODEH) / Mr. Francisco Soberón, Mr. Carlos Rivera, Mr. Ronald Gamarra and Ms. Gloria Cano	Death threats	Press Release	April 7, 2009
Ms. Evelyn Ceballos Enríquez and Mr. Freddy Rodríguez Olivera	Harassment / Assault	Urgent Appeal PER 002/0509/OBS 072	May 12, 2009
Mr. Zenón Cueva	Assault	Urgent Appeal PER 003/0509/OBS 078	May 15, 2009
Mr. Alberto Pizango Chota, Mr. Saúl Puerta Peña, Mr. Marcial Mudarra Taki, Mr. Cervando Puerta Peña, Mr. Daniel Marzano Campos and Ms. Teresita Antazú López	Judicial harassment	Press Release	June 2, 2009
Mr. Santiago Manuin Valera	Assault / Judicial harassment	Urgent Appeal PER 004/0709/OBS 108	July 21, 2009

20 / See Human Rights Council, *Informe del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas*, S. James Anaya - Adición - Observaciones sobre la Situación de los Pueblos Indígenas de la Amazonía y los Sucesos del 5 de junio y Días Posteriores en las Provincias de Bagua y Utcubamba, Perú, United Nations Document A/HRC/12/34/Add.8, July 20, 2009.

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
<b>Mr. Andrés Luna Vargas</b>	Death threats / Fear for life and physical integrity	Urgent Appeal PER 005/0809/OBS 120	August 21, 2009
<b>Ms. Teresita Antazú López</b>	Judicial harassment	Urgent Appeal PER 006/0809/OBS 127	August 26, 2009
<b>Ms. Daysi Zapata Fasabi</b>	Judicial harassment	Urgent Appeal PER 007/0909/OBS 133	September 3, 2009
<b>Pr. Segundo Jara Montejo</b>	Assassination attempt / Fear for safety and physical and psychological integrity	Urgent Appeal PER 008/0909/OBS 134	September 11, 2009
<b>Dr. Santos Octavio Esparza Villalobos</b>	Judicial harassment	Urgent Appeal PER 009/0909/OBS 135	September 17, 2009
<b>Mr. Salomón Lerner Febres</b>	Threats	Urgent Appeal PER 010/0909/OBS 140	September 29, 2009
<b>Ms. Gisela Ortiz Perea</b>	Slander campaign	Urgent Appeal PER 011/0909/OBS 141	September 29, 2009
<b>Interethnic Association for the Development of the Peruvian Rainforest (AIDESEP)</b>	Obstacles to freedom of association	Press Release	October 29, 2009
<b>AIDESEP and 69 of its members, including Mr. Alberto Pizango Chota and Mr. Bladimiro Tapayuri</b>	Withdrawal of request for dissolution / Judicial harassment	Press Release	November 17, 2009
<b>Mr. Pedro Condori Laurente and Mr. Claudio Boza Huanhuayo</b>	Arbitrary detention / Judicial harassment	Urgent Appeal PER 012/1109/OBS 173	November 27, 2009

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# VENEZUELA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

Venezuela continued its process of institutional reform, which affects Government bodies that are independent from State's control, particularly through the Executive's progressive co-optation of judicial power, which could threaten the guarantee to uphold and respect fundamental rights<sup>1</sup>. The Government and other State institutions' refusal to commit to the international system of human rights protection was also cause for concern, and could have negative repercussions on the work of defenders in a context of increasing violence<sup>2</sup>, criminalisation of social protests and deplorable conditions for prisoners and restrictions on freedom of expression.

On December 18, 2008, the constitutional section of the Supreme Court of Justice of Venezuela declared that a sentence from the Inter-American Court of Human Rights (IACtHR)<sup>3</sup> was "inexecutable" because it was "violating the sovereignty of the Venezuelan State"<sup>4</sup>. Furthermore, the Venezuelan State refused to discuss the communication sent by the United Nations Special Rapporteur on the matter<sup>5</sup>, and questioned the impartiality of the Inter-American Commission on Human Rights (IACHR)

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1/ See Inter-American Commission on Human Rights (IACHR), *Annual Report 2008*, Document OEA/Ser.L/V/II.134, Doc. 5 rev.1, February 25, 2009.

2/ In accordance with the official figures from the Office of Penal, Scientific and Criminal Investigations (*Cuerpo de Investigaciones Penales, Científicas y Criminalísticas*), affiliated to the Ministry of the Interior and Justice, 16,094 homicides, excluding extrajudicial executions, were recorded in 2009, while 14,735 and 14,829 homicides were respectively recorded in 2007 and 2008. According to the Public Ministry, during the first 90 days of 2009, 155 people lost their lives at the hands of police agents during alleged confrontations or executions. On June 2, 2009, the Minister of Internal Affairs and Justice, Mr. Tareck El Aissami, acknowledged that 20% of crimes in Venezuela were committed by the police.

3/ This sentence ordered the reappointment of the former Judges of the Administrative Court of First Instance, Ms. Anna María Ruggeri Cova, Mr. Perkins Rocha Contreras and Mr. Juan Carlos Apitz Barbera, who had been arbitrarily dismissed in October 2003, in violation of their right to due process and judicial protection, which are recognised in the American Convention on Human Rights. This sentence also urged the Executive power to denounce this treaty. See Sentence Series C No. 182 of the IACtHR, Apitz Barbera and others Case (*Administrative Court of First Instance*), August 5, 2008.

4/ See Sentence No. 1939, File No. 08-1572 of the Supreme Court of Justice - Constitutional Section of the Bolivarian Republic of Venezuela, December 18, 2008.

5/ See Human Rights Council, *Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy*, United Nations Document A/HRC/11/41/Add.1, May 19, 2009.

in its treatment of various matters featured in its 2008 Annual Report<sup>6</sup>. Moreover, the Government confirmed that it would not allow the IACHR to visit Venezuela “until it corrected its biased view”<sup>7</sup>.

In terms of freedom of expression, on July 3, 2009, the Director of the National Commission for Telecommunications (*Comisión Nacional para las Telecomunicaciones* – CONATEL) announced that 240 AM and FM radio stations would be subjected to administrative proceedings for not having completed their registration<sup>8</sup>. On July 31, 2009, the threat was carried out and the first 32 radio stations and two television channels were immediately closed<sup>9</sup>. Furthermore, in July 2009, the Venezuelan Public Prosecutor’s Office presented a Special Bill on “Media Crime” in order to criminally punish those who attack “social peace, national security and independence, the security of State institutions, the health and public morale of Venezuelans”. Legislators did not approve this bill. However, it adds to Venezuela’s unfavourable situation with respect to freedom of expression. In this context, national organisations reported that some journalists preferred to refrain from providing certain information for fear of retaliation<sup>10</sup>.

Furthermore, although violence in prisons presents a challenge for Venezuelan authorities, there was no significant improvement in 2009, with a total of 366 deaths and 635 injuries that year<sup>11</sup>. The situation was further complicated by the fact that complaints of human rights violations committed in prisons provoked retaliation from the authorities. Besides the high rates of violence, inmates also confronted awful living conditions and overcrowding<sup>12</sup>.

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6 / Such is the case of the Press Release published on May 9, 2009 by the Venezuelan Ministry of Foreign Affairs, which mentions “the manipulation and lies from bodies of the Inter-American System of Human Rights” and the “inaccurate, malicious and false” nature of the IACHR 2008 Annual Report.

7 / See IACHR, *2008 Annual Report*, Document OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009.

8 / In 2000, an Organic Law on Telecommunications was approved, establishing a two-year period to change the concession of radio stations. There could be a change in ownership if necessary - for example, in the event of the death of the original owner of the concession. Many of the radio stations that underwent these changes and changed ownership did not receive a response for more than 10 years. As such, when filling out the list of updated information, which CONATEL demanded of individuals and corporations with radio broadcasts in May 2009, it became apparent that many radio stations had not been able to complete the process because of inaction on the part of the authorities.

9 / See Public Space organisation (*Espacio Público*).

10 / *Idem*.

11 / See Venezuela Prison Observatory (OVP), *Situación carcelaria en Venezuela, Informe 2009*, 2010.

12 / This led the IACHR to adopt provisional measures in favour of the prisoners at the La Pica, El Rodeo, Uribana and Yare I and II penitentiaries in Venezuela, which remained in effect for three years.

## Obstacles to freedom of association

In 2009, the National Assembly continued to debate a new Law on International Cooperation. The law was passed when it was first discussed in the National Assembly on June 13, 2006, at the urging of the Legislative Commission on Foreign Policy, and the President of the National Assembly thought that its final approval should top the agenda in 2009. This bill proposes that the work of non-governmental organisations (NGOs) – including national and international human rights organisations that operate in Venezuela – adapt to the State's development projects and foreign policy in order to access international cooperation funds<sup>13</sup>. Furthermore, this bill would force the organisations to provide confidential information that would place their beneficiaries and even human rights defenders themselves in danger<sup>14</sup>. NGOs complained that this bill was being used to impede their work, in as much as it would become much more difficult for them to receive funding and authorisation to exist as organisations. In early 2010, the President of the National Assembly for External Affairs publicly announced that the adoption of this law was a priority on the legislative agenda for the year<sup>15</sup>.

## Slander campaigns, threats and harassment of human rights defenders by various State authorities

In its 2008 Annual Report, the IACHR noted that slanderous statements and acts of harassment by Venezuelan State authorities continued. In 2009, civil society organisations complained that this trend against human rights defenders did not subside.

Defenders who spoke out against the conditions in penitentiaries were often the victims of these statements. For example, the Director of the Venezuelan Prison Observatory (*Observatorio Venezolano de Prisiones – OVP*)<sup>16</sup>, Mr. **Humberto Prado**, was once again the victim of slanderous statements and harassment<sup>17</sup>. On March 17, 2009, on the *Globovisión* news channel, Mr. Gerson Pérez, a militant political leader of the official United Socialist Party of Venezuela (*Partido Socialista Unido de Venezuela – PSUV*) accused Mr. Prado of being behind the protests in the “La Planta”

13/ See Committee of Family Members of the Victims of the events that occurred between February 27 and the first days of March of 1989 (COFAVIC).

14/ *Idem*.

15/ *Idem*.

16/ OVP documents cases of violations of prisoners' human rights in order to present them before national and international organisations.

17/ Since 2006, Mr. Prado has been the object of slander campaigns, death threats and assaults because of the “La Pica prison” case that was brought before the IACHR, and because of which he was granted provisional protection measures.

prison and of financing strikes in certain penitentiaries. Mr. Pérez insisted that he had proof to support his accusations: “We have the investigation and documents, as well as direct indications from inmates. If these acts continue, we will take matters into our own hands”<sup>18</sup>. Furthermore, the Public Ministry requested information about Mr. Prado’s financial accounts throughout the country on various occasions, beginning in February 2007. In addition, on September 30, 2009, during a hearing on the situation of inmates in various Venezuelan prisons before the IACtHR in San José, Costa Rica, Mr. Germán Saltron, State agent for the inter-American system, attacked Mr. Prado’s moral integrity. Mr. Saltron accused Mr. Prado of corruption, taking advantage of prisoners and being responsible for prison violence, among other things<sup>19</sup>. On November 24, 2009, the IACtHR recommended that provisional measures be adopted to protect Mr. Prado<sup>20</sup>, but the Venezuelan State has not done so. The harassment that Mr. Prado suffered also included acts of intimidation such as death threats over the telephone. Similarly, Mr. **Carlos Nieto Palma**, Director of the NGO called “A Window to Freedom” (*“Una Ventana a la Libertad”*), has been the victim of acts of intimidation since 2003. On August 19, 2009, three members of the metropolitan police paid Mr. Nieto a visit at his house and asked him: “Why don’t you just shut your mouth? (...) You should stop taking these things from the Minister”, in reference to his reports on the irregularities in the country’s penitentiaries<sup>21</sup>.

Furthermore, the Venezuelan Programme of Education-Action in Human Rights (*Programa Venezolano de Educación Acción en Derechos Humanos* – PROVEA) and the Committee of Family Members of the Victims of the events that occurred between February 27 and the first days of March of 1989 (*Comité de Familiares de Víctimas de los sucesos ocurridos entre el 27 de febrero y los primeros días de marzo de 1989* – COFAVIC) reported being the victims of slander campaigns because of their work. They were accused of working against the revolution because, for example, they receive funding from other countries. For instance, COFAVIC reported that 20 years after the Caracazo events<sup>22</sup>, some Government officials and

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18/ See COFAVIC.

19/ See Archdiocese of Caracas Episcopal Vicariate of Human Rights (*Vicaría Episcopal de Derechos Humanos de la Arquidiócesis de Caracas*).

20/ See IACtHR Resolution, *Provisional Measures with Respect to the Bolivarian Republic of Venezuela*, November 24, 2009.

21/ See Venezuelan Programme of Education-Action in Human Rights (PROVEA) and COFAVIC.

22/ The Caracazo was a revolt that broke out on February 27, 1989 against the neoliberal economic policies of the Government of former President Carlos Andrés Pérez. The revolt culminated the next day with a massacre in the city of Caracas when the metropolitan police’s security forces, the army and

journalists discredited their work. On February 26, 2009, television host Mr. Mario Silva claimed that COFAVIC was part of a conspiracy that was plotting to break up the civil-military union. He also accused Ms. **Liliana Ortega**, President of COFAVIC, of wanting to steal indemnities to the victims of the Caracazo. On June 9, 2009, the IACtHR decided to lift the provisional measures in favour of Ms. Ortega and COFAVIC, a decision that was appealed by the organisation since human rights defenders in Venezuela were still being persecuted<sup>23</sup>.

Even more serious was the attempted assassination of Mr. **José Urbano**, President of the NGO called Pro-defence of the Right to Education (*Pro-defensa del Derecho a la Educación*), who was attacked on August 27, 2009 when driving a motorcycle on a motorway in the city of Barcelona, in the State of Anzoátegui. Two male strangers riding a motorcycle blocked him and one of them shot at Mr. Urbano, who got down off his motorcycle and fled to a nearby wooded area. The hit men also fled, taking Mr. Urbano's motorcycle with them. Mr. Urbano had already been the victim of an assault in February 2007 and received a bullet wound. There was never any investigation into the attack, nor was there one for his attempted murder in 2009. Furthermore, Mr. Urbano was not provided with any measure of protection. The attacks on him seem to be related to his public criticism of the quality of education that Venezuelan minors who lack financial resources receive, as well as his denouncement of corruption<sup>24</sup>.

### **Obstacles and retaliation against defenders who participate in the international human rights system**

In 2009, the Venezuelan Government retaliated against those who had followed recommendations from international human rights bodies. Such was the case of Judge **María Lourdes Afiuni**, who was arrested by police intelligence agents on December 10, 2009, not long after having ordered the conditional release of Mr. Eligio Cedeño, based on the assessment and recommendations of the United Nations Working Group on Arbitrary Detention<sup>25</sup>. Judge Afiuni was still being detained as of the end of 2009

23/ See COFAVIC.

24/ *Idem*.

25/ Mr. Eligio Cedeño is a Venezuelan businessman accused of financial fraud, whose arrest was declared arbitrary by the UN Working Group on September 1, 2009. On December 10, 2009, the team of defence lawyers for Mr. Cedeño presented the opinion of the UN experts in a hearing before Judge Afiuni, and Mr. Cedeño was released after spending almost three years in prison awaiting trial. Mr. Cedeño is currently in the United States seeking political asylum.



and prosecuted for her alleged participation in the release and eventual flight of Mr. Cedeño<sup>26</sup>.

Furthermore, Venezuela, along with Nicaragua, tried to impede the participation of civil society organisations in the Organisation of American States (OAS) meeting that was held in San Pedro Sula, Honduras, in June 2009. Over the past three years, it has also managed to prevent an organisation called Transparency Venezuela (*Transparencia Venezuela*) from participating in the dialogue between civil society and the Government that was established by the Inter-American Convention Against Corruption, because it receives funding from the organisation Transparency International.

### **Criminalisation of protests of labour rights defenders**

In 2009, there was a gradual increase in the criminalisation of peaceful demonstrations through criminal trials against demonstrators, especially labour rights defenders<sup>27</sup>. For example, on April 20, 2009, Messrs. **José Solano, Asdrúbal Solórzano, Federy Radosky, Pedro Pérez and Ronald Marciano**, workers from the PDVSA contractor, Vincler Sodinsa Consortium, staged a peaceful siege of the offices of the Ministry of People's Power for Labour and Social Security in order to protest the Minister's decision to revoke the administrative decision of the Anaco Office of Labour Inspection. Metropolitan police officers broke up the protest using tear gas and kicking the workers. Messrs. Solano, Solórzano, Radosky, Pérez and Marciano were accused of being caught in the act of a misdeed by the Public Ministry and were imprisoned at the La Planta penitentiary until May 19, 2009, following the ruling of the Tenth Court of First Instance in Penal Affairs Acting as a Review for the Judicial Criminal Circuit in the Metropolitan Area of Caracas<sup>28</sup>. Likewise, in May 2009, eleven workers from a contracting company of State-owned Venezuela Petroleum (*Petróleos de Venezuela*) were imprisoned after holding a peaceful protest in the headquarters of the Ministry of People's Power for Labour because they had been laid off. The Public Ministry charged them with "aggravated damage to public property", "illegitimate deprivation of liberty", "aggravated resistance to authority", "active obstruction to the functioning of legally-established institutions", "insulting a public servant", "incitement to commit a crime", "intentionally aggravated

26 / The arrest of the Judge received the support of the Venezuelan President. See Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the Independence of Judges and Lawyers and Special Rapporteur on the Situation of Human Rights Defenders Joint Press Release, December 16, 2009.

27 / See PROVEA and Public Space Report, *Manifestaciones públicas: enero - diciembre 2009*, March 2010.

28 / See Archdiocese of Caracas Episcopal Vicariate of Human Rights Report, *Informe sobre la Situación de los Defensores y Defensoras de Derechos Humanos en Venezuela*, 2009.

personal injuries”, “use of children to commit a crime”, “provision of supplies” and “concurrence of crimes”<sup>29</sup>. Furthermore, on September 24, 2009, Mr. **Rubén González**, Secretary General of the Orinoco Iron Ore Workers’ Union (*Sindicato de Trabajadores de Ferrominera Orinoco*), was arrested during a strike that was held in August 2009 at the Orinoco Iron Ore plant in Piar city in order to demand the fulfilment of a collective bargaining agreement. Mr. González was accused of “provision of supplies”, “damage to public patrimony”, “restricted access to a work site” and “closure of public roads”. As of the end of 2009, he was still being detained for these crimes<sup>30</sup>. Labour rights defenders were also harassed through laying-off trade union leaders. According to PROVEA, between October 2008 and September 2009, 473 people were laid off for having participated in union activities or for belonging to a union-related organisation<sup>31</sup>.

### Obstacles to freedom of expression for independent journalists

Freedom of expression, on which the work of independent journalists depends, was an area of concern throughout 2009, a year that began and ended with the murder of independent journalists or activists involved in divulging information. On January 16, 2009, journalist **Orel Sambrano**, Director of the weekly newspaper *ABC de la semana* and of *Radio América*, was murdered in the city of Valencia by an unknown person<sup>32</sup>. The journalist died as a result of a bullet wound to the back of the neck. In his journalistic work, the reporter systematically reported on events related to drug trafficking and local corruption. At the end of 2009, the Office of Scientific, Penal and Criminal Investigations and the prosecutors assigned to lead the investigation had been able to identify several people involved in the crime, but only two had been arrested. On November 26, 2009, Mr. **Mijail Martínez**, a human rights defender and member of the Committee of Victims Against Impunity (*Comité de Víctimas contra la Impunidad* – CVCI), an organisation that publicly denounced alleged cases of serious human rights violations in the State of Lara in which public servants and leaders of State security bodies are directly and criminally involved, was killed. Mr. Martínez was an audiovisual producer and was working on a documentary that told the stories of victims of human rights violations at the hands of police agents from the State of Lara, and

29 / See COFAVIC.

30 / See PROVEA Report, *Informe Anual 2009 - Situación de los Derechos Humanos en Venezuela, Informe Anual octubre 2008 / Septiembre 2009*, December 9, 2009, and Public Space.

31 / See PROVEA Report, *Informe Anual 2009 - Situación de los Derechos Humanos en Venezuela, Informe Anual octubre 2008 / Septiembre 2009*, December 9, 2009.

32 / See Public Space. The IACHR Office of the Special Rapporteur for Freedom of Expression “deplore[d] the murder of Orel Sambrano [...] and] urge[d] Venezuelan authorities to investigate this crime promptly and effectively, and to duly prosecute those responsible”.

on numerous occasions had reported cases of mass executions, torture, enforced disappearances and other serious crimes to the Public Ministry and the media. A few days after his murder, a young man named Jairo José Ollavez confessed that he had been hired to kill Mr. Martínez. After lengthy judicial deliberation, Mr. Ollavez was released on probation, and at the end of 2009, was a fugitive<sup>33</sup>. In late 2009, there were no leads in the investigation and there was a request to transfer the case to the National Public Prosecutor's Office so that an impartial, quick, exhaustive and transparent investigation could be conducted at a national level.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Nicaraguan and Venezuelan NGOs	Obstacles to freedom of association	Press Release	May 29, 2009
Mr. Mijail Martínez	Assassination	Urgent Appeal VEN 001/1209/OBS 195	December 21, 2009



# ASIA

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# REGIONAL ANALYSIS

## ASIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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While elections took place in various Asian countries in 2009 – mainly in fragile political contexts such as in *Afghanistan*, *Bangladesh*, *India*, *Indonesia* and *Iran* –, they did not lead to any concrete improvement in the human rights situation in those countries. Elections were marred by human rights violations and acts of intimidation in *Afghanistan* and *Indonesia*, while repression of post-election protests in *Iran* resulted in mass arrests in the ranks of peaceful demonstrators, including hundreds of political activists and figures, journalists, student activists and human rights defenders. In *Burma*, the military junta carried out a campaign to neutralise all opposition ahead of the 2010 elections. In that framework, many defenders, journalists, union leaders and social workers were arrested and sentenced to severe penalties. Likewise, despite promises of reforms and greater respect for human rights, Dato' Seri Mohd. Najib bin Tun Haji Abdul Razak, who was designated as Prime Minister of *Malaysia* in April, displayed an increased level of intolerance towards dissent and opposition in 2009.

Several States also continued to face political and security instability, as did *China*, where violence particularly erupted in July in the Xinjiang Uighur Autonomous Region (XUAR), and *Thailand*. Internal conflicts (*Afghanistan*, *India*, *Indonesia*, *Pakistan*, *the Philippines*, *Sri Lanka*) also led to serious human rights abuses, including arbitrary arrests, enforced disappearances, extrajudicial executions, torture and other ill-treatments, in full impunity. In *Sri Lanka*, although the conflict ended in May, serious human rights violations continued to occur in the country, while the proclamation of the state of martial law in the province of Maguindanao, in *the Philippines*, following the massacre in Amputuan, contributed to reinforce the influence of the military in the region thereby aggravating the already volatile human rights situation. Furthermore, populations in some areas of *Nepal* continued in 2009 to be subjected to violence by armed groups, which allegedly include members of former vigilante groups created and armed by the Government during the civil war.

220 In such a context, systematic human rights violations remained rampant in most countries of the region, while impunity for those abuses was still

widespread. Governments also continued to restrict freedoms of expression, assembly and association, as well as to control access to information and to exert censorship of the media and Internet (*Afghanistan, Bangladesh, Burma, Cambodia, China, the Democratic People's Republic of Korea, Iran, Laos, Malaysia, Sri Lanka, Thailand, Viet Nam*).

At the regional level, the launching in October 2009 of the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights constituted a welcome and long-overdue step forwards, in spite of the weaknesses of its mandate. The new body carries the task of promoting regional cooperation on the promotion and protection of human rights. Nevertheless, the independence, accountability and transparency of the Commission will largely depend on the commitment of its members, in particular representatives of highly repressive regimes.

### **Ongoing use of repressive legislations to curb human rights activities**

While some Asian countries continued to invoke in 2009 national security concerns to clamp down on democracy and fundamental freedoms, repressive legislations remained in force in several countries, thereby maintaining a restrictive environment for human rights activities. In *Malaysia*, although one of the first decisions of the new Government was the review of the Internal Security Act (ISA), the implementation of which has long raised numerous concerns because of its lack of judicial oversight and its instrumentalisation to curb political dissent and negate the work of human rights defenders, as of the end of 2009, no substantive legislative or institutional reforms had been introduced. Meanwhile, other repressive laws remained in place, further questioning the Government's willingness to uphold the respect of civil liberties. Likewise, in *Sri Lanka*, as in previous years, the authorities used again the Prevention of Terrorism Act as well as other repressive laws to silence criticism and dissent, in particular against those openly critical of the war with the Tamil Tiger rebels and its effect on civilian population.

In other countries, the introduction of several new pieces of legislation contributed to the deterioration of an already restrictive environment for human rights activities. In *Cambodia* in particular, the adoption of a new Criminal Code, which added a number of broadly defined offences that may be used to curb freedom of expression, along with the promulgation of the Law on Peaceful Demonstration and the imminent adoption of two laws regulating NGOs and trade unions seemed to be part of a governmental strategy to restrict the activities of Cambodian civil society organisations and reinforce their control. Similarly, both the controversial Anti-Terrorism (Amendment) Ordinance 2009 in *Pakistan* and the

Anti-Terrorism Ordinance in *Bangladesh* might be used as tools to prosecute human rights defenders and other activists under the pretext of national security. Finally, in *Indonesia*, the Government continued in 2009 to push the Parliament to adopt the Bills on State Secrecy and on Mass Organisation, which could, if adopted, create difficulties for human rights groups to document human rights abuses, provide for the monitoring of NGOs fund and establish a commission to monitor their activities.

### **Human rights lawyers, a privileged target of repression**

Lawyers defending human rights activists or involved in cases considered sensitive by authorities were increasingly targeted in Asia in 2009. In *China* and *Burma* in particular, human rights lawyers suffered a consistent pattern of abuses including arrest and prosecution, harassment, suspension of licenses or disbarment and physical abuse. In *Iran*, authorities also continued to harass and crackdown on prominent human rights lawyers, in particular members and founders of the Defenders of Human Rights Centre, in an attempt to prevent them from representing political prisoners and reform supporters detained following the disputed presidential election. In *Viet Nam*, one lawyer was arrested and charged with “conducting propaganda” against the State under Article 88 of the Criminal Code for speaking out against the extraction of bauxite in the Central Highlands and calling for political reform, and several lawyers involved in the defence of human rights remained detained as of the end of 2009, following criminal sentences and disbarment from the Lawyers Bar Association of Viet Nam. Lawyers in *Cambodia*, *Pakistan* and *Sri Lanka* were also victims of acts of harassment, death threats or attacks.

### **Reprisals against defenders denouncing human rights abuses committed by security forces and fighting against impunity**

In 2009, human rights defenders and NGOs remained targeted for denouncing extrajudicial killings, corruption and other human rights violations, particularly when they were committed by the police, security or armed forces, as well as for fighting against impunity that accompanies such abuses (*Bangladesh, India, Nepal, the Philippines, Sri Lanka, Thailand*). Defenders fighting impunity also continued to be perceived by authorities as possible threats and were demonised as “terrorists”, “separatists” or supporters of “anti-State forces” (*the Philippines, Sri Lanka, Thailand*). In *Indonesia*, those who sought justice for the murder of a prominent human rights defender in 2004 were victims of judicial harassment.

Moreover, aid workers continued to face obstacles and were subjected to reprisals in *Sri Lanka*, in particular for drawing attention on human rights abuses. Likewise, in *Burma*, several of the individuals who were arrested in

2008 for carrying out relief activities in the Irrawaddy Delta after Cyclone Nargis remained under detention as of the end of 2009.

### Ongoing repression of trade unionists

In 2009, employers and Governments in Asia remained bent on repressing trade union activity, leading to continuous and serious violations of fundamental trade union rights throughout the year. Trade unionists and workers were fired or sacked for participating in strike actions or protests, they suffered attacks, arbitrary arrests and harsh prison sentences (*Burma, Iran, Viet Nam*), as well as abduction, torture (*Pakistan, the Philippines*), the use of violent techniques to repress workers' demonstrations (*Iran, Thailand*) or the use of "obstruction of business" clauses (*Republic of Korea*). In *Cambodia*, trade union leaders continued to be regularly subjected to violence, harassment and intimidation in order to stop them from carrying out their legitimate trade union activities. In addition, the trade union movement remained weakened and intimidated by the assassination of three trade union leaders in 2004 and 2007, while impunity for the authors of their assassinations continued in 2009. Defending the rights of bounded workers also remained an extremely risky activity in *Pakistan*.

### Women's rights defenders still at risk

For being at the forefront in the defence of human rights, women human rights defenders faced harassment in several Asian countries in 2009. This was the case especially in *Iran*, where members of the "One Million Signatures" Campaign, a grassroots campaign to abolish gender discrimination in Iranian laws, were specifically targeted and regularly harassed by the authorities and security forces. No less than 50 members of the Campaign were arrested at various times during the year and some of them remained in detention as of the end of 2009. A number of women rights' activists also had to flee their country. In *Nepal*, women human rights activists also continued to face barriers to access justice and seek redress for acts of violence, including sexual violence and gender discrimination, and remained at risk of attack, in particular for challenging the patriarchal and caste-based system. In *India*, human rights defenders fighting against human trafficking were again victims of acts of intimidation in 2009, all the more as human trafficking continued to receive support from corrupt politicians and police officers. In *Afghanistan*, women human rights defenders also faced harsh reprisals, as sadly illustrated by the assassination on April 12, 2009 of Ms. **Sitara Achakzai**, a women' rights defender and Provincial Council member from Kandahar, who was encouraging women to take up jobs and fight for their rights. Earlier in 2009, Ms. Achakzai had been organising a nationwide sit-in of more than 11,000 women, in seven provinces to mark the International Women's Day. Fearing for her safety,



she was to leave Afghanistan on May 1. Subsequently, a Taliban spokesperson claimed responsibility for her assassination<sup>1</sup>.

### **Acts of harassment against defenders of minorities rights**

Minorities rights defenders faced ongoing harassment and violence in 2009. This was the case in particular in *India*, where human rights defenders working to promote the rights of the Dalit and other marginalised communities remained subjected to reprisals. In *Pakistan*, several human rights defenders of minorities rights faced various acts of harassment, in a context where the wilful negligence of the police to address the rights of religious minorities allowed radicals to intimidate and attack with impunity. Defenders of minorities rights in *Bangladesh*, of Uighur and Tibetan communities in *China*, and members of the Unified Buddhist Church of Viet Nam (UBCV), a prohibited movement that peacefully promotes religious freedom, democracy and human rights in *Viet Nam*, also remained subjected to acts of reprisals, while several defenders of minorities rights, both cultural and religious, were still arbitrarily detained since 2007 in *Iran* as reprisals for their human rights activities, including for promoting the respect for the human rights of the Kurdish minority.

### **Harassment of environment activists and defenders protesting against illegal exploitation of natural resources, land grabbing and forced evictions**

Advocating for the right to land and adequate housing remained a high-risk activity in many Asian States in 2009, in particular due to the collusion of authorities with powerful private groups, especially logging and palm oil companies. Land rights defenders and forced eviction petitioners continued to be arbitrarily arrested and detained in countries such as *Bangladesh*, *Burma*, *Cambodia*, *China*, *Indonesia*, *Malaysia* and *Pakistan*. Human rights defenders fighting against forced evictions were harshly repressed in the framework of the 2009 Yongsan operation in the *Republic of Korea*, thereby constituting a blatant example of the impact of forced evictions on the rights of people in areas marked by large economic development.

Moreover, defenders protesting projects with negative impact on the environment continued to be victims of assassinations and other forms of attacks in *Thailand*, especially for denouncing abusive exploitation of natural resources affecting the environment and way of living of local

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1/ See United Nations Development Fund for Women (UNIFEM) - Afghanistan Statement, April 13, 2009, as well as United Nations Assistance Mission in Afghanistan (UNAMA) and Office of the United Nations High Commissioner for Human Rights Joint Report, *Silence is Violence - End the Abuse of Women in*

communities. In *India*, those who defended the right to land and environmental rights of marginalised communities were also subjected to reprisals, as illustrated by the arrest of the leaders of a movement of over 10,000 persons protesting against the Narmada Dams Projects, in Madhya Pradesh. In *Bangladesh*, defenders protesting against the exploitation of natural resources or environment-impacting projects were often victims of repressive measures in 2009. Similarly, defenders fighting on behalf of environmental and health rights were targets of various acts of harassment in *the Philippines*, in particular those who protested against the possible renewed operation of the Bataan Nuclear Power Plant, conducted campaigns against aerial spraying or fought against mining exploitation on their ancestral land.

**Urgent Intervention issued by The Observatory in 2009 on a country of the region for which there is no country fact-sheet**

COUNTRY	Names	Violations / Follow up	Reference	Date of Issuance
LAOS	Messrs. Thongpaseuth Keuakoun, Seng-Aloun Phengphanh, Bouavanh Chanmanivong, Kéochay and Khamphouvieng Sisa-At	Ongoing arbitrary detention / Fear for physical and psychological integrity / Impunity in death custody	Joint Press Release	October 23, 2009

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# BANGLADESH

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

Following the ninth parliamentary elections held on December 29, 2008, Bangladesh returned to an elected system of Government. On January 6, 2009, the military backed “caretaker” regime handed power over to the new Government. However, despite the end of the state of emergency on December 17, 2008, during which serious human rights violations were recorded under the unelected caretaker Government, the human rights situation in Bangladesh did not really improve in 2009. In particular, freedom of expression and of the media remained hindered, and journalists faced attacks or judicial prosecution, among others for reporting against the Government activities or local party leaders of the ruling Awami League. Moreover, although the Foreign Minister, Dr. Dipu Moni, said during the Universal Periodic Review (UPR) of Bangladesh, which the United Nations Human Rights Council undertook in February 2009, that zero tolerance would be applied to extrajudicial killings, extrajudicial killings have continued, mostly in complete impunity as the judiciary in Bangladesh is very much influenced by the Government and the judicial corruption is also high<sup>1</sup>. Custodial torture and torture in remand also go almost unchallenged. Furthermore, during the UPR, attention was notably paid to the protection of human rights defenders and journalists, corruption, rights of indigenous and religious minorities, as well as arbitrary detention, torture and prison situations<sup>2</sup>.

In February 2009, the Parliament passed, as a law, the Anti-Terrorism Ordinance 2009, which had been adopted in 2008 by the caretaker Government<sup>3</sup>. This legislation contains a very broad definition of terrorist acts, which includes property crimes as well as physical attacks, contrary to the recommendations of the United Nations<sup>4</sup>. There is a risk that the law will be used as a tool to persecute political opposition, human rights

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1/ According to the NGO Odhikar, in 2009, 154 people were reportedly killed extra-judicially by law enforcement agencies, in particular by, *inter alia*, the Rapid Action Battalion (RAB), the police, the army, Ansar and the Bangladesh Rifles. See Odhikar, *Annual Report on Bangladesh*, January 1, 2010.

2/ See United Nations Press Release, June 10, 2009 and Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Bangladesh*, UN Document A/HRC/11/18\*, October 5, 2009.

3/ See Odhikar Press Statement, February 21, 2009.

4/ See Observatory Annual Report 2009.

defenders, trade unionists and other activists under the guise of ensuring the security of the State.

On July 9, 2009, the Parliament adopted the National Human Rights Commission (NHRC) Act. Whilst the creation of a commission in Bangladesh is to be welcomed, it is feared that the proposed body will not meet the independence and pluralism guarantees required by the Paris Principles. In particular, the Act provides that the selection of the members of the Commission is made by a committee predominantly made up of Government officials. Furthermore, the powers of the Commission do not allow the Commission to take actions against an accused person or against law enforcement agencies<sup>5</sup>.

Land grabbing also remained an issue of particular concern in 2009. In most cases, ethnic and religious minority communities saw their land occupied by so called powerful people who are getting support from either the ruling party or from the “State machinery”: In the urban areas, the “land developers” forcefully evict poor inhabitants and then regularise the occupied land with the help of the “State functionaries”; in the rural areas it is done by the local thugs supported by the ruling party.

### **Repression of human rights defenders and NGOs denouncing violations committed by security forces**

Torture at the hands of law-enforcement agencies in Bangladesh is nothing new and continued unabated as an endemic problem, including against human rights defenders, who remained particularly targeted when denouncing human rights violations committed by security forces. On October 22, 2009, Mr. F.M. Masum, a journalist at the *New Age* newspaper, was arrested and allegedly tortured by officers of the Rapid Action Battalion (RAB, the elite crime-fighting force)<sup>6</sup>. They took Mr. Masum to the headquarters of the RAB-10, where he was detained for around ten hours and was brutally tortured. As a result of the torture, Mr. Masum sustained serious wounds, into which the RAB personnel rubbed salt. They also told him he would be killed in “crossfire”. Only after the intervention of Home Minister, Ms. Sahara Khatun, and several high officials of the Government was Mr. Masum released. Mr. Masum has written reports on extrajudicial killings such as the death in “crossfire” or “encounter” com-

5 / The Commission can only suggest the Government that it takes steps against those who have been proven guilty of crimes. See Odhikar, *9-Month Human Rights Monitoring Report, January 1-September 30, 2009, October 1, 2009*, and Odhikar, *Monthly Report*, July 2009.

6 / See Odhikar, *Human Rights Monitoring Report on Bangladesh - Period: 01- 30 October 2009*, November 1, 2009.

mitted by RAB officers and on illicit trading in drug substances by police and security officers. He has also written several reports on the torture of journalists across the country. Furthermore, Mr. **Korban Ali**, fact-finding officer of the human rights organisation Odhikar, received warnings and intimidating calls on several occasions as he was conducting fact-findings on the death of Mr. Shahinoor Rahman Dablu, allegedly killed by the detective branch of the police, Mr. Liakat Ali Babul and Kaiser Mahmud Bappi, allegedly killed by RAB, and Md. Mozam Pramanik, allegedly killed in a police station. Mr. Korban Ali received phone calls from unknown persons on August 17 and 31, October 18 and December 10, 2009. The callers asked him for whose interest Odhikar was carrying out the fact findings on extrajudicial killings. They also told him that Odhikar should be sensitive towards RAB and the police and not towards the criminals who were extra-judicially killed.

Human rights organisations were also subjected to intimidation practices by public authorities. To that extent, it is worth mentioning that the registration of civil society organisations as well as activities implemented with foreign funds are regulated by the NGO Affairs Bureau (NGOAB), which is placed under the Office of the Prime Ministers. All NGOs that receive foreign funding submit all projects to it for clearance. Without such clearance, the NGOs cannot withdraw or accept any foreign funds. Needless to say, projects on the protection of civil and political rights, which may be perceived by the Prime Minister's office, or the Ministry of Home Affairs, as "threatening" the Government are generally not given approval or stalled. In 2009, this was the case in particular of Odhikar, which received a letter on August 31, 2009 from the NGOAB, informing them that they had cancelled Odhikar's human rights project entitled "Human Rights Defenders Training and Advocacy Programme in Bangladesh" due to the objection of the Home Affairs Ministry, although the project had been approved by the NGOAB on April 28, 2009. Odhikar had already organised several events around the issue of torture, including district level advocacy programmes. The Government failed to show any legal basis for this action. Odhikar filed writ petition No. 6550 of 2009 challenging the cancellation of its project. On October 11, 2009, the High Court Division of the Supreme Court issued a ruling against the Government and stayed the impugned order<sup>7</sup>.

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7/ The donor of this particular programme – the Rehabilitation and Research Centre on Torture Victims (RCT) – extended the project period for another three months, to end in March 2010. As part of the renewal process, Odhikar submitted on January 17, 2010 an application for extension to the NGOAB in due course but this, too, was rejected by the Bureau on February 11, 2010, which based its refusal on the earlier objections placed by the Ministry of Home Affairs.

## Repression of economic and environment-related peaceful protests

Defenders protesting against the exploitation of natural resources or environment-impacting projects were often victims of repression measures in 2009. On August 24, the Government decided to enter into production sharing contracts with the companies Conco Phillips and Tallo Oil, whereby the contracting companies could commence oil exploration in three sites in the Bay of Bengal, and consequently giving scope for 80% of the extracted oil to be exported. In protest of this decision and demanding the Government not to enter into such contracts, which do not take into consideration the fact that oil and gas can be used to develop the power sector of Bangladesh along with a growth of the readymade garments sector, therefore calling for the respect of the sovereign rights of the people over their country's resources, the National Committee to Protect Oil, Gas, Mineral Resources, Power and Ports organised a procession on September 2, 2009, with a view to surround Petro Bangla office. The police then tried to prevent the procession and attacked it. About 30-35 persons were severely wounded. As of the end of 2009, no investigation had been carried out into this incident<sup>8</sup>. Furthermore, on July 5, 2009, members of the cultural organisation "Lampost" were attacked by the police as they took part in a peaceful protest in front of the Indian High Commission to demand the cessation of the construction of the Tipaimukh dam at Monipur, India, as this will affect Bangladesh's environment. The demonstration also aimed at protesting against police abuses at Lalgarg, India, along with human rights violations and interference of India in Bangladeshi politics. The baton-charge of the police left around 30 people, both men and women, injured. Two Lampost leaders, Messrs. **Ashish Koroa** and **Prince Mahmud**, were arrested for "voluntarily causing hurt to deter public servant from his duty and voluntarily causing grievous hurt to deter public servant from his duty", under Sections 332 and 333 of the Criminal Code of 1860, and were allegedly tortured in custody. Although they were subsequently released on bail, the case was still pending against them as of the end of 2009<sup>10</sup>.

## Harassment of minorities rights defenders

In 2009, defenders of minorities rights also continued to be subjected to acts of harassment. For instance, eight representatives of ethnic minority

8/ See Odhikar, *9-Month Human Rights Monitoring Report, January 1 - September 30, 2009*, October 1, 2009.

9/ Lalgarg is an area in the West Bengal State of India where radical left activists have developed a movement on land rights issues and the West Bengal State Government with the support of the Central Government had unleashed atrocities against the local people of Lalgarg.

10/ See Odhikar, *9-Month Human Rights Monitoring Report, January 1 - September 30, 2009*, October 1, 2009.

groups organised a press conference on July 2, 2009 at the Dhaka Reporters Unity to report the arrests, torture and incidents of land grabbing that took place in June 2009 in the locality of Sajek of Baghaichori in Rangamati, Chittagong Hill Tracts area, where the military has been deployed for decades to assist the civil administration to maintain law and order and counter armed insurgency. In that context, land grabbing is being carried out in many occasions with the complicity of the military, when the military is not directly involved. Subsequently, on July 5 and 6, a group of the Bangladesh army from the Baghaihat zone took into custody two village chiefs – Mr. **Ajit Chakma**, village chief of Kojoichori of Gongaram Dor, and Mr. **Manekdhon Chakma**, village chief of Hogeietli – in order to question them about the press conference. The army also carried out raids at the houses of those who had taken part in the press conference. As a consequence, the village representatives had to flee from their home and went in hiding for some time. Furthermore, on July 8, 2009, Mr. Habildar Rafikul Islam, a non commissioned officer in the army from the Gongaram Post, led an army group to the Gongaram area where they took into their custody 30-35 members from eight to ten families and released them the following day. No reason was given for their detention<sup>11</sup>.

### Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Shahanur Islam Saikot	Death threats	Urgent Appeal BGD 001/0309/OBS 051	March 23, 2009
Odhikar	Obstacles to freedom of association	Open Letter to the authorities	September 3, 2009

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# BURMA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

The year 2009 was characterised by a campaign by Burma's ruling military junta, the State Peace and Development Council (SPDC), to eradicate all political opposition ahead of the 2010 elections. Hundreds of prominent political activists, Buddhist monks and nuns, journalists, labour activists, bloggers and human right defenders as well as social workers were arrested and sentenced to lengthy jail terms. Even some of the lawyers representing activists were imprisoned for speaking out against the grossly unfair secret trials held in detention centres or in closed courthouses.

The trial of Ms. Aung San Suu Kyi, the leader of the National League for Democracy (NLD) party and winner of the 1991 Nobel Peace Prize, who has been subjected to house arrest since 2003, was perhaps one of the most significant event of 2009 in Burma. On May 14, 2009, the military regime arrested Ms. Aung San Suu Kyi on charges of breaching the terms of her house arrest order by permitting the intrusion of an American citizen into her house, just days before she was due to be released. Ms. Suu Kyi was transferred to Insein prison, Rangoon, and went on trial on May 18 for allegedly violating Article 22 of the 1975 State Protection Act<sup>1</sup>. On August 11, she was sentenced to three years of imprisonment with hard labour, commuted to 18 months of house arrest<sup>2</sup>. The case was riddled with irregularities and raised severe concern within the interna-

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1/ According to this provision, "any person against whom action is taken, who opposes, resists or disobeys any order passed under this Law shall be liable to imprisonment for a period of up to three years, or a fine of up to five thousand kyats, or to both".

2/ In the initial phase, except on two occasions, her trial was conducted behind closed doors. Subsequently, under the pressure of international experts, a number of diplomats were invited to attend the court hearings in July. Only two of Ms. Aung San Suu Kyi's four proposed witnesses were allowed to testify, and she was never allowed to meet with her lawyer in private.



tional community<sup>3</sup>. Ms. Suu Kyi appealed her sentence, but the Rangoon Division Court dismissed the appeal on October 1. Ms. Aung San Suu Kyi has been imprisoned by the military authorities for nearly 15 of the past 21 years. Her sentencing is part of the military regime's campaign to ensure that the most viable pro-democracy candidates would be unable to run in the 2010 elections. In addition to Ms. Aung San Suu Kyi, in 2009 the military regime sentenced 99 pro-democracy activists to prison terms, including 23 NLD members<sup>4</sup>.

In 2009, thousands of activists continued to be detained in Burma, especially those involved in the 2007 mass protests. While the SPDC released more than 6,000 prisoners in February to demonstrate its cooperation with the visiting UN Special Rapporteur on the Situation of Human Rights in Myanmar, Professor Tomás Ojea Quintana, only 31 of them were political prisoners<sup>5</sup>. Likewise, more than 7,000 prisoners benefited from an amnesty in September, but only an estimated 128 were political prisoners and no leading opposition figures were released<sup>6</sup>. In his report, the Special Rapporteur insisted that all 2,156 prisoners of conscience currently detained should be released before the elections. The Special Rapporteur also received disturbing information regarding harsh conditions of detention, solitary confinement, forced labour, shackling, and ill-treatment of prisoners, in particular during the interrogation phase<sup>7</sup>. During the year,

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3/ On August 11, 2009, UN Secretary-General Ban Ki-moon, who visited Burma in July but was denied permission to visit Ms. Aung San Suu Kyi, "deplored the decision by a Myanmar court to sentence [...] Aung San Suu Kyi to an additional 18 months of house arrest, and urged that she be released immediately". The sentence was also condemned by the Vice Chairperson-Rapporteur of the Working Group on Arbitrary Detention Mr. El Hadji Malick Sow, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression Mr. Frank La Rue Lewy, the Special Rapporteur on the Situation of Human Rights Defenders Ms. Margaret Sekaggya, and the Special Rapporteur on the Situation of Human Rights in Myanmar Mr. Tomas Ojea Quintana. See United Nations Press Releases, August 11 and May 14, 2009. See also EU Presidency Statement calling for all-inclusive dialogue between the authorities and the democratic forces in Burma/Myanmar, February 24, 2009.

4/ For instance, on February 13, the SPDC extended the house arrest of NLD Deputy Chairman Tin Oo by another year. On the same day, NLD elected Members of Parliament Myi Pu and Tin Min Htut were sentenced to 15 years in prison for writing an Open Letter to the UN. On March 23, 2009, Messrs. Htet Htet Oo Wai, Win Myint Maung and Tun Tun Win were sentenced to five years in prison for calling for Ms. Suu Kyi's release in front of the People's Assembly building in Rangoon in December 2008 and, on June 26, 2009, NLD members Chit Pe and Aung Soe Wei were sentenced to 18 months in prison for participating to a vigil prayer for her release. On October 26, 2009, Mr. Tin Htut Paing was sentenced to 15 years in prison for putting up a poster that called for the release of political prisoners in Burma. See Alternative ASEAN Network on Burma (ALTSEAN-Burma).

5/ See Human Rights Watch Report, *Burma's Forgotten Prisoners*, September 2009.

6/ See Assistance Association for Political Prisoners (AAPP).

7/ See United Nations Press Releases, March 17, May 14 and August 11, 2009, and UN General Assembly, *Situation of human rights in Myanmar - Note by the Secretary-General*, UN Document A/64/318, August

freedoms of expression, association and assembly remained also seriously hampered.

Throughout the year, various international bodies condemned the human rights situation in the country. In March, the Human Rights Council condemned the ongoing systematic violations of fundamental rights in Burma and urged the Government to guarantee the rights to the freedoms of assembly, association and expression, including for free and independent media, and to lift immediately all restrictions on the exercise of these rights<sup>8</sup>. These concerns were backed up by a UN General Assembly Resolution of August 2009<sup>9</sup>. In August, the European Union also adopted additional restrictive measures against Burma “in reaction to the verdict against Daw Aung San Suu Kyi and given the gravity of the violation of her fundamental rights”<sup>10</sup>. The UN Secretary-General’s Special Advisor on Burma, Mr. Ibrahim Gambari, visited Burma three times in 2009 to meet with senior junta officials and leaders of the pro-democracy movement.

**In this context, anyone campaigning for the respect of human rights and democracy continued to face heavy repression in Burma in 2009.**

#### **Targeting of defence human rights lawyers**

As in previous years, in 2009 authorities in Burma increasingly targeted defence human rights lawyers. The independence of lawyers to practise their profession continued to be hindered for politically motivated reasons and those who challenged the unfair conditions of their clients’ trials were often charged under the Contempt of Courts Act (1926)<sup>11</sup>. Moreover, their licence was sometimes revoked in order to prevent them from practising. For instance, on March 6, 2009, Messrs. **U Khin Maung Shein** and **U Aung Thein**, two lawyers, were released after completing their full sentences. They had been convicted in November 2008 to four months in prison for “contempt of court”<sup>12</sup>. They immediately resumed their legal duties. However, in May, a day after Mr. U Aung Thein’s application was

8/ See UN General Assembly, *Report of the Human Rights Council, Resolution 10/27. Situation of human rights in Myanmar*, UN Document A/64/53, March 27, 2009.

9/ See United Nations General Assembly, *Situation of human rights in Myanmar - Note by the Secretary-General*, UN Document A/64/318, August 24, 2009.

10/ See Council of the European Union Statement, August 13, 2009. Under the new restrictive measures, members of the judiciary responsible for the verdict are added to the existing list of persons and entities subject to a travel ban and to an assets freeze. Moreover, the list of persons and entities subject to the restrictive measures is extended to cover the assets freeze to enterprises that are owned and controlled by members of the regime in Burma/Myanmar or by persons or entities associated with them.

11/ This Act does not specify what actually constitutes “contempt of court”, leaving it open for any interpretation and decision by higher courts.

12/ See Observatory Annual Report 2009.

filed to represent Ms. Aung San Suu Kyi, he was sent a copy of an order disbaring him from practice as a lawyer and revoking his licence, on grounds that he was not “abiding by professional ethics”. Mr. U Aung Thein’s close associate, Mr. U Khin Maung Shein, who was not directly involved in Ms. Aung San Suu Kyi’s case, also had his lawyer’s licence revoked. As of the end of 2009, they were still working in the NLD’s Legal Committee and helping activists on trials as legal consultants<sup>13</sup>. Likewise, the law licence of Mr. **Nyi Nyi Htwe**, a lawyer who had been sentenced to six months’ imprisonment in October 2008 under Section 228 of the Criminal Code on charges of “contempt of the court” due to his involvement in the defence of 11 NLD youths, was revoked after he was released from Insein prison on April 28, 2009<sup>14</sup>. Moreover, on January 15, 2009, Mr. **U Phoe Phyu**, a lawyer who had assisted farmers whose land had been forcibly seized by the army, was arrested and charged under the Unlawful Association Act for alleged “links with illegal organisations” after representing labour activists detained for reporting the seizure of farmland to the International Labour Organisation (ILO). On March 17, 2009, he was sentenced to a four-year imprisonment by Magwe Division Court. His appeal was rejected in May and, as of the end of 2009, Mr. U Phoe Phyu remained detained<sup>15</sup>.

### Arbitrary arrest of trade unions members

Trade unionists also continued to face repression in 2009, although the release of Mr. **U Thet Way**, a labour activist actively working to prevent the recruitment of child soldiers and forced labour and who had provided information to the ILO on these issues, under the amnesty of February 28, 2009, was to be welcome<sup>16</sup>. On January 3, 2009, Mr. **Bo Min Yu Ko**, aka Phyo Gyi, a member of the Mandalay branch of the All Burma Federation of Student Unions (ABFSU) – the largest national student organisation, outlawed by the regime – was sentenced to a total of 104 years of imprisonment by the Obo Prison Court in Mandalay. He had been arrested on September 18, 2008 and charged under 40 different sec-

13 / See AAPP Media Statement, May 16, 2009.

14 / See AAPP, *Chronology of Political Prisoners in Burma for January 2009*, and US Campaign for Burma.

15 / See AAPP, *Chronology of Political Prisoners in Burma for January 2009* and *Chronology of Political Prisoners in Burma for March 2009*, and United Nations General Assembly, *Situation of human rights in Myanmar - Note by the Secretary-General*, UN Document A/64/318, August 24, 2009. After ILO intervention, the sentence against Mr. U Phoe Phyu was reduced to one year, and he was released from prison on March 5, 2010. But shortly after his release, he received a notice that his licence had been revoked. Following the ILO Liaison Office in Rangoon intervention, the arrested farmers were also released.

16 / On September 16, 2008, Mr. U Thet Way had been sentenced to two years’ imprisonment with hard labour.

tions of law, including six charges under Section 13/1 of the Immigration Act. He was not allowed a defence lawyer and his family was not allowed to attend his court hearing<sup>17</sup>. Furthermore, on February 9, 2009, Mr. **Kyaw Ko Ko** and Mr. **Nyan Linn Aung**, two leaders of the ABFSU who had been arrested on March 16, 2008 by members of the Burmese Military Intelligence Unit, were sentenced to three years of imprisonment each by Rangoon Mingalar Taung Nyunt Township Court for “possessing illegal videos” of the 1988 uprising under the Video Act, which regulates uncensored videos. As of the end of 2009, Messrs. Kyaw Ko Ko and Nyan Linn Aung remained detained<sup>18</sup>. On April 1, five members of the Federation of Trade Unions of Burma (FTUB)<sup>19</sup>, namely Mr. **U Zaw Myint Aung**, Mr. **U Soe Oo**, Mr. **Maung Tun Nyein**, Ms. **Khine Lin Myat** and Ms. **Shwe Yi Nyunt**, also a member of FTUB Women’s Committee, were arrested at their places of residence in Rangoon as they returned home from the First National Congress of the FTUB, which ended on March 24. All are campaigners for workers’ rights and for the improvement of wages and working conditions for workers inside Burma. Furthermore, an unspecified number of family members of these five human rights defenders were also arrested, threatened or put under pressure in an effort by the authorities to compel cooperation from the five detained FTUB members. On April 10, 2009, they all returned safely to their homes in Rangoon, albeit after having been warned to cease any activity within the FTUB.

### Ongoing repression of relief workers assisting Cyclone Nargis victims

Several of the individuals who were arrested in 2008 for carrying out relief activities in the Irrawaddy delta following the passage of Cyclone Nargis remained under detention as of the end of 2009, including Mr. **Nyan Tun**, who was given a 14 years’ imprisonment sentence in September 2008<sup>20</sup>, and Mr. **U Thura**, aka **Zarganar**, prominent comedian, film director and activist, who was sentenced on November 21 and 27, 2008 to, respectively, 45 years’ and 14 years’ imprisonment for multiple charges, including “committing disaffection towards the State and Government by using the Internet”. On February 13, 2009, he was granted a 24-year

17/ See AAPP Media Statement, January 14, 2009.

18/ See AAPP, *Chronology of Political Prisoners in Burma for January and Chronology of Political Prisoners in Burma for February 2009*, ABFSU and Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, UN Document A/HRC/10/19, March 11, 2009.

19/ Since its foundation in 1991, FTUB has worked to end violations of fundamental trade union and other human rights, notably the systematic use of forced labour by the military.

20/ On June 27, 2008, Mr. Nyan Tun was arrested because he was trying to appeal to the SPDC headquarters in Nay Pyi Taw about the forcible removal of Nargis victims from a camp in Labutta township by local authorities. On September 28, 2008, he was sentenced to 14 years’ imprisonment by Myaungmya Township Court. As of the end of 2009, he remained detained in Tharawaddy prison.

reduction of his original 59-year sentence by Rangoon Divisional Court and, as of the end of 2009, he remained detained in Myitkyina prison in Kachin State, in the country's far north, where he was transferred in December 2008. On several occasions, his family was denied permission to visit him<sup>21</sup>. Moreover, in early February 2009, Ms. **Phyo Phyo Aung** and her father, Dr. **Nay Win**, were charged under provisions of the Unlawful Associations Act that bans any "organisations that attempt, instigate, incite, abet, or commit acts that may in any way disrupt law and order, peace and tranquillity, or safe and secure communications [...] or [...] that attempt, instigate, incite, abet or commit acts that may effect or disrupt the regularity of state machinery". Ms. Phyo Phyo Aung was also charged under Section 505(b) of the Criminal Code for making statements causing public mischief. Both were arrested in June 2008 along with Messrs. **Aung Thant Zin Oo**, **Shein Yarza Tun**, **Aung Kyaw San** and **Phone Pye Kywe** for organising to collect bodies of Cyclone Nargis victims for burial, and had started an organisation called "The Group that Buries the Dead". On April 10, 2009, the six relief workers were sentenced by a special court in Insein prison to jail terms ranging from two to four years<sup>22</sup>. On October 26, 2009, Messrs. **Thant Zin Soe**, Editor of the Foreign Affairs weekly journal, **Ka Gyi**, **Zaw Gyi**, **Lai Ron**, **Shwe Moe** and **Aung Myat Kyaw**, members of the Cyclone Nargis relief group "Lin Let Kye" (Shining Star), were arrested in Rangoon's Dagon township. On October 27, freelance journalist Mr. **Pai Soe Oo** was also arrested and the police confiscated notes that contained the names of other members of Lin Let Kye group. While detained, they were reportedly interrogated about their links with foreign "opposition groups" and the sources of the "financial support" they had allegedly received. On December 1, 2009, they were all released from the Aung Thabyay interrogation centre in Rangoon, after being asked to sign a pledge that they would not make contact with foreign organisations or accept overseas money again<sup>23</sup>.

### Imprisonment of land rights defenders

In 2009, land rights defenders were subjected to arbitrary detention and harsh sentences. As an example, Mr. **U Aye Myint**, a human rights defender who worked to support the land rights of farmers in Burma, was

21/ See AAPP, *Chronology of Political Prisoners in Burma for February 2009 and Chronology of Political Prisoners in Burma for April 2009*.

22/ Messrs. Aung Thant Zin Oo and Shein Yarza Tun and Ms. Phyo Phyo Aung were sentenced to four years each, while Dr. Nay Win and Messrs. Aung Kyaw San and Phone Pye Kywe were sentenced to two years each. See AAPP, *Chronology of Political Prisoners in Burma for April 2009 and Cyclone Nargis Anniversary Report*, May 2009.

23/ See AAPP, *Chronology of Political Prisoners in Burma for December 2009 and ALTSEAN-Burma, Burma Bulletin Issue 34 and Burma Bulletin Issue 36*, October and December 2009.

sentenced to two years' imprisonment on September 24, 2009, on a spurious charge of "threatening to injure a public servant". As of the end of 2009, he remained detained in Thayet prison, central Burma<sup>24</sup>. According to the Forestry Department in Aunglan in Magwe division, Mr. U Aye Myint reportedly threatened a forest manager on August 11 and 14, saying that he would have him and other officials sacked for having lodged a criminal complaint against two villagers after they had cut eucalyptus plantations in a reserve area in order to make charcoal. The so-called reserve was previously the farmers' land, but officials allegedly confiscated it. Mr. U Aye Myint worked closely with Mr. **Ko Zaw Htay**, who was found guilty of giving out official secrets and sentenced by Magwe Township Court to ten years in prison on January 23, 2009 on charges of "leaking sensitive information", for taking video footage of army-confiscated land and sending it abroad in order to help farmers in Natmawk township, Magwe division, to lodge complaints before the ILO on the seizure of more than 5,000 acres of land by the military. His lawyer, Mr. U Phoe Phyu, was also imprisoned in the same period<sup>25</sup>. As of the end of 2009, Mr. Ko Zaw Htay remained detained in Thayet prison<sup>26</sup>.

### Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. U Zaw Myint Aung, Mr. U Soe Oo, Mr. Maung Tun Nyein, Ms. Khine Lin Myat and Ms. Shwe Yi Nyunt	Arbitrary arrest / Harassment	Urgent Appeal MMR 001/0409/OBS 060	April 9, 2009
	Release	Urgent Appeal MMR 001/0409/OBS 060.1	April 16, 2009
Burma Lawyers' Council (BLC) / Mr. U Aung Htoo	Obstacles to freedom of association / Harassment	Press Release	May 5, 2009

24/ See AAPP.

25/ See above.

26/ See AAPP, *Chronology of Political Prisoners in Burma for January 2009*, and US Campaign for Burma. 237

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# CAMBODIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In 2009, Cambodia was particularly marked by an increase in restrictions on the right to freedom of expression, in a context where the Cambodia People's Party (CPP) has become overwhelmingly powerful and was controlling all the State apparatus. Members of the opposition and representatives of civil society organisations critical of the Cambodian Government were the main target of such repression: at least 22 complaints were filed by Government officials against them during the year, with an additional 25 complaints against journalists for "criminal defamation", "disinformation" and related offences. Several journalists were imprisoned<sup>1</sup>.

Forced evictions also continued to take place throughout 2009 both in cities and in rural areas. These evictions, in blatant violation of national and international standards, benefit the powerful and wealthy people, leaving victims without means of subsistence. According to the Cambodian Human Rights and Development Association (ADHOC), 29 cases of forced eviction affected 5,497 families in 2009, with an additional 71 communities notified of impending eviction<sup>2</sup>. As of late 2009, 52 individuals were reportedly detained in relation to land disputes in 18 out of 25 prisons monitored by the Cambodian League for the Promotion and Defence of Human Rights (LICADHO), including members of human rights organisations and community leaders<sup>3</sup>. In contrast, no prosecutions were instigated against the corporations or other entities responsible for violent land seizures and the destruction of property<sup>4</sup>.

2009 did see some progress in the work of the Extraordinary Chambers in the Courts of Cambodia (ECCC), with the trial of Mr. Kaing Guek Eav, alias "Duch", which can be viewed as a key element in addressing

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1/ See ADHOC, *The Human Rights Situation Report 2009*, February 4, 2010.

2/ *Idem*.

3/ See LICADHO.

4/ A number of development partners called upon the Government of Cambodia to stop forced evictions until a fair and transparent mechanism for resolving land disputes is put in place and a comprehensive resettlement policy is developed. See Common Statement, July 16, 2009, signed by the Embassies of Australia, Bulgaria, Denmark / Danida, Germany, the United Kingdom, the United States of America, the Swedish International Development Agency (Sida), the Asian Development Bank, the Delegation of the European Commission, the United Nations and the World Bank.

Cambodia's painful history<sup>5</sup>. Nevertheless, the judicial system, as well as other aspects of public administration, continued to suffer from corruption<sup>6</sup>, and human rights defenders found it very difficult if not impossible to hold the authorities and other powerful people accountable for human rights violations before the domestic courts. As highlighted by the UN Secretary General, impunity remained a major challenge to the rule of law in Cambodia in 2009. Numerous cases of unlawful detention were not addressed by the competent institutions<sup>7</sup> and there were repeated political interferences in judicial proceedings<sup>8</sup>. Impunity was still the rule and the Judiciary was often used as a tool in the hands of the authorities to repress dissent. The persisting impunity for attacks against human rights defenders in Cambodia remained a major concern, all the more as these attacks are meant to intimidate and silence all human rights activists.

These serious concerns and others were addressed by various UN human rights mechanisms in 2009: in June 2009, the UN Committee on Economic, Social and Cultural Rights examined Cambodia's State report and the UN Universal Periodic Review process was undertaken in December, which led to 91 recommendations for the Cambodian Government to improve its human rights record<sup>9</sup>. The Committee notably expressed its deep concern about Cambodia's prevalent culture of violence and impunity "and the repression of human rights activists defending economic, social and cultural rights, particularly those defending housing and land rights". The Committee also acknowledged the "reports that the court system has been used to legitimise forced evictions and falsely prosecute housing rights defenders". The Committee consequently urged Cambodia "to take all necessary measures to combat the culture of violence and impunity prevalent in the State party, and for the protection of human rights defenders, including indigenous leaders, peasant activists [...] against any intimi-

5/ The verdict in the case against Mr. Kaing Guek Eav is expected at the end of July 2010.

6/ Transparency International 2009 Corruption Perception Index ranked Cambodia 158th out of 180 countries in the world and South East Asia's second-most corrupt country.

7/ See Human Rights Council, *Report of the Secretary General - Role and achievements of the OHCHR in assisting the Government and people of Cambodia in the promotion and protection of human rights*, UN Document A/HRC/12/41, August 5, 2009.

8/ See Testimony by Dr. Chhiv Kek Pung, President and Founder of the Cambodian League for the Promotion and Defence of Human Rights (LICADHO), before the Tom Lantos Human Rights Commission, September 10, 2009.

9/ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Cambodia*, UN Document A/HRC/13/4, January 4, 2010, Committee on Economic, Social and Cultural Rights, *Concluding Observations - Cambodia*, UN Document E/C.12/KHM/CO/1, June 12, 2009 and Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights, in accordance with Paragraph 15 (B) of the Annex to Human Rights Council Resolution 5/1 - Cambodia*, UN Document A/HRC/WG.6/6/KHM/2, September 18, 2009.



dation, threat and violence, whether perpetrated by State security forces and agents or non-State actors”. Moreover, in September 2009, the UN Human Rights Council decided to extend by one more year the mandate of Mr. Surya Prasad Subedi, UN Special Rapporteur on Human Rights in Cambodia<sup>10</sup>.

### **Legislative reforms restricting the environment for human rights activities**

In 2009, the introduction of several new pieces of legislation contributed to worsen an already restrictive environment for human rights activities. The Government also announced the imminent adoption of two laws regulating NGOs and trade unions.

#### **Adoption of a new Criminal Code**

The new Criminal Code adopted on October 6 in a rush by the CPP-dominated National Assembly, ignoring crucial suggestions by NGOs and opposition parliamentarians members, enshrines a number of broadly defined offences that may be used to curb freedom of expression. Notably, defamation remains criminalised, paving the way for continuing abusive criminal prosecution of human rights defenders, including journalists reporting human rights violations<sup>11</sup>. While the Law on Freedom of the Press provides for civil penalties, the crimes of “defamation” (Article 305)<sup>12</sup> or “public insult” (Article 307) are subjected to penalties ranging from three months and 56 days’ imprisonment to fines of 10 million riels (approximately 1,852 euros), and the crime of “slandorous denunciation” provides for penalties ranging from one month to one year’ imprisonment and fines of two million riels (approximately 1,932 euros).

#### **Promulgation of the Law on Peaceful Demonstration**

On December 5, 2009, the Law on Peaceful Demonstration was promulgated, which imposes excessive restrictions in violation of the international human rights obligations of Cambodia<sup>13</sup>. This is all the more worrisome when considered that the authorities often refuse to authorise demonstrations, or delay granting authorisation for demonstrations until shortly

10/ See Human Rights Council, *Technical Assistance and Capacity-Building - 12/... Advisory services and technical assistance for Cambodia*, UN Document A/HRC/12/L.18\*, September 28, 2009.

11/ See Cambodian Centre for Human Rights (CCHR) Press Release, October 16, 2009.

12/ The new offence of defamation in Article 305 applies to any “allegation or slanderous charge that undermines the honour or the reputation of a person or an institution”. The extension of the offence to comments affecting the reputation of institutions is concerning given the propensity of Government officials and ministries in recent years for initiating defamation proceedings.

13/ See CCHR Press Release, June 19, 2009.

before they are due to take place, even though the Constitution guarantees the right to freedom of peaceful assembly (Article 37)<sup>14</sup>.

The Law on Peaceful Demonstration, which will enter into force in April 2010, does in principle allow demonstrations signalled by declaration only. However, the legal requirements imposed to ensure the legality of a declaration are so burdensome and proscriptive that a demonstration must *de facto* be authorised before it can take place. Under the new law, demonstrations can only be authorised where they do not pose a danger or represent an attack on security and public order. These grounds for refusal are ill-defined and leave ample room for continuing abuse by authorities. In addition, the law does not provide for spontaneous demonstrations. Any gathering that has not received official approval, even when peaceful, may be forcefully dispersed by the authorities. Moreover, whereas under international law restrictions must be fully justified in a democratic society on the basis of “public safety, public order, public health or morals”, and be proportional to their objective, the text adopted mentions “harming the rights to freedom and honour of others, good customs of society and national security”. Those terms are vague and open to wide interpretation. For instance, on this basis, a demonstration could be prohibited because it is considered as defamatory to the authorities. Under the new law, the authorities can also refuse to allow a demonstration if “there is *reliable information* that the demonstration may cause danger or serious harm to the security, safety and public order” (emphasis added). It is unclear what “reliable information” means in this context. Furthermore, the law does not provide for judicial review or appeal in the case of a refusal to allow a demonstration.

### Approval of the Anti-Corruption Bill

In December 2009, the Anti-Corruption Bill was approved by the Council of Ministers. The proposal was to be discussed in the National Assembly early 2010, and seemed to be the priority on the legislative agenda<sup>15</sup>. Given the lack of transparency during the adoption process, several questions remain as to the efficiency of this new instrument<sup>16</sup>. Some NGOs feared in particular that it would be used as a new tool of repression and intimidation of human rights defenders, as the law would reportedly not only require the disclosure of assets from Government officials but also NGO workers. In particular, the law allows for whistle blowers to

14/ See ADHOC, *The Human Rights Situation Report 2009*, February 4, 2010.

15/ The bill was finally passed in March 2010.

16/ See ADHOC. The Law was adopted on March 11, 2010 by the Parliament and it will enter into force in November 2010.

be prosecuted if the allegations they raise are declared to be false by the anti-corruption body, which is composed of people elected by the ruling party. This is a clear threat against anti-corruption initiatives and NGOs and journalists working in this field. In addition, NGO leaders are also forced to declare their assets since the law includes them in the requested lists of “civil servants”. The precise meaning of NGO “leaders” has not been defined, and it could therefore encompass the executive director, the chairperson and/or members of the Board. While NGO leaders have no problem declaring their assets, this late inclusion of NGO leaders could indicate an intention by the Government to misuse the law against NGOs that vocally criticise its policies.

### **Imminent adoption of the Bill on Associations and NGOs and of the Law on Trade Unions**

In 2009, no draft of the Bill on Associations and Non-Governmental Organisations circulated during the preparatory process preceding its discussion, which contributes to reinforce the fear that this project – far from being used to regulate dangerous or “terrorist” organisations – forms part of a Governmental strategy to restrict the activities of Cambodian civil society organisations and reinforce their political control. The majority of NGOs accept transparency requirements and other legitimate regulations to which they are already subjected. However, many observers fear that the new law would allow the Government to suspend or dissolve NGOs if they are deemed to have conducted activities for undefined “political interests”. The text may be sufficiently vague to serve a wide range of political ends<sup>17</sup>.

At the end of 2009, the Ministry of Labour was also preparing a Law on Trade Unions with the aim of clarifying the industrial relations landscape and of limiting the number of unions within one factory, without the social partners being consulted or the text being made public. This legislative initiative was taken at the joint request of the private sector forum and the Government. There are fears that the law may introduce strict registration requirements and grant the authorities powers to restrict the activities of the more “politically active” unions, similar to those under the draft NGO law. This would make it even harder for trade unions to exercise their legitimate activities. It should be noted that trade unions are outside the scope of the Law on Peaceful Demonstration, and may be subjected to strict rules on organising demonstrations or marches under the new Law on Trade Unions. There are talks of joint workshops and

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17/ See LICADHO Briefing Paper, *Is an NGO law in Cambodia justified?*, June 2009 and Joint Statement of 216 domestic civil society organisations, September 1, 2009.

consultation meetings with the social partners before the law is adopted, which is anticipated by early 2011.

### **Threats and judicial harassment against human rights lawyers**

A number of lawyers were targeted by prosecution in Cambodia in 2009, merely for representing the interests of their clients, as underlined by UN Special Rapporteur on the Independence of Judges and Lawyers<sup>18</sup>. For example, on April 27, 2009, Mr. **Kong Sam Onn**, a human rights lawyer, was the subject of a criminal defamation complaint by Prime Minister Hun Sen. The lawsuit was filed against Mr. Kong Sam Onn and a client of his, Ms. Mu Sochua, opposition elected Member of Parliament from Kampot province. The complaints followed the announcement by Ms. Mu Sochua of her intention to file a defamation complaint against the Prime Minister after he had made insulting comments against her during a public speech. Ms. Mu Sochua had criticised the Executive on several occasions. On June 10, the Prosecutor dismissed the complaint against the Prime Minister. On July 6, under the pressure of the fines and disbarment which he was likely to face, Mr. Kong Sam Onn addressed a letter of apology to the Prime Minister and requested to join the ruling Cambodian People's Party. His about-face led to an immediate withdrawal of all criminal and other actions against him<sup>19</sup>. Moreover, in January 2009, three defence lawyers acting for defendants at the ECCC, Mr. **Michiel Pestman**, Mr. **Victor Koppe** and Mr. **Andrew Ianuzzi**, were threatened with possible legal action by Cambodian judges for having called for allegations of corruption at the Chambers to be properly investigated by the Phnom Penh Municipal Court. Indeed, in a press release issued on January 9, 2009, the impugned judges stated that they “deeply regretted” the filing by the lawyers of such a complaint and they “reserve[d] the right to legal recourse against any individuals” if those allegations “stem[ed] from bad faith in putting the blame on the judges”. Yet, as of the end of 2009, there had been no further development with regard to such threat of legal action against Messrs. Pestman, Koppe and Ianuzzi<sup>20</sup>.

### **Ongoing acts of reprisals against trade unions leaders and impunity in the murders of trade unionists**

In 2009, trade union leaders continued to be regularly subjected to violence, harassment and intimidation in order to stop them from carrying

18/ See United Nations Press Release, July 1, 2009.

19/ See CCHR Press Release, July 9, 2009. As for Ms. Mu Sochua, she was found guilty on August 4, 2009 of having defamed the Prime Minister by the Phnom Penh Municipal Court and was sentenced to pay a fine of eight and a half million riel (approx. 1,500 euros) and a further eight million riel in compensation.

20/ See CCHR.

out their legitimate trade union activities. In particular, the Cambodian authorities recurrently used violence or the threat of violence to prevent workers from peacefully protesting on labour rights issues. Peaceful gatherings outside factories by striking workers were repeatedly and forcibly dispersed by armed police. In the process, strike leaders and workers were injured and unlawfully arrested. Local Government authorities also routinely rejected requests from unions to march and rally in public areas<sup>21</sup>. For instance, on June 4, 2009, over 300 striking Sangwoo factory workers from the Samraong Tong district of Kampong Speu, who were demonstrated to demand respect for their labour rights as well as the release of three imprisoned workers, were obstructed by 700 provincial police officers, and six workers were seriously injured in the clash<sup>22</sup>.

Criminal charges, or the threat of them, were also regularly used against trade union leaders and activists to intimidate them into halting their activities. For instance, criminal complaints were filed against 14 trade union leaders, activists and members of the Cambodian Tourism and Services Workers' Federation (CTSWF) after they were dismissed in February 2009 from the Naga Hotel and Casino in Phnom Penh for their trade union activities. After they demanded to be reintegrated into their positions and threatened to organise a strike, all 14 unionists were summoned in July 2009 to the Phnom Penh Municipal Court and questioned about complaints filed against them by Naga management. These complaints accused them of "criminal defamation", "disinformation" and "incitement". Two of the unionists immediately resigned from the union and were not questioned by the court prosecutor, while the others had to wait until October 2009 for the court to dismiss the case. If convicted, the unionists would each have faced up to three years in prison and costly fines<sup>23</sup>.

Moreover, while the trade union movement remains weakened and intimidated by the assassination of three leaders of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) in 2004 and 2007 – Messrs. **Chea Vichea**, FTUWKC President (2004), **Ros Sovannareth**, a FTUWKC Steering Committee member (2004), and **Hy Vuthy**, an FTUWKC trade union leader (2007) – impunity for the authors of their assassinations continued in 2009. Indeed, despite lack of any evidence against him, in February 2005, Mr. Chan Sopheak, also known as Thach Saveth, was sentenced to 15 years' imprisonment by the Phnom Penh

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21/ See Testimony by Mr. Tola Moeun, Head of Labour Programme Unit at Community Legal Education Center (CLEC), before the Tom Lantos Human Rights Commission, September 10, 2009.

22/ See LICADHO.

23/ *Idem*.

Municipal Court for Mr. Sovannareth's assassination. The hearing before the Court of Appeal took place on February 11, 2009. It lasted less than an hour and the Court upheld the conviction. Despite the presence in Court, at the request of the defence lawyer, of one of the witnesses of Mr. Sovannareth's assassination, Presiding Judge Um Sarith refused to call him to the stand, and preferred to rely upon written statements of witnesses collected by the police<sup>24</sup>. Since then, an appeal to the Supreme Court was lodged and remained pending as of the end of 2009. The case of Mr. Hy Vuthy was just as poorly investigated and his killers remained at large as of the end of 2009. In July 2009, the Phnom Penh Municipal and Appeals Courts decided to drop the investigation on his murder. With regards to the high-profile killing in 2004 of Mr. Chea Vichea, the Supreme Court decided, on December 31, 2008, to release on bail Messrs. Born Samnang and Sok Sam Oeun. The two men spent close to five years in prison on false charges of killing, following a judicial trial marred by political interference, intimidation of witnesses, and other violations of international legal standards. They were only released after a large international campaign. The case was then sent back to the Court of Appeals to be retried, which in its turn sent a list of points to be investigated down to the Phnom Penh Municipal Court. At the end of 2009, no progress appeared to have been made. Although these releases are to be welcomed, serious concerns remain as to the persistent judicial harassment against the two men. In August 2009, Mr. **Chea Mony**, Mr. Chea Vichea's brother, was threatened with legal action for accusing the Government of involvement in the killing of his brother. However, Prime Minister Hun Sen withdrew the judicial proceedings in September 2009, on grounds that Mr. Chea Mony was "overwhelmed by grief" when he spoke out<sup>25</sup>.

### **Forced evictions and intimidation of land rights defenders**

In 2009, NGOs, community leaders and human rights defenders who stood up for the rights of victims of forced evictions and land-grabbing<sup>26</sup> were again regularly subjected to harassment, intimidation and criminalisation. For instance, the Cambodian Natural Resource Protection Organisation (CNRPO) came under repeated attack in 2009 in an attempt to deter them from their combat against illegal logging in Koh Kong province. On December 21, 2008, six CNRPO staff patrolling for illegal loggers

24 / See LICADHO, *Submission to the United Nations Universal Periodic Review, Cambodia*, April 10, 2009.

25 / See CCHR Press Release, August 31, 2009.

26 / Land grabbing and evictions can concern farmers in the countryside, city dwellers, but also indigenous people, who by virtue of the Land Law 2001 benefit from special land rights. The different pieces of "land" legislation are not applied, and it is extremely difficult for the rural and the urban poor to have their legal rights respected.

were shot at by police officers, who were not arrested or even suspended from their positions. Instead, two months after the shooting, on February 16, 2009, Mr. **Keo Kob**, a CNRPO staff who was shot in the stomach by the police officers, and his boss, Mr. **Keo Ya**, were arrested and placed in pre-trial detention after being charged with “illegal logging”. They were released on bail on February 28. However, as of the end of 2009, charges had not been dropped against Messrs. Keo Kob and Keo Ya<sup>27</sup>. As in many other cases, it appears that authorities maintain the pending charges as a threat against NGO workers and community activists. A good illustration refers to a land grab by a politically connected private company – the DM Group – of 250-300 hectares of indigenous land owned by the “Tumpuon” people of Batang village in Ratanakkiri<sup>28</sup>. In November 2008, violence broke out between Tumpuon villagers and the police at the provincial courthouse in Banlung. In July 2009, Mr. **Pen Bonnar**, ADHOC Provincial Coordinator who was assisting the villagers<sup>29</sup>, and his colleague Mr. **Chhay Ty** were questioned by the authorities. On August 6, Judge Thor Saron reportedly declared that if Mr. Pen Bonnar was removed from the province, the case “could be solved”, although the investigation would continue. ADHOC then decided to remove both men from Ratanakkiri province into a safe place and to collect evidence for defending them in the court. Following a series of letters from the Cambodian Centre for Human Rights (CCHR) to His Majesty King Norodom Sihamoni and the Supreme Council of Magistracy, it was announced in October 2009 that an investigation into the misconduct of Judge Thor Saron – namely his personal use of a truck that was confiscated as an evidence in a case before the Ratanakkiri Provincial Court – would be undertaken. However, in November, the Ministry of Justice ruled that his use of the truck was “in response to an actual demand and was in the public interest”. Mr. Bonnar returned to Ratanakkiri in January 2010, where he resumed his work. Mr. Chhay Ty, on the other hand, went to work in Mondulakiri<sup>30</sup>. In April 2009, the arrest of La Peang village chief, Ms. **Touch Ly**, also raised great concerns. In January 2009, Ms. Ly helped certify a letter in a land dispute with the KDC International Company owned by Ms. Chea Keng, the wife of the Minister of Industry, Mining and Energy, which claims about 600 hectares of land in the area. On February 21, 2009, she was called to the Ministry of Interior’s Serious Crime Department for a closed-door meeting. When she emerged, she had completely changed her

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27/ See LICADHO Press Release, May 28, 2009.

28/ Cambodia’s most remote and isolated province.

29/ Mr. Pen Bonnar is well known for his defence of the rights of the indigenous people against the encroachment of their local land and forests by the rich and powerful.

30/ On March 1, 2010, Mr. Chhay Ty returned to work in Ratanakkiri. See CCHR and ADHOC.

mind and authorised an agreement saying she would stop representing the families and recognise that all the disputed land belonged to KDC. She also agreed to give up her own land to the company. She was nevertheless arrested two months later, on April 28, 2009, at the Ministry of Interior. She was taken to the Phnom Penh Municipal Court, charged with “falsifying information”, and imprisoned. On August 27, 2009, Ms. Touch Ly was sentenced to 16 months’ imprisonment after being found guilty of “forging thumbprints” as well as to pay a fine of one million riel (about 183 euros) and compensation of five million riel (about 913 euros) to KDC<sup>31</sup>.

Furthermore, the freedom of peaceful assembly of victims of forced evictions was strongly restricted in 2009. On several occasions, various restrictions were introduced at both the village and commune levels to disperse gatherings and prevent protesters from travelling to Phnom Penh. Those arriving in Phnom Penh were banned from staying overnight in public parks or pagodas, and those spending the night at human rights NGO offices were harassed by local authorities<sup>32</sup>. In addition, in June 2009, the Phnom Penh Municipality refused twice to authorise the CCHR to organise a public forum on human rights and development with members of the Boeung Kak lake area, a community that is at imminent risk of being forcibly expelled<sup>33</sup>.

### Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Chea Vichea	Assassination / Impunity	Urgent Appeal KHM 001/0805/OBS 070.2	January 6, 2009
Mr. Ros Sovannareth	Assassination / Impunity	Urgent Appeal KHM 001/0209/OBS 025	February 16, 2009
Mr. Kong Sam Onn	Administrative and judicial harassment	Urgent Appeal KHM 002/0609/OBS 085	June 18, 2009

31/ See Cambodian Human Rights Action Committee (CHRAC) Press Release, September 10, 2009 and LICADHO Statement, September 29, 2009.

32/ See ADHOC, *The Human Rights Situation Report 2009*, February 4, 2010.

33/ See CCHR.



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# CHINA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In 2009, the People's Republic of China pursued its harsh policy of crackdown on all dissenting and critical voices that was put in place in 2008 ahead of the Olympic Games. Systematic human rights violations remained rampant, with the use of arbitrary detention, torture and other ill-treatments still being widespread, as was censorship of the media and Internet.

This year was particularly marked by the violence that erupted on July 5, 2009 in Urumqi, capital of the Xinjiang Uighur Autonomous Region (XUAR), in the north-west of China, following a demonstration that was harshly repressed by the police<sup>1</sup>. The protests started after a violent riot in a factory in Shaoguan (Guangdong province) during which Uighur workers were killed. However, it was the result of long-standing tensions between Uighur and Han Chinese ethnic groups, based on the systematic targeting of Uighurs by Governmental authorities<sup>2</sup>. On July 8, the Standing Committee of the Political Bureau of the Central Committee of the Communist Party of China declared that the situation was master-minded and organised by the “three forces” of terrorism, separatism and extremism at home and abroad. In October, a total of 21 people were tried and convicted of crimes such as “murder”, “damage to property”, “arson” and “robbery”, in violation of minimum standards of due process and fair trials, and nine received death penalty<sup>3</sup>.

While China's State secrets system – consisting of laws and regulations accumulated since the early 1950s, with the Law on the Protection of

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1/ According to the official Chinese news agency *Xinhua*, the clashes between the protesters and the police reportedly left 156 people killed and more than 1,000 injured.

2/ The Uighurs, the largest non-Chinese ethnic group in the region, form half of the population of this region. As other minorities in China, they are unable to exercise real political decision-making that has an impact on their own communities. China's rapid economic transformation has not improved their lives: discrimination in the field of social rights is deeply entrenched; their cultural rights are being violated; they face persecution based on their religion and, under the guise of the fight against terrorism, those who are accused of separatism are often arbitrarily arrested, tortured, and even executed.

3/ On October 12, the Urumqi Intermediate People's Court sentenced six men to death and one to life imprisonment. On October 14, another 14 men were tried and sentenced. Six received the death penalty, three of them with a two-year reprieve, a sentence which is usually commuted to life in jail, while others were sentenced to ten years of imprisonment. See Tibetan UN Advocacy.

State Secrets as its centrepiece – is perhaps the most powerful tool the Chinese Government has at its disposal to control access to information and to sanction those who express views disapproved by the Government, including journalists, dissidents and human rights defenders, the authorities announced in 2009 revisions to the Law on the Protection of State Secrets, which were reviewed and discussed in a first reading at the ninth session of the Standing Committee of the 11th National People's Congress (NPC) on June 22, 2009. Yet, the draft revision was not adopted and, instead, the NPC released it for public review and comment on June 27, 2009. According to the NPC, the revision is meant to address the technological advances that have taken place since the law was first promulgated in 1988, and is largely aimed at placing greater, tighter and more rigorous control over classified information in the digital age. The proposed revisions, which are expected to be adopted in 2010, do not adopt a clear and precise definition of State secrets that is in keeping with international legal standards, including the requirement that any restriction on freedom of expression be narrow, specific and limited to information that would threaten the life of the nation if disclosed, nor do they eliminate retroactive classification of information as State secrets. On the contrary, the proposed provisions exclude limitations on the definition of State secrets, having therefore the potential of greatly expanding what can be considered State secrets. They also extend the definition to cover Internet and electronic information<sup>4</sup>.

In February 2009, the human rights situation in China was considered under the Universal Periodic Review (UPR) of the United Nations Human Rights Council. Attention was drawn to the importance to respect freedom of religion and the rights of minorities as well as freedom of expression. Concern was also raised regarding secret detention facilities, death penalty and allegations of human rights violations against human rights activists and petitioners, housing and land rights activists, defenders of the Uighur and Tibetan communities, as well as environmental, HIV/AIDS and labour rights activists<sup>5</sup>. However, China rejected many of the recommendations made by the Member States, including recommendations related to freedoms of expression and of association, the independence of the judiciary, safeguards for the legal profession, protection of human rights defenders, the rights of ethnic minorities, abolition of the

4/ See Human Rights in China (HRIC) Press Release, July 24, 2009. The revisions were adopted in April 2010.

5/ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review - China*, UN Document A/HRC/11/25\*, October 5, 2009.

death penalty, abolition of Re-education Through Labour (RTL)<sup>6</sup>, prohibition of torture, media freedom and effective remedies for discrimination<sup>7</sup>. In August 2009, the United Nations Committee on the Elimination of Racial Discrimination, in relations to ethnic clashes that occurred in the XUAR in July 2009 and in the Tibet Autonomous Region (TAR) in March 2008, expressed its concern “at reports alleging the disproportionate use of force against ethnic Tibetans and Uighurs respectively and the important number of their detentions” and called upon the Chinese authorities “to ensure that those detained in connection with the above events are guaranteed humane treatment while in custody and fair trial standards according to international law [...]”. The Committee also called upon the Chinese authorities “to take all appropriate measures to ensure that lawyers can exercise their profession freely, in law and in practice, and to promptly and impartially investigate all allegations of harassment, intimidation, or other acts impeding the work of lawyers”, as well as “to take effective measures with a view to ensuring that the application of administrative detention and “re-education-through-labour” is used restrictively and subject to full judicial control in line with international human rights standards”<sup>8</sup>.

On April 13, 2009, the State Council Information Office issued China’s first National Human Rights Action Plan (2009-2010), which covers a broad range of issues, from civil and political rights to human rights education and cooperation with international human rights institutions. However, while the Action Plan provides some notable elements, including a provision calling for physical separation between detainees and interrogators during questioning and the conducting of physical examinations prior to and following interrogations, as well as the prohibition of “the extortion of confessions by torture” and of “illegal detention by law enforcement personnel”, the vast majority of the plan lacks details, substance and concrete measures for enforcement and implementation. Furthermore, much of the Plan merely reiterates the limited human rights provisions already in place in existing laws and regulations, which largely have not been put into practice. It also fails to take concrete steps toward abolishing the RTL system, protecting human rights activists and ratifying the International

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6/ RTL is an administrative detention measure according to which, without any proper legal procedures or court proceedings, the Public Security Bureau can send individuals to detention facilities for a maximum of four years.

7/ See HRIC Statement, February 11, 2009.

8/ See Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination - The People’s Republic of China*, UN Document CERD/C/CHN/CO/10-13, August 28, 2009.

Covenant of Civil and Political Rights, important reforms necessary if the Government is indeed serious about improving its human rights record<sup>9</sup>.

### Ongoing crackdown on “Charter 08” activists

In 2009, Chinese authorities continued their crackdown against signatories of the “Charter 08”, which was launched on the Internet on December 9, 2008, calling for political reforms that promote human rights and democracy<sup>10</sup>. Indeed, the police kept intimidating, harassing and questioning signatories of the Charter and put them under surveillance for several months, including many who have been interrogated or summoned on multiple occasions<sup>11</sup>. For instance, on March 17, officers from the National Security Unit under the Nanping City Public Security Bureau (PSB), as well as the associate director of a local PSB station, arrived at the home of Ms. **Fan Yanqiong** to question her about her involvement with Charter 08 as well as with a proposed citizens’ organisation designed to supervise the Government and check corruption. Ms. Fan refused to answer their questions, and the officers left after 20 or 30 minutes, threatening her on their way out. On April 24, eight days after she applied for a permit to travel to Hong Kong and paid the required fees, Ms. Fan was told by the Nanping city, Fujian province, PSB Entry-and-Exit Management Department that she was prohibited from going through entry-and-exit procedures, without providing her with a specific reason<sup>12</sup>. On April 4, 2009, Ms. **Liu Shasha** was detained by local police for taking to the streets to distribute copies of Charter 08 in Nanyang city, Henan province, and interrogated there until 10 pm. Instead of allowing her to go home, however, police turned Ms. Liu over to leaders from her employer, PetroChina, who kept her under surveillance at a company guest-house until April 8<sup>13</sup>. On May 22, Mr. **Li Zhiyou** was taken away from his residence in Guilin city, Guangxi province, by a group of plain-clothes policemen who did not present any written summons or other documentation, and took him to a local police station. There, after waiting for a number of hours, he was questioned about Charter 08 and other related issues<sup>14</sup>. More worryingly, on June 23, 2009, human rights activist Mr. **Liu Xiaobo** was arrested before being charged with “inciting subversion of State power”, pursuant to Article 105 of the Criminal Code, for co-authoring Charter 08. On December 9, 2008, he was placed under “residential surveillance” at an undisclosed location in

9/ See Chinese Human Rights Defenders (CHRD) Statement, April 20, 2009.

10/ As of November 2010, it had been signed by more than 10,000 people from around the country.

11/ As of mid-February, CHRD had recorded 143 cases of people being harassed for being involved with Charter 08. See CHRD China Human Rights Briefing, February 1-15, 2009.

12/ See CHRD China Human Rights Briefings, March 15-31 and April 20-26, 2009.

13/ See CHRD China Human Rights Briefing, April 14-19, 2009.

14/ See CHRD China Human Rights Briefing, May 18-May 31, 2009.

Beijing<sup>15</sup>. On December 23, 2009, his trial took place before Beijing No.1 Intermediate People's Court. It lasted only three hours, under near total security lock down outside the courtroom. On the eve of the trial, several supporters of Mr. Liu Xiaobo were contacted by the police and threatened against organising any shows of support online or in front of the Court during the trial. On December 25, the Court found him guilty of "inciting subversion of State power" and sentenced him to 11 years of imprisonment and two years' deprivation of political rights<sup>16</sup>. On December 29, 2009, Mr. Liu appealed his sentence and, as of the end of 2009, he remained detained at the No. 1 Beijing Detention Centre<sup>17</sup>.

### **Increased repression of human rights defenders and restrictions on fundamental freedoms on the eve of key sensitive anniversaries and events**

The authorities also continued in 2009 to repress defenders and restrict freedoms of expression, assembly and association on the eve of key politically sensitive events, including the annual sessions in March of the NPC and Chinese People's Political Consultative Congress (CPPCC) in Beijing, the 20th anniversary of the violent repression against peaceful pro-democracy students and political activists on the Tiananmen square, the 60th anniversary of the People's Republic of China, or the visit of US President Barak Obama in November. On those occasions, the authorities subjected a large number of rights defenders, petitioners and dissidents to surveillance, harassment, detention and even beatings. In the final days before the 20th anniversary of the Tiananmen Massacre, on June 4, officials across the country intensified their efforts to prevent any commemoration of the date, and CHRD documented the cases of 65 activists who were harassed by the police in order to prevent them from organising or taking part in such activities. These individuals were taken into police custody, had their movements restricted, were forced to leave their homes, or otherwise threatened or monitored by police. Meanwhile, the authorities ordered nearly 160 websites to be shut down for "system maintenance" in order to prevent people from mobilising online and from learning about activities planned in many cities around the world to commemorate the anniversary. For instance, a number of members of the Guiyang Human Rights

15/ "Residential surveillance" is a form of pre-trial detention that can be used up to six months without a charge being issued. According to Article 58 of the Criminal Procedural Law (CPL), the maximum limit for residential surveillance is six months. Mr. Liu Xiaobo's "residential surveillance" term should therefore have expired on June 8, 2009.

16/ Both the UN High Commissioner for Human Rights and the European Parliament expressed their deep concern about the extremely harsh sentence. See United Nations Press Release, December 25, 2009 and European Parliament Resolution P7\_TA-PROV(2010)0006, January 21, 2010.

252 17/ On February 11, 2010, the Beijing Municipal High People's Court confirmed Mr. Liu's sentence.

Forum were detained, questioned or placed under house arrest in the days leading up to June 4<sup>18</sup>. Similarly, on the eve of the 60th anniversary of the founding of the People's Republic of China, on October 1, 2009, the Chinese Government implemented a number of drastic repressive measures to increase its control over citizens' expression and personal liberties. In particular, the Chinese authorities attempted to use technology as well as laws and regulations to restrict the flow of information in order not only to limit access to information by ordinary citizens in China, but also to undermine the ability of Western media to report accurately on the country. In particular, officials stepped up efforts to control Internet use, blocking the use of proxy servers, a popular means of accessing overseas websites that are otherwise restricted on the mainland. Hundreds of activists and dissidents were detained, subjected to "soft detention"<sup>19</sup>, threatened, monitored or forced to leave the capital<sup>20</sup>. For instance, Mr. **Jiang Qisheng**, Vice-Chairman of the Independent Chinese PEN, and Ms. **Ding Zilin**, leader of the Tiananmen Mothers, were forced to leave Beijing to visit relatives or "travel" and were subjected to surveillance by national security officers under Beijing PSB. On September 25, Mr. **Mu Jiayu**, a human rights activist from Chongqing municipality, was threatened by police officers that he would face detention if he was holding gatherings on the occasion of the anniversary<sup>21</sup>. During US President Obama's visit in China in November 2009, human rights defenders were also subjected to increase surveillance. For instance, Mr. **Qi Zhiyong** was detained by Beijing PSB from November 9 to 18, after he and a fellow activist applied for permission to hold a demonstration protesting police harassment during Mr. Obama's visit<sup>22</sup>. On November 19, 2009, Mr. **Jiang Tianyong**, a Beijing-based human rights lawyer, was detained and interrogated by the police for more than 13 hours, during which he was verbally abused, after he requested to meet with President Obama at the American Embassy<sup>23</sup>. In December 2009, members of the Guizhou Human Rights Forum were harassed in order to prevent them from carrying out activities to celebrate Human Rights Day, on December 10, especially the

18 / See CHRD Statement, June 4, 2009.

19 / Individuals subjected to "soft detention" are guarded by police stationed at their homes. Though individuals may be allowed to leave their homes during soft detention, they are closely followed and monitored by police or asked to travel in police vehicles, and often barred from meeting other "sensitive" individuals.

20 / In September 2009 alone, HRIC has documented more than two dozen cases of sentencing, arrest and detention, surveillance and house arrest, forced departure from home and disappearance. See HRIC Statement, September 30, 2009.

21 / See CHRD Statement, September 30, 2009.

22 / See CHRD China Human Rights Briefing, November 20-23, 2009.

23 / See CHRD Press Release, November 19, 2009 and HRIC Press Release, November 19, 2009.

annual Guizhou Human Rights Symposium. Several participants – including Ms. Wu Yuqin and Messrs. Shen Youlian, Mo Jiangang, Huang Yanming, Chen Defu, Zhu Zhengyuan, Sha Li and Zhang Chongfa – were stopped in front of their homes, taken away from the park where the symposium was supposed to take place and physically searched.

### **Human rights lawyers, increasingly a privileged target of repression**

In 2009, lawyers who worked on sensitive cases – including those defending human rights defenders, Falung Gong practitioners, farmers who have lost land, victims of forced evictions and of the tainted milk powder scandal, and those who pressed for direct election of the leadership of the Government-controlled Beijing Municipal Lawyers' Association – suffered a consistent pattern of abuse, including arbitrary arrests and prosecution, harassment, suspension of their licenses or disbarment, and violent attacks. Thus, about 20 human rights defence lawyers were unable to renew their licences to practise law following their annual review on May 31 – including Messrs. Jiang Tianyong, Li Heping, Li Xiongbing and Wang Yonghang<sup>24</sup>. Similarly, on February 17, 2009, Beijing's Yitong Law Firm was notified that it would be forced to close for six months for “re-organisation” – effective from March 13 to September 12, 2009 – by the Beijing Haidian District Bureau of Justice. Although the authorities cited the reason for the punishment as the firm's “facilitation of the illegal work of an individual in providing legal services without having obtained a professional lawyer's license”, this move was considered to be in retaliation for lawyers of the firm advocating direct elections of the leadership of the Beijing Lawyers' Association in 2008<sup>25</sup>. The firm is also known for taking on controversial and sensitive rights cases, such as representing jailed activists Messrs. Hu Jia<sup>26</sup> and Chen Guangcheng<sup>27</sup>. In addition, on July 14, 2009, the Beijing-based organisation Gongmeng, also known as the Open Constitution Initiative (OCI), which provides legal consultation and assistance to the public, received notices from State and local tax authorities ordering it to pay 1.42 million yuan (about 160,600 euros) in fines for tax

24 / See CHRD Statement, September 30, 2009 and HRIC Press Releases, June 4 and September 30, 2009.

25 / See CHRD Statement, February 18, 2009 and HRIC Press Releases, February 19 and March 18, 2009.

26 / Mr. Hu Jia, an HIV/AIDS activist and winner of the 2008 Sakharov Prize for Freedom of Thought, has been detained since December 27, 2007. In April 2008, he was sentenced to three years and six months' imprisonment and one year of political rights deprivation for “inciting subversion of State power”. His health has steadily deteriorated in the framework of his arbitrary detention.

27 / Mr. Chen, a lawyer involved in denouncing the extensive use of violence by the authorities of Linyi in relation to birth planning policies, has been arbitrarily detained since March 2006. In December 2006, he was sentenced to four years' and three months' imprisonment for “intentionally disrupting traffic” and “inciting material destruction”. While in detention, he has been denied appropriate medical care

violations<sup>28</sup>. On July 17, the Beijing Municipal Bureau of Civil Affairs shut down Gongmeng's Law Research Centre, citing its failure to register with the Government. Gongmeng had recently been advising family members of victims of the tainted milk powder scandal to file suits against those responsible. On July 29, Mr. **Xu Zhiyong**, Director and co-founder of Gongmeng, was detained and subsequently charged on August 18 for "tax evasion" in connection with Gongmeng. On August 17, Gongmeng was officially shut down for providing "false data" when it registered as a company, and for having public interest activities inconsistent with its commercial enterprise designation. On August 23, Mr. Xu was released on bail from the Beijing No. 1 Detention Centre pending trial, which, as of the end of 2009, had not taken place yet.

Furthermore, Beijing judicial authorities sternly warned human rights lawyers not to take on any cases related to the unrest that took place in July 2009 in Urumqi, Xinjiang. For instance, on July 13, Beijing law firms received a notice from the Beijing Municipal Department of Justice instructing lawyers to "take a cautious approach" in dealing with judicial commentary on the July 5 violence in Urumqi. Lawyers were told to avoid writing or saying anything that would "disrupt the handling of cases" in print media and the Internet and to "carefully consider" accepting requests for legal advice or requests to represent anyone charged with a crime during the riots. Law firms were also instructed to set up a system for managing lawyers' requests to take cases in Xinjiang, and to act in tandem with judicial authorities and the Beijing Lawyers' Association when deciding whether or not to allow employees to take such cases<sup>29</sup>.

Human rights lawyers were also subjected to arbitrary detention and physical assaults as reprisals for their activities. Thus, Mr. **Gao Zhisheng**, Director of the Beijing-based Shengzhi Law Office, who has taken on high-profile human rights cases, involving sensitive issues (such as torture of Falun Gong members and Christian house church leaders, as well as cases of arbitrary detention of petitioners seeking official accountability for acts of corruption and negligence), was last heard on January 19, 2009. As of the end of 2009, the whereabouts of Mr. Gao, who had been under constant police surveillance, along with his family, since receiving a suspended sentence for "inciting subversion" in 2006, remained unknown. During the year, the authorities especially cracked down on human rights

28 / Founded by lawyers and legal scholars and supported by a group of rights defence lawyers, Gongmeng had registered as a for-profit company rather than a civil society organisation due to the restrictive requirements under relevant regulations.

29 / See CHRD China Human Rights Briefing, July 13-10, 2009.



lawyers defending Falun Gong practitioners. For instance, on April 13, Beijing lawyer **Cheng Hai** was attacked and beaten while on his way to meet with a detained Falun Gong practitioner in Chengdu, Sichuan province. It is believed that those responsible for the attack were officials from the Jinyang General Management Office, Wuhou district, Chengdu. On May 13, Beijing lawyers **Zhang Kai** and **Li Chunfu** were beaten by a group of police officers from the Jiangjin district PSB in Chongqing and detained for representing a 66-year old Falun Gong practitioner who died while detained in Chongqing's Xishanping RTL camp<sup>30</sup>. Moreover, Messrs. **Liu Ruping**, **Wang Yonghang** and **Wang Ping**, who had previously been harassed because of their work defending Falun Gong practitioners in different locations in north-eastern China, were respectively arrested on July 2, 4 and 8 in Jinan city (Shandong province), Dalian city (Liaoning province) and Pingdu city (Shandong province)<sup>31</sup>. On November 27, Mr. Wang was sentenced by the Shahekou District Court in Dalian city to seven years in prison for "using a cult to damage social and legal system" under Article 300 of the Criminal Code, which is regularly used against Falun Gong practitioners. As of the end of 2009, Mr. Wang remained detained. On January 22, 2010, Mr. Liu Ruping was reportedly sentenced to seven years in prison. No further information could be obtained regarding Mr. Wang Ping's situation.

### **Judicial harassment and arbitrary detention of human rights defenders denouncing forced evictions**

Despite declarations in the National Human Rights Action Plan that Chinese authorities will safeguard farmers' land rights, land rights defenders and forced eviction petitioners continued to be arbitrarily arrested and detained in 2009. For instance, on March 3, 2009, the Changzhi City PSB detained Messrs. **Feng Jiusheng** and **Chen Heying**, two villagers from Wuma village in Changzhi city (Shanxi province), and gave them each a 15-day administrative detention after the two men had led a protest against local officials accused of illegally selling to developers the land that peasants in Wuma village relied on for their livelihood. They were also the organisers of open letters signed by the villagers addressed to the deputies of the NPC and to the members of the CPPCC. On November 6, Mr. **Lin Dagang**, a seventy year-old forced-evictions petitioner who has been arbitrary detained since June 11, was convicted to two years' imprisonment following a closed trial by the Jiaojiang District People's Court in Taizhou (Zhejiang province), allegedly for "illegal possession of State secrets". Mr. Lin is an organiser of the Nationwide Property Owners of

30/ See HRIC Press Release, May 13, 2009.

31/ See CHRD Statement, July 16, 2009.

State-maintained Rental Houses, a group seeking to obtain the return of the “State-maintained rental houses” that were taken over by the Chinese Government in 1956 and rented out for around 20 to 40% of the original price as compensation for their owners. In 1966, the Government stopped this compensation, and since the late 1970s, the owners have been requesting the reinstatement of their property rights. On November 11, Mr. **Liu Zhengyou**, a Sichuan activist who has provided continued assistance to petitioners and victims of forced evictions and reported on human rights abuses, was taken from his home by local police, and shortly thereafter criminally detained on suspicion of “fraud”. Eight officers also searched his apartment and copied the contents of his computer<sup>32</sup>. As of the end of 2009, Mr. Liu remained detained pending trial. On December 30, officers from the Zhabei PSB in Shanghai arrived at the home of Mr. **Zheng Enchong**, a human rights lawyer who has been providing legal assistance to victims of forced evictions and housing activists in Shanghai, to summon him for questioning on suspicion of “economic and taxation” crimes. This marked the 76th occasion since his release from prison in June 2006 that he was summoned<sup>33</sup>. Police also searched his home, but did not confiscate any items. As of the end of 2009, Mr. Zheng remained under house arrest<sup>34</sup>.

### **Ongoing repression against defenders who questioned the Government’s role in the 2008 Sichuan earthquake**

More than one year after the devastating May 12, 2008 Sichuan earthquake, individuals who attempted to conduct independent investigations or provide legal counsel to victims’ families continued to be targeted, all the more as the authorities kept obstructing efforts to review the causes and consequences of the tragedy. Indeed, although the Government pledged to investigate the deaths of students and to hold individuals accountable if shoddy construction was to blame, a promise it reiterated in its 2009 National Human Rights Action Plan, no report on the number of children killed or the structural quality of the collapsed school buildings was published. Instead, the Government actively prevented individuals from performing independent investigations and suppressed efforts by families to take legal actions by detaining and intimidating individuals who attempted to do so. On March 28, 2009, Mr. **Tan Zuoren**, an environmental activist based in Chengdu, was detained by Chengdu police on suspicion of “inciting subversion of State power”, three days after the online release of a report entitled *Independent Investigation Report by Citizens*, which presented findings of his investigation into the causes of the widespread

32/ See HRIC Press Releases, March 5 and November 6, 2009 and CHRD Statement, November 12, 2009.

33/ Mr. Zheng was imprisoned for three years for “leaking State secrets” in 2003.

34/ See CHRD China Human Rights Briefing, December 31, 2009 - January 6, 2010.

collapse of school buildings during the May 2008 earthquake in Sichuan. He had also released online a proposal to compile a list of students who died in the earthquake and to assist the parents of these children in their fight for justice. However, he was tried on the basis of attempting to organise commemorative activities for the 20th anniversary of the Tiananmen Massacre and conducting interviews with “hostile foreign forces” such as the exiled student leader Wang Dan. On August 12, 2009, his trial took place before the Chengdu Municipal Intermediate People’s Court but, as of the end of 2009, the verdict had not been announced yet, in violation of Article 168 of the Criminal Procedure Law (CPL), which allows a maximum period of two and a half months for a trial court to issue a ruling after accepting the case<sup>35</sup>. Likewise, on November 23, 2009, the Wuhou District Court, in Chengdu city, sentenced Mr. **Huang Qi**, a cyber-dissident and Director of the Tianwang Human Rights Centre, to three years in prison for possessing “three documents issued by a certain city Government”, although the judge did not specify what kind of documents they were, which city Government issued them or, more importantly, how their contents constituted “State secrets”. Mr. Huang has been arbitrarily detained since June 10, 2008 after he visited the Sichuan earthquake zone numerous times, provided aid to victims of the disaster and published information on his website about the plight of parents who had lost their children. He also provided reports and interviews to foreign journalists about the protests carried out by the families of children who died in the Sichuan earthquake. While in detention, his health condition has severely deteriorated<sup>36</sup>.

### Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Chen Qitang (a.k.a. Tianli)	Sentencing / Arbitrary detention	Urgent Appeal CHN 001/0109/OBS 002	January 6, 2009
Signatories to the “Charter 08”, including Messrs. Liu Xiaobo, Chen Xi, Du Heping, Liang Zhuangyuan, Wen Kejian and Zhang Zuhua	Intimidation / Harassment / Arbitrary arrests / Arbitrary detention	Open Letter to the authorities	January 8, 2009
Mr. Wang Debang	Arbitrary arrest / Search / Harassment	Urgent Appeal CHN 002/0109/OBS 004	January 12, 2009
Ms. Mao Hengfeng	Arbitrary detention / Ill-treatments	Urgent Appeal CHN 004/0406/OBS 044.8	January 14, 2009

35/ On February 9, 2010, Mr. Tan was sentenced to five years in prison, with an additional three years’ deprivation of his political rights, for “inciting subversion of State power”.

36/ On February 8, 2010, Mr. Huang was informed by a judge from the Chengdu City Intermediate Court of the decision to reject his appeal.

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Chen Guangcheng	Health concern / Arbitrary detention	Urgent Appeal CHN 006/0706/OBS 087.7	January 15, 2009
Mr. Gao Zhisheng	Enforced disappearance / Fear for security	Urgent Appeal CHN 009/1106/OBS 136.3	February 4, 2009
	Adoption by the UPR Working Group of a recommendation encouraging repression of human rights defenders	Press Release	February 13, 2009
Mr. Yao Fuxin	Release	Joint Press Release	March 18, 2009
Ms. Yangyi Dolma and Ms. Sonam Yangchen	Arbitrary detention / Ill-treatments	Urgent Appeal CHN 003/0409/OBS 059	April 8, 2009
	Death in detention / Arbitrary detention	Urgent Appeal CHN 003/0409/OBS 059.1	December 7, 2009
Messrs. Xu Zhiyong and Li Xiongbing / Gongmeng	Arbitrary detention / Threats / Closure of an NGO / Judicial harassment	Urgent Appeal CHN 004/0809/OBS 122	August 24, 2009
Messrs. Xu Zhiyong and Jiang Tianyong	Release on bail / Harassment	Urgent Appeal CHN 004/0809/OBS 122.1	August 26, 2009
Mr. Liu Xiaobo	Residential arrest / Judicial harassment	Urgent Appeal CHN 005/0809/OBS 126	August 26, 2009
		Urgent Appeal CHN 005/0809/OBS 126.1	December 24, 2009
Ms. Shen Peilan	Arbitrary detention / Ill-treatment	Urgent Appeal CHN 006/1109/OBS 158	November 3, 2009
Mr. Lin Dagang	Arbitrary detention / Judicial harassment	Urgent Appeal CHN 007/1109/OBS 165	November 10, 2009
Mr. Huang Qi	Sentencing / Arbitrary detention / Health concern	Urgent Appeal CHN 004/0608/OBS 105.2	November 24, 2009
Mr. Qi Chonghuai	Ill-treatments / Arbitrary detention	Urgent Appeal CHN 003/0508/OBS 085.1	December 9, 2009
Guizhou Human Rights Forum members, including Ms. Wu Yuqin, Mr. Shen Youlian, Mr. Mo Jiangang, Mr. Huang Yanming, Mr. Chen Defu, Mr. Zhu Zhengyuan, Mr. Sha Li, Mr. Zhang Chongfa, Mr. Liao Shuangyuan and Mr. Chen Xi	Acts of harassment and intimidation / Arbitrary arrest	Urgent Appeal CHN 008/1209/OBS 185	December 10, 2009

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# INDIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

In 2009, poverty remained a reality for millions of people in India, as UN High Commissioner for Human Rights Ms. Navanethem Pillay emphasized on the occasion of her visit to India in March 2009. Indeed, benefits and dividends of the economic liberalisation and rapid economic growth were not always shared equally<sup>1</sup>. In particular, the poorest and most marginalised groups, primarily the Dalits and Adivasis, continued to face discrimination despite the illegality of the caste system and to live in deep poverty. Landless farmers and Adivasis were also subjected to forced evictions in several States due to industrial and other business projects.

In addition, widespread asymmetries in power and wealth were “compounded by the persistence of gaps in the implementation of higher courts’ decisions [...] and of national laws and policies that promote and protect human rights and seek to support the most vulnerable”, as underlined by the High Commissioner<sup>2</sup>. Indeed, human rights violations continued to be rampant in 2009, while impunity for those abuses remained widespread, especially as Section 197 of the Criminal Procedure Code and the Armed Forces Special Powers Act (AFSPA) in areas affected by armed uprising still provided protection from prosecution to the police and security forces<sup>3</sup>. Moreover, the Government amended the Unlawful Activities (Prevention) Act of 1967 in December 2008, which, *inter alia*, extends the detention without bail period from 90 to 180 days and police custody from 15 to 30 days,

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1/ See Statement by Ms. Navanethem Pillay, High Commissioner for Human Rights at the National Human Rights Commission (NHRC), March 23, 2009.

2/ *Idem*.

3/ In this regard, the UN High Commissioner for Human Rights called on India to repeal laws providing security forces with excessive emergency powers, including the AFSPA, which “breach contemporary international standards”. See Statement by Ms. Navanethem Pillay, High Commissioner for Human Rights at the NHRC, March 23, 2009. The AFSPA, which is at the origin of many acts of police violence in the State of Manipur, entered into force in 1958 and gives the Indian army full powers in areas affected by armed uprising, notably in Kashmir and in the north-eastern States, including Manipur, where separatist rebels are present. In particular, the AFSPA empowers soldiers to arrest, keep in detention and shoot at any person (Section 4.a) so as to “maintain public order” if the soldier has reasons to believe that such person is an “insurgent”. This can be carried out with total impunity, as the law requires the permission from the central Government to prosecute a member of the army.

accepts the use of wiretaps as evidence and provides for life imprisonment for those involved in terror acts<sup>4</sup>.

As the Naxalite Maoist movement intensified its attacks in 2009 and the conflict in Chhattisgarh spread to other States, paramilitary and police forces were in turn increasingly deployed, leading to human rights abuses on both sides, including arbitrary arrests, abductions by State agencies and armed insurgents, deaths in detention, custodial rape and torture. In this context, the number of extrajudicial executions alarmingly increased in 2009, mostly in the States of Manipur, Assam, Chhattisgarh, Orissa and Madhya Pradesh, where militant movements of various nature operate. Government's failure to guarantee the rule of law also encouraged corruption and common crime. In addition, tribal populations of Dantewada district in Chhattisgarh State were continuously facing large-scale internal displacements, in particular during the "Operation Green Hunt", which began in November 2009 in the States of Chhattisgarh, Jharkhand, Orissa, Andhra Pradesh, Maharashtra and West Bengal, and by which paramilitary troops along with State armed police carried out operations against the Naxalite Maoist movement and which seriously affected tribal populations living in the areas where the operation is being carried out.

A welcome development in 2009 was the organisation by the National Human Rights Commission, on October 12, 2009, of a workshop on human rights defenders at the end of which it recalled that defenders should be "provided protection by the State against any violence, threats, retaliation, adverse discrimination, pressure or any arbitrary action", and that there was a need to set up a Focal Point for Defenders, preferably at the NHRC, so that they can reach out to it for support<sup>5</sup>. However, the NHRC remains an institution with a very limited mandate as, among others, it has only a recommendatory power and it does not address human rights violations committed by the armed and paramilitary forces. In addition, in July, Justice K. G. Balakrishnan, the new Chairperson of the NHRC, made a statement according to which "encounter killings" are "sometimes unavoidable" as a solution to law and order issues. Such comments can only be seen as inap-

4/ In addition, a new section has been inserted in the bill that says that those using explosives, firearms, poisonous chemicals, biological or radiological weapons with the intention of aiding, abetting or committing a terror act "shall be punishable with imprisonment for a term which may extend to 10 years". The bill also says that anyone in India or in a foreign country who directly or indirectly raises or collects funds or provides funds for a terrorist act shall be punishable with at least five years imprisonment, which may extend to life.

5/ See NHRC, *Recommendations made at the Workshop on Human Rights Defenders*, October 12, 2009. The Focal Point was established in May 2010.

propriate from the Chairperson of the NHRC, an institution that hundreds of victims approach seeking redress in cases of extrajudicial executions.

The general elections to the 15th “Lok Sabha”, the lower house of the Indian Parliament, which poll process was completed on May 16, 2009, did not bring any change to the human rights situation in the country, as the ruling alliance led by the Congress Party, which returned to power, had failed to address the most urgent human rights issues in the country at the end of 2009.

### **Acts of harassment against defenders of the rights of marginalised communities**

In 2009, human rights defenders working to promote the rights of Dalit and other marginalised communities remained victims of repression and of acts of harassment. For instance, Mr. **Marimuthu Barathan**, President of the Human Rights Education and Protection Council, who has been working closely with Dalit communities in Tirunelveli and surrounding southern districts of Tamil Nadu State, has been subjected to judicial harassment since May 27, 2009. On that day, he was arrested by the police and accused of the murder of a man, as well as of being involved in the killing of 20 Dalit people<sup>6</sup>. Mr. Barathan had played a crucial role in the filing of the highest number of cases under the Scheduled Cast / Scheduled Tribe (Prevention of Atrocities) Act. He also campaigned for police reforms and against custodial torture. He was charged for various offences, including “rioting armed with deadly weapons” and “murder”. On June 27, he was released from prison on bail. As of the end of 2009, the charges against Mr. Barathan remained pending and the trial in the case had not started yet. Furthermore, on July 22 and 23, Dr. **Lenin Raghuvanshi**, Convener of the Peoples’ Vigilance Committee on Human Rights (PVCHR), a local non-governmental human rights organisation working in Varanasi, Uttar Pradesh (northern India)<sup>7</sup>, received continuing and renewed death threats over his mobile. In 2008, Dr. Raghuvanshi had already received threatening calls, warning him that he would be killed if he continued to work with the Dalit communities. On July 23 and 24, he registered a complaint before the Director General of Police of Lucknow, Uttar Pradesh, and Inspector General of Police, Varanasi zone<sup>8</sup>. In December 2009, members

6/ Following those killings, the Tirunelveli police arrested several Dalit people. The victims sought the assistance of Mr. Barathan, who defended their cause in front of Government officials and the police and stated that these persons were falsely accused. It is alleged that Mr. Barathan was accused in retaliation.

7/ PVCHR is a network of human rights bodies that campaign on various issues relating to the Dalit community, including the education of children, fair salaries, property title and the fundamental rights of members of this community.

262 8/ See Peoples’ Vigilance Committee on Human Rights (PVCHR) Statement, July 24, 2009.

of Vanvasi Chetna Ashram (VCA), a human rights and development NGO working for the resettlement of Adivasi communities displaced by the conflict in Chhattisgarh<sup>9</sup>, were also subjected to various acts of harassment. On December 10, 2009, Messrs. **Kopa Kunjam**, VCA Rehabilitation Coordinator<sup>10</sup>, and **Alban Toppo**, a lawyer and also a member of VCA, were arrested and brought to Bhairamgarh police station, where they were reportedly severely beaten. Although Mr. Toppo was later released without charge, Mr. Kunjam was charged on December 11 with “murder”, “waging war against the State” and “illegally carrying a weapon”, under Sections 302, 147, 148 and 149 of the Criminal Code, and Sections 25 and 27 of the Arms Act. As of the end of 2009, Mr. Kunjam remained detained and the charges against him were still pending<sup>11</sup>. On December 14, human rights activists from around India had planned to join VCA in a peaceful march through villages affected by the ongoing conflict in southern Chhattisgarh. However, a group of 39 women’s activists travelling to Dantewada in Chhattisgarh, where VCA is based, were twice stopped and harassed by police while marching from Raipur, the State capital. In addition, taxi and bus drivers were warned not to take the group to Dantewada and the women eventually had to turn back. On December 16, the Dantewada District Magistrate declined to grant permission to VCA to organise peaceful demonstrations for the implementation of an Indian Supreme Court order providing for the rehabilitation and compensation of indigenous peoples displaced by the Salwa Judum militias. On the same day, the landlord of VCA’s temporary rented headquarters informed **Mr. Humanshu Kumar**, founder of the organisation, that he was being pressured to evict the organisation<sup>12</sup>.

Those who defended the land and environmental rights of marginalised communities were also subjected to reprisals. Thus, on October 29, 2009, the Madhya Pradesh police used force against peaceful protesters

9 / Since 2005, VCA has documented human rights abuses committed against the local indigenous peoples by security forces and State-backed militias as part of the ongoing conflict with Maoist rebels in Chhattisgarh State.

10 / In particular, Mr. Kunjam helped the families of indigenous peoples who were allegedly killed by security forces in Matwara in March 2008 and in Singaram in January 2009 to lodge complaints and initiate a case at the High Court.

11 / See People’s Watch.

12 / VCA had moved into the rented premises after their office and residential property, including training halls, a medical dispensary and Humanshu Kumar’s home, were demolished by bulldozers on May 17, 2009. The authorities had served VCA with notice of the demolition only one day before it was carried out, alleging that VCA’s property had encroached on forest land. The demolition was carried out despite an ongoing court case against the order. In January 2009, VCA’s financial support from overseas was blocked by the national Government, leading to a lay-off of staff members. See People’s Union for Civil Liberties (PUCL) and People’s Watch.



and arrested 19 leaders of the Save Narmada Movement (*Narmada Bachao Andolan* – NBA), a coalition of local organisations fighting for the rights of people who were displaced because of the dam-building projects on the Narmada river, which are also affecting the eco-system. The protesters were demanding consultation and the implementation of judicial orders for the rehabilitation of Adivasis and other communities displaced by the projects. The police also raided the NBA office in Khandwa on October 30, seized papers belonging to the organisation, sealed the office for an hour and arrested another NBA senior activist. On November 6, the 20 NBA activists, including Messrs. **Alok Agarwal**, **Chittaroopa Palit**, **Kamla Yadav** and **Ramkuwar Rawat**, were released on bail. However, as of the end of 2009, they continued to face charges for offences under Sections 147 (“rioting”) and 333 (“causing grievous hurt to deter a public servant from discharge of duty”), 323 and 332 (“voluntarily causing hurt to deter a public servant from discharge of duty”), 353 (“assault or applying criminal force to deter a public servant from discharge of duty”) and 294 (“performing obscene acts and songs”) of the Criminal Code<sup>13</sup>. Moreover, as of the end of 2009, Messrs. **Rabindra Kumar Majhi**, **Madhusudan Badra** and **Kandera Hebram**, members and activists of the Keonjhar Integrated Rural Development and Training Institute (KIRDTI), an organisation that advocates for the land rights of Adivasis, and for ecological protection from mining and illegal logging in Keonjhar district, in the State of Orissa<sup>14</sup>, remained arbitrarily detained in Keonjhar since their arrest in July 2008 as the charges against them remained pending in relation to their alleged connections with armed Maoist groups.

### Assaults against anti-corruption activists

The denunciation of corruption in India remained a high-risk activity in 2009, in particular at the local level. For instance, on July 16, in the Vanniyar area of Kilavadinatham village, a group of ten men led by a relative of Mr. M. Kumar, S/o. Mayavan – the Panchayat President of Kilavadinatham – assaulted Messrs. **D. Thambirajan** and **Ramasamy**, members of the Citizens for Human Rights Movement, for their involvement in the exposing of corrupt practices by the local Panchayat President in implementing the National Rural Employment Guarantee Scheme in Cuddalore district (Tamil Nadu). Mr. Thambirajan managed to escape but Mr. Ramasamy got caught by a man who hit him with an iron pipe and bamboo canes. Mr. Ramasamy’s son, Rajesh, and two other relatives, Messrs. Subramani and Ponnusamy, tried to rescue him but they were also attacked. Special Sub Inspector of Police, Mr. Gnanasekaran, of Buvanagiri police station

13/ See People’s Watch.

264 14/ KIRDTI is also involved in working on development activities with the “Juang” tribal community.

asked Mr. Ramasamy alone to go to the hospital and instructed the others to come to Buvanagiri police station to lodge a complaint. However, instead of receiving their complaint, a false case was filed against them. Messrs. Ramasamy and Thambirajan were added as accused. On July 17, Messrs. Subramani, Rajesh and Ponnusamy were remanded to 15 days in judicial custody. As of the end of 2009, the charges against Messrs. Ramasamy and Thambirajan remained pending.

### **Harassment of defenders fighting against human trafficking**

Human rights defenders fighting against human trafficking were again victims of acts of intimidation in 2009, all the more as human trafficking continued to receive support from corrupt politicians and police officers. On March 6, Mr. **Ajeet Singh**, President of “Guria”, a human rights organisation working against human trafficking and for the rehabilitation, health, education and other rights of women in prostitution and their children, was threatened by the local police following a rescue operation in the red light district near Meerganj, in Allahabad city. Indeed, before the rescue operation, Guria had made an application to the Allahabad District Administration requesting police assistance, and the Additional District Magistrate, directed by the City Magistrate, had ordered the police to accompany them. However, during the operation, the police was reportedly uncooperative. Following the rescue operation, Mr. Singh was brought to Kotwali Allahabad police station, where he was threatened by members of the police. In particular, a police representative threatened him that he would be “killed during a police encounter” or he would be implicated in criminal cases. Moreover, on March 8, 2009, two Hindi daily newspapers, *Chetna Vichar Dhara* and *Amar Ujala*, published articles in which they implied that Mr. Singh and members of Guria had been involved in illegal activity and alleging that they had tried to extort money from the brothel owners.

### **Arbitrary detention of defenders protesting against extrajudicial executions and other abuses committed by police and armed forces**

In 2009, human rights defenders denouncing extrajudicial killings and other abuses committed by police and armed forces continued to be subjected to reprisals. For instance, although Dr. **Binayak Sen**, National Vice-President of the Peoples’ Union for Civil Liberties (PUCL) and Secretary General of the PUCL branch in the Chhattisgarh State, was finally granted bail by the Supreme Court of India on May 25, 2009, he remained prosecuted before the Raipur Court as of the end of 2009. Dr. Sen had been arrested in 2007 under the Chhattisgarh Special Public

Security Act 2006 and the Unlawful Activities (Prevention) Act 2004<sup>15</sup> for alleged links with the Naxalite Maoist guerrilla. He had helped to organise fact-finding investigations on human rights violations in the State of Chhattisgarh, including abuses against detainees. He also denounced the alleged involvement of the police into the unlawful killing of 12 Adivasis in 2007. Moreover, on August 4, Ms. **Phanjoubam Sakhileima**, President of “Apunba Manipur Kanba Imma Lup” (AMKIL), a women’s civil society umbrella group in Manipur and a member organisation of “Apunba Lup”, an umbrella group coordinating the civil protest against police brutality in Manipur, Ms. **Lourembam Nganbi Devi**, AMKIL Vice-President, and Ms. **Yumlembam Mema**, AMKIL Secretary General, were arrested by policemen after they were allowed to meet the Governor of Manipur in the margins of a demonstration organised in response to the summary killings by the Manipur Police Commando Unit of a young man and a mother in her advanced stage of pregnancy in Imphal (Manipur State) on July 23. The next day, they were remanded in judicial custody. On August 10, the District Magistrate of Imphal West informed that Ms. Lourembam Nganbi was detained under the National Security Act, 1980 (NSA)<sup>16</sup>, but did not provide any grounds for the detention of the two others. On January 8, 2010, Ms. Sakhileima, Ms. Nganbi Devi and Ms. Mema were released on bail but remained charged with “disturbing normal public life”, “helping the general people to agitate against the Government”, “supporting outlaw organisations” and “possible threat to national security”<sup>17</sup>. In the same context, on August 5, the police arrested Messrs. **Phurailatpam Devan Sharma**, Secretary of the All Manipur United Club Organisation (AMUCO), a member organisation of “Apunba Lup”, **Chingtham Dayananda**, Assistant Publicity Secretary of AMUCO, **Th. Naobi** and **Karam Sunil**, Coordinators of “Apunba Lup”, on charges of “rioting”, “causing damage” and “breaking the peace of the people”. The following day, they were remanded in police custody until August 10, 2009, when they were detained under the NSA. On January 8, 2010, they were released after the Government withdrew the charges against them<sup>18</sup>. Similarly, on September 14, 2009, Mr. **Jiten Yumnam**, a member of the Coordinating Committee of the Asia Pacific Indigenous Youth Network (APIYN) and Secretary of the NGO “Citizens’ Concern for Dams and Development” (CCDD), an organisation working on environmental rights

15/ These laws have been widely criticised for being extremely vague and subjective on what is deemed unlawful by the authorities. Moreover they include no provision for the granting of bail to detainees or for the right to appeal.

16/ Under the NSA a person can be detained without charges (preventative or administrative detention) for a period of up to one year.

17/ See People’s Watch.

18/ *Idem*.

in north east India, was arrested by the police at Imphal airport, without arrest warrant. On the same day, the police also arrested seven AMUCO executives, namely Messrs. **Chungset Koireng, Likmabam Tompok, Amom Soken, Irom Brojen, Toarem Ramananda, Shamjetsabam Nando and Thiyam Dinesh**, after a combined team of Singjamei police and Imphal West Police Commandos raided their office. On September 15, they were remanded in police custody until September 29, 2009. Messrs. Thiyam Dinesh, Likmabam Tompok, Shamjetsabam Nando and Chungset Koireng were released on the same day from detention after being granted bail against a surety bond of 50,000 rupees (about 815 euros) each, while Messrs. Jiten Yumnam, Amom Soken, Irom Brojen, and Toarem Ramananda remained in detention. They were charged under Sections 121 and 121.A of the Criminal Code (“attempting to wage war” and “conspiring to commit offences against the State”), Section 16/18/39 of the Unlawful Activities (Prevention) Act (“unlawful acts of supporting or motivating insurgents”), and Section O of the Official Secret Act. While in detention, the detainees were reportedly subjected to torture and ill-treatments. Their arrest is allegedly in direct retaliation for their organisation of peaceful protests against extrajudicial killings by security forces and part of the crackdown on civil society following protests at the extrajudicial killing of the young man and the pregnant woman on July 23, 2009. On January 7, 2010, the charges against Mr. Yumnam and the seven AMUCO were dropped, and they were therefore all released<sup>19</sup>. On August 22, Mr. **Gopen Chandra Sharma**, District Human Rights Monitor of “Banglar Manabadhikar Suraksha Mancha” (MASUM) in Murshidabad District (West Bengal), received death threats on his phone. On August 24, Mr. Sharma lodged a written complaint to Jalangi police station. Despite the fact that the Superintendent of Police of Murshidabad and other senior officers were informed about the calls, the police did not file up a case. Mr. Sharma has already been subjected to judicial harassment and threats in the past. He regularly denounced abuses committed by Border Security Forces (BSF), including extrajudicial killings, smuggling and trafficking. Moreover, as of the end of 2009, Ms. **Irom Chanu Sharmila**, a human rights defender who has been on hunger strike since November 2, 2000 in protest against the AFSPA, continued to be detained for “attempting suicide” (Section 309 of the Criminal Code)<sup>20</sup> and has refused to eat or drink since then. As a consequence, the authorities have since then regularly resorted to forced nasal feeding.

19/ See Centre for Organisation Research and Education (CORE).

20/ According to the Criminal Code, the maximum sentence for the charge of “attempting suicide” is of one year in detention. Therefore, Ms. Sharmila is released every year and then placed in detention shortly afterwards again for the same reasons.

## Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Dr. Binayak Sen	Release on bail / Judicial proceedings	Urgent Appeal IND 004/0408/OBS 055.1	May 26, 2009
Messrs. D. Thambirajan and Ramasamy	Assault / Abuse by the police	Urgent Appeal IND 001/0709/OBS 109	July 23, 2009
Mr. Marimuthu Barathan	Arbitrary arrest / Release / Judicial harassment	Urgent Appeal IND 002/0809 /OBS 123	August 25, 2009
Mr. Gopen Chandra Sharma	Death threats / Harassment	Urgent Appeal IND 003/0809/OBS 125	August 26, 2009

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# INDONESIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

The key political developments in Indonesia in 2009 were most certainly the legislative and presidential elections of April 9 and July 8. The elections were dominated by persons with strong military backgrounds and several of the presidential and vice-presidential candidates faced serious allegations of human rights violations. President Susilo Bambang Yudhoyono was re-elected in the first round, with more than 60 per cent of the vote and the participation of approximately 176 million voters. President Yudhoyono's Democratic Party also won the legislative elections. Although the elections proceeded relatively smoothly<sup>1</sup>, incidents of violence and protest in West Papua were reported<sup>2</sup>. The end of the election period was tragically marked by the July 17 dreadful suicide bomb attacks at the JW Marriott and the Ritz-Carlton in Jakarta.

2009 has also seen an influx in political arrests based on charges of subversion or treason, and the official approach to social unrest in Indonesia continued to rely heavily on the military (especially in West Papua). Activists talking about self-determination of indigenous Papuan people were silenced with criminal charges, political trials and years of imprisonment. As with previous years, the most serious obstacle to bringing gross human rights violations to courts was the unwillingness of the Attorney General to conduct investigations on the recommendations of the National Commission for Human Rights (Komnas HAM). In addition, the role of Indonesia's elite military special forces (*Komando Pasukan Khusus* – Kopassus) is particularly worrying. Kopassus soldiers typically do not wear uniforms and have no formal role in policing, but act on their own or in response to complaints of public disturbances. Those taken back to the Kopassus barracks are likely to be ill-treated, in full impunity.

Against this context, a welcome development in 2009 was the introduction of the National Police Chief Regulation on the Implementation of Human Rights Principles and Standards (PERKAP Number 8 Year 2009), which refers extensively to the prohibition of torture and sets high stand-

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1/ For a critical approach of the 2009 elections, see National Alliance for Change and the Youth Indonesian Movement Report, *The April 2009 Election was Flawed; Save Indonesia's Democracy*, April 12, 2009.

2/ See The Commission for Disappeared and Victims of Violence (KontraS) Statement, April 9, 2009.

ards for police conduct. This instrument will be particularly important to prevent the use of excessive force in handling demonstrations, as well as during detention<sup>3</sup>. However, it lacks provisions for enforcement, in particular disciplinary measures in cases of violations of the code. Nevertheless, torture continued to be used in Indonesia to obtain information or cover up cases of abuse in the police force and the act of torture, as defined by the UN Convention Against Torture, is still not included in the Criminal Code as a crime.

Moreover, the Government continued in 2009 to push the Parliament to adopt bills that could endanger human rights activities, in particular the Bill on State Secrecy and the Bill on Mass Organisation. The Bill on State Secrecy could indeed create difficulties for the victims and human rights groups to document human rights abuses<sup>4</sup>, while the Bill on Mass Organisation plans to monitor NGOs' fund and to establish a commission to monitor the activities of NGOs, which could advise the Government to freeze NGOs' license and fund. In December 2009, the Bill on the State Secrecy and the Bill on Mass Organisation were listed on the List of the National Legislative Programme 2010-2014. Finally, although a Victims and Witness Protection Agency (LPSK) was established in 2008 under the Witness Protection Act 2006 and inaugurated in July 2008, it remained un-operational due to budget issues. Therefore, human rights defenders who faced serious attack or death threats still had to be relocated or evacuated by private institutions such as national or international NGOs and donor agencies, or religious institutions such as the churches<sup>5</sup>.

Finally, corruption in Indonesia remained rampant at all levels, and the Corruption Court Law, which was finally enacted on September 29, 2009, lacks crucial elements to ensure the effective functioning of the court. In particular, it is not clear whether the Corruption Eradication Commission (KPK) or Public Prosecutor will have the obligation to investigate and prosecute corruption cases before the court.

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3/ See KontraS Statement, December 21, 2009 and Imparsial.

4/ In particular, the Bill on State Secrecy provides for the death penalty as maximum penalty for someone who would be "leaking" information related to the war period. In that framework, journalists and human rights NGOs could face death penalty for documenting human rights abuses committed during the war period. See Imparsial.

5/ See International NGO Forum on Indonesian Development (INFID) and Imparsial.

## Impunity in the murder of Mr. Munir Said Thalib and judicial harassment against those who try to seek justice in this case

Impunity in the murder of Mr. **Munir Said Thalib**, co-founder of the Commission for the Disappeared and Victims of Violence (KontraS), killed in 2004, continued to prevail in 2009, with a worrying trend of prosecution of those who endeavour to fight for justice. In February 2009, the Komnas HAM appointed a public examination team to “verify the evidence and the trial process” that had led to the acquittal of Maj. Gen. Muchdi Purwopranjono, former Deputy Chief of Indonesia’s National Intelligence Agency and the suspected mastermind behind the murder of Mr. Munir. The team reported that Mr. Muchdi’s trial and the subsequent appeal by the Prosecutor had suffered from a number of irregularities, including allegations of witness tampering, unprofessional handling of the case by prosecutors, the failure of the district court judge to summon at least two key witnesses for the prosecution, and the appellate court judge’s lack of experience in reviewing criminal trials. On June 15, Mr. Muchdi, who was prosecuted for “planning” and “assistance in the murder” of Mr. Munir, was acquitted of all charges by the Court of Appeal. In July 2009, the Supreme Court rejected the appeal of the Prosecutor. As of the end of 2009, those responsible for the murder at the highest levels remained at large.

In this context, Mr. **Usman Hamid**, Coordinator of KontraS and member of the independent fact-finding team established by President Yudhoyono to conduct investigations into Mr. Munir’s killing, was under criminal investigation following his involvement in the campaign for justice for his late colleague. Indeed, Mr. Muchdi Purwopranjono announced that he would file a criminal defamation suit under Articles 310 and 314 of the Criminal Code<sup>6</sup> against Mr. Usman Hamid and three other human rights defenders, including Mr. Munir’s widow, Ms. **Suciwati Munir**, who gave her testimony during the trial, Mr. **Hendardi**, Director of the Setara Institute, and Ms. **Poengky Indarti**, Managing Director of Imparsial. However, as of the end of 2009, Mr. Muchdi Purwoprandjono had only filed a complaint with the police against Mr. Usman Hamid, because he allegedly criticised the verdict outside the court and asserted that Mr. Muchdi Purwoprandjono was a murderer<sup>7</sup>. On September 3, 2009, Mr. Usman Hamid received a summons and on September 9, 2009, he

6/ Under those articles, defamation is punishable by over five years’ imprisonment.

7/ Mr. Muchdi Purwoprandjono will probably not be able to sue Ms. Suciwati Munir, Mr. Hendardi and Ms. Poengky Indarti as they testified before the court. Indeed, according to the Criminal Procedural Code as well as the Legal Principles, any testimony made before a court is protected under the law and any witness may therefore testify freely.



reported to the Jakarta police headquarters. As of the end of 2009, the police investigation against him was still ongoing.

### Repression against anti-corruption activists

2009 was a hard year for the anti-corruption movement, more specifically for the KPK. Indeed, the police and the Attorney General's Office (AGO) responded to KPK's investigations on their institutions with criminal charges against two KPK Commissioners, Messrs. **Chandra M. Hamzah** and **Bibit Samad Riyanto**, who were arrested on October 29, 2009 under charges of "abuse of authority" and of "receiving bribery". Following nation-wide public pressure in support of the two commissioners, President Yudhoyono set up a fact-finding team, which recommended to dismiss the case and to release both men. Messrs. Chandra M. Hamzah and Bibit Samad Riyanto were released on November 3 and, on December 1, the Attorney General Office dismissed the case. In light of the weak evidence, many understood their detention as an intimidation tactic by the police<sup>8</sup>. The use of defamation laws to stop public criticism of institutions was also particularly worrying. Two other anti-corruption activists, Messrs. **Illian Deta Arta Sari** and **Emerson Yuntho**, from the Indonesian Corruption Watch (ICW), were named as suspects in a criminal defamation case for expressing their scepticism about the amount of money that the AGO claimed to have saved the State through corruption prosecutions. Although their analysis was based on a State Audit Board report, they were accused of defamation by the AGO, after ICW publicly pointed out a multi-trillion rupiah gap (several thousands euros) in AGO's annual budget and called for an investigation. As of the end of 2009, the defamation case was still pending<sup>9</sup>. Mr. **Hendra Budian**, Executive Director of Aceh Judicial Monitoring Institute (AJMI), was also subjected to judicial harassment after he asked the Provincial Attorney-General of Aceh to investigate into a serious case of corruption, in which the victims of the conflict in Aceh (Bener Meriah area) are prevented from enjoying their rights before the Aceh Reintegration Body. When the victims gathered in the office of the Provincial Attorney-General, they were provoked by local officers, and a scuffle occurred. In order to prevent a bigger chaos, AKP Renaldi, the police Commandant gave discretion to Mr. Hendra to control the victims. In the process of doing so, Mr. Hendra broke one of the windowpanes, and the action of the windowpane breaking was sub-

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8/ See INFID and Imparsial.

9/ On October 14, 2009, the Attorney General summoned them to the police headquarters for interrogation on allegations of "defamation" after *Rakyat Merdeka* newspaper published their information concerning the official audit result of the Financial Auditor Body on the Attorney General Office. See the Indonesia's NGO Coalition for International Human Rights Advocacy (HRWG), INFID and Imparsial.

sequently taken into a penal case by the District Attorney. Mr. Hendra was tried by the District Court of Banda Aceh, and in March 2009 the court sentenced him to three months of imprisonment and six months of probation under Article 406 of the Criminal Code for “breaking someone’s good”<sup>10</sup>. In another disturbing case, the body of *Radar Bali* journalist **Mr. Anak Agung Gede Bagus Narendra Prabangsa** was found afloat in Bias Tugel beach, Karangasem, Bali, on February 16, 2009<sup>11</sup>. Before he was murdered, Mr. Prabangsa had intensively reported on alleged corruption in the Local Education Office in Bangli district, Bali. Police investigation revealed that a number of people picked up Mr. Prabangsa and brought him to the residence of a member of the local House of Representatives, Mr. I Nyoman Susrama. He was beaten to death and his body was dumped in Goa Lawah beach, Klungkung. Nine persons were arrested in connection to his murder<sup>12</sup>. As of the end of 2009, most of them were still facing charges and the judicial process was ongoing.

### **Acts of harassment against defenders denouncing violent land-grabbing practices**

In 2009, defenders denouncing violent land-grabbing practices were regularly subjected to harassment. For instance, on January 28, 2009, **Mr. Muhammad Rusdi**, a farmer and the village chief of Karang Mendapo, was arrested for his leading role in campaigning against land-grabbing by PT Kresna Duta Agroindo (KDA), an oil palm plantation. He was detained at the district police facilities of the Sarolangun Regency. He was subsequently charged with “attempting to embezzle money” entrusted upon him by the citizens that elected him village chief<sup>13</sup>. Mr. Rusdi was subsequently released but, as of the end of 2009, the case against him remained pending before the Supreme Court. Furthermore, during a dem-

10 / See INFID and Imparsial. Mr. Hendra Budian was never detained because of the light violation he was sentenced to.

11 / See INFID and Imparsial.

12 / I Nyoman Susrama, Komang Gede, Nyoman Wiradnyana alias Rencana, I Komang Gede Wardana alias Mangde, Dewa Sumbawa, Endy, Daryanto alias Jampes, I Wayan Suecita alias Maong and Gus Oblong. Mr. Susrama was suspected as the mastermind and others as his accomplices. See, among others, KontraS and HRWG.

13 / Several years ago, KDA illegally cut down 600 ha forest and rubber plantations of Karang Mendapo citizens. The land then became part of a larger palm oil plantation. Since then, KDA distributed a monthly fee of 58,000 rupiahs (4.74 euros) to each registered farmer. There has never been a clearly stated purpose of this payment. In August 2008, the villagers seized the land back and harvested the yields of the oil palms. Ever since, they have been subject to intimidation and maltreatment by unknown persons presumably acting on behalf of KDA. These incidents were reported to the police but to no avail. As part of the protest, the citizens of Karang Mendapo decided to return the fee they had received from KDA. KDA refused to take back this money, so that it was entrusted on Mr. Rusdi until KDA would receive it. This appears to be the reason for Mr. Rusdi’s arrest. See Forum-Asia Press Release, February 5, 2009.

onstration about a land conflict between land workers from Takalar (north Polongbangkeng) who used to own the land that was subsequently sold to the company PT Perkebunan Nusantara (PTPN) and PTPN, which was held on July 15, 2009 near a plantation belonging to PTPN Section XIV, clashes between land workers and PTPN employees grew violent. Consequently, Takalar resort police filed investigation reports against nine land workers. One was arrested and two more were taken into police custody, though no report was filed against PTPN employees. During the following days, the police reportedly arrested two more land workers for their role in the protest, while intimidating others. Moreover, on October 25, as a group of villagers was returning home, they were reportedly chased and shot at by eight mobile brigade officers, who arrested eight of them: Messrs. **Baddu Daeng Sikki** (Panaikang village), **Basee Daeng Gassing** (Ma'lolo of Ko'mara village), **Daeng Gani**, **Daeng Sanre**, **Daeng Salli**, **Daeng Nuntung**, **Daeng Rurung** and **Daeng Nuju**, who were subsequently released. Along with the five peasants who were arrested after taking part in the July demonstration, they were prosecuted under various charges, including "disobedience against public authorities" and "resistance and rebellion" (Articles 160 and 212 of the Criminal Code). All but one protesters were subsequently released.

### Repression of peaceful demonstrations

Numerous violent repressions of peaceful demonstrations took place in 2009. On May 9, 2009, a peaceful solidarity demonstration was held on Malalayang beach to support traditional fishermen, marking the opening of the Justice Forum for Marine Affairs (FKPP), an alternative forum to the World Ocean Conference<sup>14</sup>. Local police and intelligence organisations hindered the meeting, destroyed parts of the setup and arrested the Executive Director and Regional Coordinator of Friends of the Earth Indonesia (*Wahana Lingkungan Hidup Indonesia* – WALHI), Messrs. **Berry Nahdian Furqon** and **Erwin Usman**. On May 11, 2009, the North Sulawesi Manado District Court sentenced Messrs. Furqon and Usman to one month imprisonment and two months' probation as well as to a fine of 1,000 rupiah (about 0.08 euros) for "not obeying State officials" as stipulated in Article 216 of the Criminal Code<sup>15</sup>. Both men were released on May 15, 2009. Moreover, more than 20 non-Indonesian attendees from the Philippines, Malaysia, and Cambodia who had participated in the peaceful solidarity demonstration were deported on this occasion, without explana-

14 / The civil society movement (particularly the fisher folks and environmental movements) consider the World Ocean Conference as a tool to legitimise the liberalisation of marine resources, leading to the impoverishment of fisher folks through various so-called development policies.

15 / See INFID, Imparsial and KontraS.

tion or official deportation letter. The police had apparently withdrawn the letter of permission to hold the event, but had not notified FKPP. No reason was given for this<sup>16</sup>.

Police officers also used excessive force against demonstrators in Nabire district, Papua. For instance, on January 29, 2009, in the framework of a peaceful demonstration of about 100 people that was started on January 27 and organised in front of the General Election Commission's building in Nabire by the "Coalition of People who care about the election of the Head of Region" in order to call for the holding of local elections that had already been delayed several times, police officers violently dispersed the remaining peaceful demonstrators in the early morning while they were sleeping on the site. The police kicked and beat some demonstrators with rattan sticks and rifle butts, who suffered bruises and cuts as a result. In particular, police officers beat Mr. **Yones Douw**, a member of the Papuan Kingmi Church and a volunteer with the Institute for Human Rights Study and Advocacy (*Lembaga Studi dan Advokasi Hak Asasi Manusia – ELSHAM*), on the ears and punched him in the face when he attempted to intervene to stop clashes between police forces and demonstrators. He was then arrested and kicked with boots three times<sup>17</sup>. Mr. Yones Douw was deprived of food and drinking water during his detention and interrogation. On January 30, the police released him and seven other demonstrators without charge, but instructed them to report to the station each day.

### Ongoing stigmatisation of human rights defenders in Papua

Since the visit to Indonesia of the then Special Representative of the UN Secretary General on the Situation of Human Rights Defenders, Ms. Hina Jilani, situation in Papua has not improved: in her report on her visit in 2007, concerning the situation of human rights defenders in the conflict area of Papua, Ms. Jilani had concluded that a climate of fear undeniably prevailed in West Papua, especially for defenders engaged with the rights of the Papuan communities to participation in governance, control over natural resources and demilitarization of the province<sup>18</sup>. The situation of these defenders has not eased and, despite the adoption of the Special Autonomy Law in 2001, they continued to be targeted, especially by security apparatuses such as police, military and intelligence officers. In particular, the Government used the separatist label to stigmatise and

16 / See KontraS Press Release, May 11, 2009.

17 / See KontraS and Amnesty International Joint Open Letter, November 30, 2009.

18 / See Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders - Mission to Indonesia*, UN Document A/HRC/7/28/Add.2, January 28, 2008.

justify violence against human rights defenders in Papua. In addition, the momentum of election was used by perpetrators to increase violence against defenders in Papua. On April 7, 2009 for instance, Mr. **Markus Haluk**, Secretary General of the Central Highland Students Association of Papua (AMPTPI), leader of the Papua National Consensus Committee and Deputy Secretary of the Papua Indigenous Peoples' Council, was arrested and detained for 24 hours after the police accused him of being involved in the series of violence in Jayapura during the general elections of 2009. Yet, he was released soon after the police had failed to find evidence against him<sup>19</sup>. Moreover, Ms. **Yosefa Alomang**, a prominent human rights defender who has been fighting since the 1980s against Freeport McMoran, a giant US mining company that is ruining the environment surrounding mining areas and violating the human rights of indigenous Papuans, continued in 2009 to receive death threats because of her human rights activities<sup>20</sup>.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
<b>Mr. Munir Said Thalib</b>	Impunity / Assassination	Press Release	January 15, 2009
<b>Mr. Usman Hamid, Mr. Munir Said Thalib and Ms. Suciwati Munir</b>	Judicial proceeding / Harassment	Open Letter to the authorities	November 10, 2009

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19/ See INFID and Imparsial.

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# IRAN

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

2009 saw an increasing crackdown on civil society in general and human rights defenders in particular and can be considered as the most severe period of repression for 20 years in the Islamic Republic of Iran. The year was indeed marked by a dramatic deterioration of the situation of human rights. While gross violations of human rights remained rampant, a sharp turn occurred in the aftermath of the June 12, 2009 presidential election, when hundreds of thousands of opposition supporters took the streets of Tehran and other cities to dispute the re-election of the incumbent President Mahmoud Ahmadinejad. During the weeks and months that followed, the authorities responded very harshly and brutally to the peaceful protests, resulting in the death<sup>1</sup>, injury and arbitrary detention of numerous individuals. Several thousand protesters were arrested in the capital as well as other cities, including hundreds of political activists and leaders, journalists, student activists and human rights defenders, often without arrest warrant, and held in solitary confinement for months without charge and due process, and frequently with no access to their lawyers and families<sup>2</sup>.

On August 1, 2009, a series of “show trials” began against the post-election detainees, during which disregard of the right to fair trial was clearly illustrated. In one session alone, around 100 detainees, including lawyers, journalists and human rights defenders, were put on trial in court. Many reportedly made forced “confessions” to what the prosecution alleged was a foreign-backed attempt to bring about a “velvet revolution” in Iran and were shown on television incriminating themselves even before standing “trial”. No foreign media were allowed to cover the trials. Detainees were

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1/ A committee formed by two of the presidential candidates, Messrs. Mir Hossein Mussavi and Mehdi Karrubi, former Prime Minister and Parliament Speaker respectively, announced in September that at least 72 peaceful protesters had been killed by armed security forces and plain-clothes Basiji militia members, either on the streets or under torture and ill-treatment in custody.

2/ The repression was internationally condemned. See in particular United Nations Press Releases, July 7 and June 19, 2009, and European Parliament Press Release, June 16, 2009.

reported to be subjected to torture and harsh interrogations<sup>3</sup>. Allegations of rape and sexual assaults of male and female detainees were also reported.

Other demonstrations were harshly repressed by Government forces and the Revolutionary Guards-controlled Basiji militia in 2009, in particular demonstrations commemorating the tenth anniversary of the student-led protests of July 9, 1999 in Tehran, the *Qods-Day* at the end of the month of Ramadan, the National Student Day demonstrations of December 7 and the December 27 (Shiite Holy day of Ashura) protests<sup>4</sup>.

Moreover, a few months after the disputed elections, the Government intensified its war against the free flow of information and bolstered censorship with the launch of a new Web Crimes Unit tasked with policing the Internet for “insults and lies”, closing down websites and blogs voicing dissent, the *BBC* signal jamming, thereby raising the question of the responsibility of foreign companies exporting censorship technologies and equipment<sup>5</sup>. Dozens of journalists reportedly fled Iran since the election.

### **Serious obstacles to freedom of association and muzzling strategies against human rights organisations**

In 2009, freedom of association was seriously hampered as the authorities increased restriction on human rights non-governmental organisations. Several human rights organisations were closed during the year and many of their members were arrested or harassed by the authorities. Following the closing down in December 2008 of the Defenders of Human Rights Centre (DHRC), established by five lawyers including the 2003 Nobel Peace Laureate **Shirin Ebadi**, on the eve of a ceremony marking the 60th anniversary of the Universal Declaration on Human Rights, a Government-controlled organisation called the “Students Defenders of Human Rights Centre” was established in Iran in January 2009, with the probable objective of creating confusion with the DHRC. Moreover, on August 1, 2009, the Vice-Prosecutor of Tehran publicly accused Ms. Shirin Ebadi and DHRC of having established relations with foreign forces to organise a “velvet revolution” in Iran. As of the end of 2009, the DHRC offices remained closed. Similarly, the offices

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3/ See International Campaign for Human Rights in Iran Statement, August 10, 2009. To that extent, Mr. Malick El Hadji Sow, Vice-Chairperson of the UN Working Group on Arbitrary Detention, Mr. Manfred Nowak, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Ms. Margaret Sekaggya, Special Rapporteur on the Situation of Human Rights Defenders, expressed their serious concern over such reports. See UN Press Release, August 13, 2009.

4/ See International Campaign for Human Rights in Iran Statement, December 7, 2009.

5/ See League for the Defense of Human Rights in Iran (LDDHI).

of the Centre for the Defence of Prisoners' Rights were sealed by security officials on September 9, without prior warning and with no reason given by the authorities<sup>6</sup>. In December 2009, Mr. **Emad Baghi**, founder of the Centre and laureate of the 2009 Martin Ennals Award, was arrested and put in detention in section 209 of Evin prison, Tehran. The Iranian Writers' Association, to which the authorities have denied registration, has been unable to hold its general assembly for the past seven years and, in August 2009, the Journalists' Association, a legally registered body, was shut down. Members of the central council of the student alumni group ADVAR TAHKIM, an organisation mainly involved in human rights activities but also in political activities as a pro-reform organisation that supported Mr. Mehdi Karrubi as presidential candidate, were also targeted by the authorities. On November 3, 2009, Mr. **Hasan Asadi Zaidabadi**, in charge of ADVAR TAHKIM human rights committee, journalist, and Spokesperson of the Committee to Investigate Arbitrary Detentions, was arrested at his home in Tehran for "gathering" and "conspiracy against the system", "propaganda against the system", "disturbing the public's minds", "insulting the President", "participating in illegal gatherings" and "spreading false information", on the basis of a summons from the Revolutionary Court, and then taken to section 209 of Evin prison. Between November 3 and 4, 2009, Mr. **Mohammad Sadeghi**, member of ADVAR TAHKIM central council, as well as Messrs. **Kouhzad Esma'ili** and **Hojat Sharifi**, members of the group, and Ms. **Nafiseh Zarekohan**, journalist and wife of Mr. Sharifi, were also arrested. Mr. Hasan Asadi Zaidabadi was released on December 12 and his trial was scheduled on August 3, 2010, Mr. Sadeghi was released after 40 days of detention, and Mr. Esma'ili, Mr. Sharifi and Ms. Zarekohan were respectively released on bail on November 15 and in late December. All remained charged at the end of 2009. Prior to those arrests, ADVAR TAHKIM had called for a participation in demonstrations on November 4, 2009 – the anniversary of the students' movement in 1977 and of the attack of the United States embassy in Tehran in 1979 – in a context where the authorities warned Iranian citizens not to use the protests as a pretext for expressing rejection of the June 2009 election proclaimed results and opposition to the Government. Furthermore, as of the end of 2009, Mr. **Ahmad Zaidabadi**, ADVAR TAHKIM Secretary General, and Mr. **Abdollah Momeni**, ADVAR TAHKIM Spokesperson, remained detained since



June and were reportedly subjected to ill-treatment in order to make false confessions<sup>7</sup>.

### Human rights lawyers increasingly targeted

Iranian authorities continued to harass and pursue their crackdown against prominent human rights lawyers in 2009, in particular members and founders of DHRC, in an attempt to prevent them from representing political detainees and reform supporters detained following the disputed presidential election. For instance, on June 16, 2009, Mr. **Abdolfattah Soltani**, lawyer at Tehran Bar Association and founding member of DHRC, was arrested by four plain-clothes officers. His whereabouts remained unknown until July 7, when he was located in section 209 of Evin prison. On August 26, he was released on payment of a USD 100,000 bail, following 70 days of arbitrary detention, including 17 days in solitary confinement. However, as of the end of 2009, he remained accused of “having acted against national security” and had not yet faced trial. Furthermore, on October 2, his passport was seized by the authorities in order to prevent him from leaving Iran for Germany to receive the Nuremberg International Human Rights Award. Likewise, on July 8, 2009, Mr. **Mohammad Ali Dadkhah**, a lawyer and founding member of DHRC, was arrested together with three of his colleagues as well as his daughter, by three plain-clothes persons, without any warrant. His law firm was subsequently closed and doors were sealed with lead. His arrest might be related to his public intervention of July 7 on the Prague-based *Farda* radio station, where he opposed the use of death penalty and criticised the hangings of about 20 persons on July 3, allegedly for drug trafficking. Mr. Dadkhah, who was accused of “keeping weapons, opium as well as documents” evidencing links with foreign “enemies”, was released on bail on September 13 and, as of the end of 2009, had not appeared in court for his trial. On July 21, Mr. **Mohammad Seifzadeh**, another leading human rights lawyer and founder of DHRC, was summoned by the Islamic Revolutionary Court and threatened that measures may be taken to prevent him from continuing

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7/ In early January 2010, Mr. Ahmad Zaidabadi was sentenced in appeal for, *inter alia*, “collusion to create rioting” and “propaganda against the system” to six years’ imprisonment, then five years’ internal exile to Gonabad and life-long deprivation of all political activities and written or oral political or news analysis or making speeches. He is now held in Raja’i Shahr prison, near the city of Karaj and far from Tehran, where mostly common criminals are imprisoned. In April 2010, Mr. Abdollah Momeni was sentenced in appeal to a total of four years and 11 months in prison. His charges included “propaganda against the system by giving interviews to counter-revolutionary websites”, “gathering and collusion with intent to act against the national security” and “disturbing the minds of the public”. The indictment mentioned his contacts with Amnesty International and Human Rights Watch as propaganda against the regime.

his human rights activities. As of the end of 2009, no further information could be obtained on Mr. Seifzadeh's situation<sup>8</sup>.

In addition, on June 17, the former Head of the Judiciary, Ayatollah Mahmoud Shahroudi, approved revisions to the bylaws of the 1955 Law establishing the independence of the Iranian Bar Association, giving the Government the ability to deny political critics and human rights defenders the right to practice as lawyers. Indeed, implementing those regulations (bylaws) would give the Judiciary, whose head is appointed by the Supreme Leader and which oversees the Justice Ministry, the decisive role in approving lawyers' licensing applications. However, the application of the new regulations was suspended for six months, and the suspension was then renewed for another six months<sup>9</sup>.

### Ongoing harassment against women's rights defenders

Women's rights defenders in Iran continued to face threats and harassment in 2009<sup>10</sup>. Members of the "One Million Signatures" Campaign, a grassroots campaign to abolish gender discrimination in Iranian laws, were specifically targeted and regularly harassed by the security forces. No less than 50 members of the Campaign were arrested at various times during the year and some of them, including Ms. **Mahboubeh Karami** and **Zaynab Bayazidi**<sup>11</sup>, as well as other women including some members of a group known as "Mourning Mothers" remained detained as of the end of 2009. A number of women rights' activists also had to find refuge abroad. For instance, on January 29, 2009, Ms. **Alieh Eghdamdoust**, who is currently serving a three-year imprisonment sentence for her activities in the Campaign for Equality, which has been campaigning against legalised gender-based discrimination and as a result of her participation in the June 12, 2006 protest in Haft Tir Square, was incarcerated in Evin prison, where she remained detained as of the end of 2009. In October 2009, Ms. **Ronak Safarzadeh**, a member of the women's rights organisation "Azar Mehr" in Sanandaj (Iranian Kurdistan) and an active member of the Campaign who has been detained since October 2007 in Sanandaj prison, was sentenced in appeal to six years and seven months' imprisonment for

8/ See LDDHI.

9/ *Idem*.

10/ To that extent, the UN Special Rapporteur on Violence Against Women also underlined that women human rights defenders were specifically targeted in Iran. See Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences - Communications to and from Governments*, UN Document A/HRC/11/6/Add.1, May 26, 2009.

11/ Ms. Bayazidi was arrested in Mahabad in July 2008 for "propaganda against the State", "membership of an illegal organisation" and "acting against national security" and is serving an imprisonment sentence of four years and a half in Zanjan prison.

“spreading propaganda against the State” and for her alleged and unproven membership of the Kurdish opposition group Free Life Party (“Pejak”). On April 14, the sentence against Ms. **Parvin Ardalan**, another active member of the Campaign, was reduced to one year suspended imprisonment over a period of three years for “disruption of public order” and “refusal to obey the order of the police”. Ms. Ardalan had been arrested in March 2007 in front of the Revolutionary Court as she peacefully demonstrated in support of women’s rights activists. On July 17, 2009, Ms. **Shadi Sadr**, a prominent lawyer, women’s rights activist working with the “One Million Signatures” Campaign, Director of “Raahi” (a legal advice centre for women), founder of *Zanan-e Iran* (a website dedicated to the work of Iranian women’s rights activists) and a journalist for *Meydaan* (an online newspaper on women’s issues), was approached in a crowded street by men in plainclothes as she was walking with several other women’s rights activists. They assaulted her without showing any arrest warrant, forced her into a car and beat her as she was struggling to escape. After having been held in section 209 of Evin prison, she was released on July 28 on payment of a USD 50,000 bail. However, she remained accused of “having acted against national security” and “disobey police orders”<sup>12</sup>. In October 2009, the “One Million Signatures” Campaign activist Ms. **Jelveh Javaheri** was given a six months’ prison sentence by the Revolutionary Court for her participation in a peaceful protest in 2008. Ms. Javaheri was targeted on numerous occasions as a result of her work, notably on May 1, 2009, for taking part in a demonstration marking the International Workers’ Day, for which she spent over one month in prison, including sixteen days in solitary confinement. This new sentence was based on charges of “gathering and collusion with intent to act against State security” as she joined other women’s rights activists in commemoration of the National Day of Solidarity of Iranian Women<sup>13</sup>. Furthermore, Ms. **Atieh Yousefi**, one of the most active members of the Campaign in the city of Rasht, was arrested on the Shiite Holy day of *Ashura* (December 27), while trying to assist a young man who had been severely injured by plain-clothes agents. As of the end of 2009, she remained in detention, and a judge denied her family permission to visit her<sup>14</sup>.

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12 / On May 17, 2010, Ms. Sadr was sentenced to six years of imprisonment with 74 lashes on charges of “acting against national security and harming public order” in relation to her participation in a rally within the framework of the “One Million Signatures” Campaign in March 2007 outside a revolutionary court where four fellow feminists were on trial.

13 / See LDDHI.

282 14 / See International Campaign for Human Rights in Iran Statement, January 5, 2010.

## Repression of labour rights activists and union leaders

As in previous years, while workers were again denied the right to form free trade unions, trade union activists continued to face harsh repression in 2009. In particular, Mr. **Mansour Osanloo**, President of the Syndicate of Workers of Tehran and Suburbs Bus Company (*Sherkat-e Vahed*), who was arrested in July 2007 by security services and subsequently sentenced to five years' imprisonment on grounds of "propaganda" and "activities against the State", remained detained as of the end of 2009 in the Raja'i Shahr prison, west of Tehran. Throughout the year, his health continuously deteriorated due to pre-existing medical problems as well as new ones provoked by ill-treatments. Despite the prison doctor's referral, Mr. Osanloo was denied a temporary leave to get necessary medical help. In addition, the Tehran Revolutionary Court confirmed his dismissal on October 21. Mr. **Ebrahim Madadi**, Vice-President of the Union, was also still detained, serving a two-year imprisonment term. As of the end of 2009, Mr. **Hashem Khastar**, a teacher's trade unionist, also remained in jail because of his trade union activities, serving a two-year prison term for "acting against the security of the country"<sup>15</sup>. Furthermore, on October 11, 2009, five leaders of the Syndicate of Workers of Haft Tapeh Sugar Cane Company, Messrs. **Ali Nejati**, President of the trade union, **Feridoun Nikoufard**, **Mohammad Heydari Mehr**, **Ghorban Alipour** and **Jalil Ahmadi**, were given sentences to up to six months' imprisonment by the Appeal Court of Dezful and six months sentence suspended over five years – during which time they are barred from all trade union activity – for criticising conditions at their workplace and reclaiming wage arrears<sup>16</sup>. Messrs. Ali Nejati, Feridoun Nikoufard, Jalil Ahmadi, Ghorban Alipour and Mohammad Heydari were taken to prison during the first half of November. All but Mr. Nejati were released conditionally or on probation at the end of the year.

Furthermore, independent celebrations of the International Workers' Day on May 1 were once again repressed in 2009. In the days prior to the peaceful rally organised by the 2009 May Day Organising Committee in Laleh Park, Tehran, security forces issued court summons, made threaten-

15 / See International Campaign for Human Rights in Iran Statement, November 9, 2009, and International Trade Union Confederation (ITUC), *Annual Survey of Trade Union Rights*, June 9, 2010.

16 / While Mr. Nejati was arrested on March 8, 2009 and held for over a month in solitary confinement, Messrs. Ahmadi, Nikoufard, Alipour, Heydari Mehr were arrested between March 2 and 3, before being released on bail on March 5-7. Mr. Nejati was not released until April 14. All were charged with "acting against national security". They were tried on the one hand in connection with a strike in 2007, and on the other hand with creating a union in 2008. Initially sentenced to one year in prison on April 14, 2009, all but Mr. Nejati were cleared of all charges pertaining to 2008 on appeal on September 25. See International Campaign for Human Rights in Iran Statement, November 9, 2009 and ITUC, *Annual Survey of Trade Union Rights*, June 9, 2010.

ing phone calls and placed workers and labour activists under surveillance. Hours before the start of the celebrations in Laleh Park, hundreds of uniformed police officers as well as plainclothes intelligence officials appeared on the spot. They positioned themselves inside the park and closed all its entrances. Nevertheless, over 2000 workers reportedly showed up for the event. A large number of participants were cornered by the police, beaten to the ground with batons, tear-gassed, punched, kicked and verbally abused. The police also broke cameras and cell phones of anyone trying to document what was happening. There were reports of severe injuries, and an estimated 150 to 200 people were arrested – including other activists such as women's rights defenders, students, and even some passersby – and most of them taken to Evin prison. About 100 activists remained in custody for days or weeks, and the authorities said they would not be released until after the presidential elections. However, almost everybody had been released by the first half of June<sup>17</sup>.

### Ongoing arbitrary detention of defenders of minorities rights

As of the end of 2009, several defenders of minorities rights, both cultural and religious, remained arbitrarily detained since 2007 as reprisals for their human rights activities, including several notable human rights defenders and journalists who had promoted Kurdish human rights, such as Messrs. **Adnan Hassanpoor**, a member of the Iranian Kurdistan Journalist Association as well as a reporter for the *Aso* newspaper, **Abdoulvahid (aka Hiwa) Boutimar**, an active member of the environmental NGO "Sabzchia"<sup>18</sup>, **Mohammad Sadigh Kaboudvand**, Editor-in-chief of the banned weekly *Payam-e mardom-e Kurdistan* (*The Message of the People of Kurdistan*) and President of the Association for the Defence of Human Rights in Kurdistan (RMMK)<sup>19</sup>, and **Sa'eed Matinpour**, an Azerbaijani journalist and cultural activist from the city of Zanjan<sup>20</sup>.

17/ See ITUC, *Annual Survey of Trade Union Rights*, June 9, 2010.

18/ Messrs. Boutimar and Hassanpoor were arrested respectively in December 2006 and January 2007 and were sentenced to death in July 2007 after spending several months incommunicado. Mr. Hassanpoor's death sentence was subsequently commuted to 15 years' imprisonment and that of Mr. Boutimar to eight years' imprisonment.

19/ Mr. Kaboudvand was arrested on July 1, 2007 and has been detained at Evin prison since then. In May 2008, he was sentenced to ten years' imprisonment for "acting against State security by establishing the [RMMK]" and one year in prison for "propaganda against the system". The sentence was later confirmed in appeal in October 2008.

20/ Mr. Matinpour is known for his writings protesting human rights violations by the Iranian authorities and calling for increased political, cultural and linguistic rights of the Azerbaijani people in Iran. Arrested in 2007, he was sentenced in June 2008 to eight years' imprisonment for "propaganda against the Islamic system" and "relations with foreigners".

## Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Defenders of Human Rights Centre (DHRC) / Centre for the Mine Cleanup Project (CMCP) / Ms. Jinus Sobhani	Arbitrary arrest / Search / Obstacles to freedom of association	Press Release	January 15, 2009
DHRC / Ms. Jinus Sobhani / "One Million Signatures" Campaign members, including Ms. Alieh Eghdamdoust and Ms. Nafiseh Azad	Arbitrary detention / Closing down of an NGO / Obstacles to freedom of association / Sentencing	Press Release	February 3, 2009
Ms. Jinus Sobhani	Release on bail	Press Release	March 12, 2009
"One Million Signatures" Campaign members / Ms. Alieh Eghdamdoust, Mr. Ali Abdi, Ms. Delaram Ali, Ms. Bahara Behravan, Ms. Farkhondeh Ehtesabian, Ms. Shahla Forouzanfar, Mr. Arash Nasiri Eghbali, Ms. Mahboubeh Karami, Ms. Khadijeh Moghaddam, Ms. Leila Nazari, Mr. Amir Rashidi, Mr. Mohammad Shoorab and Ms. Soraya Yousefi	Arbitrary detention / Release on bail / Judicial harassment	Joint Open Letter to the authorities	April 9, 2009
Ms. Ronak Safarzadeh and Ms. Parvin Ardalan	Sentencing / Arbitrary detention / Judicial harassment	Press Release	April 21, 2009
Ms. Silva Harotonian	Sentencing / Arbitrary detention	Urgent Appeal IRN 001/0609/OBS 082	June 12, 2009
Mr. Abdolfattah Soltani	Incommunicado detention / Judicial harassment	Urgent Appeal IRN 002/0609/OBS 084	June 16, 2009
	Enforced disappearance	Press Release	June 22, 2009
	Arbitrary detention	Urgent Appeal IRN 003/0709/OBS 102	July 8, 2009
	Release on bail / Judicial harassment	Urgent Appeal IRN 003/0709/OBS 102.1	August 27, 2009
	Obstacles to freedom of movement / Administrative harassment / Risks of detention	Urgent Appeal IRN 003/0709/OBS 102.2	October 2, 2009
Mr. Ahmad Zaidabadi	Enforced disappearance	Press Release	June 22, 2009
Ms. Jila Baniyaghoob	Arbitrary detention	Press Release	June 22, 2009
Ms. Shirin Ebadi	Harassment / Threats of judicial prosecution	Press Release	June 26, 2009
Ms. Zeynab Peyqambarzardeh	Arbitrary arrest	Urgent Appeal IRN 002/0709/OBS 098	July 7, 2009

Names	Violations / Follow-up	Reference	Date of Issuance
	Release	Urgent Appeal IRN 002/0709/OBS 098.1	July 8, 2009
Mr. Mohammad Ali Dadkhah, Ms. Sara Sabaghian, Ms. Bahareh Davallou and Mr. Amir Raïsian / DHRC	Incommunicado detention	Urgent Appeal IRN 004/0709/OBS 103	July 9, 2009
Ms. Shadi Sadr	Arbitrary detention / Risk of ill-treatment and torture	Urgent Appeal IRN 005/0709/OBS 107	July 21, 2009
	Release on bail / Judicial harassment	Urgent Appeal IRN 005/0709/OBS 107.1	July 30, 2009
Ms. Shadi Sadr, Ms. Jila Baniyaghoub, Ms. Shiva Nazarahari, Ms. Mahsa Amrabadi, Ms. Hengameh Shahidi, Ms. Zahra Toudi and Ms. Somayeh Tohidlou	Arbitrary detention / Judicial harassment	Joint Press Release	July 25, 2009
Mr. Mohammad Ali Dadkhah and Ms. Shirin Ebadi	Slander / Harassment / Ongoing arbitrary detention	Press Release	August 5, 2009
Mr. Emad Baghi	Obstacles to freedom of movement / Harassment	Press Release	November 2, 2009
“One Million Signatures” Campaign members / Ms. Elnaz Ansari, Ms. Aida Saadat, Ms. Khadijeh Moghaddam, Ms. Maryam Malek, Ms. Jelveh Javaheri, Mr. Kaveh Mozzafari, Ms. Parisa Kakaee, Ms. Ronak Safarzadeh, Ms. Zeynab Bayazidi and Ms. Alieh Eghdamdoust	Judicial harassment / Obstacles to freedom of movement / Arbitrary detention	Urgent Appeal IRN 006/0911/OBS 163	November 9, 2009
Ms. Shirin Ebadi, Mr. Emad Baghi, Mr. Heshmatollah Tabarzadi, Mr. Mashaollah Shamsolvaezin, Mr. Alireza Beheshti, Mr. Mostafa Izadi, Mr. Morteza Kazemian, Ms. Nasrin Vaziri, Mr. Keyvan Mehregan, Ms. Mahin Fahimi, Mr. Mehdi Arabshahi, Ms. Mansoureh Shojaie, Ms. Haleh Sahabi, Ms. Zohreh Tonkaboni, Mr. Morteza Haji and Mr. Hassan Rasouli	Arbitrary arrest / Harassment	Press Release	December 29, 2009

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# MALAYSIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

A major political event in 2009 was the designation on April 3 of Dato' Seri Mohd. Najib bin Tun Haji Abdul Razak, President of the United Malays National Organisation (UMNO), one of the major political parties that make up the ruling National Front National Front coalition (*Barisan Nasional* – BN), as Prime Minister of Malaysia. One of the first decisions of his Government was the review of the Internal Security Act (ISA), the implementation of which has long raised numerous concerns because of its lack of judicial oversight and its instrumentalisation to curb political dissent and negate the work of human rights defenders. On October 29, Home Minister Hishammuddin announced that five areas of the ISA would be amended<sup>1</sup>. However, as of the end of 2009, no substantive legislative or institutional reforms had been introduced<sup>2</sup>. Meanwhile, other repressive laws such as the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (EO), the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA)<sup>3</sup>, the Sedition Act, the Official Secrets Act, which are both among the laws that most seriously infringe upon freedom of speech and expression in Malaysia<sup>4</sup>, and Section 27 of the Police Act

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1/ The length of detention periods; the rights and treatments given to detainees and their families; the power of the Home Minister in issuing detention orders; the use of ISA for political reasons; and the possibility of detention without trial.

2/ See SUARAM.

3/ Like ISA, the EO and the DDA provide for detention for up to 60 days without charges or trial for the purpose of investigation. At the end of the 60-day period, the Home Ministry may choose to release a detainee on restrictive orders, or order further detention without trial for a term of two years, which can be renewed indefinitely.

4/ The Sedition Act, for example, deems unlawful “any acts, speech, words, publication or any other thing” that has “seditious” tendencies, including “to bring hatred or contempt or to excite disaffection against any ruler or against any government”; “to excite revolt”; “to promote feelings of ill-will and hostility between races or classes of the population”; and “to question any matter, right, status, position, privilege, sovereignty, or prerogative established or protected under Part III of the Federal Constitution” - which talks about the special rights of the Malays, the position of the Malay language, etc. As for the Official Secrets Act, it makes it an offence to publish without authorisation any information classified as “top secret”, “secret”, “confidential” or “restricted” by public officers. Because of the loose definition and broad interpretation of the Act as to what qualifies as an “official secret”, it is unclear how much information may be subject to classification as a State secret. This means that any information, the variety of which is potentially unlimited, may be classified by the Government as “official secret”.



1967<sup>5</sup> remain firmly in place, further questioning the Government's willingness to uphold civil liberties. At the end of 2009, nine individuals remained detained under the ISA and approximately 1,000 individuals, including minors, were being detained under the EO and the DDA<sup>6</sup>.

A further institutional development was the double amendment, in March and July, of the enabling law of the Human Rights Commission of Malaysia (SUHAKAM) Act 1999. These modifications were adopted in response to a notice given by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC)<sup>7</sup> for SUHAKAM to make improvements or face a possible downgrading in its accreditation status. However, the amendments were drafted by the Government alone, without consultation with civil society. They were criticised as superficial, in particular as the Prime Minister keeps discretionary powers over the selection of commissioners. Despite the concerns expressed by the ICC over both the transparency in the process of selecting commissioners and the possibility that performance indicators for commissioners, as provided in the July 2009 amendments, may be politically manipulated, the ICC decided to retain the Commission's 'A' status<sup>8</sup>.

Moreover, despite promises of reforms and greater respect for human rights, the new Prime Minister displayed an increased level of intolerance towards dissent and opposition in 2009. This was notably seen in the Perak Constitutional crisis, during which the Pakatan Rakyat-controlled State Government fell under the control of the BN. Subsequently, Mr. Nizar Jamaluddin from Pakatan Rakyat, the then-Perak "Menteri Besar" (Chief Minister of the State), requested the Sultan of Perak to dissolve the Perak State Assembly to make way for State-wide elections as

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5/ The Police Act requires inter alia a license to be obtained from the police for any public assemblies, meetings and processions. The application for the license can be refused but, even if issued, conditions can be imposed or the licence may be cancelled by the police at any time. Without such a license or upon the breach of conditions attached, the police can stop the assembly, meeting or procession and order its stoppage, even through the use of force.

6/ In total, 39 individuals were released from ISA in 2009. 22 Malaysian individuals were given restriction orders upon their release, while the remaining 16 who are foreign nationals were deported upon their release.

7/ The ICC monitors the compliance of national human rights institutions with the "Paris Principles" of 1993. "A Status" institutions are those that are in compliance with the Paris Principles.

8/ See SUARAM Report, *Malaysia Civil and Political Rights Report 2009: Overview*, December 10, 2009. See also Briefing Note on the special review of SUHAKAM by the International Coordinating Committee of National Human Rights Institutions (March 2009) and Asian NGOs Network on National Human Rights Institutions (ANNI), *NGO Parallel Report on the Reaccreditation Review of the Human Rights Commission of Malaysia (SUHAKAM)*, February 23, 2009.

both Pakatan Rakyat and BN did not command a clear majority. However, instead of heeding the request to dissolve the State Assembly, the Sultan of Perak asked Mr. Nizar Jamaluddin to resign. When he failed to resign, the Sultan of Perak appointed Mr. Zambry Kadir from BN as the new Menteri Besar, thus effectively dismissing Mr. Nizar Jamaluddin from the position. In May 2009, High Court Judge Abdul Aziz Abd Rahim ruled that a Menteri Besar could only be dismissed by a vote of no confidence of the State Assembly. However, the High Court decision was subsequently overruled by the Court of Appeal and later upheld by the Federal Court. The BN's takeover of the Perak State Government and the dismissal of Pakatan Rakyat's Nizar Jamaluddin as the Menteri Besar of Perak were thus widely seen as undemocratic and unconstitutional.

In the framework of the first Universal Periodic Review (UPR), which Malaysia underwent in February 2009, the UN Human Rights Council recalled the failure of Malaysia in ratifying major international human rights instruments<sup>9</sup> and in welcoming the visit of several UN Special Procedures mandate-holders, despite a number of requests<sup>10</sup>. These failures are particularly worrying in view of the numerous human rights challenges faced by Malaysia, in particular as regards freedoms of assembly and expression, arbitrary and preventive detention, impunity of security forces, protection of migrants, as well as heightened politicisation of race and religion issues<sup>11</sup>. Member States especially recommended Malaysia to both adopt laws on the media that guarantee freedom of expression and information, and review laws – such as the Sedition Act, the Printing Press and Publications Act and the Official Secrets Act – that run counter to these liberties<sup>12</sup>. However, the media remained tightly controlled in 2009 in Malaysia, with no substantial reforms implemented<sup>13</sup>.

9/ In particular the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), the Convention Against Torture (CAT), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of Persons with Disabilities, the 1951 Convention on the Status of Refugees and the Rome Statute of the International Criminal Court.

10/ Special Rapporteur on Indigenous People, requested in 2005; Special Rapporteur on Human Rights and Countering Terrorism, requested in 2005; Special Rapporteur on Freedom of Religion, requested in 2006; Special Rapporteur on Migrants, requested in 2006; Independent Expert on Minority Issues, requested in 2007; Working Group on Arbitrary Detention, requested in 2008. See UN Document A/HRC/WG.6/4/MYS/2, November 20, 2008.

11/ See SUARAM Press Release, July 23, 2009.

12/ See Human Rights Council, UN Document A/HRC/11/30/Add.1, June 3, 2009.

13/ See SUARAM Report, *Malaysia Civil and Political Rights Report 2009: Overview*, December 10, 2009. 289

## Violent repression of peaceful demonstrations

In 2009, freedom of peaceful assembly was once more curtailed as several peaceful demonstrations were strongly repressed. Indeed, whilst Home Minister Hishammuddin announced in August 2009 that Section 27 of Police Act would be reviewed to “recognise the right of the public to gather peacefully”, as of the end of 2009, no amendments had been tabled<sup>14</sup>. In that context, on August 1, 2009, thousands of police and security forces – including riot squad members – strongly repressed a peaceful rally organised by civil society to challenge the ISA<sup>15</sup>. The police arrested at least 589 persons, including 44 juveniles, and most of them were detained at Markas Pasukan Gerakan Am Cheras. All but 91 of the persons arrested were released on the same day. On August 2, around 60 persons were released, but around 30 detainees were remanded for two days at the Bukit Jalil police station and charged with different offences, including for taking part in an “illegal assembly” and for “assisting in the distribution of T-shirts for an unlawful society known as the “Gerakan Mansuhkan ISA”. As of the end of 2009, those charges remained pending. On May 5, 2009, Mr. **Wong Chin Huat**, an activist of the Coalition for Clean and Fair Elections (BERSIH), was arrested under Section 4(1) of the Sedition Act. His arrest was believed to be in connection with a press conference held on the morning of his arrest, during which he had urged all Malaysians to wear black in protest against the BN’s takeover of the Perak State Government from Pakatan Rakyat, a move seen by many as unconstitutional. On May 8, Mr. Wong Chin Huat was released without charges from police custody at the Commercial Crimes Investigation Department (CCID) headquarters in Kuala Lumpur. Scores of others were arrested in relation to similar protests in the following weeks, before being subsequently released<sup>16</sup>. On May 6, 2009, 14 individuals, including two SUARAM Coordinators, Messrs. **John Liu** and **Temme Lee**, were arrested during a candlelight vigil outside Brickfields district police station to that aims at showing show support for Mr. Wong Chin Huat. They were released a few hours later after their particulars were taken by the police. On May 7, 2009, for the second continuous night, a candlelight vigil was held by civil citizens at the Brickfields police to show support for Mr. Wong Chin Huat and 20 individuals were arrested<sup>17</sup>.

In addition to the dangers faced by peaceful demonstrators in Malaysia, their lawyers also face the risk of being arrested and detained, in blatant

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14/ *Idem*.

15/ See Joint Press Release of OMCT and SUARAM, August 7, 2009.

16/ See SUARAM.

17/ *Idem*.

violation of both the right to practice a profession freely and the rights of detainees to counsel. For instance, five lawyers, Messrs. **Puspawati Rosman, Fadiyah Nadwa Fikri, Murnie Hidayah Anuar, Ravinder Singh Dhaliwal and Syuhaini Safwanwere**, were arrested on the night of May 7, 2009 at the Brickfields police station in Kuala Lumpur, as they were seeking access to their clients who had been arrested earlier in the evening during a candlelight vigil that had been organised to ask for Mr. Wong Chin Huat's release. Despite protestations of other bar members, the lawyers were only released without charge late in the afternoon of May 8<sup>18</sup>.

### **Five defenders detained under the ISA released but placed under the Restricted Residence Act**

Following its announcement of a review of the ISA, the Government decided on May 8, 2009 to free 13 detainees held under the act, including Messrs. **P. Uthayakumar**, legal adviser of the Hindu Rights Action Force (HINDRAF), an NGO defending the rights of the Indian minority in Malaysia, **M. Manoharan**, a lawyer, and **T. Vasanthakumar**, HINDRAF Organising Secretary, who were released on May 9 from the Kamunting detention camp. On April 5, 13 other ISA detainees had already been released, including Messrs. **V. Ganabatirau** and **R. Kengadharan**, two HINDRAF lawyers. The five HINDRAF members were detained since December 13, 2007 under Section 8(1) of ISA, which allows the person to be placed in administrative detention for up to two years, for organising a mass demonstration on November 25, 2007 to demand equality and fair treatment for and protest the marginalisation of Indian Malaysians. These releases intervened whilst on February 11, despite calls from civil society organisations asking for their immediate and unconditional release on the ground of the arbitrary character of their detention, the Federal Court had unanimously dismissed the five motions for review of their habeas corpus application, and agreed with the fact that the Prime Minister could order a person to be detained under Section 8 of ISA without waiting for full investigation by the police. Whilst these releases constitute positive developments, it is particularly regrettable that all 13 – with the exception of Mr. Uthayakumar<sup>19</sup> – were subjected to restrictions under the Restricted Residence Act, even when none of them, including those detained for more than seven years, have been charged in an open court or been proven guilty. As of the end of 2009, many of them remained prohibited from leaving their residential area, being outdoors from 9pm to 6am daily, as well as

18/ See SUARAM.

19/ Mr. Uthayakumar refused to sign the Restriction Order. However, because of fear of more backlash from the public, the Government released him anyway.

speaking at public events and taking part in activities of political parties and trade unions<sup>20</sup>.

### **Harassment and intimidation of land rights activists and indigenous leaders**

Throughout 2009, the police arrested scores of land rights activists and indigenous leaders in relation to protests and resistance against encroachment of ancestral lands, especially by logging and oil palm companies, notably in Sarawak. While Sarawak Constitution and laws provide for the recognition of native land rights, weak Government leadership has indeed led to the issuance of logging and oil palm permits in the same areas where indigenous peoples live<sup>21</sup>. The arrest, on September 16, of 15 human rights defenders in Sarawak was considered by many observers as a blatant form of intimidation aiming at silencing the voices of the communities who are questioning the construction of large dams in the area. They were released in the evening of the same day, but were initially required to report to the police on September 29. Upon reporting to the police, they found that the police decided in the end not to press charges. Among those arrested and subsequently released were Messrs. **Mark Bujang** and **Raymond Abin**, members of the Borneo Resources Institute (BRIMAS), an indigenous non-profit organisation working at the grass roots level in Sarawak, and Ms. **Hellan Empaing**, a member of the Sarawak Native Women's Association (WADESA), all leaders of the Indigenous Peoples Network of Malaysia (*Jaringan Orang Asal Se Malaysia*)<sup>22</sup>. Furthermore, on October 23, Mr. Ondie Anak Jugah, an indigenous Dayak-Iban, was arrested and remanded for two days on suspicion of "masterminding" a blockade at Rh Umping Lepong in Balleh, Kapit, after police complaints were lodged by the logging company "Melukun Sdn Bhd", which is logging in the community's native land area, against him and the villagers who mounted blockades to prevent loggers from encroaching onto their native land in Kapit, Sarawak. Earlier in October, Mr. Ondie Anak Jugah had already been arrested by the police for a period of seven days. On January 15, 2009, Messrs. **Bunya Ak Sengoh** and **Marai Ak Sengoh** and Ms. **Melati Ak Beken**, three other Iban land activists from Sarawak who have been actively involved in a struggle to keep a plantation company out of their native customary rights land, were arrested under the Emergency Ordinance 1969 after Bintulu police accused them of being involved in a series of robberies. However, it is believed that their arrest merely aimed

20/ See SUARAM Report, *Malaysia Civil and Political Rights Report 2009: Overview*, December 10, 2009.

21/ See SUARAM and Asian Forum for Human Rights and Development (Forum-Asia) Press Release, November 4, 2009.

22/ See Forum-Asia Press Release, September 18, 2009.

at sanctioning their activities on behalf of the rights of their community. On March 15, 2009, Messrs. Bunya Ak Sengoh and Marai Ak Sengoh were given a two-year detention order under the Emergency Ordinance. However, no formal charge was brought against them. As of the end of 2009, they remained detained at the Simpang Renggam detention centre, in Johor. As for Ms. Melati Ak Beken, she was released after the initial 60-day detention period, on March 15<sup>23</sup>.

### **Restrictions on the press and sedition charges against journalists documenting human rights violations**

The deteriorating state of freedom of expression in Malaysia was manifested in the Government's use of various repressive laws, including the Sedition Act and the Universities and University Colleges Acts<sup>24</sup>, to intimidate, arrest and prosecute individuals or groups, including activists, students and bloggers expressing dissenting views. In 2009, the Government continued its persecution of Mr. **Raja Petra Kamarudin**, Editor of the online newspaper *Malaysia Today*, who was charged with "sedition" for making allegations implicating the current Prime Minister and his wife Ms. Rosmah Mansor in the high-profile murder of a Mongolian national, Mr. Altantuya Shaariibuu. The police issued two arrest warrants in 2009 against Mr. Kamarudin, who evaded arrest. On November 11, 2009, the Petaling Jaya Sessions Court disposed the case of Mr. Kamarudin because the police could not trace him to complete the trial. However, this does not amount to acquittal from the sedition charges he faced. Therefore, Federal Territories Criminal Investigation Department Director Mr. Bakri Zinin said that Mr. Kamarudin was still wanted by the police and that he would most likely face the sedition charge when the police locates him in Malaysia<sup>25</sup>. Moreover, on November 18, the Home Ministry issued a warning letter to Tamil-language daily *Tamil Nesan* over its reporting of the killing of five suspected armed robbers by the police. The Ministry accused the daily of arousing racial sentiments in its coverage of the police shooting. The Home Ministry's letter warned that the daily's publishing licence could be revoked if they continued publishing such articles<sup>26</sup>.

23 / See SUARAM Press Release, January 23, 2009.

24 / The Universities and University Colleges Act severely restricts freedoms of speech and expression, assembly and association of students and university staff as it imposes a variety of prohibitions against students. These include, among others, prohibiting student bodies and organisations from affiliating with, or dealing in any way with, any society, political party, trade union, or organisation - whether on campus or elsewhere, in or out of the country - without the prior approval in writing from the vice chancellor.

25 / See SUARAM Report, *Malaysia Civil and Political Rights Report 2009: Overview*, December 10, 2009.

26 / See SUARAM.

## Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Messrs. P. Uthayakumar, M. Manoharan, T. Vasanthakumar, R. Kenghadharan and V. Ganabathirau	Arbitrary detention / Concern for the health condition	Urgent Appeal MYS 002/0408/OBS 061.1	February 11, 2009
	Release / House arrest / Arbitrary detention / Concern for the health condition	Urgent Appeal MYS 002/0408/OBS 061.2	April 7, 2009
	Release / Ongoing harassment	Urgent Appeal MYS 002/0408/OBS 061.3	May 27, 2009

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# NEPAL

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

A climate of political stalemate has prevailed in Nepal since the Government's fall in May 2009. Mr. Pushpa Kamal Dahal ('Prachanda'), Chairman of the Communist Party of Nepal (Maoist) (UCPN-M), who had been elected as the first Prime Minister of the Republic of Nepal in August 2008, resigned on May 4, 2009 following differences with President Yadav over the dismissal of the Chief of Army, Mr. Rookmangad Katwal. On May 23, former General Secretary of the Communist Party of Nepal (United Marxist-Leninist), Mr. Madhav Kumar Nepal was elected Prime Minister<sup>1</sup>. Since then, the peace process of Nepal, started in 2006, has stalled with Maoists blocking parliamentary proceedings, declaring strikes and protesting in the streets for "civilian supremacy" over the Nepal army<sup>2</sup>. There is a risk that increased violence by political parties and affiliated groups, as well as subsequent retaliation threats, further jeopardise the process<sup>3</sup>. With the current political crisis, lawmakers are well behind schedule in drafting the new Constitution, which must be completed by May 28, 2010 when the Interim Charter expires<sup>4</sup>.

It is in this turbulent context that the Government of Nepal welcomed in March 2009 the visit of the UN High Commissioner for Human Rights, Ms. Pillay, who took the occasion of her visit to recall that the peace process could be jeopardised if justice was not ensured for the victims of past and

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1/ See Delegation of the European Union to Nepal Fact Sheet on [www.delnpl.ec.europa.eu](http://www.delnpl.ec.europa.eu).

2/ Maoists want the President to apologise for his move to reinstate the army chief, which they say was unconstitutional, and call for a parliamentary debate over the extent of the President's powers. See Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal) and Informal Sector Service Centre (INSEC).

3/ See United Nations Press Release, June 11, 2009 and OHCHR-Nepal Press Release, December 20, 2009. OHCHR-Nepal expressed particular concern about the violence that erupted on December 20, 2009 on the first day of the general strike called by the UCPN-M, especially at New Baneshwor, Kathmandu. A number of police officers and protesters were injured. Police were observed to use excessive force on the crowd, including inappropriate use of lathis (long batons) and tear gas, and even stone-throwing.

4/ The Interim Constitution was passed on January 15, 2007.



ongoing human rights violations<sup>5</sup>. The decision of the Government and the UCPN-M, mid-July 2009, to finally launch the discharge and rehabilitation process for 4,008 Maoist combatants, including 2,973 minors, constitutes in this regard a positive development<sup>6</sup>. However, serious concerns were expressed about the promotion of Major General Toran Jung Bahadur Singh to Lieutenant General and second-in-command of the Nepalese Army despite widespread opposition<sup>7</sup>.

Furthermore, populations in some areas of Nepal continued in 2009 to be subjected to violence by armed groups, which allegedly include members of former vigilante groups created and armed by the Government during the civil war<sup>8</sup>. Thus, 2009 saw a re-emergence of fake “encounter” killings and an increase of incidents of torture in the Terai districts (southern Nepal): from January to December 2009, the human rights NGO Advocacy Forum documented 18 cases of possible extrajudicial executions in Terai districts<sup>9</sup>. Impunity for human rights violations committed by the State security forces has been and continues to prevail in Nepal. Police continue to refuse to file complaints from relatives and to register First Information Reports (FIRs)<sup>10</sup>. The poor security conditions and erosion

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5/ See United Nations, *UN High Commissioner for Human Rights, Navi Pillay - Statement to the Media*, March 22, 2009. The major issues relate to the return of land seized, as well as to the launching of investigations into cases of arbitrary detention, torture and extrajudicial killings. See OHCHR-Nepal, Letter of July 26, 2009 addressed to the Prime Minister of Nepal, calling upon the Government to take action against perpetrators of arbitrary detention, torture and disappearance that took place at the Nepal Army's Maharajgunj barracks in 2003 and 2004, as well as against perpetrators of violations occurring in Bardiya district between 2001 and 2003.

6/ See United Nations Mission in Nepal (UNMIN) Press Release, July 17, 2009. Government's failure to investigate and prosecute extrajudicial killings during the internal armed conflict (1996-2006) contributes to the ongoing culture of impunity. More than 60 cases of extreme violent extrajudicial killings are listed, but the Government has failed to prosecute anyone. See Human Rights Watch and Advocacy Forum Report, *Still Waiting for Justice - No End to Impunity in Nepal*, October 2009.

7/ On this occasion, OHCHR-Nepal recalled that “those implicated in credible allegations of human rights violations committed by members of the 10th Brigade in 2003 and in 2004, when General Singh was in command, should not be promoted pending completion of a full, transparent and impartial investigation”. See OHCHR-Nepal Press Release, December 24, 2009.

8/ See UN General Assembly, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, UN Document A/64/187, July 29, 2009.

9/ See Advocacy Forum Report, *Torture and extrajudicial executions amid widespread violence in the Terai*, February 2, 2010. The report documents 12 incidents of possible extrajudicial executions, mostly by members of the Nepal Police (NP). Two cases involved members of the Armed Police Force (APF). Eight of the killings concern members of political groups operating in the Madeshi communities in southern Nepal. Each of these is presented by the security forces as killings during “encounters” between the police and the alleged members of these groups. The report also shows that torture is widespread against detainees, and documents violence by armed political and criminal groups, including widespread rape, and highlights the failure of the police to bring those responsible to justice.

10/ In none of the 12 cases of alleged extrajudicial executions documented by Advocacy Forum have FIRs been registered despite repeated attempts by the relatives.

of rule of law have put human rights defenders under threat especially in Terai districts, as underlined by the Office of the UN High Commissioner for Human Rights in Nepal: “The lack of public security, in particular in the Terai, has had a negative effect on the ability of many professionals to operate, including human rights defenders, who are sometimes reluctant to carry out investigations and issue public reports for fear of retaliation, either by State authorities or armed groups”<sup>11</sup>.

Although the situation for human rights defenders in Nepal has improved greatly since the Peace Agreement of 2006, some concerns remain. To that extent, OHCHR-Nepal urged the Government to put in place mechanisms to protect human rights defenders and allow them to undertake vital human rights work in an environment free from intimidation<sup>12</sup>. However despite requests since 2003 from UN Special Rapporteur on Human Rights Defenders to conduct a visit to Nepal, the Government has not issued an invitation so far<sup>13</sup>.

### Repression against human rights defenders fighting against impunity

In 2009, human rights defenders denouncing human rights violations and fighting against impunity remained targeted by security forces and other non-State actors. For instance, on April 7, 2009, as he was reaching the court with a witness, Mr. **Nanda Ram Bhandari**, a human rights lawyer working with the branch office of Advocacy Forum in Surkhet district, was manhandled, intimidated, and locked inside Surkhet District Court premises from 12:30 pm to 5 pm by a mob of around 30-35 people led by the leaders of the women's wing of the UCPN-M and the revolutionary All Nepal Women's Organisation, with the support of the Young Communist League (YCL). Mr. Nanda Ram Bhandari was then providing free legal assistance to a suspect prosecuted on charges of “murder”. The mob also pelted stone at his left hand, which caused small injury. Later on, he was released with the help of other lawyers from the District Court Bar and police. The mob also locked the main gate of the court and encircled the court till 5 pm when the police at last intervened to disperse it<sup>14</sup>. On June

11/ See OHCHR-Nepal, *Remarks by Richard Bennett, Representative of the UN High Commissioner for Human Rights in Nepal, delivered at the launch of OHCHR's Handbook for Civil Society (in Nepali)*, November 30, 2009.

12/ See Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal*, UN Document A/HRC/10/53, March 3, 2009.

13/ See OHCHR-Nepal, *Remarks by Richard Bennett, Representative of the UN High Commissioner for Human Rights in Nepal, delivered at the launch of OHCHR's Handbook for Civil Society (in Nepali)*, November 30, 2009.

14/ See Advocacy Forum.

22, 2009, around 40-60 officers from Baglung district police office (DPO) beat up with bamboo stick Mr. **Baburam Adhikari**, a lawyer working with Advocacy Forum, and harassed and intimidated another Advocacy Forum staff, Mr. **Nilkantha Sharma**, who had come to monitor a strike and had urged the police not to use excessive force. One police officer said: “These idiot people of Advocacy Forum always file cases against the police to dismiss us from job. Thrash to these idiot human rights activists and load them into the van. These human rights activists always speak and write against the police”. From eight to ten uniformed police officers also forcefully loaded Messrs. Baburam Adhikari and Nilkantha Sharma to a police van and took them to the Baglung DPO. On the way to the police station, police officers scolded the two defenders with very offensive words. The Baglung district representative of the human rights NGO Informal Sector Service Centre (INSEC) was also arrested by the police<sup>15</sup>. Messrs. Baburam Adhikari and Nilkantha Sharma, along with INSEC Baglung district representative, were released about half an hour later following pressures from local human rights organisations. On December 10, 2009, DPO Jhapa in-charge Superintendent of Police Rabindra Prasad Sharma threatened Mr. **Deepak Niraula**, representative of the branch of Advocacy Forum in Jhapa, who had come to the police office to register FIRs on behalf of three victims – one who had been found dead while in police custody and two who were killed by security forces – and accused him of bothering him unnecessarily. He also threatened to take action against him if he continued, and to not allow the branch of Advocacy Forum in Jhapa to visit the DPO from then onwards. Subsequently, the police denied Mr. Deepak Niraula to meet detainees for about two months<sup>16</sup>.

Human rights defenders were also subjected to reprisals from members of the UCPN-M. On December 8, 2009, Ms. **Tika Bista**, a General Convention Member of the Federation of Nepali Journalists (FNJ), a member of FNJ Rukum district chapter and correspondent of *Rajdhani daily*, was attacked by a group of unidentified people in Rukum district, western Nepal. She was found unconscious in a bush near her home with a severe head injury and wounds inflicted by a razor blade on four fingers of the right hand. She had been thrown off the side of a cliff. A laptop and two mobile phones belonging to her were found damaged nearby. Documents written by the journalist were also scattered around the area. She sustained injuries to her head, leg and arms. In the past, she used to receive threats for articles she wrote and, on November 29, she had received a threatening call after publishing an article in the local *Jantidhara*

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15/ *Idem*.

298 16/ *Idem*.

weekly that denounced the extrajudicial killing of the husband of a Constituent Assembly member by Maoists and criticised local members of the UCPN-M for using intimidation and threats. As of the end of 2009, Ms. Bista continued to undergo medical treatment in Kathmandu and the investigation remained pending<sup>17</sup>. Likewise, on June 27, 2009, YCL District Chairperson Bal Krishna Kafle threatened journalists **Labdev Dhungana** and **Kumar Ojha** following the publication of an article in *Kantipur* daily accusing YCL of corruption. The journalists were then taken to UCPN-M office and were kicked and hit with chairs by YCL cadres. On July 8, 2009, the case was finally settled after a discussion with all parties concerned was initiated by the FNJ<sup>18</sup>.

### Violence against women human rights defenders

While the culture of silence and inaction by the State often results in a complete lack of accountability for sexual violence in Nepal, particularly in the eastern Terai, the police often either refuse to file such cases or to conduct proper investigations. Perpetrators regularly seek assistance from armed groups to intimidate the victims, human rights defenders and lawyers when they try to obtain justice, increasing further insecurity for people to speak out about sexual violence<sup>19</sup>. In this context, women's rights defenders in Nepal continued to face barriers to access justice and seek redress for acts of violence, including sexual violence and gender discrimination, and continued to be subjected to reprisals because of their activities. They remained at risk of attack in particular for daring to challenge the patriarchal and caste-based system. On April 9, 2009, Ms. **Kara Devi Sardar**, a women's rights activist, was beaten by relatives of Ms. Lalita Gurung, after she had called for the respect of the fundamental right of any person to marry and to choose freely her/his mate. Ms. Gurung had planned to have an inter caste wedding, which was vehemently rejected by her relatives. Immediately after the assault, Ms. Kara Devi Sardar approached the Illaka police station of Chimdi village, Sunsari district, but Sub Inspector Rajesh Chaudhari denied her legal right to file a complaint. On April 11, the Women Human Rights Defender Network Sunsari, and more than 500 women from eight Village Development Committees (VDC)<sup>20</sup>, staged a demonstration in front of the police station in Chimdi VDC, in order to call for sanctions against the police officer and to denounce the denial

17/ See INSEC.

18/ *Idem*.

19/ See Advocacy Forum Report, *Torture and extrajudicial Executions amid widespread violence in the Terai*, February 2, 2010.

20/ A Village Development Committee (VDC) is the lower administrative part of the Local Development Ministry. Each district has several VDCs, similar to municipalities.

of access to justice, evoking at the same time the statement made by the Prime Minister on January 25, 2009, in which he committed to establish a complaint centre for women to register cases in order to end all forms of violence against women and criminalise caste-based discrimination against Dalits. The women were then assaulted and attacked with batons and rear end of guns by around ten police officers and four other unknown people. The police beat the women on the head, the chest, the thighs and the legs and some even tried to force the stick into the vagina of some women. At least 14 women were injured<sup>21</sup>. Journalists were also manhandled and their vehicle vandalised by the police<sup>22</sup>.

### **Urgent Intervention issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Ms. Kara Devi Sardar, Women Human Rights Defender Network Sunsari, Ms. Thakani Mehta, Ms. Sita Kamat, Ms. Bina Chaudhari, Ms. Sunita Sah, Ms. Laxmi Chaudhary, Mr. Rajan Niraula, Mr. Krishna Bhattra, Mr. Gopal Kolirala, Mr. Sukudev Chaudhari and Mr. Binod Chaudhary	Physical assault / Denial of justice / Repression of a demonstration / Ill-treatments	Urgent Appeal NPL 001/0409/OBS 062	April 16, 2009

21/ Including Ms. Thakani Mehta, Ms. Sita Kamat, Ms. Bina Chaudhari, Ms. Sunita Sah and Ms. Laxmi Chaudhary, who were seriously injured and were brought to the Koshi Zonal Hospital for medical treatment.

22/ Including journalists Messrs. Rajan Niraula, Krishna Bhattra and Gopal Kolirala, as well as Mr. Sukudev Chaudhari, INSEC representative who had investigated the incident at the police station. Mr. Binod Chaudhary, a member of the Women's Rehabilitation Centre (WOREC) in the Sunsari district, an organisation helping victims of domestic and sexual violence, was also threatened.

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# PAKISTAN

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

Throughout the year 2009, terrorist attacks took a heavy toll on the lives of civilians and law-enforcement personnel across Pakistan, and violent conflict continued between militant groups and Government security forces, especially in the Federally Administered Tribal Areas (FATA) and the provinces of Balochistan and the North West Frontier Province (NWFP)<sup>1</sup>. Counter-terrorism operations in the NWFP and FATA caused extensive involuntary displacement of civilians<sup>2</sup>. Furthermore, in April 2009, the murder of three Baloch nationalist leaders sparked a massive wave of protests across Balochistan, during which at least 16 people were killed and many others injured in incidents of shooting<sup>3</sup>. In this context, President Asif Ali Zardari issued on October 2, 2009 the Anti-Terrorism (Amendment) Ordinance 2009, modifying the provisions of the Anti-Terrorism Act 1997. Among other changes, the ordinance extended the period of administrative detention from 30 to 90 days without the possibility of challenging the detention order before an impartial court and without the right to bail.

The year 2009 also saw an increase in violent attacks against religious minorities, as the Government failed to either take effective measures to prevent such violence, particularly against Christians in Gojra, in the Punjab province, and against Shias in Karachi, in Sindh province, or to bring to justice the perpetrators of such crimes. In particular, as the militancy surged in the north-western parts of the country, involuntary displacement of thousands of people belonging to Christian, Sikh and Hindu communities from Swat, Kohat and FATA was reported following threats of violence by extremist militant or following demands for payment of huge sums as “jaziya”, a tax imposed on non-Muslims who live under Muslim rule.

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1/ As many as 1,296 people were killed in 108 suicide attacks by militant groups across the country during the year. Major targets of the attacks included not only Government premises, but also civilian establishments, mosques, schools, courts, media offices and shrines. See Human Rights Commission of Pakistan (HRCP) Annual Report 2009, *State of Human Rights in 2009*, February 2010.

2/ Between May and July, after the launch of a military operation against Taliban militants in Swat, in the NWFP, 2.7 million Pakistanis were internally displaced, creating a massive humanitarian crisis. See UNICEF, *Humanitarian Action Report 2010 - Partnering for Children in Emergencies*, February 2010.

3/ See HRCP Annual Report 2009, *State of Human Rights in 2009*, February 2010.

Freedom of expression also remained under attack in 2009. Independent and free media faced threats from violent non-State actors, such as Taliban and their allied militant groups, on the one hand, and was subjected to intimidation and restrictions by the authorities on the other. In FATA and the NWFP, where Taliban and Pakistani security forces were engaged in an armed conflict, reporting facts accurately became increasingly dangerous for professional journalists. Similarly, in Balochistan, journalists faced restrictions on access to certain areas and on reporting independently because of unwritten restrictions and warnings issued by the security establishment and militants. A total of 163 direct attacks were reported against media during the year, including murders, kidnappings, threats, assaults and attacks on media establishments<sup>4</sup>. Moreover, on July 9, 2009, the President reissued the Prevention of Electronic Crimes, Ordinance (PECO) 2009, which covers 18 offences that carry severe punishment, including life imprisonment and the death penalty, and could be abused by the authorities to curb freedom of expression.

On March 15, 2009, the Government announced the reinstatement of deposed Chief Justice Iftikhar Muhammad Chaudhry along with other judges who had been sidelined under the November 3, 2007 proclamation of emergency, imposed by the then President General Pervez Musharraf, while judges who had taken oath under the Provisional Constitution Order (PCO), issued by President Musharraf in November 2007, were removed from their posts. The judges had been dismissed after they refused to take a fresh oath under the PCO. They had also played a key role in the movement for independence of judiciary, freedom of press, restoration of democracy and rule of law, particularly release of scores of victims of enforced disappearances. The judges were reinstated following a “Long March” on Islamabad by lawyers from across the country, who boycotted court proceedings, observed hunger strikes and held demonstrations for their reinstatement. Former Prime Minister Nawaz Sharif also announced that his party, the Pakistan Muslim League-Nawaz (PML-N), would fully participate in the protests if the deposed judges were not reinstated by March, and several other parties made similar announcements. During the “Long March”, a major crackdown was launched against lawyers, political workers and activists and hundreds were detained in a nationwide operation, before the lawyers’ argument finally prevailed and the judges were reinstated.

On July 31, 2009, the Supreme Court of Pakistan declared the November 3, 2007 proclamation of emergency and all actions taken under it unconstitutional. The Court also nullified as many as 37 ordinances issued by President Musharraf, asking the Parliament to reconsider them within 120 days and, if deemed appropriate, to enact them as acts of Parliament. These ordinances included the National Reconciliation Ordinance (NRO), which was issued in October 2007 and granted amnesty to politicians and public officials who were accused of corruption, embezzlement, money laundering, murder, and terrorism between January 1, 1986, and October 12, 1999, the time between the last two martial laws in Pakistan. On December 16, 2009, the Supreme Court unanimously struck down the NRO as unconstitutional, and observed that all orders made under the NRO were illegal. Moreover, on November 16, the Supreme Court decided to resume the hearings of cases of enforced disappearances, which had been suspended after the November 2007 proclamation of emergency. Nevertheless, as of the end of 2009, the whereabouts of hundreds of people believed to be secretly detained by the authorities remained unknown. Meanwhile, independent human rights organisations such as the Human Rights Commission of Pakistan (HRCP) continued to receive new reports of incidents of enforced disappearances<sup>5</sup>. The failure of the criminal justice administration was also reflected in increased incidents of crimes against women, including honour killings, rape, domestic violence and acid attacks, in 2009. A total of 1,404 women were murdered in 2009, 647 of them killed in the name of “honour”<sup>6</sup>.

### Acts of harassment against defenders of minorities rights

In 2009, several human rights defenders of minorities rights, including human rights lawyers, faced various acts of harassment, amid an almost persistent unwillingness by the police to guarantee the rights of religious minorities, as radical groups intimidated and attacked minority groups with impunity. For instance, Advocate **Anis AA Saadi**, Co-Chairperson of the Free Legal Aid and Settlement, disappeared on March 6, 2009 after he attended, as a pro bono lawyer, a hearing at the Lahore High Court for a rape case involving a member of a religious minority. His family feared that he may have been kidnapped due to his work on blasphemy cases. One week later, he was found by the roadside with marks of torture on his body. In March, he received a letter from a group of Taliban insurgents which contained death threats against him and his family. The threats were repeated on April 1 in an anonymous phone call. Mr. Saadi finally

5/ In 2009, HRCP managed to verify more than three dozens complaints of enforced disappearances. See HRCP.

6/ See HRCP Annual Report 2009, *State of Human Rights in 2009*, February 2010.



decided to leave Pakistan in June, but remained worried about the situation of his spouse and their two young children who remained in Pakistan and continued to receive death threats and were exposed to intimidation<sup>7</sup>. In September 2009, Mr. **Rao Zafar Iqbal**, Executive Director of the National Council for Human Rights, in Faisalabad, was the subject of a campaign by Muslim radical groups, which called for Mr. Iqbal's murder for regularly defending members of religious minorities charged under the blasphemy law. In particular, *fatwas* (religious edicts) were published in the *Daily Express* on July 3 and the *Daily Paveel* on August 4, calling for the lawyer's murder as a "service to Islam". On August 10, Mr. Iqbal had already escaped an attempt on his life. However, officials continued to refuse Mr. Rao Zafar Iqbal and his family police protection<sup>8</sup>.

### **Reprisals against human rights defenders combating feudal lords and land grabbing**

Even though district courts provided relief to thousands of bonded labourers at farms and brick kilns in Sindh, Punjab and the NWFP by recovering and releasing them in 2009<sup>9</sup>, defending the rights of bonded workers remained extremely risky in Pakistan in 2009. For instance, Mr. **Din Mohammad Kumbhar**, a peasant activist living in the Sindh province, was abducted in June 2009 by men working for landlords – reportedly henchmen of landowners – and forced on gunpoint to give up the rights to his property. Mr. Kumbhar has strived for many years for realisation of basic human rights of bonded labourers despite constant intimidation from powerful landlords. He has been instrumental in the "Hari" movement that has sought to break the eternal servitude of the peasant to the feudal lords. He repeatedly went to Khipro police station, but was told that nothing could be done to assist him<sup>10</sup>. Furthermore, in November 2009, Mr. **Nisar Baloch**, an activist and leader of the Save Gutter Baghicha Movement and a member of the NGO "Shehri", who had started a movement against land grabbing in the Gutter Baghicha locality of Karachi, was murdered in the port city. According to media reports, the land mafia believed to be responsible for the target killing enjoyed the support of a powerful ethnic party. As of the end of 2009, the perpetrators of Mr. Baloch's assassination had not been brought to justice<sup>11</sup>.

7/ See Front Line and International Observatory for Lawyers Statements, March 13 and June 30, 2009.

8/ See HRCP.

9/ See HRCP Annual Report 2009, *State of Human Rights in 2009*, February 2010.

10/ See HRCP.

11/ See HRCP Annual Report 2009, *State of Human Rights in 2009*, February 2010.

## Acts of harassment against trade union activists

In 2009, the right to form trade unions remained absent in practice in many industries and workers depended on factory owners' whims to exercise this right. Trade unions activists often faced acts of reprisals because of their activities. For example, on May 16, 2009, police in Faisalabad registered cases of robbery against more than 1,300 labourers on the complaint of a factory owner ostensibly over the workers' efforts to set up a trade union. The factory management also sacked 15 members of the union. Furthermore, on October 29, 2009, Messrs. **Imran Usman** and **S. M. Umer**, trade unions activists of the Muslim Commercial Bank Staff Union, were arrested by officers of the Mitha Dar police station in Karachi, after cases were filed by the bank management against them the previous day. They were accused of disturbing the bank's operation by instigating a union protest and encouraging bank employees to participate. They were both released on bail on October 30. As Mr. Usman was returning home, at least six armed men in a blue van, the kind used by security staff at the bank, dragged him into it and took him away. The next day, an official of the Karachi police confirmed that Mr. Usman was not with the police and an abduction case was registered at Mitha Dar police station on October 31, naming unidentified security staff as suspects. Subsequently, the suspects were not seen at work. This increased suspicions about the implication of security staff in the case, which include retired army officers Colonel (r) Akbar Khan, Major (r) Gul Nawaz Cheema and Captain (r) Mohammad Haneef<sup>12</sup>.

## Ongoing threats and attacks against human rights defenders in areas outside effective Government control, in particular parts of Balochistan and NWFP

In areas where the writ of the State had receded amid actions of armed militants, civil society organisations continued to face threats from the Taliban militant groups, most notably in NWFP, and separatist militant organisations in Balochistan. Terrorist activities by Taliban militants posed a massive threat to the operations of non-governmental organisations in the Swat region during the first quarter of 2009. For instance, a Tehreek-e-Taliban Pakistan (TTP) Spokesman frowned upon the NGOs deciding how mosques, houses and lavatories were to be built in the area, which the Taliban obviously did not approve of. The Spokesman also equated the word NGOs with "vulgarity" and "obscurity" as they hired women to work alongside men. The Taliban intimidated and threatened NGO staff, especially women. Soon after the NWFP Government struck a "peace

12/ See HRCP.

accord” with the Taliban in Swat valley on February 16, the latter ordered all NGOs working in the Swat valley to cease operations in the area. A Taliban Spokesman warned all NGOs to leave Swat because in his view they were “creating problems for peace”. However, military operations against Taliban in Swat in April and May 2009 led to some improvement in the security situation in the area. By the end of 2009, civil society organisations begun to operate there again, though they had to operate under strict security measures<sup>13</sup>.

Moreover, NGOs throughout Pakistan faced severe threats during 2009 in the wake of increasing terrorism and violence. On October 5, 2009, five UN officials were killed and another eight injured when a suicide bomber dressed as a paramilitary soldier blew himself up after slipping through high security checkpoints at the main office of the World Food Programme in Islamabad. The United Nations temporarily closed all its offices in the country after the first terrorist attack against an office of the world body in the federal capital in several years. According to Government officials, the attack took place a day after the new leader of the banned TTP, Hakimullah Mehsud, had threatened fresh attacks amid reports that a military operation was to be launched in the Waziristan tribal region of FATA. In November, the Director of the NGO “Young Generation”, Mr. Ibrahim Shah, was shot and killed by two unidentified gunmen in a targeted killing at his office in Landhi area of Karachi, creating panic among the NGO community of the city. As of the end of 2009, his murderers had not been identified yet<sup>14</sup>.

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13/ See HRCP Annual Report 2009, *State of Human Rights in 2009*, February 2010.

14/ *Idem*.

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# THE PHILIPPINES

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

Enforced disappearances and extrajudicial killings against those labelled as “leftists” – political opponents, human rights activists, journalists, religious and members of peasant and fishermen’s organisations, labour and trade union activists – continued in 2009. In that context, the end of the year was tragically marked by a terrible massacre in Amputuan, province of Maguindanao. On November 23, at least 57 people, including two human rights lawyers and 30 journalists, were brutally killed by armed men<sup>1</sup>. They were on their way to the Commission on Elections to file Vice Mayor Mangudadatu’s certificate of candidacy for the elections of May 2010. The decision of President Gloria Macapagal-Arroyo to proclaim a state of martial law in the province in the aftermath of the massacre was vehemently criticised by human rights organisations, which considered that placing the province under direct military control might aggravate the already volatile situation<sup>2</sup>.

This event sadly illustrates the deterioration of the human rights situation in the Philippines, which human rights record came under international scrutiny in 2009<sup>3</sup>. Attention was drawn in particular by the UN Committee Against Torture (CAT) to the “numerous, ongoing, credible and consistent allegations” of routine and widespread use of torture and ill-treatment of suspects in police custody, their lack of investigation, as well as the insufficiency of legal safeguards for detainees<sup>4</sup>. The CAT also underlined with concern the numerous documented reports of harassment and violence against human rights defenders. Furthermore, it noted that although the total number of extrajudicial killings has declined significantly, such killings, as well as enforced disappearances and the use of death squads<sup>5</sup>, continued. Reforms directed at institutionalising the

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1/ See KARAPATAN Report, *Oplan Bantay Laya - Blueprint for Terror and Impunity, 2009 Report on the Human Rights Situation in the Philippines*, December 2009.

2/ See KARAPATAN, *Statement on the Declaration of Martial Law in Maguindanao*, December 2009 and United Nations Press Release, December 2, 2009.

3/ The UN Committee on the Rights of the Child, the Committee on Elimination of Racial Discrimination and the Committee Against Torture examined the situation of the Philippines in 2009.

4/ See CAT, *Concluding Observations: The Philippines*, UN Document CAT/C/PHL/CO/2, May 29, 2009.

5/ Death squads in the Philippines are allegedly responsible for summary executions of petty criminals, drug dealers, gang members, and street children in particular in Davao city and other cities.

reduction of killings and in ensuring command responsibility for abuses were not implemented. Witness protection remained grossly inadequate, and impunity was still widespread<sup>6</sup>. The European Parliament had already expressed similar worries in its Resolution of March 12, 2009, by which it expressed grave concern about the hundreds of cases of extrajudicial killings and the role security forces play in orchestrating these murders<sup>7</sup>.

The Government's counter-insurgency plan, "Oplan Bantay Laya" (OBL), also contributed significantly to this climate of impunity. Armed forces often lump together armed revolutionary movements, legal and democratic organisations, media and political opposition as targets to quell growing dissent<sup>8</sup>. Moreover, they regularly label members of local communities as possible supporters or even secret combatants for armed insurgency groups<sup>9</sup>. This situation was strongly criticised in 2009 by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution, who recommended President Arroyo to take "concrete steps to put an end to those aspects of counterinsurgency operations, which have led to the targeting and execution of many individuals working with civil society organisations"<sup>10</sup>.

One of the most positive political developments in this context was the signing by President Arroyo, on November 12, of the Act Penalising the Commission of Acts of Torture<sup>11</sup>. Nevertheless, the Government's commitment to prevent and punish torture must be measured by the way by which authorities will take appropriate measures to effectively implement this act – including by approving the Implementing Rules and Regulations in accordance with the UN Convention Against Torture.

### **Death threats and assassination of human rights defenders denouncing extrajudicial killings**

Human rights defenders denouncing extrajudicial killings continued to be subjected to reprisals in 2009. As a case in point, on June 27, Ms. **Aurora Broquil**, Chairperson of the Movement for National Democracy (KPD),

6/ See Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Follow-up to country recommendations - Philippines*, UN Document A/HRC/11/2/Add.8, April 29, 2009.

7/ See European Parliament Resolution P6\_TA(2009)0144 on the Philippines, March 12, 2009.

8/ See KARAPATAN Report, *Oplan Bantay Laya - Blueprint for Terror and Impunity, 2009 Report on the Human Rights Situation in the Philippines*, December 2009.

9/ See United Nations Press Release, August 19, 2009.

10/ See Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Follow-up to country recommendations - Philippines*, UN Document A/HRC/11/2/Add.8, April 29, 2009.

11/ Full title of the Act: *Act Penalizing the Commission of Acts of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Prescribing Penalties Therefore and for other Purposes*.

and Ms. **Emily Fajardo**, KPD member and Treasurer of the Nuclear-Free Bataan Movement (NFBM), received death threats through text messages<sup>12</sup>. Mr. **Francisco Honra**, NFBM Secretary General, had received the same messages the day before. Ms. Broquil was responsible for filing in cases before the Commission on Human Rights (CHR) for the extrajudicial execution of Messrs. Alberto Ocampo and Jose Gonzales on April 29, 2009, allegedly at the hands of the Philippine National Police (PNP). The three defenders had also recently worked on a case of arbitrary arrest and torture against three activists from the anti-Bataan Nuclear Power Plant. Some days after the threats, the PNP regional office of Camp Olivas (San Fernando city, Pampanga province) invited Mr. Honra to submit a statement in the framework of their investigation. However, during the interview, Mr. Honra noticed that the questions asked were rather in line with his personal background and felt that he was the one being questioned. As of the end of 2009, no investigation had been carried out into those threats. Furthermore, on December 7, as Ms. Broquil and Ms. **Ruby Momje**, another KPD member, went out of their office, they were attacked by four unidentified men wearing camouflage hats and riding a tricycle and a motorcycle, who tried to force them to ride in the tricycle. When they refused to do so, the men tried to corner them, but Ms. Broquil and Ms. Momje were able to run. The men chased them until they reached an area where there were more people<sup>13</sup>. Ms. Broquil and Ms. Momje reported the case to the police, which carried out an investigation and made a regular patrol in the area after the incident but, as of the end of 2009, the investigation had led to no result.

In an even more worrying trend, defenders denouncing extrajudicial killings committed by the military were in turn victims of extrajudicial killings, in full impunity. Thus, on March 31, 2009, Ms. **Edelina Jollos-Jerus** was shot dead in front of her two children in San Juan, Sorsogon city. She was actively involved in “Hustisya!”, an organisation of relatives of victims of human rights violations under the Arroyo regime that is also campaigning against extrajudicial killings. Her husband, a peasant leader and organiser of the Peasant Association in Sorsogon, was shot dead under similar circumstances in April 2007<sup>14</sup>. Furthermore, for the first time since the Marcos dictatorship, a Catholic priest was assassinated in the morning of September 6, 2009. Father **Cecilio Lucero** was driving in Brgy. Layuhan, San Jose, northern Samar, when he was ambushed by five men. A few days

12/ The messages were stating: “The barrel of our guns will be the last thing you will see! You, communists, who have blood debts with the Filipino people, will pay for it!”.

13/ See Task Force Detainees of the Philippines (TFDP).

14/ See Philippine Human Rights Reporting Project Statement, April 13, 2009, and KARAPATAN.

before the incident, soldiers – who introduced themselves as members of the 63rd infantry battalion of the Armed Forces of the Philippines (AFP) – went to the convent in Catubig where Fr. Lucero lived. Five of them were heard by a convent helper talking to the priest about an incident in Lope de Vega. The priest was heard raising his voice, after which the soldiers left. Fr. Lucero had been travelling around the province to document human rights abuses by both the military and armed opposition groups. Whenever there were reports of human rights violations, he would rush to the abusive soldiers' camp or the 803rd infantry brigade camp in Catarman, northern Samar, and confront the commanding officer. The findings of the national fact-finding mission that was carried out by civil society organisations pointed to the members of the AFP as perpetrators of Fr. Lucero's ambush, under OBL. The findings were transmitted to the CHR, which also undertook its own investigation but, as of the end of 2009, the findings of this investigation were still not known<sup>15</sup>.

### Acts of harassment against environmental and health rights defenders

In 2009, defenders fighting on behalf of environmental and health rights were targets of various acts of harassment. This was the case of Messrs. **Rafael Limcumpao** and **Domingo Alcantara**, respectively peasant and community organisers, as well as Mr. **Archie Bathan**, Secretary General of the NFBM, who were all arrested on May 27 by the PNP. Prior to the arrest, the three defenders had planned to organise campaigns to protest the possible renewed operation of the Bataan Nuclear Power Plant in the area, which is likely to bring about serious environmental and health implications for local residents. The three men were brought to the headquarters of PNP 303rd provincial mobile group, in camp Tolentino, where they were submitted to torture and inhuman treatments, including the “Russian roulette”. On May 28, they were forced to attend a press conference with local journalists, where policemen claimed they were leaders of a rebel group. The three men were then charged with “attempted murder” and “illegal possession of explosives and firearms”. Later in the afternoon, the victims were turned over to the Bataan provincial jail (Balanga city), where they remained detained as of the end of 2009<sup>16</sup>. Similarly, since September 2009, members of “People Against Aerial Spraying” (MAAS)<sup>17</sup> and of the Interface Development Interventions (IDIS) have been sub-

15/ See KARAPATAN Report, *Oplan Bantay Laya - Blueprint for Terror and Impunity, 2009 Report on the Human Rights Situation in the Philippines*, December 2009, and Press Statement, October 18, 2009.

16/ On May 5, 2010, an hearing in the case was supposed to be conducted at the Balanga Regional Trial Court Branch 1, but it was rescheduled for June 30, 2010, on which day it was again postponed.

17/ MAAS is an NGO composed of nearly 200 households, including farmers, indigenous people, women, youth fishermen and former plantation workers, most of them exposed to aerial spray plantations activity around Mindanao.

jected to a series of harassment and surveillance acts by unidentified people in Mindanao. Both MAAS and IDIS were conducting campaigns against aerial spraying and its consequences for people's health since 2007. It is believed that these people might be related to groups opposed to the ban on aerial spraying, in particular a group of Cavendish banana producers and exporters, the Pilipino Banana Growers and Exporters Association (PBGEA), formed by 18 companies, and a network of pesticide companies owned by foreign multinationals. An investigation was subsequently carried out by the police but, as of the end of 2009, it had led to no result<sup>18</sup>.

### **Disclosure of a “secret” list presenting human rights defenders as possible military targets**

In 2009, several organisations expressed their deep concern over a list of human rights defenders presented as possible military targets. The 67-pages document classified as secret is reported of having been prepared in the third quarter of 2007 – but was only known in 2009 through a leak by a military who disclosed the existence of that list – by the so-called “JCICC Agila”, under the office of the Assistant Chief of Staff for Intelligence of the 10th infantry division of the AFP<sup>19</sup>. It lists the names of 105 human rights defenders and several organisations, which it claims have colluded with the communist movement for the “takeover of the seat of Government”. Although the military denied the existence of this document, the risk is great that in the absence of a genuine investigation, these persons may be exposed to assassination. A significant number of those in previous lists were indeed shot with the implication of military, police and other officials. Fears were expressed in particular for the safety of Ms. **Rita Melencio**, from the Task Force Detainees of the Philippines (TFDP), who has figured prominently in seeking justice in several high-profile cases. As a reaction against this list, three human rights lawyers who were mentioned in the list, Mr. **Carlos Zarate**, Ms. **Angela Librado-Trinidad** and Ms. **Lilibeth Ladaga**, filed a petition for a writ of amparo before the Office of the Clerk of Court of the Regional Trial Court in Davao City on June 16, requesting that temporary protection be granted to them<sup>20</sup>. However, their writ was dismissed by the Court for want of evidence on August 14, 2009<sup>21</sup>.

18/ See TFDP Press Release, February 2, 2010.

19/ It is entitled “3rd QTR. 2007 OB [Order of Battle] - Validation Result”.

20/ The writ is a remedy promulgated by the Supreme Court in 2007, which is available to any person whose right to life, liberty and security is violated or threatened, by an unlawful act or omission of a public official or employee, or of a private individual or entity.

21/ See TFDP.



## Attacks against land rights activists opposing mining

Land rights defenders fighting for the protection of their ancestral lands were subjected in 2009 to a number of attacks designed to hinder their activities. For instance, on September 28, Mr. Aladino “**Datu Mansubaybay**” **A. Badbaran** was killed in an ambush by unidentified armed men in Barangay Balit (San Luis, Agusan del Norte). His wife, Ms. **Demesia Badbaran**, was wounded during the attack. Both were members of “**Tagdumahan**”, a farmers’ organisation of the Banwaon tribe, and of “**Kalumbay**”, a farmers’ organisation covered by the services of the Rural Missionaries of the Philippines. These organisations are fighting for the protection of the ancestral lands from incursions of large-scale mining owned by local and foreign corporations. As of the end of 2009, no investigation had been opened into the killing, and the family continued to receive threats. Furthermore, Mr. **Datu Alvie Binungkasan** was shot in his home on the evening of November 20 and Mr. **Rico Badbaran** was killed on November 24, 2009. Both were indigenous activists working on land rights issues for the Lumad people, who are indigenous of southern Philippines. Mr. Binungkasan was a council member of the indigenous peoples’ organisation “**Pig-akuman**”, which is an affiliate of Kalumbay Regional Lumad Organisation, a regional federation of indigenous peoples in northern Mindanao<sup>22</sup>. Mr. Badbaran was a relative of Mr. Datu Mansubaybay. The killers of Mr. Binungkasan are believed to be members of the Task Force Gantangan, a paramilitary group, as Mr. Abundio Cablay, an active leader of the task force, would reportedly have sent a text message to Mr. Binungkasan saying that “he and his family would be the next targeted because of his active stance against Government policies”. Mr. Binungkasan had opposed Mr. Cablay’s plan to obtain the Certificate of Ancestral Domain Title (CADT) in order to consolidate and lay claim to ancestral lands of the Lumad people for commercial exploitation. The killers of Mr. Badbaran are also believed to be members of the Bungkatol Liberation Front, a local paramilitary group allegedly linked to Task Force Gantangan. As of the end of 2009, no investigation had been carried out into the assassination of Messrs. Datu Alvie Binungkasan and Rico Badbaran. Mr. **Datu Maampagi Belayong**, Chairman and founding member of “**Linundigan-Kalumbay**”, a member organisation of Kalumbay, was also reportedly shot dead by the Task Force Gantangan-Bagani on September 2, in Esperanza (Agusan del Sur). The Chairperson of the CHR subsequently promised to investigate into the case<sup>23</sup>.

22 / Kalumbay has been at the forefront of the indigenous peoples’ struggle for the right to self-determination, and is now actively campaigning versus large-scale mining operations and plantations encroaching ancestral lands and the accompanying militarisation of Lumad communities.

23 / See KARAPATAN Report, *Oplan Bantay Laya - Blueprint for Terror and Impunity, 2009 Report on the Human Rights Situation in the Philippines*, December 2009.

## Harassment of trade union members

Human rights violations against workers and trade unions increased in 2009. According to the Centre for Trade Union and Human Rights (CTUHR), three trade unionists were murdered in 2009, and thousands were harassed and threatened because of their trade union activities<sup>24</sup>. Military style intimidation tactics were also used against groups advocating labour rights. As an example, since late September 2009, suspicious looking men with military “buzz cuts” have been taking pictures and videos of people visiting the office of the CTUHR in Lapu-Lapu city (Visayas Island). Moreover, in 2009, Ms. **Aurelia Yray**, Treasurer of the “Nagkahiusang Mamumuo sa Os Miguel” (NAMAOS) labour union, Mr. **Roldan Anover**, Auditor of NAMAOS, and Ms. **Cerila Anding**, NAMAOS President, were subjected to continuing threats, harassment and intimidation by soldiers from their locality, because of their involvement in NAMAOS labour union and for not complying with the soldiers’ demand to cease their union activities. For instance, throughout January, military officers in uniform visited the residences of Ms. Aurelia Yray and Ms. Cerila Anding. The soldiers, linked to the Workers for Industrial Peace and Economic Reforms (WIPER)<sup>25</sup>, resorted to accusing them of working for the communist movement and demanded that they cease affiliation with the labour movement May First Movement (*Kilusang Mayo Uno* – KMU). On January 16, 2010, NAMAOS union members filed a complaint for harassment with the Compostela Valley police station but no investigation was held. On April 2 and 4, 2009, several members of the WIPER looked for Ms. Aurelia Yray to “speak with her about NAMAOS” and to encourage the trade union not to be affiliated with KMU as it is “the supporter of the Communist Party, the New People’s Army and the National Democratic Front of the Philippines”. The soldiers also told Ms. Yray not to participate in protest rallies for the Labour Day, on May 1 and other demonstrations. NAMAOS subsequently filed a complaint before the CHR-Region 11 and, as of the end of 2009, the case was still pending.

In a positive development, on November 13, 2009, the Rizal Provincial Prosecutor dismissed the murder charge against labour lawyer Mr. **Remigio Saladero** – chief legal counsel of KMU, Board Chairperson of the

24 / Messrs. **Edwin Oyeman**, killed on August 10, 2009, **Carlito Dacudao**, killed on August 21, 2009, and **Reynaldo Bucaling**, killed on October 4, 2009, were members of different sugar workers unions affiliated with the National Federation of Sugar Workers (NFSW), in Negros occidental province, in western Visayas. As of the end of 2009, no investigation had been carried out into those assassinations. See CTUHR Report, *Tides of Crises in the Workers Movement, Yearend report on the situation of workers’ rights and human rights 2009*, January 2010.

25 / The WIPER claims to be providing civic service and campaigning for industrial peace in the area. However, the soldiers attached to them are accused of threatening and harassing labour leaders.

Pro-Labour Legal Assistance Centre (PLACE) and member of the Free Legal Assistance Group (FLAG) and the National Union of People's Lawyers – and 60 other individuals, all affiliated with progressive groups in connection with the killing of a member of a paramilitary group in Rizal province (east of Manila). The charge had been filed on February 11, 2009, barely a week after Mr. Saladero was released without charge from a three-month detention in Oriental Mindoro<sup>26</sup>. There were strong reasons to believe that these charges were manufactured to harass Mr. Saladero for his work as a defender of workers' rights. Mr. Saladero was one of the lawyers who argued before the Supreme Court on the constitutionality of President Gloria Arroyo's "calibrated pre-emptive response policy". He had also been subjected to various attacks in the past, mostly from the military, for representing suspected members of the New People's Army (NPA) in Rizal.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
<b>Ms. Aurora Broquil, Ms. Emily Fajardo and Mr. Francisco Honra</b>	Death threats	Urgent Appeal PHL 001/0709/OBS 093	July 1, 2009
<b>Messrs. Rafael Limcumpao, Domingo Alcantara and Archie Bathan, Ms. Rita Melencio</b>	Arbitrary detention / Ill-treatments / Judicial proceedings / Threats	Urgent Appeal PHL 002/0709/OBS 096	July 2, 2009

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# REPUBLIC OF KOREA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In 2009, the political context in the Republic of Korea (South Korea) was marked by a crackdown against undocumented migrant workers implemented by President Lee Myeong-bak's administration in October and November. Whilst there were roughly 190,000 undocumented migrant workers in South Korea, the Government called their presence "illegal" and justified hunting them down in the name of "maintaining order" and "protecting the jobs of domestic workers"<sup>1</sup>. In addition, other workers fighting for the respect of their rights faced harassment and repression in 2009.

Furthermore, the threats posed to the independence of the National Human Rights Commission of Korea (NHRCK) raised serious concerns. In particular, the appointment in July 2009 of Mr. Hyun Byung-chul, who lacked experience and expertise in the field of human rights, as new Chairperson of NHRCK, was considered by many civil society organisations as further evidence of the subordination of NHRCK to the ruling administration<sup>2</sup>. These concerns were backed up by the UN Committee on Economic, Social and Cultural Rights when considering the third periodic report of the Republic of Korea at its 43rd session (November 2-20, 2009), which expressed concerns about the lack of investigative powers of the NHRCK and the downsizing of its fixed staff by 21 per cent, whereas for all other ministries, it has been of two per cent at the most<sup>3</sup>.

At the judicial level, the Constitutional Court, in a welcome move, decided on September 24, 2009 that two articles of the Act on Assembly and Demonstration were "in discord with the Constitution": namely Article 10

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1/ See MINBYUN-Lawyers for a Democratic Society. The UN Committee on Economic, Social and Cultural Rights noted that 34.9 per cent of the total workforce is made up of non-regular workers and deeply deplored that working conditions and social insurance of non-regular workers are inadequate. See Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights - Republic of Korea*, UN Document E/C.12/KOR/CO/3, December 17, 2009.

2/ See Forum Asia, *Asian Human Rights Defenders*, Vol. 5, No. 1, May 2009.

3/ See Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights - Republic of Korea*, UN Document E/C.12/KOR/CO/3, December 17, 2009. See also NGOs Alternative Report to the UN Committee on ESCR on the Third Periodic Report submitted by the Republic of Korea, September 2009.

prohibiting assembly and demonstrating before sunrise and after sunset and Article 21(2) describing punishment for a person who violates Article 10. However, the Court left the responsibility to the Legislature for the amendment of those provisions, with a note that if no amendment is made by June 30, 2010, the two articles shall lose their effect from July 1, 2010<sup>4</sup>.

### **Repression of human rights defenders fighting against forced evictions in the framework of the 2009 Yongsan operation**

The rapid economic growth achieved in South Korea, within a relatively short period of time, has led to a number of forced evictions in areas marked for development and large commercial projects. These evictions often take place in violation of the rights of individuals, under the false guise of public benefit. In this context, on January 20, 2009, a group of tenants and small business owners struggling against their eviction and requesting temporary shelters and proper compensations, occupied the rooftop of a building and constructed a watchtower in the area of Yongsan (Seoul)<sup>5</sup>. In contradiction with regulations on demonstration control, the police quickly deployed a special task force to arrest the protesters, thereby launching an excessive and disproportionate response to the crisis. During the incident, the watchtower caught fire, resulting in the deaths of five men<sup>6</sup> and one police officer. The Prosecutor's office vowed to thoroughly investigate the case but, on February 9, it concluded that the police bore no responsibility and, instead, the Seoul Central District Prosecutors' Office indicted nine protesters under the charges of "obstructing traffic in general", "obstructing the performance of special official duties", "violating laws concerning the punishment of acts of violence" and "vandalizing". The defence lawyer applied for civil participation in the trial<sup>7</sup>, but the request was denied. In addition, the continuation of the procedure was

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4 / A revised bill that was submitted in February 2010 specifies the above period of prohibition as being from "10 p.m. to 6 a.m.". However, some constitutional law experts and NGOs argue that this revision will in practice increase the prohibited period, and that it should eliminate the prohibition of period entirely. See MINBYUN-Lawyers for a Democratic Society.

5 / See Forum Asia, *Asian Human Rights Defenders*, Vol. 5, No. 1, May 2009.

6 / Messrs. Seong-su Lee, Yong-Hyun Yoon, Sang-rim Lee, Hui-sung Yang and Dae-sung Han.

7 / This is a South Korean system of jury participation with final decision taken by judge. See Forum Asia, *Asian Human Rights Defenders*, Vol. 5, No. 1, May 2009.

marred by obstruction from the side of the prosecution<sup>8</sup>. Furthermore, after the police raid in Yongsan, the dead evictees were widely labelled as “terrorists” by both the Prosecutor’s Office and the mainstream media. Members from around 100 civil, religious and rights groups reacted by forming a nationwide committee on January 21, 2009 – the Committee Against the Brutal Repression of Yongsan Demolition Protest, which urged the Government to investigate into the events, punish those responsible, provide appropriate compensation to the victims and design appropriate plans for the related development areas. In March 2009, a warrant of arrest for “holding an illegal rally” was issued against Mr. **Nam Kyung-nam**, Chairman of the Federation Against House Demolition, and Messrs. **Park Lae-gun** and **Lee Jong-hoi**, co-Presidents of the Committee Against the Brutal Repression of Yongsan Demolition Protest, who led various campaigns on behalf of the victims’ families<sup>9</sup>. On January 11, 2010, the three men surrendered to the police after an agreement on a Government apology and compensation was reached between the Seoul Metropolitan Government and the Committee Against the Brutal Repression of Yongsan Demolition Protest on December 30, 2009. The Korean Prime Minister also met with the families on October 3, and the Seoul Metropolitan Government agreed to a public funeral ceremony on January 9, 2010.

8 / When submitting the investigation reports of the case to the court, the prosecution omitted one third of the documents, amounting to 3,000 pages. These pages contained affidavits of commanding police officers and those who took part in the operation, allegedly favouring the defendants. Despite the requests of the defence lawyer, the court refused to issue a warrant to seize the reports. The case was finally postponed and the defence lawyer resigned, appealing for an unjust trial. On September 1, 2009, the accused asked for the court to delay the court proceedings since there were no longer defence lawyers, but the court refused this saying that they would be assigned counsel and that the abuse of the right of defence could no longer be accepted. See SARANGBANG and MINBYUN-Lawyers for a Democratic Society Report, on behalf of the Committee Against the Brutal Repression of Yongsan Demolition Protest, *Urgent Appeal and Report on the Aftermath of “Forced Eviction and Protestors’s deaths at Yongsan, Republic of Korea”*, June 12, 2009. On October 28, 2009, the 27th Criminal Negotiations Division Seoul Central District Court found all nine defendants guilty of killing a police officer by tossing a Molotov cocktail at flammable materials. The court sentenced two protesters to six years in prison and another five protesters to five years in prison. Another defendant was sentenced to three years in prison with a four year suspended sentence, and the last one was sentenced to two years in prison with a three year suspended sentence. Three of the nine defendants were remanded into custody upon receiving prison sentences. The nine defendants appealed the sentencing and their trial in appeal was to start on March 15, 2010.

9 / According to the arrest warrant, Mr. Park held an assembly after sunset without informing the police on January 23 and held illegal assemblies that obstructed general traffic on January 31 and in February 2009. Mr. Lee is accused of organising assemblies that would have posed a direct threat to public peace and order “by inciting collective violence, threats, destruction, arson etc.” and obstructing general traffic, for protests on the dates above-mentioned and March 7. He stands accused of organising approximately 72 gatherings after sunset without informing the police since January 20, 2009.

The three men have been detained since<sup>10</sup>. While Mr. Nam Kyung-nam is being prosecuted before the Seoul Central District Court for “obstructing traffic” (Article 185 of the Criminal Act), “special obstruction of public duty” (Article 144 (2)), “interference with business” (Article 314) as well as for “violating the Punishment of Violence, Etc. Act” and “violating the Act on Punishment of Use and Others of Molotov Cocktails”, Messrs. Park Lae-gun and Lee Jong-hoi are being prosecuted for “violation of the Assembly and Demonstration Act” and for “obstructing traffic”. Likewise, on April 28, 2009, Ms. **Chang Younghee**, Chief of Office of the Federation Against House Demolition, was arrested for “extortion” (Article 350 of the Criminal Act). As of the end of 2009, she remained detained. On April 30, 2009, 38 university students were arrested for violation of the Law on Assembly and Demonstration and Breach of the General Transportation on Criminal Code, before being all released on warning within 48 hours<sup>11</sup>.

### **Ongoing repression of migrants’ human rights defenders**

Whilst the Government declared an intensification of the crackdown against undocumented migrant workers until December, it pursued repressive measures against migrants’ rights defenders. Since 2002, immigration officers have indeed used the cover of their authority in order to arrest undocumented migrants to target those involved in the defence of human rights. On October 8, Mr. **Minod Moktan** (known as Minu), who founded the “Stop Crackdown Band” along with other migrants in 2003, co-founded the Internet broadcaster of the *Migrant Workers Television (MWTV)*, and produced two documentaries on the migrant workers’ situation in South Korea, was arrested by immigration officers while he was entering the *MWTV* building in Yongsang (Seoul) in the course of an immigration raid. He was subsequently imprisoned at Hwaesong detention centre. Mr. Minod Moktan is a Nepalese native migrant worker who had been living in the Republic of Korea for 18 years and emerged as a symbolic figure defending the rights of unregistered migrant workers in South Korea. The circumstances of his arrest did not comply with the immigration raids usual procedures and seemed to demonstrate that it was linked to his activities of defence and promotion of migrant workers’ rights. On several occasions, Mr. Minod Moktan had strongly denounced the brutality of the crackdown and called on the Government to implement a programme to

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10 / See SARANGBANG and MINBYUN-Lawyers for a Democratic Society Report, *Urgent Appeal and Report on the Aftermath of “Forced Eviction and Protestors’s deaths at Yongsan, Republic of Korea”*, June 12, 2009.

318 11 / See MINBYUN-Lawyers for a Democratic Society.

legalise undocumented migrant workers. On October 23, 2009, Mr. Minod Moktan was deported to Nepal after 15 days of detention.

Moreover, as of the end of 2009, the Seoul-Gyeonggi-Incheon Migrants Trade Union (MTU), an affiliated of the Korean Confederation of Trade Unions (KCTU), which was formed in 2005 as a union for and by migrant workers regardless of visa status<sup>12</sup>, was still waiting that its case be reviewed by the Supreme Court after the Ministry of Labour appealed against the decision in February 2007 of the Seoul High Court, which ruled in favour of MTU's legal union status, stating clearly that undocumented migrant workers are recognised as workers under the South Korean Constitution and the Trade Union Law, and therefore the subjects of legally protected basic labour rights, including the right to freedom of association.

### Obstacles to trade union rights

In February 2009, an international trade union mission to South Korea<sup>13</sup> concluded that the trade union rights situation was deteriorating, and that the Government failed to implement recommendations made by the International Labour Organisation. High on the list of concerns was the Government's use of Korea's unique "obstruction of business" clause (Section 314 of the Criminal Code) to severely limit legitimate trade union activity<sup>14</sup>. Indeed, the "obstruction of business" clause was still used as a systematic recourse to weaken the right to strike, as was the use of force beyond that which is absolutely necessary to maintain public order<sup>15</sup>. As an example, in April 2009, Ssangyong Motor Company fired around 3,000 workers during their structural adjustment process. As a consequence, the workers and the Ssangyong Motors Branch of the Korean Metal Workers Union (KMWU) went on a strike from May 22 to August 6, 2009 and occupied the Pyungtaek factory of the Ssangyong Motor Company. On August 4, the Government dispatched 2,500 riot police forces and

12 / MTU especially seeks to improve working conditions and stop the crackdown against undocumented migrant workers.

13 / The mission included representatives of the International Trade Union Confederation (ITUC) and its regional organisation ITUC-AP, the International Metalworkers' Federation (IMF), the Public Services International (PSI) and the OECD Trade Union Advisory Committee (TUAC).

14 / See ITUC Statement, February 26, 2009. The penalty for violating Section 314 of the Criminal Code is under five years of imprisonment or under 15 million won of fine (about 9,891 euros).

15 / The UN Committee on Economic, Social and Cultural Rights also expressed its great concern "about the frequent prosecution of workers with regard to labour management relations and the excessive use of force demonstrated against striking workers, mainly on the grounds of Article 314 of the Penal Code regarding "obstruction of business" [and...] reiterate[d] its concern that trade union rights are not adequately guaranteed in the State party (art. 8)". See Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights - Republic of Korea*, UN Document E/C.12/KOR/CO/3, December 17, 2009.



25 squadrons to crack down on the striking workers, firing tear gas from helicopters, using Taser guns against them and stopping supplies of water (including drinking water and water for fire extinguishers, gas and food). Civil society and opposition political parties tried to deliver water and food inside the factory but they were blocked by the company's management. Even medical personnel could not enter the premises. 94 workers were subsequently charged for "obstruction of business" and placed under arrest on August 7, 2009<sup>16</sup>. Moreover, on March 24, 2009, Mr. **Ro Jong-myeon**, a union leader from the *YTN-24 hour News Channel*, was arrested for "obstruction of business" subsequent to a strike carried out by members of the union in protest to his dismissal along with five other union members, after he protested against the appointment in July 2008 of a new chief executive officer by President Lee Myung-bak who used to work as a special media adviser for him during his candidate years, and which labour unions of *YTN* regarded as a Government way to control broadcast media<sup>17</sup>. On April 2, Mr. Ro Jong-myeon was released through review of legality for confinement and, on December 10, 2009, he was fined for "obstruction of business" to 20 million won (about 13,428 euros) by the Seoul Central District Court. Moreover, on November 13, 2009, the Seoul Central District Court nullified his dismissal. However, *YTN* appealed the decision and, as of the end of 2009, the case remained pending<sup>18</sup>.

### **Urgent Intervention issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
<b>Mr. Minod Moktan</b>	Unlawful arrest and deportation	Urgent Appeal KOR 001/1009/OBS 155	October 27, 2009

16 / See ITUC Statement, July 27, 2009, Forum-Asia Statement, July 29, 2009, and Joint NGOs Report, *NGO Report on the Situation of Freedom of Opinion and Expression in the Republic of Korea since 2008*, April 2010. On February 12, 2010, 22 were sentenced to imprisonment by the Suwon District Court: Mr. Han Sang-Gyun, the manager of the Ssangyong Motors Branch of the KMWU, was sentenced to four years' imprisonment; seven executives of the branch were sentenced to three years' imprisonment; ten people were sentenced to three years' imprisonment but saw their indictment suspended for four years; another four people were sentenced to two years' imprisonment but saw their indictments suspended for three years. The 72 people who were not sentenced to imprisonment but fined had been previously released pending trial. See MINBYUN-Lawyers for a Democratic Society.

17 / The dismissal took place on October 6, 2008. Thirty-three members of the union received disciplinary punishment at that time.

18 / See MINBYUN-Lawyers for a Democratic Society.

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# SRI LANKA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

The year 2009 saw an escalation of the conflict with a military offensive launched by the Government against the Liberation Tigers of Tamil Eelam (LTTE) in Mullativu and Killinochi districts, in the northern Vanni region, which provoked a major humanitarian crisis, with hundreds of thousands of civilians being trapped between Government and LTTE forces. While the LTTE forced thousands of civilians to fight and physically prevented people from fleeing the war zone, using them as human shields, the Sri Lankan military repeatedly bombed and shelled densely populated areas. The fighting between Government forces and LTTE resulted in a significant increase in human rights and international law violations by all parties to the conflict, including enforced disappearances, extrajudicial executions, torture and other ill-treatments. Following a final offensive mid-May that is said to have killed thousands more civilians, the Government declared asserting control over the areas previously controlled by the LTTE in the Vanni and claimed victory on May 19, ending more than 25 years of armed conflict. UN agencies estimate that more than 7,500 civilians were killed and over 15,000 wounded between mid-January and early May 2009 in Sri Lanka<sup>1</sup>. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Detentions, Mr. Philip Alston, even mentioned “allegations that as many as 30,000 persons were killed in Sri Lanka in the closing months of the conflict”<sup>2</sup>. Following the end of the conflict, about 280,000 Tamil civilians who had fled the Vanni district during the last weeks of the war were confined to overcrowded internment camps controlled by security forces, denied their freedom of movement and left without any access to independent observers, including media and humanitarian workers. By the end of the year, restrictions on freedom of movement were relaxed, mainly due to international pressure. At the end of the year, President Mahinda Rajapaksa decided to advance the presidential election by two years in the hope of capitalising the war victory<sup>3</sup>.

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1/ See United Nations Press Releases, December 23, 2008, March 13 and May 8, 2009.

2/ See Oral Statement made by Mr. Philip Alston at the 14th session of the UN Human Rights Council, June 3, 2010.

3/ As a consequence, presidential election was due in January 2010 and the parliamentary election in April 2010.

The end of the conflict did not put an end to human rights violations in the country: the draconian Prevention of Terrorism Act (PTA) as well as the Emergency (Miscellaneous Provisions and Powers) Regulation 2005 and the Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulation 2006 still remained in force. The PTA in particular was used to silence criticism and dissent and to curb freedoms of expression, association and peaceful protest. Human rights abuses, suppression of media freedom and political opposition to the war and to corrupt practices remained endemic. Hundreds continued in arbitrary detention, and torture in police custody was commonplace<sup>4</sup>. Perpetrators also continued to enjoy impunity, as illustrated by the disbandment, in June 2009, of the Presidential Commission of Inquiry, which had been established to investigate into serious human rights violations committed since 2006, without completing its mandated tasks. In particular, no report was made public and the inquiry did not result in any prosecutions.

Freedom of expression continued to be restricted in Sri Lanka throughout 2009. During the conflict, the Government of Sri Lanka used all methods at its disposal to keep the media under strict control and to prevent any independent coverage of the situation in the areas where fighting and displacement were taking place. Government political leaders and high ranking officials also continued to make public allegations against media and journalists without any evidence. For instance, in late May, when the war victory jubilation was at its height, most senior armed services and police officers appearing on State controlled television levelled charges against unnamed independent media activists as LTTE collaborators who allegedly received money from the LTTE<sup>5</sup>. In such a context, media was forced to adopt a strict self-censorship, especially on matters related to the war and the aftermath of the war, and many media workers had to leave the country for their safety in 2009<sup>6</sup>. Yet, although the UN Special Rapporteur on Freedom of Expression made a request to visit Sri Lanka in August 2009, as of the end of the year the Government had not responded to this request, despite a commitment it had made during its bid for election for the UN Human Rights Council in 2006.

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4/ See Media Freedom in Sri Lanka (MFSL) Report, *Sri Lanka - Freedom of Expression Violations, January-December 2009*, February 2010.

5/ *Idem*.

6/ At least 34 media personnel left the country in the course of 2009, and 24 of them applied for political asylum in western countries. See MFSL Report, *Sri Lanka - Freedom of Expression Violations, January-December 2009*, February 2010.

On February 9, 2009, ten independent UN experts<sup>7</sup> “expressed their deep concern at the deteriorating human rights situation in Sri Lanka, particularly the shrinking space for critical voices and the fear of reprisals against victims and witnesses which – together with a lack of effective investigations and prosecutions – has led to unabated impunity for human rights violations”. Ms. Margaret Sekaggya, UN Special Rapporteur on the Situation of Human Rights Defenders, added that “a climate of fear and intimidation reigns over those defending human rights, especially over journalists and lawyers”, and that “the safety of defenders has worsened considerably over the past year, most significantly following denunciations of human rights abuses committed by parties to the conflict, of corruption by state officials and of impunity”<sup>8</sup>. On March 12, the European Parliament also adopted a Resolution deploring the deteriorating humanitarian situation in Sri Lanka<sup>9</sup> and on May 26 and 27, the UN Human Rights Council held a special session to address the human rights situation in the country<sup>10</sup>.

### **Serious acts of reprisals against journalists denouncing human rights violations**

In 2009, journalists who denounced human rights violations, in particular corruption and abuse of authority and the impunity that accompanies them, were again on the front line of the repression, while impunity remained the main characteristic of all attacks against the media. Indeed, none of the killings, abductions, assaults, threats and acts of intimidation against journalists were investigated to completion. On January 8, 2009, Mr. **Lasantha Wickrematunge**, founder and Chief Editor of the *Sunday Leader* newspaper who was a vocal critic of corruption and abuse of authority in Sri Lanka as well as of the Government policies relating to the conflict, was driving to work when he was shot by four unidentified gunmen riding motorcycles in Colombo, close to Ratmalana military base. He was rushed to the hospital with serious head injuries, where he died. In the past, Mr. Wickrematunge had been several times the target of intimidation attempts and lawsuits due to his investigative reporting on corruption and nepotism in the Government and in society in general, and

7/ The Special Rapporteurs on the Situation of Human Rights Defenders; on the Promotion and Protection of the Right to Freedom of Opinion and Expression; on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health; on the Independence of Judges and Lawyers; on the Right to Food; on Extrajudicial, Summary or Arbitrary Executions; on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; on Adequate Housing; and the Chairpersons of the Working Groups on Enforced or Involuntary Disappearances and on Arbitrary Detention.

8/ See United Nations Press Release, February 9, 2009.

9/ See European Parliament Resolution P6\_TA(2009)0129 on Sri Lanka, March 12, 2009.

10/ See United Nations Press Release, May 27, 2009.

the impunity that accompanies them. Mr. Wickrematunge was also a critic of the war and advocated a negotiated political solution to the conflict<sup>11</sup>. As of the end of 2009, the authors of Mr. Wickrematunge's assassination still remained to be identified. Moreover, *Sunday Leader* journalists continued to be harassed after his murder. For instance, on October 22, 2009, Ms. **Frederica Jansz**, Editor of the *Sunday Leader*, and Ms. **Munza Mushataq**, News Editor, received death threats that were similar to the ones received by Mr. Wickrematunge three weeks before his assassination. The threats came after the newspaper published a report on video footage allegedly showing Sri Lankan Government soldiers executing Tamil prisoners and which had been broadcast by *Channel 4* in the United Kingdom in August 2009. The journalists reported the threats to Sri Lanka's Inspector General of Police as well as to the local police in Colombo but, as of the end of 2009, no action had been taken by the authorities<sup>12</sup>. Furthermore, Mr. **Sunanda Deshapriya**, a journalist and human rights defender, was accused in pro-governmental media of being a "traitor" and a liar" after issuing an intervention at the special session of the UN Human Rights Council on May 27, 2009, which was subsequently posted on *YouTube*. Several comments were also tantamount to inciting to violence against Mr. Deshapriya and his family. On May 25, Mr. Deshapriya had already been accused in the media of going to Geneva "with the aim of going before the Human Rights Council with inaccurate and false statements against the Government of Sri Lanka and the security forces" and to "defend the LTTE leadership". On June 7, 2009, *The Nation* reported that President Mahinda Rajapaksa "voiced his concern about Sunanda Deshapriya arguing against Sri Lanka during the United Nations Human Rights Council's Special Session in Geneva", which was considered as "betrayal"<sup>13</sup>. Following the brutal assault on Mr. Poddala Jayantha, General Secretary of the Sri Lanka Working Journalists Association (SLWJA), who was kidnapped, tortured and dumped at a roadside on June 1, 2009, the Criminal Investigation Division (CID) questioned and later remanded Messrs. **Sandaruwana Senadheera** and **Bennet Rupasinghe**, *Lanka E News* Editor and News Editor, on respectively June 2 and 1, for reporting Mr. Jayantha's abduction, including to the police. They were detained as suspects in the assault on their colleague, before being released on per-

11/ The assassination of Mr. Wickrematunge was severely condemned by UN High Commissioner for Human Rights, Ms. Navanethem Pillay, who expressed deep concern about the free expression of dissent in Sri Lanka. These worries were backed up by the European Parliament in its Resolution of February 5, 2009. See United Nations Press Release, January 29, 2009 and European Parliament Resolution P6\_TA(2009)0054 on Sri Lanka, February 5, 2009.

12/ See MFSL Report, *Sri Lanka - Freedom of Expression Violations, January-December 2009*, February 2010 and Law and Society Trust (LST).

13/ See LST.

sonal bail of Rs. 500,000 (about 3,363 euros) by the Magistrate Court on June 2. On October 12, the court discharged them as the police had failed to provide any evidence to prosecute them<sup>14</sup>. On August 31, 2009, **Mr. Jayaprakash S. Tissanayagam**, a Tamil journalist for *The Sunday Times* and *The Daily Mirror*, as well as Editor-in-chief of *Outreach Multimedia*, an online magazine established to highlight human rights issues in Sri Lanka, was sentenced by the Colombo High Court to 20 years of hard labour under the PTA for “causing communal disharmony”, “inciting racial hatred” and “supporting terrorism”. Mr. Tissanayagam was arrested in March 2008 by the Terrorism Investigation Division (TID) of the police and detained for more than five months without charge, before being indicted in August under the PTA and the Emergency Regulations, in relation with articles he wrote in 2006 in the *North-Eastern Monthly* magazine and that criticised the Government’s military operations carried out in Tamil regions, because of their “indiscriminate impact on civilians”<sup>15</sup>.

### **Ongoing acts of harassment against lawyers and defenders acting for victims of human rights abuses**

Lawyers and defenders acting for victims of human rights abuses were also often subjected to acts of harassment, death threats and attacks in 2009. For instance, on January 24, the Human Rights Centre “Right to Life” in Negombo, Katunayake, received death threats through a phone call. In September 2008, the centre and its lawyers had already received death threats, which started after the assassination, on September 20, 2008, of Mr. Sugath Nishanta Fernando, who was a complainant in a bribery case and received death threats before his death and whom Right to Life had helped. On January 26, the President of Right to Life lodged a complaint to the Inspector General of Police of Colombo. Subsequently, the CID informed the centre that inquiries had been opened and were ongoing. Likewise, on January 27, **Mr. Amitha Ariyaratne**, former lawyer of Mr. Sugath Nishanta, was threatened three times with death at the Negombo police station by police officers. Mr. Ariyaratne also represents Mr. Nishanta’s family in a complaint of torture against police officers from Negombo police station accused of having tortured Mr. Nishanta. However, no officers were arrested or questioned on these death threats. **Mr. Santha Fernando**, Secretary for Justice and Peace in the National Christian Council

14 / *Idem*.

15 / His Co-Director Mr. N. Jasiharan and his wife, Ms. V. Valamathy, who were also arrested in March 2008, were released in October 2009 when the charges were dropped after they agreed not to pursue a fundamental rights complaint against the authorities. In September 2009, Mr. Tissanayagam filed an appeal against his sentencing, and he was finally released on bail in January 2010. In May 2010, he was given a presidential pardon.

of Sri Lanka (NCCSL), who is particularly involved in the promotion of justice among the less privilege sections of society, was detained without charge under the Emergency Regulations from March 27 to November 11, 2009 in the TID, before being released on bail. As of the end of 2009, Mr. Fernando still had to report regularly to TID and was not able to leave the country as his passport was surrendered to the court until his case be examined. On May 7, 2009, Mr. **Sinnavan Stephen Sunthararaj**, Project Manager at the Centre for Human Rights and Development (CHRD), well-known for documenting cases of child abuse in Jaffna, was abducted, allegedly by officers of the CID. Mr. Sunthararaj had then just spent two months in detention without charge. As of the end of 2009, Mr. Sunthararaj remained missing. Furthermore, in the morning of August 20, 2009, Dr. **Paikiasothy Saravanamuttu**, Executive Director of the Centre for Policy Alternatives (CPA), received an anonymous death threat letter saying that he was held responsible for the fact that Sri Lanka stands to be deprived of the European Union's Generalised System of Preferences Plus (GSP+) benefits in October, which will result in job losses in the garment industry, following the transmission of information by Dr. Saravanamuttu to Ms. Benita Ferrero-Waldner, the European Union Commissioner for External Relations<sup>16</sup>. Dr. Saravanamuttu and CPA subsequently lodged a complaint to the police and requested the Inspector General of Police to order an immediate investigation into the matter. On June 1, 2009, the CPA had already received a threatening letter that accused the NGO of aiding and abetting terrorism and of conspiring against Sri Lanka with the international community. In addition, on September 2, Dr. Saravanamuttu was briefly detained by the TID at Katunayake international airport upon his return from overseas. The TID questioned him for up to two hours before releasing him, without giving him any reason for his arrest. Moreover, a group of 133 citizens and civil society activists and organisations who issued a public statement condemning the death threat against Dr. Saravanamuttu on August 27, which was published as a paid advertisement in the *Daily Mirror* and *Lankadeepa* newspapers on September 16, came under investigation by the CID.

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16/ The EU's GSP is a trade arrangement through which the European Union (EU) provides preferential access to the EU market to 176 developing countries and territories. The special incentive arrangement for sustainable development and good governance (known as GSP+) offers additional tariff reductions to support vulnerable developing countries in their ratification and implementation of international conventions in these areas. CPA has consistently argued that the GSP+ benefits must be renewed, and that Sri Lanka should use the opportunity to also strengthen its human rights protection framework by complying with international human rights law.

In particular, officers from the CID visited and questioned several of the signatories on August 28<sup>17</sup>.

Moreover, the situation of extreme insecurity faced by human rights defenders in Sri Lanka was exacerbated by a public statement made in March by Sri Lanka's Human Rights Minister, Mr. Mahinda Samarasinghe, who discredited and threatened human rights defenders after several Sri Lankan NGOs denounced human rights violations during the session of the UN Human Rights Council held in Geneva in March 2009. Similarly, five lawyers, namely Messrs. **Srinath Perera, Upul Jayasuriya, S. Sumanthiran, Viran Corea and Athula Ranagala**, were branded as "unpatriotic" and "traitors of the nation" in an article that appeared on the Ministry of Defence website on July 10, 2009. They were also described as lawyers who "have a history of appearing for and defending LTTE suspects in the past". It seems that the lawyers were defamed solely because they appeared for the *Sunday Leader* newspaper in a defamation case brought by the Ministry of Defence<sup>18</sup>.

### **Ongoing obstacles against humanitarian workers**

While the Government's decision in September 2008 to order all international humanitarian organisations – with the exception of the International Committee of the Red Cross (ICRC) – to withdraw from the Vanni area as it could "no longer guarantee the safety of aid workers" in the region remained in force in 2009, therefore having a strong impact on access to relief by civilian populations, humanitarian workers and organisations continued to face serious restrictions in their work. In particular, military camp administration prevented humanitarian organisations, including the UN and the ICRC, from undertaking effective monitoring and protection in the camps controlled by security forces. In July, the Government asked the ICRC to close its offices in eastern Sri Lanka after Minister Mahinda Samarasinghe said that the "specialised services" provided by the ICRC and other aid organisations were no longer needed since the end of the war, and barred it from accessing most displaced persons in the north: by July 17, 2009, four ICRC offices in Trincomalee, Mutur, Batticaloa and Akkaipattu, in the eastern province, had been closed, and activities in this region had been suspended. During the same period, activities carried out from Vavuniya and Mannar offices were put on hold pending further clarification and agreement with the Government. The closure came amid

17/ They were asked how they knew of Dr. Saravanamuttu; whether there was any meeting for all signatories of the statement; whether they had in fact seen the threatening letter, and who had sent the threatening letter.

18/ See LST.



growing tension between the Government and dozens of aid groups over criticism of conditions inside Government run camps in the north that hold Tamil civilians displaced during the final phase of fighting between the Government and the LTTE<sup>19</sup>. Government officials also continued to publicly accuse international aid agencies, including the UN and the ICRC, of being LTTE supporters or sympathizers.

In addition to obstacles faced in their daily work, aid workers were also subjected to acts of harassment when they were drawing attention on human rights abuses they witnessed. In May 2009, five Government employed medical doctors, namely **Dr. T. Sathiyamoorthy**, **Dr. T. Varatharajah**, **Dr. V. Shanmugarajah**, **Dr. Ilancheliyan Pallavan** and **Dr. S. Sivapalan**, were arrested by the Sri Lankan army, who eventually handed them over to the police, when they were placed in the custody of the TID, and branded as LTTE supporters for providing information about the situation in the conflict zone to local and international human rights groups and media, including reports of Sri Lankan military attacks on civilians. On August 24, 2009, Dr. Sathiyamoorthy, Dr. Varatharajah, Dr. Shanmugarajah and Dr. Pallavan were finally released on bail but were confined to Vavuniya, while Dr. Sivapalan was released on bail on September 1 on similar conditions. As of the end of 2009, the doctors still faced charges of “providing false information to the media” and “aiding rebel propaganda”. In addition, on June 11 and 12, 2009, Mr. **Charles Raveendran Navaratnam**, staff member of the United Nations High Commissioner for Refugees (UNHCR), and Mr. **Kanthasamy Sounthararajan**, staff member of the United Nations Office for Project Services (UNOPS), were abducted by men in plain clothes, who did not identify themselves and were driving an unmarked vehicle. It was later discovered that the two UN staff members had been taken away by Sri Lankan security services. They would have been arrested for “actively engaging in LTTE activities” and, as of the end of 2009, they reportedly remained detained<sup>20</sup>. Moreover, on September 6, 2009, Mr. **James Elder**, the United Nations Children’s Fund (UNICEF) Spokesman in Colombo, was summoned to the Foreign Minister, where he was told that his residential visa had been cancelled as of September 7. Mr. Elder was finally given until September 21 to leave the country. Although no official reason was given to the decision, Mr. Elder’s expulsion followed various statements he made on the plight of children during and in the aftermath of the war<sup>21</sup>. In July, Mr. **Peter Mackay**, a field operative with the UNOPS, had already been forced to leave Sri Lanka for compiling

19/ See ICRC, at [www.icrc.org/web/eng/siteeng0.nsf/html/sri\\_lanka](http://www.icrc.org/web/eng/siteeng0.nsf/html/sri_lanka) and LST.

20/ See LST.

21/ *Idem*.

detailed briefings that challenged the Government's official civilian death toll and the questioned adequacy of its arrangements for relief operations<sup>22</sup>.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
<b>Mr. Lasantha Wickrematunge</b>	Assassination	Urgent Appeal LKA 001/0109/OBS 006	January 15, 2009
<b>Mr. Upali Tennakoon</b>	Assault	Urgent Appeal LKA 002/0109/OBS 015	January 27, 2009
<b>Members of the Human Rights Centre "Right to Life" / Mr. Amitha Ariyaratne</b>	Death threats	Urgent Appeal LKA 003/0209/OBS 022	February 3, 2009
<b>Mr. Sinnavan Stephen Sunthararaj</b>	Enforced disappearance / Fear for physical and psychological integrity / Harassment	Urgent Appeal LKA 004/0509/OBS 077	May 15, 2009
<b>Mr. Paikiasothy Saravanamuttu</b>	Death threats	Urgent Appeal LKA 005/0809/OBS 121	August 21, 2009

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# THAILAND

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

A prominent event in Thailand in 2009 was the anti-Government protest organised by the United Front for Democracy against Dictatorship (UDD), backed by deposed Prime Minister Thaksin Shinawatra, in late March and April. At least 123 people were injured during street battles. Moreover, after UDD protesters broke into the meeting site of the summit of the Association of Southeast Asian Nations (ASEAN) on April 11, 2009, the summit was cancelled. In response, the Government declared a state of emergency in Pattaya, Bangkok and surrounding provinces. On April 12, about 50 UDD members protesting the state of emergency and the arrest of one of their leaders forced their way into the Interior Ministry. In the night of April 13-14, at least 77 people were injured and two were shot dead<sup>1</sup>. Furthermore, despite Prime Minister Abhisit Vejjajiva's declarations that he would shift the focus from a security-oriented approach to development and justice, no significant progress was reached in 2009 in tackling the southern insurgency that has claimed more than 3,900 lives in the last six years. On the contrary, violence intensified, harsh laws remained in force, and militias exacerbated Buddhist-Muslim tensions. Armed forces obstructed efforts to assert civilian control and opposed the lifting of martial law and emergency decree in force in the three conflict-racked provinces of Pattani, Yala and Narathiwat<sup>2</sup>.

Other developments attracted a chorus of international protests. In particular, the Government of Thailand proceeded with a high number of forcible returns of refugees coming from neighbouring authoritarian regimes in 2009, in violation of the principle of non-refoulement<sup>3</sup>. In December, some 4,000 ethnic Hmong Laotians were deported back to Laos, although many had been in Thailand for over 30 years and some were recognised as being in need of international protection<sup>4</sup>. Furthermore, the execution

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1/ See Union for Civil Liberty (UCL).

2/ See International Crisis Group Report, *Southern Thailand: Moving towards Political Solutions?*, December 8, 2009.

3/ According to the principle of non-refoulement, no State should expel, return or extradite a person to another State where he or she would be in danger of being tortured.

4/ See United Nations Press Release, December 31, 2009. See also European Parliament Resolution P6\_TA(2009)0055 on the situation of Burmese refugees in Thailand, February 5, 2009.

of two drug traffickers on August 24 – the first since 2003 – attracted widespread condemnation from the global abolitionist movement<sup>5</sup>.

Freedom of expression in Thailand was again restricted in 2009, not only on the Internet, but also through other media. The Ministry of Information and Communication Technology (MICT) continued in particular to silence “cyber-dissidents” and restrict freedom of expression, using increasingly the Law on *Lèse Majesté* as a pretext<sup>6</sup>. MICT claimed to have shut down more than 2,000 websites on this basis and a blocking of numerous other websites continued<sup>7</sup>. The Government also announced on May 14 that it would introduce new regulations for community radio and TV stations, aimed at controlling programme content<sup>8</sup>. The regulations were eventually approved and community radio stations were required to register under a National Telecommunications Commission (NTC) scheme to in order to become legal broadcasters. By August 25, 2009, 5,500 300-day trial licenses had been issued, a number reaching 98 to 99% of community radios countrywide. Community stations that acquired the trial license had to ensure their programme content do not “incite political unrest and violence, offend the monarchy or disrupt social morals”<sup>9</sup>.

Finally, at the institutional level, the selection of unqualified members for Thailand’s National Human Rights Commission, in conflict with the criteria of the Paris Principles, was severely criticised. Out of the seven new members approved by the Senate on May 1, 2009, one was subjected to a commission investigation and several had no experience in human rights, whilst several highly qualified candidates were rejected. One of the major criticisms was the rejection of representation from recognised civil society organisations<sup>10</sup>.

### **Acts of harassment and intimidation against defenders fighting impunity**

In 2009, defenders fighting impunity continued to be perceived by authorities as possible threats. On February 8, 2009, Thai security forces, under the command of Lieutenant Colonel Pravej Sudhiprapha, searched the office of the Working Group on Justice for Peace (WGJP) in the

5/ See UCL and World Coalition Against Death Penalty Statement, September 3, 2009.

6/ Thailand’s *lèse majesté* law is one of the harshest in the world. It provides for penalties ranging from three to fifteen years’ imprisonment and has frequently been used for political motives.

7/ See IFEX Press Release, April 8, 2009.

8/ See Article 19 and The National Press Council of Thailand Report, *Impact of Defamation Law on Freedom of Expression in Thailand*, July 2009.

9/ See UCL.

10/ *Idem*.

southern province of Pattani. Twenty members of the police and military spent three hours searching the office. The search was reportedly carried out under martial law, following information that militants had been seen in the area. Security forces ordered the volunteers to provide the login passwords of the computers, which contained details about abuse victims, witnesses, and other sensitive information. Moreover, the military dropped leaflets over southern areas, which included the name and address of Ms. **Angkhana Neelapaijit**, the chair of WGJP and the widow of Mr. **Somchai Neelapaijit**, a human rights lawyer who disappeared five years ago after filing a complaint alleging that police officers had tortured clients of his in the south. This was done without her agreement and compromised her work. The search occurred after the publication of several reports about human rights conditions in southern Thailand, including one released by the WGJP<sup>11</sup>. Moreover, although four Thai Prime Ministers in the past five years acknowledged that police and Government officials were involved in the enforced disappearance of Mr. Somchai Neelapaijit, none of them brought the perpetrators to justice. In addition, the police officer, who had been sentenced to three years in jail in connection with Mr. Somchai Neelapaijit's disappearance, Mr. Pol Maj Ngern Thongsuk, from the Crime Suppression Division, is believed to have fled the country. Ms. Neelapaijit has kept pressing for progress on the case of her husband and as a consequence suffered petty harassment from unknown persons on various occasions.

### **Killing of a rights activist in Yala province**

On March 12, 2009, Ms. **Laila Paaitae Daoh**, a prominent rights activist and peace advocate, was shot in broad daylight in Krongpenang district, Yala province. Ms. Paaitae Daoh and her family had long received threats and had been targets of insurgent attacks. Alleged insurgents killed her eldest son in 2004 and her husband and second son in 2006. Despite pressures from insurgents, Ms. Paaitae Daoh promoted coexistence between ethnic Malay Muslims and Buddhist Thais. After her death, her sister received anonymous phone calls from men speaking in the local Malay dialect and threatening her with death. Ms. Paaitae Daoh's killing and the threats against her sister are widely seen to be perpetrated with the aim to intimidate Muslims who do not support the use of violence by insurgents in the southern provinces. As of the end of 2009, the authors of Ms. Paaitae Daoh's assassination had still not been identified<sup>12</sup>.

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11/ *Idem.*

332 12/ *Idem.*

## Shooting of two defenders of community and environmental rights

In 2009, defenders of environmental rights in Thailand continued to be victims of assassinations and other forms of attacks, especially for denouncing abusive exploitation of natural resources affecting the environment and way of living of local communities. On November 27, **Mr. Sittichai Phetpong**, Vice-President of the Association for the Protection of Maritime Resources who worked for the socially disadvantaged, as well as for the preservation of natural resources<sup>13</sup>, was severely wounded by a gunman on a motorcycle, in the Khanghe district of Haad Yai (Songkhla province). He received three bullets in the body and one bullet in the arm. In the past, he had received threats from those whose continued exploitations of natural resources have been curtailed by his initiatives to prevent and protest destructive environmental practices, and reported those threats to Haat Yai police on May 31. After representatives of various NGOs and Mr. Sittichai Phetpong's father submitted a letter of demand for justice to the Governor of Songkhla province, the case was entrusted to senior police officers of the ninth region. Police Lieutenant General Wirayut (Commander of region 9) subsequently announced he would appoint a special working group for the investigation, but no progress was reached as of the end of 2009 and Mr. Sittichai remained in hospital in a critical state. Likewise, on October 6, 2009, **Mr. Praseth Rakpao**, former member of the Provincial Council of Rayong and a lawyer, was shot in his car by a gunman riding a motorcycle. The cause of the assassination is likely to be linked to the fact that Mr. Praseth Rakpao was the leader of the villagers protesting against a large investment treatment plant which runs counter to environmental protection laws. Local people had been protesting the project over several months. On July 28, they submitted to the Parliament a petition demanding justice, with almost 4,000 signatories. Before the killing, protesters had been warned of danger. As of the end of 2009, the authors of his assassination had still not been identified<sup>14</sup>.

## Labour union leaders face dismissal and arrest

The right to peaceful assembly of trade unionists was curtailed in 2009, with the police using violent techniques to repress workers and their leaders. For instance, on August 27, a large number of the 1,959 workers dismissed by the Body Fashion Thailand Limited (a subsidiary of Triumph International) and their supporters protested at the Parliament in Bangkok. Most of the dismissed workers come from vulnerable groups

13/ Mr. Sittichai Phetpong has also played an important role in establishing and strengthening community organisations, as well as in the preservation of the resources of Songkhla Lake.

14/ See UCL.

such as the elderly, pregnant and disabled workers. Video testimonies showed the police using long range acoustic devices to disperse the rally. These devices emit disorienting noise up to 155 decibels, a level that can permanently damage hearing, induce pain and cause vomiting<sup>15</sup>. The following day, Dusit police bureau issued a warrant for the arrest of three leaders of Triumph International Labour (Thailand) Union, namely **Mr. Sunthorn Boonyod**, **Ms. Boonrod Saiwong** and **Ms. Jitra Kotchadej**. On January 25, 2010, Dusit police station charged Ms. Jitra Kotchadej and Ms. Boonrod Saiwong of “assembling more than ten persons to cause political disturbance”, under Articles 215 and 216 of the Criminal Code, as well as under Article 108 of the Highway Act. They were released soon after their arrest on bail of 100,000 baht each (approx. 2,200 euros). As of the end of 2009, the charges remained pending and there was no news of the whereabouts of Mr. Boonyod<sup>16</sup>.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Ms. Angkhana Neelapaijit, Mr. Somchai Neelapaijit	Harassment / Threats / Enforced disappearance	Urgent Appeal THA 001/0609/OBS 090	July 9, 2009

15 / These devices were developed for control of hostile crowds and have been used against Somali sea pirates attacking shipping, as well as in Iraq.

16 / See UCL.

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# VIET NAM

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

In 2009, Viet Nam continued to arrest and convict dozens of peaceful pro-democracy advocates, independent religious activists, human rights defenders, journalists and bloggers, using vaguely-worded national security laws such as conducting “anti-Government propaganda” or “abusing democratic freedoms” in an effort to bolster the authority of the Communist Party. In addition, the authorities continued throughout 2009 their control over the media. A regrettable development in this regard was the announcement made by the Government in October 2009 of its intention to draft a new decree, which would provide for fees to be charged against journalists who refuse to identify their sources or write “subjective” articles having “serious consequences”<sup>1</sup>. This move was immediately criticised, including by official media. As of the end of 2009, this decree had not been adopted, or made public.

In the framework of the UN Universal Periodic Review (UPR), which Viet Nam underwent in May 2009, many UN Member States and organisations recalled that the country was facing a number of major human rights challenges. They underlined in particular that Viet Nam was still not party to core international treaties, including the Convention Against Torture and the 1951 Convention on the Status of Refugees<sup>2</sup>. Several countries also deplored that Viet Nam had not invited UN observers since 1998, whilst six UN Special Procedures have pending requests to visit the country<sup>3</sup>. Whilst accepting some general recommendations on the promo-

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1/ See Vietnam Committee on Human Rights - Quê Me: Action for Democracy in Vietnam (VCHR).

2/ Some of the core treaties to which Viet Nam is not a party: OP-ICESCR<sup>3</sup>, ICCPR-OP 1, ICCPR-OP 2, OP-CEDAW, CAT, OP-CAT, ICRMW, CRPD (signed on October 22, 2007), CRPD-OP, CED. See Human Rights Council, *Compilation prepared by OHCHR - Vietnam*, UN Document A/HRC/WG.6/5/VNM/2, March 16, 2009.

3/ Special Rapporteurs on the Right to Freedom of Opinion and Expression (requested in 2002); on Extrajudicial, Summary or Arbitrary Executions (2006); on Freedom of Religion or Belief (2008); on the Right to Food (2008), as well as the Independent Experts on the Effects of Foreign Debt (2008) and on the Issue of Safe Drinking Water (2008). See Human Rights Council, *Compilation prepared by OHCHR - Vietnam*, UN Document A/HRC/WG.6/5/VNM/2, March 16, 2009. In response to the UPR, the Government of Viet Nam declared that it had recently extended invitations to the Special Rapporteurs on the Right to Food, Education and Health and the Independent Experts on Extreme Poverty and Effects of Foreign Debt on Human Rights. See Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Viet Nam, Addendum*, UN Document A/HRC/12/11/Add.1, September 16, 2009.



tion of human rights, Viet Nam rejected many of the concrete proposals. For example, numerous countries called for transparency on prisons and camps, the number of detainees, the reasons for their incarceration and death penalty, but these recommendations were rejected<sup>4</sup>. Viet Nam also ruled out recommendations regarding the need to increase the independence of the media, to lift restrictions on freedom of expression, to release prisoners of conscience, and to recognise the Unified Buddhist Church of Viet Nam (UBCV). It further refused to abolish both vague “national security” provisions in the Criminal Code<sup>5</sup>, including Article 88 on “spreading propaganda against the Socialist Republic of Viet Nam”, Article 258 on “abusing democratic freedoms to infringe on the interests of the State” and Ordinance 44, which authorises administrative detention without trial under house arrest or in psychiatric facilities for suspected national security offenders<sup>6</sup>. The Government also refused to recognise the rights of individuals and groups to “dissent publicly”, and to engage in dialogue with civil society organisations<sup>7</sup>.

On a positive note, in June 2009, Viet Nam abolished death penalty for seven crimes, including rape, giving of bribes, counterfeiting of money and bonds, hijacking of ships and planes, destructions of weapons and military equipment and appropriation of property through swindling. Regrettably, critics of the Government can still be sentenced to death under some criminal provisions like “national security” “intent to overthrow the people’s administration” (Article 79 of the Criminal Code) and “espionage” (Article 80) simply for exercising their right to freedom of expression. Indeed, these vague and imprecise provisions make no distinction between non-violent acts – such as the peaceful exercise of freedom of expression – and violent actions – such as terrorism. Although the State-controlled media reported in 2009 a total of 58 death sentences, real figures are very difficult

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4/ See United Nations Press Release, September 24, 2009.

5/ Under the amended 2004 Criminal Procedures Code (Article 120), suspected “national security” offenders may be held in custody pending investigation for four months. This period may be extended four times by the Chairman of the Supreme People’s Procuracy, after which the authorities must either release detainees or “if deeming it necessary, apply other deterrent measures”. *Quan che*, or “probationary detention” (Article 30 of the Criminal Code), is a second punishment inflicted on former political prisoners, which enables the State to place “national security” offenders “under the supervision and re-education of the local authority” for a period of one to five years’ probation after their release.

6/ Ordinance 44 on “Regulating Administrative Violations” empowers local officials not only to arrest and detain citizens, but also to commit them to mental hospitals or “rehabilitation camps” without any due process of law. The Ordinance is particularly used against political and religious dissidents, and legalises the arbitrary practice of detention without trial.

7/ See VCHR Statement, May 13, 2009.

to verify, as statistics on the number of death sentences and executions are not published by the Government<sup>8</sup>.

### **Ongoing repression against the Unified Buddhist Church of Viet Nam and its leaders**

Despite declarations by the Government of Viet Nam in the framework of the UPR that “as a multi-religion country with more than 20 million followers of various religions and 80 per cent of the population having religious belief, Viet Nam always respects freedom of religion [and] considers this a legitimate need of the people”<sup>9</sup>, the situation of the UBCV, a prohibited movement that peacefully promotes religious freedom, democracy and human rights which is adhered to by the majority of the population, remained of particular concern in 2009<sup>10</sup>. In a Resolution of November 26, the European Parliament strongly condemned religious persecution in Viet Nam, deploring the fact that “many religious organisations face a ban and persecution of their members if they wish to remain independent of the Government”, especially since “in the absence of independent human rights organisations, Church leaders often take on the role of human rights defenders and fight for greater tolerance and more democratic principles”<sup>11</sup>. The European Parliament cited specifically the repression of UBCV and the continued house arrest of UBCV leader **Thich Quang Do** (after more than 27 years in detention) and the imprisonment of hundreds of people on account of their religious or political beliefs and affiliation. As of the end of 2009, Thich Quang Do, who is 80 years old and was nominated for the 2009 Nobel Peace Prize<sup>12</sup>, remained under effective house arrest since June 2001 at the Thanh Minh Zen Monastery in Saigon.

### **Arbitrary detention of several human rights lawyers**

National security arguments continued to be invoked in 2009 to clamp down on democracy and freedom of expression in Viet Nam. The trial of **Le Cong Dinh**, a prominent human rights lawyer and former Vice-President of the Ho Chi Minh City Bar Association, and three other

8 / Indeed, to defuse criticism by the international community and human rights organisations, Viet Nam adopted in January 2004 a decree classifying death penalty statistics as “State secrets”.

9 / See Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Viet Nam, Addendum*, UN Document A/HRC/12/11/Add.1, September 16, 2009.

10 / Banned effectively in 1981 following the creation of the State-sponsored Viet Nam Buddhist Church, UBCV leaders and members continued to be subjected to detention, intimidation and constant harassment. Despite repeated appeals from the international community, Viet Nam has not re-established its legal status.

11 / Restrictions on freedom of religion also concern the Christian Church. See Resolution P7\_TA-PROV(2009)0104 of the European Parliament, November 26, 2009.

12 / See International Buddhist Information Bureau Press Release, March 11, 2009.

activists attracted considerable international attention, for it has been a long time since the regime last tried anybody on subversion charges. On June 13, 2009, Le Cong Dinh was arrested by the Public Security Police and later charged with “conducting propaganda” against the State, under Article 88 of the Criminal Code. Le Cong Dinh had spoken out against the extraction of bauxite in the Central Highlands, and had also called for political reform. At a press conference, the Investigation Agency of the Ministry of Public Security stated that he had “connived with overseas subversives to publish documents distorting the socio-economic policies” of the Government. At the end of 2009, Le Cong Dinh was charged with “carrying out activities aimed at overthrowing the people’s administration”, under Article 79 of the Criminal Code. On July 1, 2009, he was disbarred. In August 2009, he was compelled to make a public “confession” broadcast on television. On January 20, 2010, the People’s Supreme Court in Ho Chi Minh City sentenced him to five years in prison<sup>13</sup>. This case constitutes a blatant example of the “catch-all” character of the legislation in Viet Nam, which prevents the accused from knowing the grounds of the accusations and enables authorities to change these grounds arbitrarily whenever they wish so.

Moreover, other lawyers involved in the defence of human rights remained detained as of the end of 2009, following criminal sentences and disbarment from the Lawyers Bar Association of Viet Nam. Thus, human rights lawyers and pro-democracy activists **Nguyen Van Dai**, founder of the Committee for Human Rights in Viet Nam, and **Le Thi Cong Nhan**, a member of the Committee for Human Rights in Viet Nam and Spokeswoman for the Viet Nam Progression Party (VNPP), who were arrested in March 2007 and sentenced on May 11, 2007 to, respectively, five and four years in prison for “conducting propaganda against the Socialist Republic of Viet Nam” (Article 88 of the Criminal Code)<sup>14</sup>, remained detained as of the end of 2009 in, respectively, prison camp K1, Xa Ba Sao (Ha Nam province) and prison camp 5, Phan trai 4, Yen Dinh (Thanh Hoa province).

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13 / His co-defendants, bloggers and pro-democracy activists Tran Huynh Duy Thuc, Nguyen Tien Trung and Le Thang Long, were sentenced for the same charges to prison terms ranging from seven to sixteen years.

14 / In November 2007, the Hanoi Appeals Court decided to reduce their sentences to four and three years’ imprisonment respectively, followed by four and three years’ house arrest.

## Obstacles to freedom of peaceful demonstrations organised in favour of workers and peasants' rights

In 2009, Vietnamese authorities continued to regularly repress peaceful demonstrations and prosecute protesters under criminal law. For instance, several activists campaigning for workers' rights were arbitrarily arrested in 2009 for demanding the right to set up independent trade unions, which are forbidden in Viet Nam. In particular, workers hit by the economic crisis staged unprecedented strikes in 2009 and protested lack of action by State-controlled labour unions. Peaceful demonstrations by farmers and peasants – known as the “Victims of Injustice” (many of them women) – were also brutally repressed. This rural protest movement, in which dispossessed farmers march to Hanoi or Saigon to file petitions and camp outside Government buildings protesting State confiscation of lands for development projects and lack of compensation, has reached explosive proportions, with over two million complaints filed over the past 10 years<sup>15</sup>.

## Ongoing repression of bloggers and journalists

Despite declarations from the Government in the framework of the 2009 UPR that “all citizens have the right to express their aspiration, opinions and comments on all political, economic and social issues on the mass media [and that] Viet Nam encourages the use of the Internet (...) [and] the development and use of blogs”<sup>16</sup>, on-line journalists and writers were regularly fired, arrested and forced to make “confessions” in 2009. The UN Working Group on Arbitrary Detention expressed specific concern in 2009 about the situation of a number of bloggers and journalists in Viet Nam<sup>17</sup>. Two Hanoi bloggers, **Bui Thanh Hieu** and **Pham Doan Trang**, also a journalist of top-ranked news *VietnamNet*, were arrested on August 27-28, 2009, before being released, respectively, on September 5 and 4, 2009. Both of them had criticised the Government's backing of a highly controversial bauxite mining project in the Central Highlands, which has been tendered to a Chinese company as well as the Communist Party's submissive attitude to China on issues of territorial sovereignty<sup>18</sup>. Similarly, **Nguyen Hue Chi**, manager of the website *Bauxite Viet Nam*, which criticises bauxite mining in the Central Highlands region of Viet Nam, in particular its disastrous impact on environment, was subjected to harassment and summoned on several occasions by the police in December 2009 and January 2010.

15/ See VCHR and FIDH, *rapport conjoint soumis à l'occasion de l'Examen périodique universel du Vietnam*, May 2009.

16/ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Viet Nam, Addendum*, UN Document A/HRC/12/11/Add.1, September 16, 2009.

17/ See UN Working Group on Arbitrary Detention, *Opinion 1/2009*, May 2009.

18/ Notably China's claims to the disputed Parcels and Spratly archipelagos. See VCHR.

In December, the website was also victim of a cyber-attack, and some of its data were lost. As a result of all those pressures, the website was closed in January 2010<sup>19</sup>. The prominent blogger and human rights defender **Nguyen Hoang Hai**, known under his pen name **Dieu Cay**, also founding member of the Free Vietnamese Journalists Club, remained detained as of the end of 2009, following the confirmation of his sentencing to two and a half year in prison for “tax evasion” on December 4, 2008<sup>20</sup>.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Mr. Le Cong Dinh	Arbitrary detention / Judicial harassment	Joint Open Letter to the authorities	June 19, 2009
		Joint Press Release	December 23, 2009

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19 / See VCHR.

20 / Dieu Cay, who is known for his articles calling for human rights and democratic reforms posted on the Internet, has been unjustly accused of having failed for ten years to pay taxes on premises. Said taxes should have been paid by the owner of the premises not Dieu Cay, who was only renting them.



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# EUROPE AND THE COMMONWEALTH OF INDEPENDENT STATES (CIS)

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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# REGIONAL ANALYSIS WESTERN EUROPE<sup>1</sup>

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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In 2009, Western European countries continued to adopt strong policy instruments in favour of the protection of human rights defenders. One year after the adoption of the Declaration of the Council of Europe Committee of Ministers on Human Rights Defenders, the Parliamentary Assembly of the Council of Europe adopted Resolution 1660 on April 28, 2009, calling national parliaments, *inter alia*, to “support assistance and protection measures for human rights defenders at risk, such as the issue of emergency visas, trial observation and involvement in networks of parliamentarians in support of human rights defenders”. Furthermore, in a number of third-countries outside the European Union (EU), some EU Member-States embassies and/or European Commission Delegations continued to act in favour of human rights defenders on the basis of the EU Guidelines on Human Rights Defenders, although the implementation of this tool remained too often partial or lacking. Within the EU, 2009 was marked by the proposal by the Czech Republic of a “Shelter Cities Initiative”, a move that was considered as a sign of political will to protect human rights defenders from third countries. The Shelter Cities Initiative aims at identifying EU cities that would be ready to host human rights defenders temporarily, namely for security or medical reasons. However, as of late 2009, the initiative had still not been formally adopted by EU Member-States, and a number of cities approached did not seem to be aware of these principles. Expectations remain that the initiative will be further advanced in 2010, together with a coherent and ambitious EU policy on temporary visas in favour of human rights defenders at risk.

In spite of these principles and policies in favour of human rights defenders’ protection abroad, the situation of human rights activists within Western European States remained concerning to some extent, as a number of defenders continued to face obstacles to their activities, in particular those working in support of migrants’ rights as well as in favour of economic, cultural and social rights. These obstacles were not as systematic

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1/ The countries of Western Europe include the Member States of the European Union and the States Parties to the European Free Trade Agreement. Turkey is also included in this region owing to the historic nature of its negotiations with the EU.

as in other regions, but the fact remains that such hindrances, sometimes more insidious and dissimulated, were noted.

## Obstacles to the activities of defenders of migrants' rights

### Statutory obstacles and threats to criminalise activities in defence of migrants' rights

In 2009, the legislation of some Western European countries continued to have a potentially adverse effect on the capacity of the defenders of migrants rights to operate without hindrances. In *France* for instance, the debate over the necessity to reform the legislation in order to lift obstacles to the defenders of the rights of migrants was an important public issue in 2009. The vagueness of the provisions concerning the offence of “giving assistance to illegal residency”<sup>2</sup>, and in particular the lack of any clear and unconditional exemption from judicial proceedings for non-profit making activities, has indeed left room for a degree of ambiguity that exposes defenders of migrants' rights to the risk of judicial harassment. In November 2009, the French National Consultative Commission on Human Rights (*Commission nationale consultative des droits de l'Homme* – CNCDH) adopted by unanimity an opinion relating to the issue of assistance to migrants in France, which highlighted that laws in force contradicted the international and European standards, which provides that humanitarian, social or legal assistance to aliens in irregular situation, in particular by associations that have a mandate for sheltering, providing food aid, facilitating access to medical care and to legal support, etc. shall be excluded from the scope of the provisions on “assistance to unlawful entry, movement and stay on the French territory”. Despite this opinion, the restrictive legislation for defenders of migrants' rights remained in force as of late 2009. In *Ireland*, the Immigration, Residence and Protection Bill, which aimed, *inter alia*, at punishing lawyers defending migrants involved in “futile” cases – a dangerously vague expression – was taken off the Parliamentary books and had to go through a number of amendments in 2009. However, as none of the amendments related to the provisions on penalties that legal representatives would face, there are strong reasons to believe that this provision will remain in the next version of the Bill, which had not yet been adopted as of late 2009<sup>3</sup>.

2/ See Article L. 622-1 to 4 of the Code on Entry and Residency of Aliens and the Right of Asylum (*Code sur l'entrée, le séjour des étrangers et le droit d'asile* - CESEDA).

3/ See Irish Council for Civil Liberties (ICCL).



### Judicial harassment against defenders of migrants' rights

The past years were marked by an increasing hostility of the authorities towards any action in defence of or solidarity with migrants. In the context of harsher European migratory policies, more and more people – members of human rights NGOs or ordinary citizens – who have expressed their solidarity or who have directly provided assistance to migrants have been facing acts of hostility by the authorities. This was again the case in 2009 in *France*, although Mr. Eric Besson, Minister of Immigration, Integration, National Identity and Co-Development, declared on March 23, 2009 that “any person, individual, volunteer, association, who has welcomed, accompanied, sheltered irregular foreigners in distress, is not concerned with the offence of solidarity. And I note that over the past 65 years of implementation of the law, nobody in France has ever been sentenced just for having welcomed, accompanied or sheltered a foreigner in irregular situation”. In reaction to these declarations, the Group on Information and Support to Migrants (*Groupe d'information et de soutien aux immigrés* – GISTI) started in April 2009 to draw the list of sentences issued since 1986 against persons who provided support to irregular foreigners – often by offering them a shelter<sup>4</sup>. In addition, as of late 2009, Mr. **André Barthélémy**, President of Acting Together for Human Rights (*Agir ensemble pour les droits de l'Homme* – AEDH), was still facing judicial harassment for “incitement to rebellion” and “obstructing the movement of an aircraft”. In 2008, the Public Prosecutor had requested three months' suspended imprisonment against the latter, who was eventually sentenced to a 1,500 euros fine. Mr. Barthélémy lodged an appeal but, as of the end of 2009, the trial in appeal had not taken place. On April 16, 2008, Mr. Barthélémy had been placed in police custody after having taken the defence of two Congolese nationals deported to the Republic of the Congo who complained of ill-treatment. In *Cyprus*, as of the end of 2009, Mr. **Doros Polycarpou**, Chairperson of the Action for Support, Equality and Anti-Racism (KISA), an NGO committed in the fight against xenophobia, racism, discriminations, and in favour of the respect of the rights of migrants and refugees, was risking to be accused of “threats for conducting violent actions and rioting”. These accusations refer to his intervention in August 2009 in favour of a Bulgarian migrant woman who was facing pressures of expulsion by heirs of her joint-tenants<sup>5</sup>. Mr. Polycarpou later

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4/ See GISTI, *On-Line Study on the offenses of solidarity*, 2009.

5/ The woman, aged 65, was living in a State-owned house for the past 10 years with the elderly couple she looked after. After the elderly couple passed away, the son of the couple tried to force the migrant woman out of the house by the use of violence, pressure and harassment. He also apparently asked a policeman friend of his to pressurise and/or intimidate the migrant woman and her son to leave the house. The said policeman later acknowledged this himself.

went to the local police station and requested an investigation into the case as well as immediate police intervention in order to avoid further acts of violence. The policemen on duty refused to take action on the grounds that the accusations were “a dispute between civilians” and on various occasions during that day they made racist remarks<sup>6</sup>.

### Judicial harassment against defenders of Roma people

In some countries of the region, the issue of ethnic minorities, and in particular of Roma people, remained a very sensitive one in 2009. In that context, those defending their rights remained subjected to acts of judicial harassment and intimidation. For instance, in *Italy*, on November 5, 2009, Messrs. **Roberto Malini** and **Dario Picciau**, co-Presidents of EveryOne Group, a non-governmental organisation supporting Roma people and refugees, were sentenced to a prison term, later commuted into payment of a fine of 2,100 euros. The court indeed argued that “they caused the interruption, or at least disturbed a police operation aimed at identifying three foreign citizens, and used abusive language towards the officers from Pesaro-Urbino police headquarters, and interfered in the carrying out of their duty”, in accordance to Articles 110 and 340 of the Criminal Code. The two defenders were sentenced on the basis of a so-called “criminal decree”, signed by the Office of the Magistrate for Preliminary Investigations of Pesaro on November 5, 2009. A criminal decree is a judicial procedure allowing a magistrate to sentence a person on the basis of the Prosecutor’s submission only, without hearing the accused. Criminal decrees can be appealed within 15 days of their notice, but as the two defenders were only notified of their sentences early 2010, they were not able to lodge an appeal<sup>7</sup>. Similarly, in *Greece*, the proceedings against Mr. **Theodore Alexandridis**, former Legal Advisor of the Greek Helsinki Monitor (GHM) and currently European Roma Rights Centre (ERRC) staff attorney, were still pending as of the end of 2009. On October 13, 2005, Mr. Alexandridis had filed a complaint with the police against the parents of pupils who had shown violence towards Roma children to prevent them from entering their school in Aspropyrgos, near Athens. On that occasion, the President of the Parents’ Association had also filed a complaint against Mr. Alexandridis for “slander” and “defamation”. The Athens Prosecutor of First Instance Office decided to refer both complaints to the same trial, scheduled for February 5, 2009 before the Misdemeanours Court of Athens, even though Article 59 of the Code of Criminal Procedure stipulates that the referral to trial for perjury (in this

6 / The charges of “threats for conducting violent actions and rioting” were eventually filed by the police on February 11, 2010. See KISA.

7 / See Frontline Press Release, February 19, 2010.

case of Mr. Alexandridis) is to be postponed until the trial on the initial case (in this case of the non-Roma parent) is held and has led to a final and irrevocable judgment. No decision had been issued as of late 2009.

### **Acts of harassment against defenders of economic and social rights**

In some countries of the regions, defenders of economic and social rights were again subjected to various acts of harassment in 2009. In particular in *Turkey*, the trade union movement faced systematic repression of peaceful protests and trade union leaders were victims of arbitrary arrests and trials. Moreover, in *Greece*, attacks against defenders that were committed in 2008 were not properly investigated. Following the arsons of summer 2008 and their consequences, the attack against Mr. **Makis Nodaros**, a defender involved in shedding light on mismanagement and corruption by the authorities in relation to these events, remained unpunished in 2009. As of the end of 2009, no suspect had indeed been identified as being responsible for the assault on Mr. Nodaros, the Elia regional correspondent for the Athens daily *Eleftherotypia*, the Patras daily *Imera*, the Patras television station *Teletime*, the Patras radio station *Radio Gamma*, and also the host of a daily programme for the Elia radio station *Ionian FM*, in October 2008, despite the opening of an investigation. Prior to the assault, Mr. Nodaros had written a number of articles exposing corruption and mismanagement over relief provided by the Government, local authorities and non-governmental institutions for victims of forest fires, which destroyed a large part of the region in 2008. Mr. Nodaros had also published several articles about alleged corruption involving the Mayor of the adjacent Elia town of Zacharo. The Mayor reportedly succeeded in having him fired from a local Elia newspaper, and also announced that he was filing lawsuits against Mr. Nodaros and the newspapers in which he published his articles. Furthermore, the attack of a rare violence in a Western European country against Ms. **Constantina Kuneva**, a migrant trade unionist, remained unpunished as of late 2009. On December 22, 2008, Ms. Kuneva, a Bulgarian migrant worker and General Secretary of All Attica Union of Cleaners and Domestic Workers (PEKOP) based in Athens, which represents workers in the cleaning sector in the Attiki region, had sustained an attack with sulphuric acid as she was returning home from her workplace. She was seriously injured, losing the use of one eye. She also suffered from serious breathing problems due to widespread damage to her larynx, oesophagus and stomach, caused by her assailants who forced her to drink acid. On March 11, 2009, Ms. Kuneva's lawyers spoke publicly for the first time on the occasion of a press conference, stating that police had wasted valuable time in the days that immediately followed the attack, as they focused their inquiries on Ms. Kuneva's friends and family, suspecting a crime of passion, rather than treating it

as an attempt to murder Ms. Kuneva because of her trade-union activities. The lawyers further claimed that police officers failed to question witnesses, including a man who rushed to Ms. Kuneva's aid after the acid was thrown over her. They also accused the police of failing to make any efforts to determine the exact type of acid used in the attack. A 48-year-old Albanian cleaner was arrested and released in February 2009 on suspicion of being involved in the assault, but Ms. Kuneva's legal team argued that the police only caught him to "intentionally create confusion". The suspect was released after a judge decided there was not enough evidence to charge him. As of the end of 2009, no-one had been identified as being responsible for the attack carried out against her and the investigation was still ongoing.

### **Protection of public order: abusive restrictions to the right to privacy for human rights defenders in France**

Under the pretext of better protecting public order, the right to privacy for citizens and the exercise of civil liberties continued to be threatened in *France* in 2009, with direct adverse effects on human rights defenders. On October 16, 2009, a Decree (2009-1250) on the "creation of a new automatic processing system of personal data in relation to administrative investigations linked to public security" (*Décret portant création d'un traitement automatisé de données à caractère personnel relatif aux enquêtes administratives liées à la sécurité publique*) was passed by the Ministry of Interior, Overseas Territories and Territorial Governments and published in the Official Journal on October 18<sup>8</sup>. It establishes a new file within the said Ministry, gathering, inter alia, data related to "public activities" or to "political, religious, philosophical or trade-union motives" possibly "incompatible with the exercise of certain duties or missions", without providing further details on the scope and without defining the term "motives". The scope of this decree is overly broad, and gives authorities the power to create files and gather any personal information on active representatives of civil society, in particular human rights defenders<sup>9</sup>. In 2008, the Ministry of the Interior had already created a similar police file for Documentary Exploitation and Use of General Information (*Exploitation documentaire et valorisation de l'information générale* – EDVIGE), which was finally withdrawn on November 20, 2008, following the mobilisation of several civil society and political organisations. The decree granted the police the power to "centralise and analyse information relating to natural or legal persons who apply for or exercise a political, trade union, or economic

8/ See French Human Rights League (*Ligue des droits de l'Homme* - LDH).

9/ On February 15, 2010, several NGOs filed a petition before the Administrative Supreme Court (*Conseil d'Etat*) to withdraw this decree.

mandate, or play an institutional role of economic, social or religious significance”.

### **Harassment of a judge engaged in the fight against impunity in Spain**

In *Spain*, the fight against impunity of serious international crimes came under attack in 2009, as Justice **Baltasar Garzón**, Judge of the Second Chamber of the Supreme Court, faced judicial harassment for his attempts to investigate crimes against humanity, in particular enforced disappearances, committed under the dictatorship of Franco dictatorship. On May 26, 2009, the Supreme Court ruled the admissibility of a complaint lodged by the far-right organisation Manos Limpias, which the organisation “Liberty and Identity” (*Libertad e Identidad*) subsequently joined, and which accuses Judge Garzón of “prevarication”, on the grounds that the latter assumed jurisdiction to investigate crimes committed during the Franco dictatorship, disregarding the 1977 Amnesty Law, and violating the principle of non retroactivity of criminal law, as well as the principle of legality and prescription of criminal action. As of late 2009, no decision against him had been issued but, if convicted, Judge Garzón could be suspended from his judicial functions.

### **Obstacles or risks of obstacles to the activities of human rights NGOs**

In 2009, human rights organisations faced obstacles or risks of obstacles to their activities in several countries. Thus, risks of obstacles to the activities of associations materialised through slandering assertions in the press in *Spain* where, on October 25, 2009, the conclusions issued by the Spanish Association for International Human Rights Law (*Asociación Española para el Derecho Internacional de los Derechos Humanos* – AEDIDH) on the conditions of detention and ill-treatments against members of “Euskadi Ta Askatasuna” (ETA) in Spanish detention facilities, on the occasion of the presentation of an alternative report to the United Nations Committee Against Torture (CAT), were qualified by the *Europa Press* agency as “very similar to those of other organisations linked to ETA or Batasuna”. Hence a risk that the general public might assimilate AEDIDH to a terrorist organisation. In reality, the recommendations issued by AEDIDH are in line with those adopted by international human rights bodies, i.e. the Council of Europe and the United Nations Human Rights Council, and with those of international human rights NGOs. Moreover, several human rights organisations and activists in *Turkey* continued to be subjected to judicial harassment as a means to sanction their activities. This was particularly the case of members of the Human Rights Association (*Insan Haklari Dernegi* – IHD); defenders fighting against the impunity of enforced disappearances were also targeted.

## Urgent Interventions issued by The Observatory in 2009 on countries of the region for which there is no country fact-sheet

COUNTRY	Names	Violations / Follow up	Reference	Date of Issuance
FRANCE	Mr. André Barthélémy	Judicial harassment	Press Release	February 18, 2009
FRANCE	Human rights defenders of migrants' rights	Publication of a fact-finding mission report	Press Release	June 16, 2009
GREECE	Ms. Constantina Kuneva	Assault	Urgent Appeal GRE 001/0109/OBS 018	January 29, 2009
		Ongoing lack of investigation	Open Letter to the authorities	March 26, 2009
SPAIN	Spanish Association for International Human Rights Law (AEDIDH)	Stigmatisation	Press Release	October 30, 2009

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# TURKEY

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In 2009, Turkey continued to demonstrate its failure to move towards the necessary human rights and governance reforms. The Government did not comply with its 2007 post-election pledge to engage in meaningful consultation on a new constitution, needed to strengthen respect for rights. The country remained heavily militarised. Police and military forces who burnt villages, kidnapped and summarily executed civilians in the past remained unpunished. According to the Human Rights Association (*İnsan Hakları Derneği* – İHD), 97 civilians were extra-judicially killed in 2009<sup>1</sup>. Allegations of torture, ill-treatments and impunity for perpetrators were also still a cause for great concern of human rights defenders in Turkey<sup>2</sup>.

Moreover, freedom to peaceful demonstration and meeting continued to face serious obstacles. For instance, in 2009, 229 peaceful demonstrations, public meetings, marches, press conferences were dispersed by force, leading to deaths and 565 wounded. More than 1,415 remained detained as of the end of 2009 and 369 were arrested and then released following their participation in a demonstration<sup>3</sup>.

The same applied to freedom of expression. Members of the opposition, journalists and civil society activists, including human rights defenders, continued to face prosecution and conviction based on the Criminal Code, the Press Law and the Law to Fight Terrorism (Law 3713)<sup>4</sup>. In 2009, 355 people were sentenced for the exercise of the right to freedom of expression, and 18 newspapers, most of them being accused of propaganda, were suspended temporarily<sup>5</sup>. Frequent websites bans also continued to

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1/ See İHD, *2009 Turkey Human Rights Violations Balance Sheet*, April 29, 2010.

2/ The report on torture and ill-treatment by the Parliamentary Human Rights Investigation Committee, adopted in January 2009, denounces that none of the 35 lawsuits filed against 431 members of the Istanbul police for ill-treatment or torture resulted in a conviction. According to the same report, only 2% of the police officers were subject to disciplinary sanctions as a result of an administrative investigation of the allegations of torture or ill-treatments. In 2009, İHD received more than 1,000 torture complaints.

3/ See İHD, *2009 Turkey Human Rights Violations Balance Sheet*, April 29, 2010.

4/ Article 301 of the Criminal Code, which criminalises denigration of the Turkish nation, Article 37-1 of the Criminal Code on “propaganda and lies against the State” and the Law 3713 are some of the main provisions that restrict free speech in Turkey.

5/ See İHD.

be a cause for concern: 4,662 websites were blocked under Law 5651 on “the organisation of online publications and combating offences committed by means of such publications”<sup>6</sup>. In such cases, judicial and administrative decisions blocked the entire website instead of filtering out unwanted content. For instance, *Youtube* and *Deezer* have remained blocked since May 2008<sup>7</sup>. However, on a positive note, it is to be noted that on February 4, 2009, the Interior Ministry Mr. Basir Atalay reopened an investigation into the 2007 murder of Mr. **Hrant Dink**, Editor of the Turkish-Armenian language daily *Agos*, after a report by the Prime Minister’s Service found negligence and potential culpability among high-ranking intelligence officials<sup>8</sup>.

The application of the anti-terrorism legislation mainly targeted Turkish citizens of Kurdish origin or those who expressed sympathy with the Kurds. This legislation is particularly problematic in that it is used to bring a large number of prosecutions targeting legitimate free expression regarding the Kurdish issue in Turkey, and it frequently results in prison sentences. Indeed, according to Article 215 of the Criminal Code, the mere public mention of certain individuals’ names is a criminal offence<sup>9</sup>. The remit of Article 7/2 of Law 3713 is also very broad, and in particular makes no distinction between supporting political aims, which are shared by a “terrorist” organisation, and promoting that organisation, including its violent methods and actions. As an example, on February 5, 2009, Mr. Aysel Tuğluk, a senior member of the pro-Kurdish Democratic Society Party (DTP), was sentenced to 18 months in prison by the Diyarbakır Fourth Heavy Penal Court for violating anti-terrorism legislation by referring to PKK guerrillas as “heroes to some” at a rally in 2006<sup>10</sup>. On April 14, 2009, Republic Prosecutor of Diyarbakır started an operation against the Kurdish political movement. On this date, approximately 52 Kurdish politicians and activists were arrested. The latest wave of arrests took place on December 24, 2009 in 11 Turkish provinces and targeted members of the Kurdish Peace and Democracy Party (BDP) – one day after many of those arrested had joined the newly formed BDP, created following the December 11, 2009

6/ Law 5651 allows prosecutors to block access if a site’s content is deemed liable to incite suicide, paedophilia, drug abuse, obscenity or prostitution, or violates the 1951 Law forbidding any attacks on the Turkish Republic’s founder, Mr. Mustafa Kemal Atatürk.

7/ See İHD.

8/ The renewed investigation was expected to focus on possible involvement by Government officials in the murder. Twenty suspects were arrested, and court proceedings were continuing in late 2009. Eight police officers were also being investigated over allegations that they had failed to act on warnings that Mr. Dink was in danger.

9/ In particular any reference to the leader of the Kurdistan Workers’ Party (PKK) Abdullah Ocalan.

10/ See Human Rights Foundation of Turkey Daily Human Rights Reports, October 28, 2009.



closure of the DTP by the Constitutional Court ruling that the party had become the “focal point of activities against the indivisible unity of the State, the country and the nation”<sup>11</sup>. Those arrested included a number of democratically elected mayors and officials of BDP, journalists and political activists. 28 were indicted, out of which 23 were remanded into custody pending trial for alleged links with the PKK as of the end of 2009. Since April 14, 2009, more than 1,400 Kurdish politicians, nine Mayors, Municipal and Provincial General Council members, Women’s Council and Youth Council members have been detained in all of Turkey<sup>12</sup>.

### **Ongoing judicial criminalisation of human rights organisations and their members**

In 2009, several human rights organisations continued to be subjected to judicial harassment and faced trials in order to hamper their activities. This was particularly the case of the İHD and its members. For instance, at the end of 2009, the criminal case that was opened by the Chief of Public Prosecutions Office of Beyoglu on October 17, 2008 against the İHD Istanbul branch pursuant to the Law on Associations No. 5253 was ongoing, following the complaint filed by the Province of Istanbul in which the Governor claimed that the İHD Istanbul branch had carried out activities that were contrary to its objectives by allowing the Mothers For Peace Initiative to hold a press conference in their conference room. Since July 19, 2007, the İHD Mersin branch is also facing ongoing judicial proceedings that are based on claims that the association acted in a way contrary to its objectives by joining the Platform Against Privatisation and the Labour and Democracy Platform<sup>13</sup> in Mersin. These proceedings contradict Article 23 of the İHD statutes, which states that the “Executive Committee carries out activities to establish platforms with other associations, foundations, trade unions and other NGOs, to join or leave platforms that carry out activities in the field of human rights, democracy and other

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11 / This decision contradicts the Constitutional Court’s previous ruling of January 2008, ruling against the closure of the pro-Kurdish Rights and Freedoms Party that had set a precedent by establishing that statements on the Kurdish issue fell within the boundaries of free speech. The ban was widely criticised both by NGOs and groups within Turkey and abroad. In the weeks leading up to the court’s decision, protests over the case in Turkey’s south-east grew in both scale and violence. Overall, since 1962, DTP is the 25th political party closed down in Turkey. On December 15, 2009, 1,000 people gathered in front of the DTP building in Bulanik, district of Mus province with the goal of protesting the closure of the DTP. The crowd was fired upon with a long-barrelled gun and a pistol from a store in the shopping district, leading to two people’s death and the injury of seven. See İHD.

12 / See İHD.

13 / The Labour and Democracy Platform is an association of progressive and labour organisations and political parties.

similar topics”<sup>14</sup>. Yet, on a positive note, it is to be welcomed that on April 30, 2009, a lower court granted the organisation Lambda Istanbul, which is working on lesbian, gay, bisexual, and transgender (LGBT) rights, permission to continue operating, after its closure in May 2008 following a decision by an Istanbul court. The case had been initiated by the Istanbul Governor’s office, which claimed that Lambda Istanbul’s objectives were “against law and morality”.

In that framework, several İHD leaders were in turn again subjected to arbitrary detentions, judicial harassment and arbitrary searches. On May 12, 2009, in Ankara, the offices and homes of Mr. **Hasan Anlar**, İHD Deputy Secretary General, Ms. **Filiz Kalayci**, İHD Executive Committee member, Mr. **Halil İbrahim Vargün**, İHD former Treasurer, and Mr. **Murat Vargün**, lawyer and İHD member, were raided by officers of the Anti-Terror Unit of the police. The four lawyers were immediately arrested and placed in police custody in the Anti-Terror Unit detention centre. This crackdown intervened after the İHD published in February 2009 a report on human rights violations in prisons of Turkey. The four lawyers had also been working on cases of human rights violations that occurred in detention. The court decided to release the four lawyers in the night of May 14, 2009, but imposed a travel ban on them as long as the proceedings were ongoing. On May 28, the 11th District High Criminal Court of Ankara ordered the re-arrest of Ms. Filiz Kalayci on the basis of an allegation of “aiding illegal organisations”<sup>15</sup>. Moreover, four different criminal cases against Mr. **Ethem Açıkalın**, former Chairperson of İHD Branch in Adana, remained ongoing in 2009. Arrested on January 23, 2009 on charges of “being a member of an illegal organisation” and “making propaganda of an illegal organisation” for his participation in a press conference organised on December 17, 2007 to denounce the assassination on December 10, 2007 of Ms. Kevser Mızrak, reportedly a member of the Revolutionary People’s Liberation Party/Front (DHKP-C) allegedly killed by police force, he was released on bail on June 23, 2009 by the Adana Eighth Heavy Penal Court. On October 8, 2009, the same court sentenced Mr. Açıkalın to 10 months of imprisonment on charges of “making propaganda of an illegal organisation”. He appealed the decision and, at the end of 2009, the appeal was pending. In addition, on October 17, 2009, the First Criminal Chamber of the Adana First Instance Court sentenced

14 / On February 26, 2010, the Mersin Second Criminal Court of First Instance rejected the petition for closure. However, the Public Prosecutor appealed to the Supreme Court.

15 / On January 28, 2010, the court ordered the release of Ms. Kalayci. However, Ms. Kalayci as well as Messrs. Hasan Anlar, Halil İbrahim Vargün and Murat Vargün remained prosecuted for “aiding illegal organisations”. The next hearing was scheduled for June 10, 2010.

Mr. Açıkalın to three years of imprisonment for charges of “instigating a part of the people to hatred or hostility” for participating in a TV programme of *Roj TV* on October 29, 2008. During this programme, Mr. Açıkalın had criticised the Governor of Adana for cancelling the green cards<sup>16</sup> of families whose children were arrested during demonstrations in Adana. He appealed the sentence. At the end of 2009, the appeal was still pending. In December 2009, Mr. Açıkalın left Turkey to seek asylum abroad<sup>17</sup>. On March 3, 2009, Mr. **Ridvan Kizgin**, an İHD Board member and former Chairperson of the Bingöl branch, who was sentenced on March 3, 2008 by the Supreme Court of Appeals (Yargıtay) to two and a half years’ imprisonment for “concealing evidence” in the 2003 killing by unknown perpetrators of five villagers in Bingöl after he published a report denouncing the assassination of these five persons. However, as of the end of 2009, two other proceedings against him remained pending before the Court of Appeal for “insults to a State official” and “insults to the Turkish nation”<sup>18</sup>. Finally, on December 24, 2009, police officers belonging to the Anti-Terror Unit launched an operation in at least 11 provinces in Turkey following an order issued by the Diyarbakir Chief Public Prosecution Office that led to the arrest of dozens of Kurdish opposition members, journalists and civil society activists including Mr. **Muharrem Erbey**, General Vice-Chairperson of the İHD and Chairperson of its Diyarbakir province branch. Mr. Erbey was then remanded into custody and charged by the Diyarbakir Special Heavy Penal Court on December 26, 2009 of “being a member of an illegal organisation”. Simultaneously, the police searched İHD offices in Diyarbakir and proceeded to the confiscation of İHD computers and documentation, including archives that had been collected during 21 years documenting serious human rights violations like politically motivated killings by unknown assailants, enforced disappearance and torture cases.

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16 / The green card system was established in 1992 and is directly funded by the Government. Poor people earning less than a minimum level of income, which is defined by the law, are provided a special card giving free access to outpatient and inpatient care at the State and some university hospitals, and covering their inpatient medical drug expenses but excluding the cost of outpatient drugs.

17 / The Adana Sixth Heavy Penal Court is also prosecuting Mr. Açıkalın on charges of “being a member of an illegal organisation” for his participation as an İHD observer to some activities led by the Socialist Platform of the Oppressed such as press releases, marches etc. Another case was opened before the Adana Seventh Heavy Penal Court for charges of “making propaganda of an illegal organisation” for his participation in a press conference in front of the Kurkçuler prison organised on December 19, 2007 by ĐHD, the Socialist Platform of the Oppressed and the Socialist Democracy Party (SDP) to commemorate the operation “Back to Life”, which was carried out on December 19, 2000 by the Turkish security forces against 20 prisons throughout Turkey at the same time to stop hunger strikes. During the operation, 28 prisoners were killed and many of them wounded.

18 / See Annual Report 2009.

## Repression faced by human rights defenders fighting for justice for victims of enforced disappearances

In 2009, several human rights defenders who fight for the truth, justice and reparation of victims of enforced disappearances in Turkey were subjected to judicial harassment. For instance, on August 11, 2009, Mr. **Camal Bektas**, President of “Yakay-der”, an association struggling for the right to obtain the truth on enforced disappearance cases occurred in Turkey, was sentenced by the Fifth Chamber of the Court of Diyarbakir for “undermining the reputation of the army” and “propaganda and lies against the State” to one year of imprisonment. This judicial harassment followed the organisation by Yakay-der of a conference in July 2008 in Diyarbakir during which Mr. Bektas denounced the existence of mass graves in Turkey and accused the army of blocking access to several of them. The sentence took place in full contradiction with all fair trial requirements as no oral and public hearing took place and Mr. Bektas had no opportunity to defend himself. In addition, the Fifth Chamber of the Court of Diyarbakir has first and final jurisdiction to entertain the most serious crimes and therefore the sentence cannot be appealed, but Mr. Bektas’ lawyer immediately filed an application for review of the conviction before Yargitay, based in Ankara, in charge of reviewing the decisions and judgements given by courts of justice from the point of their conformity with the law. The application suspended the implementation of the sentence and should have been examined by Yargitay within three months. At the end of 2009, no decision had been issued yet. Moreover, another criminal investigation on Mr. Bektas was opened in June 2009 in relation to statements he made between February and June 2009, asking for the opening of a mass grave located in Van, a military area in eastern Turkey. Should the Prosecutor decide to prosecute him, Mr. Bektas risks a prison term ranging from four to five years. At the end of 2009, the investigation was ongoing. Ms. **Hacer Nar**, a member of the “Mothers for Peace” association, which struggles for the peaceful settlement of the Kurd issue and the right to obtain the truth on enforced disappearance cases occurred in Turkey, as well as a member of the Euromed Federation Against Enforced Disappearances (FEMED), was arrested as she was going to her office on April 12, 2009. On April 9, 2009, security forces had searched the offices of the Mothers for Peace association and confiscated a computer, a hard drive as well as working documents of the association. As of the end of 2009, the material seized had still not yet been returned to the association and Ms. Nar was held in Bakirköy prison, pending her trial on the basis of her alleged links with the PKK. Likewise, in 2009, Ms. **Nezahat Teke**, another member of the association, was convicted and sentenced to one year and a half of prison by the Fifth Chamber of the Court of Diyarbakir on the basis of similar charges without an oral and public trial, following appeals for peace and

the respect of the right to truth in Turkey and her denunciation of conditions of detention of political prisoners. Her lawyer filed an application for review of the conviction before Yargıtay. The application suspended the implementation of the sentence and should have been examined by Yargıtay within three months. At the end of 2009, no decision had been issued yet. Finally, Ms. **Pinar Seleğ**, a writer and sociologist who has been actively advocating for women's rights, the rights of discriminated and marginalised groups, including street children, and for the rights of the Kurdish and Armenian minorities, faced again trial for "alleged terrorism"<sup>19</sup>. In March 2009, the Ninth Criminal Department of the Supreme Court of Appeals (YCGK) demanded a life sentence for Ms. Seleğ, therefore cancelling the two decisions of the 12th Criminal Chamber of the Istanbul Court in 2006 and 2008 to acquit her after determining there was no evidence linking her to the blast<sup>20</sup>.

### **Arrest and trial of trade unionists**

In 2009, repression against the trade union movement was brought to bear at several levels, including systematic repression of peaceful protests, arbitrary arrests of trade union leaders and members, and confiscation of their documents because of their activities in favour of labour rights. For instance, on May 28, 2009, the Confederation of Public Employees' Trade Unions (KESK) headquarters in Ankara, its branch offices in İzmir and Van, even the houses and workplaces of some of its members were raided and searched by the Gendarmerie, and all official documents regarding gender issues and trade union activities, as well as a laptop and 18 CDs were confiscated. On the same day, 35 trade union leaders and members were arrested and placed in detention in "F-type" prisons<sup>21</sup> or small group isolation prisons. 31 of them were charged of terrorism charges, of whom 22 were kept in detention. Until the submission of the indictment on

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19 / Ms. Seleğ had initially been arrested by the police two days after the July 9, 1998 explosion at Istanbul's spice bazaar, in which seven people were killed and many injured. She was at the time working on an academic research on the Kurd issue and the origin of the civil war. Four expert reports said the explosion was caused by a gas leak and there was no evidence of a bomb. The only reason for accusing Ms. Seleğ in the explosion case was the testimony of a detainee who reportedly gave the testimony to the police under torture. In December 2000, Ms. Seleğ was released on bail after she had spent two years and an half in prison.

20 / The Public Prosecutor of the Supreme Court of Appeals objected to the decision of the Ninth Criminal Department of the YCGK but, on February 9, 2010, the Criminal General Council of Supreme Court (the Court of Cassation) rejected the objection of the Public Prosecutor and stated that the decision of the Ninth Criminal Department was appropriate. The case will be re-examined before the Istanbul 12th Criminal Chamber. If the court acquits Ms. Seleğ again, the decision will be re-examined again by the Criminal General Council of the Supreme Court.

21 / The F-type prisons are characterised by one- or three-inmate isolation cells. Many acts of torture and ill-treatment have reportedly taken place in these prisons.

July 31, 2009, the defence lawyers had not had access to their files, their homes and workplaces were searched, and their computers confiscated. On November 19 and 20, an hearing took place before the İzmir Heavy Penal Court No. 8 on this case, and the 31 leaders and members of KESK were tried on charges of “being members of the PKK”. The evidence against them referred primarily to their activities in support of such issues as Kurdish-language education and their participation in meetings. During the trial, the rights of the defence were constantly violated, with the President of the court himself doing the interrogations, and the defence lawyers being impeded to speak to the defendants. The only evidence against them stemmed from their recorded telephone conversations and their e-mail exchanges. On November 20, the court ruled in favour of the conditional release of the 22 leaders who remained detained. They had to appear in court again on March 2, 2010 and are banned to leave the country until the end of the trial. Moreover, on September 30, 2009, **Mr. Murad Akincilar**, a Turkish trade unionist working in Switzerland as the Secretary of the Swiss inter-professional trade union UNIA, based in Geneva, was arrested in Istanbul by officers in plain clothes along with sixteen other persons on terrorism charges, while they were holding a meeting for the organisation of the Social Forum in Turkey. Mr. Akincilar was then in Turkey visiting his sick mother. Ten of those arrested were released after being interrogated by the police and the others, including Mr. Murad Akincilar, remained in detention as of the end of 2009, pending trial. While in detention, Mr. Akincilar partially lost his sight in one eye because he was not granted the necessary medical care<sup>22</sup>.

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22 / See International Trade Union Confederation (ITUC).

## Urgent Interventions issued by The Observatory in 2009

Name	Violations / Follow up	Reference	Date of Issuance
Mr. Ethem Açıklan	Search / Administrative harassment	Urgent Appeal TUR 001/0108/OBS 011.1	March 11, 2009
Mr. Hasan Anlar, Ms. Filiz Kalayci, Mr. Halil İbrahim Vargun and Mr. Murat Vargün	Search / Arbitrary detention	Urgent Appeal TUR 001/0509/OBS 070	May 12, 2009
	Release / Travel ban / Judicial harassment	Urgent Appeal TUR 001/0509/OBS 070.1	May 15, 2009
Ms. Filiz Kalayci	Ongoing arbitrary detention / Judicial harassment	Urgent Appeal TUR 001/0509/OBS 070.2	October 27, 2009
Ms. Filiz Kalayci and Ms. Yüksel Mutlu	Harassment	Joint Press Release	May 29, 2009
Confederation of Public Employees' Trade Unions (KESK) and Eğitim-Sen / Ms. Songül Morsunbul, Ms. Gülçin Isbert, Mr. Abdurrahman Dasedemir, Ms. Elif Akgül Ates, Mr. Lami Özgen, Mr. Haydar Deniz, Ms. Mine Cetinkaya, Ms. Sermin Günes, Mr. Nihat Keni, Mr. Mehmet Hanifi Kuris, Ms. Sakine Esen Yılmaz, Mr. Aydın Güngörmez, Mr. Mustafa Beyazbal, Mr. Harun Gündes, Mr. Abdulcelil Demir, Ms. Yüksel Özmen, Ms. Meryem Çağ, Mr. Hasan Soysal, Mr. Aziz Akikloglu, Mr. Hasan Umar, Ms. Sueyda Demir, Ms. Yüksel Mutlu, Mr. Onder Dogan, Mr. Nejat Sezginer, Mr. Cezmi Gunduz, Mr. Ali Cengiz, Mr. Bisar Polat, Ms. Seher Tumer, Ms. Olcay Kanlibas, Mr. Erdal Guzel, Ms. Emriye Demirkir and Ms. Selma Aslan	Ongoing arbitrary detention	Open Letter to the authorities	July 30, 2009
	Conditional release	Press Release	November 25, 2009
Mr. Camal Bektas, Ms. Hacer Nar and Ms. Nezahat Teke	Sentencing / Judicial harassment	Urgent Appeal TUR 002/0809/OBS 119	August 20, 2009
Mr. Camal Bektas		Closed Letter to the authorities	September 1, 2009
Ms. Hacer Nar	Arbitrary detention	Press Release	October 28, 2009
Mr. Muharrem Erbey / Human Rights Association (IHD)	Search / Arbitrary detention	Press Release	December 29, 2009

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# REGIONAL ANALYSIS EASTERN EUROPE AND CENTRAL ASIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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The absence of political pluralism in the majority of the countries of the region (*Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Russian Federation, Turkmenistan, Uzbekistan*) continued to foster the emergence of increasingly authoritarian governments for which any form of dissidence is perceived as undermining the State political stability. In particular, the situation deteriorated worryingly in *Kyrgyzstan*, where the Government continued to slide towards repressive authoritarianism. In these countries, the Executive considers defenders to be a threat, as are independent journalists and members of the opposition. Consequently, any criticism of the human rights situation is frequently repressed or considered prejudicial.

Furthermore, attempts of rapprochement by the international community to extricate certain particularly repressive countries from their isolation have borne no fruit. The European Union lifting of some of the sanctions imposed on *Uzbekistan* and *Belarus* was indeed accompanied by no improvement in the situation of human rights and their defenders, who continued to be persecuted in these two countries. In some respects the repression against defenders even became harsher after the sanctions were lifted. Similarly, the development of economic relations with *Turkmenistan* by Europe and the United States was not accompanied by any progress in terms of freedoms of association and expression and, more generally, of respect for fundamental rights, while repression of defenders continued. Finally, *Kazakhstan* showed little willingness to improve the human rights situation despite its election to the Presidency of the Organisation for Security and Co-operation in Europe (OSCE) in 2010, and kept ignoring the appeals of the international community calling for an improvement in the human rights situation in the country.

In the South Caucasus, civil society also operated in a generally hostile climate. The pressure on certain defenders was accentuated in *Georgia* and remained very strong in *Azerbaijan* as well as, to a lesser degree, in *Armenia*, in a general context in which justice was most frequently control-



led by the executive body and where the problem of media independence persisted.

### **Obstacles to human rights defenders' freedoms of association and peaceful assembly**

In recent years, States in the region have put in place a legal arsenal that tightly controls freedoms of association and peaceful assembly, blocking defenders capacity to organise themselves and depriving them of space for public expression. This process continued in 2009, with the adoption of new laws on the media (*Belarus, Kazakhstan*), freedom of association (*Azerbaijan*) and freedom of assembly (*Georgia, Kyrgyzstan*). Furthermore, the reform of the Law on NGOs that aimed to facilitate the work of associations in the *Russian Federation* has had no effect yet. On the contrary, associations have continued to cope with considerable problems in registering and were subjected to disproportionate controls. In general, the issue of registration of associations remained a major concern for defenders, who consequently were often forced to work clandestinely, especially in *Turkmenistan*, where there is no independent registered association, or in *Uzbekistan* and *Belarus*, where defenders working in the framework of a non-registered organisation are liable to criminal proceedings. In *Azerbaijan*, the Ministry of Justice also refused to register some organisations on baseless pretexts and associations were subjected to checks, with the subsequent risk of dissolution.

Throughout the region, it has also become extremely difficult to organise and hold peaceful meetings calling for respect for human rights, even in self-styled democratic countries (*Georgia, Serbia*). In some countries, it has become almost impossible (*Belarus, Uzbekistan*), or totally impossible (*Turkmenistan*), to assemble and demonstrate. In addition, peaceful assemblies remained subject to unjustified restrictions in *Armenia, Belarus, Kazakhstan*, the *Russian Federation* and *Uzbekistan*, and space for holding meetings was restricted in *Kyrgyzstan*. Furthermore, in *Armenia, Belarus, Kazakhstan* and *Uzbekistan*, intimidation and obstacles to freedom of movement were aimed at, amongst other things, dissuading protesters from taking part in demonstrations. In *Georgia, Belarus* and in the *Russian Federation*, defenders were victims of violence perpetrated by police forces that dispersed and arrested demonstrators. In these countries, as in *Kazakhstan, Kyrgyzstan* and *Uzbekistan*, defenders were frequently arrested for taking part in meetings to promote human rights and, in some cases, sentenced to fines or imprisonment. In *Belarus* and *Uzbekistan*, several people were also subjected to ill-treatment in police stations during custody that followed these arrests.

## Ongoing violence, surveillance and intimidation campaigns against defenders in the region

Once again this year, defenders were targets of death threats in most countries in the region (*Azerbaijan, Georgia, Kazakhstan, Russian Federation, Turkmenistan*). In *Georgia*, the *Russian Federation* and *Uzbekistan*, defenders were also victims of particularly violent defamation campaigns. Termed as “enemies of the nation” (*Georgia*), “drug traffickers”, “dangerous criminals”, “crooks” (*Uzbekistan*), “terrorists” (*Russian Federation*) or presented as individuals motivated solely by foreign funding (*Russian Federation, Uzbekistan*), these campaigns were part of a global strategy to weaken defenders and to encourage acts of violence to be committed against them. Physical attacks were used as a means of putting pressure on and intimidating the latter. Whether perpetrated or not by State actors, these acts of physical violence were committed throughout the countries in the region and in general have remained unpunished (*Azerbaijan, Kazakhstan, Kyrgyzstan, Russian Federation, Serbia*). In the *Russian Federation*, these acts of violence have gone as far as the murder of six human rights defenders with total impunity. A human rights defender also remained missing as of the end of 2009. Attacks were particularly frequent in the States of Central Asia. Friends and relatives of victims were also affected by attacks and threats. These have been on a particularly disturbing scale in *Uzbekistan, Kazakhstan* and *Turkmenistan*, where the children of defenders were threatened with reprisals.

Faced with the activities of defenders, the fears of the authorities were also reflected in the establishment of an excessive system of surveillance. In many countries, there was regular control of e-mails, telephone calls and defenders’ journeys. In *Uzbekistan*, defenders were frequently followed and their homes were regularly placed under surveillance.

States also tried to restrict the work of defenders by placing obstacles in the way of exchanges with their partners abroad. As an example, in *Turkmenistan*, many defenders were subjected to a ban on leaving the country and could not go abroad. In *Belarus*, defenders were also subjected to disproportionate checks when they left the country. In addition, in *Belarus, Kyrgyzstan* and *Uzbekistan*, foreign defenders were prevented from entering the country or from meeting local defenders. In the *Russian Federation*, several defenders were also prevented from attending the OSCE Human Dimension Implementation Meeting, whereas others were victims of harassment, clearly linked to their participation in this meeting (*Kyrgyzstan, Turkmenistan*).

## **Defenders who fight against impunity, intolerance, racism and discrimination still a favourite target**

Defenders who fight against the impunity that accompanies human rights violations committed by State actors and those who denounce the failings of the justice system remained a favourite target of repression. The working conditions of defenders who work in regions that are far removed or even cut off from capital cities are in many ways more dangerous due to the lack of mechanisms for media and political mobilisation (*Azerbaijan, Georgia, Russian Federation*). Furthermore, the work of defenders remained extremely difficult in conflict or post-conflict zones (*Georgia, Russian Federation, Uzbekistan*). These geopolitical tensions resulted in a climate of fear on the whole territory of those countries and strengthened drastic security policies that considerably hampered defenders' capacity to act. This was especially the case in North Caucasus (*Russian Federation*), where there was very serious repression of defenders who denounced massive human rights violations in the region. In *Georgia*, harassment continued of defenders who criticised the violations committed by the Government and the local authorities during the management of the war in August 2008. Similarly, defenders who combat the acts of violence committed by the forces of order in the name of the fight against religious extremism and of anti-terrorism in the south of *Kyrgyzstan* and *Uzbekistan* were particularly vulnerable. In *Belarus* and in the *Russian Federation*, the threats and acts of violence committed by members of extreme right organisations against defenders who combat racism and xenophobia were still extreme, going as far as the murder of defenders in the *Russian Federation*. In *Georgia* and *Azerbaijan*, those who defend the rights of minorities were subjected to threats and judicial harassment. Finally, defenders of lesbian, gay, bisexual and transgender (LGBT) rights, people who are in general disparaged by the whole population, were again this year victims of threats and violence on the part of the police force (*Georgia*), and of attacks carried out by fascist groups (*Serbia*). In *Uzbekistan*, activities relating to gender equality were also sensitive.

## **Repression of defenders at the time of elections**

Defenders' rights and their capacity to take action were reduced considerably at the time of the elections that took place in several countries in 2009. In *Armenia* and *Azerbaijan*, election observers were repressed or prevented from carrying out their work before and during the elections. Anxious to silence any opposition protest challenging their legitimacy, the authorities increased repression and controls of defenders at the time of the parliamentary elections in *Uzbekistan* and the parliamentary elections in *Kyrgyzstan*.

## Defenders of economic and social rights and of the right to the environment in the line of fire

In the framework of an economic crisis that undermines the ruling powers, defenders of social rights, particularly in *Kazakhstan*, were also in the line of fire in 2009, when the authorities criminalised and sometimes used violence to repress social protest movements. In addition, in *Turkmenistan* and *Kyrgyzstan*, defenders of the right to the environment and the rights of victims of ecological disasters were arrested and prosecuted for their work. Finally, in *Uzbekistan* and *Kyrgyzstan*, those who fight against child labour and defend the rights of smallholders were on several occasions arrested and sometimes given heavy prison sentences following unfair trials. Defenders who denounced corruption were also the target of judicial harassment (*Azerbaijan, Georgia*).

## Judicial harassment of defenders throughout the region and ill-treatment in detention

Beyond the restrictive legal framework regarding freedoms of association and assembly, providing the authorities with the possibility of easily sentencing people who fight for respect for human rights, the lack of freedom of expression and the problem of the independence of the judiciary remained a major concern throughout the region. Proceedings for “defamation”, “attacks on dignity”, “hooliganism”, “deliberate false accusations” or “the illegal collection of information and disclosure of State secrets” became favourite ways of pursuing defenders who have become too much of an embarrassment because of their denunciation of the practices of State actors in prisons and police stations (*Belarus, Russian Federation*), the crimes committed by the Government against defenders (*Russian Federation, Uzbekistan*), acts of corruption (*Kazakhstan*); and because of the calls for the rights of the victims of ecological disasters (*Kyrgyzstan*) or the failings of the legal system (*Azerbaijan, Russian Federation*). In some countries, defenders were given heavy prison sentences based on fabricated evidence or following unfair trials (*Azerbaijan, Kazakhstan, Russian Federation, Turkmenistan*), or were given suspended sentences (*Kyrgyzstan*) or fines (*Georgia, Russian Federation*). This practice also became a means of massive repression in *Uzbekistan*, where accusations of economic crimes (fraud, misappropriation, tax offences, corruption, blackmail) were used to shut defenders away for long periods. At the end of 2009, at least sixteen defenders were still being held arbitrarily in the country in inhuman and degrading conditions. In *Belarus*, a defender committed suicide after receiving a prison sentence.

This situation is all the more disturbing as the practice of torture in prisons in the region and the catastrophic sanitary state of detention

centres undermine the physical and psychological health of the defenders who are detained. Deprivation of medical care led to the death of a defender of the rights of minorities while he was serving a prison sentence in *Azerbaijan*. The situation of prisoners of conscience is the most alarming in *Uzbekistan*. Subjected to torture and to inhuman and degrading sentences and treatment, their state of health is of particular concern. The situation appears to be similar in *Turkmenistan*, where the total news blackout prevents detailed information from being obtained on the conditions of detention of defenders who are rotting away in the country's jails.

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# ARMENIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

In 2009, the human rights situation in Armenia improved compared with 2008, when clashes between the police force and demonstrators during protests in March 2008 and the establishment of a state of emergency had followed the announcement of the presidential election results. The amnesty of June 19, 2009 permitted the release of many of the opponents arrested during the demonstrations. However, at the end of 2009, 17 of them were still held in detention and were serving nine-year prison sentences<sup>1</sup>. Although the Parliamentary Assembly of the Council of Europe (PACE) welcomed the amnesty decision, it nevertheless expressed concern regarding several points<sup>2</sup>. The Assembly regretted the breakdown of the work of the independent expert group responsible for establishing the facts regarding the events of March 1 and 2, 2008 and the circumstances that led up to them. It also expressed concern regarding the fate of persons convicted solely on the basis of police evidence and noted that it would monitor the situation of those persons still held in detention. In addition, despite positive changes in legislation on conducting meetings, peaceful assemblies and demonstrations, the Assembly noted that requests to organise rallies were still frequently rejected by the authorities on technical grounds, or that unwarranted restrictions were placed on them<sup>3</sup>.

Furthermore, although the release on health grounds of the journalist Arman Babajanyan on August 4, 2009 appeared to be a sign of the Armenian authorities' goodwill<sup>4</sup>, in parallel, the beating of Mr. Argishti

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1/ See Statement issued by the Vanadzor Office of the Helsinki Citizens' Assembly, November 4, 2009.

2/ See PACE Resolution 1677 (2009), June 24, 2009.

3/ See Helsinki Committee of Armenia Report, *Monitoring of the freedom of peaceful assembly in Armenia*, Yerevan, 2009.

4/ Editor-in-chief and founder of the daily newspaper *Zhamanak Yerevan*, Mr. Babajanyan had been in prison since 2006 for evading military service. The "Independent Commission on Release on Parole and Reduced Sentences" decided on his release on health grounds forty days before the end of his sentence, although he had previously made several applications to the same committee for this reason. See Civil Society Institute (CSI).

Kiviryan, Editor-in-chief of the on-line news portal *Armenia Today*<sup>5</sup>, on April 30, 2009, underlined how fragile press freedom remains<sup>6</sup>.

Nor did democratic progress seem to apply to the electoral process, as typified by the way the local elections were conducted in Yerevan on May 31, 2009, during which local actors, particularly the Helsinki Committee of Armenia, reported numerous frauds<sup>7</sup>, including the arrest and three months' imprisonment of the young political opponent Tigran Arakelyan<sup>8</sup>.

### **Obstacles to holding meetings and peaceful assemblies by human rights organisations**

The Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, modified on March 17, 2008 during the state of emergency<sup>9</sup>, then amended on July 11, 2008 under pressure from the OSCE Office for Democratic Institutions and Human Rights (ODIHR)<sup>10</sup>, includes several restrictive provisions, in particular Article 9.4.3, which grants considerable powers to the police services in banning demonstrations<sup>11</sup>. Several demonstrations

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5/ See CSI.

6/ It must, however, be acknowledged that the investigation following the November 17, 2008 attack on Mr. Edik Baghdasaryan, President of the NGO "Investigative Journalists" and Editor of the on-line newspaper *HetaqOnline*, which works to defend the independence of the investigative press and condemns corruption in Government circles, permitted the arrest of Mr. Karen Harutiunyan, one of the three suspects in the attack, and his sentencing by the Nork Marsh District Court on November 17, 2009 to five years in prison for "hooliganism" and "premeditated blows that caused bodily harm of medium gravity". See Annual Report 2009 and CSI.

7/ See Joint Report of the Helsinki Committee of Armenia and the Urban Foundation for Sustainable Development on the municipal elections of May 31, 2009 in Yerevan, June 2009.

8/ Mr. Tigran Arakelyan was arrested on July 5, 2009 after a dispute with the police while he distributed leaflets announcing an opposition rally on July 1, 2009. Accused of "hooliganism" and "violence against a representative of the authorities", he risks a five to ten years' prison sentence. Initially held in temporary detention for three months, he was placed under house arrest on October 9, 2009 due to health problems. As of the end of 2009, the case was still being investigated. See CSI Press Release, October 9, 2009.

9/ As a reaction to the wave of protests that followed the re-election of Mr. Serzh Sarkisian as President of the Republic on February 19, 2008, the state of emergency was decreed from March 1 to 20, 2008, including a temporary ban on the independent media, the suspension of the activities of NGOs and the political parties and the adoption of a new law that in particular restricted the freedom of peaceful assembly.

10/ See Joint Opinion No. 474/2008 on the Draft Law on Amending and Supplementing the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia prepared by the Venice Commission and ODIHR, endorsed by the Venice Commission at its 75<sup>th</sup> Plenary Session, Venice, June 13-14, 2008.

11/ Article 9.4.3 of the Law provides that an assembly may be banned by the authorities if credible data exists according to which the conduct of the event "creates imminent danger of violence or real threat to the national security, the public order, the health and morality of society, the constitutional rights and freedoms of others". Such "data" may be considered "credible" if the police of the Armenian Republic or the National Security Service has issued an justified official opinion on a real threat to the constitutional order, a risk of violence, a threat to the health and morality or encroachments on the constitutional rights and freedoms of others.

were banned or blocked in 2009 in Yerevan on this basis. Indeed, when a demonstration is due to take place in Yerevan, the police generally restricts freedom of movement by suspending public transport between Yerevan and the regions and the excessive deployment of police in different parts of the city was often observed<sup>12</sup>. This is what took place, for example, during the demonstration on March 1, 2009 organised in memory of the March 1, 2008 victims and which the authorities initially banned<sup>13</sup>.

In addition to the difficulties that defenders continued to encounter in organising peaceful assemblies, they came up against obstacles during the organisation of events or meetings related to human rights issues, as they had in 2008. Hotels continued their practice of refusing to let NGOs organise events on their premises in 2009. For instance, on November 12, 2009, the day before the Helsinki Committee of Armenia was due to present its report on freedom of assembly in Armenia, the hotel where the meeting was due to be held refused to host the conference, on the pretext that it was due to host another event on the same day. It was only after long and difficult negotiations that the presentation finally took place on the day that had been planned<sup>14</sup>.

### **Misuse of criminal justice against defenders**

The year 2009 was marked by the first arrest in Armenia of a defender, **Mr. Arshalyis Hakobian**, a member of the Armenian Helsinki Association, following his activities as an observer of the Yerevan municipal elections. On May 31, 2009, the Election Committee leader and members used violence to chase Mr. Hakobian and his colleagues from a polling station in Yerevan. Mr. Hakobian filed a complaint with the Special Investigation Department, which called him as a witness on June 5, 2009. Since he had received no official summons, Mr. Hakobian refused to attend. Two police officers then visited his home with a “summons” whose validity Mr. Hakobian at first contested and refused to sign and then, when the police officer put pressure on him, he wrote his signature in the wrong place. Irritated by Mr. Hakobian’s attitude, the police officer arrested him and took him to the Kentron district police station, where Mr. Hakobian was beaten. He was handcuffed and transferred to the Kentron District Department of Investigation and charged with “using violence against a Government representative”, under Article 316.1 of the Criminal Code, then held at Nubarashen prison. On October 16, 2009, the Court of First

12 / See Helsinki Committee of Armenia Report, *Monitoring of the freedom of peaceful assembly in Armenia*, 2009.

13 / *Idem*.

14 / See CSI.



Instance of the Keltron and Nork-Marash Districts of Yerevan decided to release Mr. Hakobian on bail. He was banned from leaving the country and the investigation was still under way as of the end of 2009<sup>15</sup>.

Two other defenders also found themselves charged in a case, despite initially being the plaintiffs. Ms. **Mariam Sukhudyán**, a young ecological activist from the organisation “SOS Teghut”, engaged not only in environmental protection but also in protecting the rights of the needy, was accused of “defamation” under Article 135.1 of the Criminal Code. In the spring of 2008, Ms. Sukhudyán and other volunteers who worked at the United Nations-supported boarding school No. 11 in the town of Nubarashen (a suburb of Yerevan), had revealed in several media that pupils of the school had been ill-treated and she had publicly accused the boarding school administration of not ensuring minimum standards of education and hygiene. On November 13, 2008, the Armenian public channel had broadcast the account of one of the boarding school pupils, who had revealed that she had been raped by one of the teachers. On the basis of this story the Erebundi Criminal Investigation Department had opened an enquiry whose findings cleared the teachers and the school administration. On February 11, 2009, the Erebundi police department investigation unit opened an investigation against Ms. Mariam Sukhudyán on the basis of accusations by the teacher who claimed that Ms. Sukhudyán had forced the young woman to testify against him. In the end, Ms. Sukhudyán was charged with “defamation” on October 20, 2009<sup>16</sup>. According to her lawyer, procedure was not respected during the criminal investigation: the student who had stated that she had been raped was seemingly forced to change her statement and the investigation apparently took no account of the evidence of four children who testified to similar cases of sexual abuse<sup>17</sup>. On October 21, the chief of Erebundi district police proposed an amnesty for Ms. Mariam Sukhudyán, but the latter refused, saying that she was not guilty and that she wanted the criminals to be punished. In November 2009, Ms. Sukhudyán agreed not to leave Yerevan before the start of the trial. The investigation was closed at the beginning of December 2009 and the trial date had still not been fixed as of the end of 2009. In addition, as of the end of 2009, the investigation ongoing since August 28, 2008 against Mr. **Mushegh Shushanyan**, the lawyer of five people arrested during the events of March 2008 for “disrespect towards the court” under Article 343.1 of the Criminal Code, after Mr. Shushanyan had left the

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15 / *Idem*.

16 / Initially accused of “defamation” on August 11, 2009, the charges against her were changed to “false testimony” on August 15, 2009 in application of Article 333.1 of the Criminal Code.

17 / See CSI and *HetqOnline*, November 16, 2009.

courtroom, remained suspended until the Constitutional Court reached a decision regarding the constitutionality of Article 343.1<sup>18</sup>.

### **Urgent Interventions issued by The Observatory in 2009**

Name	Violations / Follow up	Reference	Date of Issuance
Mr. Arshaluys Hakobyan	Arbitrary detention / Ill-treatments	Press Release	June 12, 2009
	Release	Press Release	October 20, 2009

18 / See Annual Report 2009 and CSI. In a ruling on January 14, 2010, the Constitutional Court considered Article 343.1 to be unconstitutional. The proceedings against Mr. Mushegh Shushanyan were therefore annulled.

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# AZERBAIJAN

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

The human rights situation in Azerbaijan did not improve in 2009. The democratic functioning of the country remained an illusion, and attacks on freedom of expression increased. The March 18, 2009 referendum on several amendments to the Constitution, the preparation and conduct of which were seriously challenged, permanently lifted the ban for a president to be re-elected for a third time, opening the possibility for Mr. Ilham Alyev to remain in power for life<sup>1</sup>. The local elections on December 23, 2009 also demonstrated the limits of democratic progress in the country. According to the Institute for Peace and Democracy (IDP), as of December 2, 2009, only 8% of candidates in local elections were members of the opposition<sup>2</sup>. Civil society explained the excessive representation of the Government party "United Azerbaijan" by the obstacles the other candidates faced in officially filing their candidacy<sup>3</sup>. Similarly, the Election Monitoring and Democracy Studies Centre (EMDSC) recorded serious breaches of the electoral process<sup>4</sup>. The Council of Europe meanwhile has called for a revival of multiparty democracy in Azerbaijan<sup>5</sup>.

Furthermore, in 2009, independent journalists again paid the price for their freedom of speech, with assaults and physical intimidation against them

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1/ The European Commission for Democracy, through the Peace Council of Europe (Venice Commission), expressed concern about this amendment that is very negative in terms of democratic practice, although it also noted significant improvements (such as measures conducive to greater transparency in governance and the introduction of a popular legislative initiative). The amendment to Article 32 also raised concerns from the Council of Europe and civil society in that it could restrict the right to freedom of expression and information in framing the law regarding journalists photographing, filming or recording of public events on behalf of the protection of privacy and family. See Opinion on the draft amendment to the Constitution of the Republic of Azerbaijan, adopted by the Venice Commission at its 78th plenary session, March 19, 2009.

2/ See Conclusions of the discussion on human rights in Azerbaijan led by the IDP on December 2, 2009.

3/ See Statement from the news information agency *Turan*, December 17, 2009.

4/ See Faik Medjid, *CEM&TD: Azerbaijan has no conditions for democratic elections*, *Kavkaz Uzel* (*Caucasian Knot*), November 27, 2009.

5/ The international delegation of the Congress of Local and Regional Authorities of the Council of Europe, which observed the local elections on December 23, 2009, regretted the absence of a pluralistic political landscape in Azerbaijan and pointed to irregularities in the polling stations. It particularly regretted the lack of independence in the media coverage of the elections, which focused on the majority party as well as incidents surrounding the counting of turnout in polling stations, the role and origin of local observers, the readability of ballots, and the consistency of the vote count.

constantly increasing<sup>6</sup>. On October 8, 2009, Mr. Ravil Mammadov, owner of the Internet website *Poligon*, was abducted by plainclothes police officers after posting on the site, on October 6, 2009, an article on dismissals in the Ministry of Interior<sup>7</sup>. The fact that defamation is considered an offence punishable by imprisonment in Azerbaijan is also a concern for independent journalists, as well as for human rights defenders, and hampers their freedom of expression<sup>8</sup>. Other journalists were also prosecuted and convicted for “hooliganism”, such as bloggers Mr. Adnan Hajizade and Mr. Emin Milli Abdullayev. The situation for local media, especially in regions where the presence of civil society is very limited, is also problematic. In the southern Azerbaijan, those responsible for distributing free copies of the newspaper *Djanur Khiabiarliar*<sup>9</sup> were subjected to acts of intimidation by regional authorities. Moreover, amendments to the Media Act that were adopted on March 6, 2009 only increased the pressure on journalists since they provide in particular for the possibility of suspending a publication for “abuse of power,” with the use of anonymous sources considered to be such an abuse.

Finally, despite the ratification by Azerbaijan of the Optional Protocol to the UN Convention Against Torture on January 28, 2009 and the adoption of a presidential decree on January 13, 2009 designating the Azerbaijani Ombudsman as the national mechanism for the prevention of torture, torture remains a known practice in the country<sup>10</sup>. In addition, although the Government specifically committed to prosecuting officials and law enforcement officers responsible for acts of torture when Azerbaijan joined the Council of Europe in 2001, so far not one officer has been criminally prosecuted<sup>11</sup>.

## Control over NGOs

As human rights organisations were often seen as opponents of the regime and potential enemies, the Government of Azerbaijan continued

6 / According to IDP, 150 acts of violence were committed against journalists during the first five years of the presidency of Mr. Ilham Aliyev. Of these 150 cases, only two were investigated and those responsible prosecuted and convicted.

7 / An employee of the Institute for Reporters' Freedom and Security (IRFS), Mr. Elnur Mammadov, who was filming the abduction, was also arrested. Both were released in the evening of the same day.

8 / The offence of defamation is punishable by three years' imprisonment under Article 147 of the Criminal Code.

9 / This newspaper is known for its sharp criticism and in-depth analysis of problems in the region.

10 / See UN Committee Against Torture in Azerbaijan, *Concluding Observations of the Committee Against Torture, Azerbaijan*, UN Document CAT/C/AZE/CO/3, December 8, 2009. According to the Committee, 110 people were tortured in 2009; six died following acts of torture. The practice of torture in Azerbaijan also raised criticism from the UN parting the framework of the Universal Periodic Review on February 4, 2009, and during the 96th session of the UN Human Rights Committee held from July 13 to 31, 2009.

11 / See IDP.

to deploy various strategies to impede the activities of these organisations. In June 2009, the Azerbaijani Parliament considered amendments to the Law on NGOs, Public Associations and Foundations. Denounced by civil society, these amendments seriously threatened freedom of association. They prohibited NGOs from receiving more than half their funds from abroad, they banned non-registered associations and restricted the activities of foreign NGOs since it was anticipated that their activities in Azerbaijan would depend on intergovernmental agreements. Thanks to strong national and international mobilisation, the most restrictive amendments were not adopted. Only one provision of the text adopted on June 30, 2009, by which the Government is authorised to collect information on NGOs without any legal foundation, continues to alarm human rights organisations<sup>12</sup>. In addition, on December 25, 2009, the Government adopted a decree that allows the authorities to prohibit NGOs from receiving subsidies<sup>13</sup>. The decree stipulates in particular that an NGO will not be allowed to work on a project funded by a donor without the consent of the Ministry of Justice, which represents a serious barrier to NGOs activities.

Organisations were also still subjected to random and unjustified inspections<sup>14</sup>. On October 29, 2009 for example, officials of the Ministry of Justice conducted an inspection of the offices of the Institute for Reporters' Freedom and Safety (IRFS) to "determine whether IRFS activities complied with the law and charter of organisations". The inspection was carried out in the absence of the Director of the organisation, Mr. **Emin Huseynov**. Inspectors gathered information relating to personal data of members of the organisation and its founders<sup>15</sup>. According to Azerbaijani law, the dissolution of the organisation is the only sanction provided for, regardless of the infraction committed<sup>16</sup>.

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12/ See Letter to the Ministry of Justice by a collective of human rights associations, November 6, 2009.

13/ See Decree of the President of the Republic of Azerbaijan on December 21, 2009 on changes and amendments of certain decrees of the President of the Republic of Azerbaijan about the Law of the Republic of Azerbaijan "on Changes and Amendments of Some Legislative Acts of the Republic of Azerbaijan", June 30, 2009.

14/ Since 2002, the European Court of Human Rights (ECHR) has adopted eleven decisions or judgments in response to requests from NGOs against decisions by the Ministry of Justice to refuse registrations. On five occasions, it condemned and demanded the annulment of the decisions of the Ministry of Justice, after which four of the five organisations were registered. Five other organisations were registered following a joint agreement of both parties. The last complainant died before the Court reached its decision.

15/ See South Caucasus Network of Human Rights Defenders.

16/ The ECHR ruled in its Decision No. 37083/03 (*Tebieti Muhafiz Cemiyeti and Israfilov v. Azerbaijan*) of October 8, 2009 that the measure was disproportionate to the seriousness of the misconduct.

Moreover, the practice of denying NGOs their applications for registration was still a major obstacle to freedom of association. According to EMDSC, at the end of 2009 nearly 300 non-registered, but nevertheless active, organisations functioned in Azerbaijan<sup>17</sup>. In 2009, the Ministry of Justice continued to reject applications for registration without serious grounds. For example, it refused to register EMDSC on April 29, 2009 on the grounds that the title of the Law on NGOs, Public Organisations and Foundations was referred to incorrectly in the association's statute. The complaint that the organisation filed with the District Court of Assamalski in Baku was rejected on September 2, 2009<sup>18</sup>. It is no accident that the refusal to register an association specialising in election monitoring was issued in the same year as the municipal elections. This same association, operating under the name "Election Monitoring Centre", was dissolved in May 2008, before the presidential elections of 2008.

## A judiciary that discriminates against defenders

### Misuse of the criminal justice system against defenders

Government and State officials, unhappy with the criticism of defenders, continued their constant use of the legal machine to pursue the latter abusively and undermine their work. In 2009, prosecutions against defenders for "defamation" or "attacks on dignity and honour" multiplied. For instance, Mr. **Intigam Alyev** and Ms. **Nurlana Alyeva**, respectively President of and a lawyer for the Legal Education Society, were prosecuted by Mr. Gazanfar Karimov, Justice of the Sheky Court of Appeals, for "damaging the honour and dignity of a judge". The complaint concerned a book using information contained on the official website of the Judicial Council of Justice<sup>19</sup>, entitled *The Disciplinary Responsibility of Judges*, which placed particular emphasis on the shortcomings of the work of judges, such as the discriminatory and biased nature of their decisions. The contents of the book were also published on the website of the association. On July 15, 2009, the Baku Court of Appeals upheld the decision of the District Court of Nashimi, ordering Mr. Alyev and Ms. Alyeva to pay a fine of 1,000 AZM (about 850 euros) and enjoining them not only to present their apologies but also to demand the return of books distributed and, on their website and in their book, to refute the information that had provoked

17/ See Statement of the news information agency *Turan* postponing the intervention of the participants at the plenary session held in Baku on December 10, 2009, as part of a conference entitled "Solving the problems of democracy in the 21st century", December 10, 2009.

18/ See Human Rights Centre of Azerbaijan (HRCA).

19/ The Judicial Council of Judges is in charge of training the judicial body and of the promotion and enforcement of judges.

the complaint of Judge Karimov, accompanied by a message of apology. The non-execution of this decision by Mr. Alyev would be interpreted as a refusal to enforce a court order, punishable by two years' imprisonment<sup>20</sup>. Mr. Intigam Alyev and Ms. Nurlan Alyeva challenged this decision before the Supreme Court. Despite their appeal of the decision, which should be suspensive, the Court of Appeal of Nashimi illegally demanded the ruling to be put into effect, which Mr. Intigam Alyev was still refusing to do as of the end of 2009<sup>21</sup>. Similarly, on December 13, 2008, Ms. **Leyla Yunus**, Director of the IDP and member of OMCT General Assembly, was prosecuted for "attacks on dignity and honour" by the Minister of Home Affairs of Azerbaijan, Mr. Ramil Usubov, after she revealed on the very popular news site *www.day.az* a case of child trafficking involving members of the police and denounced the functioning of the Azerbaijani justice system. The first hearing, which was held on January 23, 2009 before the Regional Court of Nashimi, did not bode well: most people wishing to attend the trial were unable to enter the courtroom, in violation of Ms. Yunus' right to a public hearing. In the end, under pressure from local and international organisations, the Minister of the Interior withdrew his complaint on March 2, 2009. Finally, on April 7, 2009, the Editor of the daily *Tazadlar* (Contrast), Mr. **Asif Marzili**, was sentenced to one year in prison for "libel" for having published an article on corruption at the International University of Azerbaijan<sup>22</sup>.

### **III-treatments and refusal of the judiciary to investigate into complaints of defenders**

One also notes that State officials responsible for acts of harassment and abuse against defenders are never punished, cases of violence against defenders are never investigated and the authorities refuse to solve cases of abuse. On October 14, 2009, the District Court of Nashimi in Baku dismissed the complaint of Mr. Emin Huseynov, who was brutally beaten by police officers from Nashimi No. 22 police station, including the deputy chief of police, Mr. Azer Karimzadeh, on June 14, 2008<sup>23</sup>. Mr. Huseynov spent more than one month in the hospital after the beating. Moreover, Mr. **Novruzali Mammadov**, an ardent advocate of the rights of the Talish people who was wrongfully sentenced to ten years in prison on December 26, 2008 for "high treason" and "incitement of racial hatred", died in custody on August 17, 2009. The health of Mr. Mammadov, aged 70, had seriously deteriorated in detention centre No. 15, particularly because of the ill-

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20 / Article 206 of the Criminal Code.

21 / See HRCA and Statement of the Legal Education Society, November 25, 2009.

22 / See Statement of *Radio Free Europe/Radio Liberty (RFE/RL)*, April 7, 2009.

23 / See HRCA and Statement of the Legal Education Society, November 25, 2009.

treatments he suffered when he was placed in solitary confinement. On July 28, 2009, he was transferred to the neurological department of the prison's central hospital, run by the Ministry of Justice, where he received no care. Following his death, his wife and son filed a criminal complaint against the Ministry of Finance, the Prison Service of the Ministry of Justice, the medical director for the Department of Justice, the administration of the colony prison No. 15, and the central prison hospital of the Ministry of Justice for "endangering the lives of others". However, on September 29, 2009, the Prosecutor for the Nizami District of Baku refused to open a criminal investigation. Mr. Mammadov's family then challenged the decision. The Court of the Nizami District, then in the second instance the Court of Appeal in Baku, on November 17, 2009, rejected the appeal. Another civil complaint was filed against the same institutions following their refusal to compensate the family of Mr. Mammadov. On October 15, 2009, a review of this complaint was opened in the Nashimi District Court but, on January 10, 2010, it decided not to initiate proceedings against these institutions.

Moreover, in 2009, no Azerbaijani judge upheld the complaints of human rights defenders brought against State officials. Thus, advocates of prisoners' rights who call for compliance with international standards of conditions of detention were persecuted and did not obtain satisfaction before the courts. This applied, for example, to Mr. **Shakir Rzakhanov**, founder of a prisoners' group at the Gobustan prison, the Initiative Group for Human Rights of Lifers. Since the start of the protest movement in 2002, Mr. Rzakhanov has been punished several times by prison authorities because of his involvement. Since February 2008, he has been held in solitary confinement for "advocacy on behalf of other prisoners", as well as for having "secretly filed [collective] complaints through his mother in order to gain some influence", and for raising "issues related to violations of minority rights". These charges relate to complaints that Mr. Rzakhanov filed before the European Court of Human Rights<sup>24</sup>. Mr. Rzakhanov's mother challenged the conclusions of the inquiry before the Regional Court of

24 / In 2008 and early 2009, he, jointly with his fellow inmates, filed 16 complaints with the prison service, denouncing the use of threats and violence towards prisoners, as well as the fact that their complaints were never examined. The findings of the internal investigative division did not confirm the complaints. However, the report of the Committee for the Prevention of Torture (CPT), which was released on November 22, 2009 and drafted following a survey carried out from September 8 to 12, 2008, reported violations of international standards in Gobustan prison, such as failures in access to medical care and the use of ill-treatments. In addition, the Committee also reported "serious concerns" about the detention of prisoners in solitary confinement for long periods. See *Report to the Azerbaijani Government on the visit to Azerbaijan Carried out by the European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (CPT) from 8 to 12 December 2008*, November 26, 2009.



Garadagh in July 2008, but her complaint was dismissed on October 31, 2008. On March 30, 2009, the Baku Court of Appeals upheld the decision of the District Court of Garadagh<sup>25</sup>.

### **Worrying situation for defenders working in the Nakhchivan enclave**

In 2009, defenders operating in the regions, particularly in the Nakhchivan enclave<sup>26</sup>, were subjected to pressure, threats and attacks because of their remoteness from the seats of international organisations and a lack of media interest. Human rights violations are common in this region, where the local government is particularly authoritarian. Human rights defenders and opponents of the Government suffered many attacks, harassment and intimidation by local authorities to stifle dissent. Those responsible for this persecution act with total impunity. Some activists cooperating with international organisations were also threatened and prosecuted on the basis of fabricated accusations. For example, the representative of the regional office of the IRFS in Nakhchivan, Mr. **Elman Abbassov**, received telephone threats against him and his family on September 21 and 22, 2009. Police in the town of Nakhchivan refused to register his complaint<sup>27</sup>. Mr. Abbassov had already received death threats by phone in March 2007. Additionally, in January 2009, he and his colleague, Mr. **Hakimeldostu Mehdiyev**, were victims of insults and death threats. In both cases, no response was received to the complaints submitted to the office of the Ministry of Internal Affairs of Nakhchivan, to the District Prosecutor, and to the Ministry of National Security<sup>28</sup>. Moreover, on December 15, Mr. **Ilgar Nasibov**, a journalist for the radio station *Azadliq*<sup>29</sup> and a member of the Democracy and NGO Development Resource Centre, and Mr. **Vafadar Eyvazov**, a member of the same organisation, were assaulted while they were conducting an investigation as part of a project to fight against corruption at the State University of Nakhchivan. Doctors, who would have been pressured by the local authorities, refused to treat them. Furthermore, attempts by the two defenders to lodge a complaint with the police, the Prosecutor of Nakhchivan, and then the local representative of the Ministry of Internal Affairs were unsuccessful. The Ministry of Internal Affairs of Nakhchivan finally opened an investigation after

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25 / The Government of Azerbaijan, in its response to the CPT report, referred to the complaint of Mr. Shakir Rzakanov's mother, without citing her. He disputed the opinion of the Committee, alleging that the Azerbaijani justice system did not confirm the inmate's complaint. See HRCA.

26 / The Autonomous Republic of Nakhchivan is an Azerbaijani enclave between Armenia, Turkey and Iran. The roads connecting Azerbaijan to Armenia through the enclave were closed because of the dispute between the two countries on the issue of Nagorno Karabakh.

27 / See HRCA.

28 / See Statement from the Nakhchivan Human Rights and Mass Media Monitoring, September 22, 2009.

29 / *Azadliq* is the Azerbaijani branch of RFE/RL.

receiving a written request from the two defenders, filed on December 16, and at the same time launched a smear campaign against the Centre. While the investigation was still ongoing, information on the attack, issued by the Press Service of the Ministry, was indeed published in the official newspaper *Sberg Gapisi* on December 18, 2009. The reports included particular mention that, contrary to reality, the Centre was not officially registered and acted illegally. Finally, on December 21, Mr. Ilgar Nasibov received a call from the Tax Ministry informing him that a tax inspection of the organisation would be conducted 15 days later.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Mr. Novruzali Mammadov	Sentencing	Urgent Appeal AZE 001/0808/OBS 139.2	January 7, 2009
	Arbitrary detention / Ill-treatments	Urgent Appeal AZE 001/0808/OBS 139.3	January 21, 2009
	Worsening health status / Destruction of equipment	Urgent Appeal AZE 001/0808/OBS 139.4	June 24, 2009
	Death in prison	Urgent Appeal AZE 001/0808/OBS 139.5	August 18, 2009
	Impunity	Urgent Appeal AZE 001/0808/OBS 139.6	October 22, 2009
Ms. Leyla Yunus	Judicial harassment	Urgent Appeal AZE 001/0109/OBS 008	January 19, 2009
		Urgent Appeal AZE 001/0109/OBS 008.1	January 26, 2009
		Closed Letter to the authorities	February 5, 2009
	End of judicial proceedings	Urgent Appeal AZE 001/0109/OBS 008.2	March 3, 2009
Mr. Ilgar Nasibov and Mr. Vafadar Eyvazov	Assault	Urgent Appeal AZE 002/1209/OBS 196	December 22, 2009

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# BELARUS

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## Political context

In its Resolution P7\_TA-PROV(2009)0117 of December 17, 2009, the European Parliament stressed that clear and significant progress in democratisation should still be made in Belarus to ensure media freedom, reform of the Electoral Code, the release of political prisoners and the abolition of the death penalty. The sanctions imposed by the European Union against the country are suspended, but will in theory be lifted if these improvements take place<sup>1</sup>. For its part, after twelve years of suspension, the Parliamentary Assembly of the Council of Europe (PACE) declared on June 23, 2009 that it was ready to give Belarus its special guest status in the Council of Europe, provided that the country continues its efforts towards democratisation and establishes a moratorium on the death penalty. Belarus has ignored this call<sup>2</sup>.

In 2009, despite the hopes raised by several positive developments in 2008, such as the release of political opponents, the situation of human rights changed very little. Freedoms of expression and association remained very restricted and repression against critical voices of power continued. This year, political parties faced systematic refusal of registration<sup>3</sup>, exposing themselves to criminal sanctions if they chose to continue their activities. This repression particularly affected young political opponents, such as activists from Youth Front, which during the year were subjected to arbitrary arrests, mistreatments and punishment following their participation in peaceful gatherings. Several were conscripted into the army or expelled from their university. More disturbingly, several cases were reported of members of security forces dressed in civilian clothes kidnapping young activists and subjecting them to humiliation and intimidation before dumping them off in the outskirts of cities<sup>4</sup>.

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1/ The EU had imposed a number of sanctions in 2004 that were partially suspended in 2008, and the visa ban on Belarusian officials in some of Europe, imposed in 2004, was temporarily lifted in 2008. These transitional measures were extended for six months following the resolution of the European Parliament.

2/ No moratorium was implemented by the authorities. On July 17, 2009, the courts sentenced two men, who had filed a clemency petition with the Board of Pardons, but the request had not yet been examined as of late 2009.

3/ For example, in 2009, the Belarusian Christian Democratic Party (BkhD) and the Party for Liberty and Progress.

4/ See RFE/RL, *Charter 97* and the Viasna Centre for Human Rights.

While small advances in press freedom were reported in 2008, the State retains the monopoly of print and electronic media, and distribution and printing systems. Several independent newspapers were censored in 2009, and the new Media Act that entered into force on February 8, 2009 thwarted the hopes of easing the State policy on freedom of expression. This new law, which regulates online media and provides for media subscribing in a register, also accelerates the closing procedures of media outlets for minor offenses, as well as the possibility to prosecute journalists for publishing statements of political parties or NGOs if they “discredit the Republic of Belarus”<sup>5</sup>. Applications for accreditation of foreign media at the Ministry of Foreign Affairs were denied arbitrarily and many foreign journalists were forced to work illegally<sup>6</sup>.

In this context, defenders, as well as any kind of opposition to power, were victims of the repressive State system of President Lukashenko.

### Repression of peaceful assemblies

Again this year, peaceful rallies held in favour of the defence of human rights were severely repressed. In most cases, defenders were not allowed to gather, and demonstrations mostly ended with violent intervention by law enforcement officials, arrests and convictions. Since 2005, on the 16th of each month, supporters gather in cities of Belarus to commemorate the disappearance of opponents of the regime<sup>7</sup>. Rallies held to mark this “Solidarity Day” are regularly repressed by the police. For instance, on September 16, 2009, the police dispersed a rally in Minsk and prevented journalists from filming and photographing the events. Thirty-one people were arrested, threatened, insulted and abused by the police during their detention at the police station before being released. The same day, some of them complained to the Prosecutor of Minsk Central District, and that complaint was forwarded to the Ministry of Home Affairs<sup>8</sup>. However, the Prosecutor declined to open an investigation, and the Directorate General for Security Affairs Ministry said that the allegations of violence could not be proven<sup>9</sup>. Similarly, on October 16, 2009, 16 people were arrested

5 / See Declaration by the Belarusian Association of Journalists (BAJ), February 17, 2009.

6 / See Viasna.

7 / These gatherings have been held since October 16, 2005 in honour of opposition leader Mr. Viktor Hanchar and businessman Mr. Anatol Krasouki, who disappeared on September 16, 1999 and who were allegedly both abducted by services secrets. The Minsk Prosecutor closed the investigation into their disappearance in 2003.

8 / The complaint also concerned acts of violence by the police on September 9, 2009 during a protest rally against the arrival of a military contingent of the Russian Federation to Belarus in the framework a joint military exercise.

9 / See Viasna.

in Gomel on their way to the rally planned for “Solidarity Day” and were prosecuted for “conducting non-authorised collective action” whereas they were, in fact, unable to attend the event. On October 13, 15 and 19, 2009, ten of them were sentenced by the District Judge of Gomel Chihunachni to fines amounting to 10,325,000 rubles (about 3,700 euros)<sup>40</sup>. Most applications for assemblies to mark the anniversary of the Universal Declaration of Human Rights on December 10, 2009 were also denied by municipalities such as in Baranavichi, Barisau, Biaroza, Gomel, Hrodna, Mahiliou, Mazir, Navapolatsk, Orsha, Smarhon and Vitsebsk. The complaint filed by Mr. **Anatol Palauni** and Mr. **Leanid Sudalenko** with the Court of the Central District of Gomel to challenge the ban of the demonstration by the municipality of Minsk was dismissed on December 30, 2009. Furthermore, the city of Minsk refused the Union of Belarusian Radio Industry to assemble to demand respect for human rights on Banhalor plaza in Minsk, which was specifically designated by authorities for organised opposition demonstrations. Another rally organised by the Belarusian Popular Front for December 10, scheduled to take place on Yakub Kolas plaza, was banned by the city of Minsk on the pretext that no group was allowed within 200 meters of a subway station. Similarly, activists of the Belarus Helsinki Committee planned to conduct an awareness-raising campaign on human rights the same day, through meetings with civil society actors in a tram around the city. However, they were prevented from doing so, as the tram was not able to circulate for “technical reasons” and the bus booked at the last minute as a replacement was blocked by police. Members of the Belarus Helsinki Committee, the Viasna Human Rights Centre, the Committee for the Protection of Victims of Repression “Solidarnosts” and the Innovation Fund of Legal Technologies then had to resort to celebrate International Human Rights Day by distributing leaflets in the streets of Minsk on various subjects relating to human rights, such as discrimination affecting persons with disabilities, lack of alternative military services, and the use of death penalty in Belarus.

### **Serious attacks on the freedom of association**

In 2009, independent civil society organisations, notably human rights organisations, were again confronted with systematic refusals of registration, thus exposing them to criminal sanctions if they chose to continue their activities. Article 193.1 of the Criminal Code criminalises activities “as part of an unregistered organisation”, punishable by a fine or a prison sentence from six months to two years. Twice this year, the application for registration by the Viasna Human Rights Centre, under the name

of Nasha Viasna, was denied. A first request on January 26, 2009 was rejected by the Ministry of Justice on March 3, 2009. The organisation challenged the ruling before the Supreme Court, which in turn upheld the decision of the Ministry on April 22, 2009 on the ground that there were inaccuracies in the list of members of the association and the charter of association. A second request was made on April 25, 2009 and was rejected on May 25, 2009. The organisation also challenged this refusal before the Supreme Court, which confirmed its position on August 12, 2009. These two consecutive refusals of registration were accompanied by a smear campaign against the organisation. In March 2009, following the first refusal, a television station aired footage of a building in Minsk and presented it as the premises used by the association to hold its meetings. The size of space designated obviously did not allow for the holding of such meetings. One of the reasons advanced by the Ministry to refuse registration was indeed that the premises were too small. The branch of Viasna from the city of Brest, “Brestskaya Viasna”, also faced similar difficulties. All four of its applications made in 2009 were refused by the office of the Ministry of Justice of Brest. The organisation appealed the decision to the Regional Court of Brest, which confirmed the decision of the Ministry. Similarly, on April 9, 2009, the Ministry of Justice dismissed the application for registration of the Belarusian Assembly of Pro-Democratic NGOs, a collective of associations that aims to contribute to the development of civil society in Belarus. This decision was upheld by the Supreme Court on June 3, 2009<sup>11</sup>.

### Judicial harassment against defenders

In 2009, judicial procedures to hinder the work of defenders were opened or continued. For example, the judicial proceedings opened in 2008 continued against Mr. **Leonid Svetsik**, a member of the Vitsebsk branch of Viasna, for the “fomenting of national and religious hostility” (Article 130.1 of the Criminal Code) after he supported citizens threatened by the extreme right organisation Russian National Unity (RNE). On March 31, 2009, Mr. Svetsik was also accused of “defamation against the President” under Article 367.2 of the Criminal Code. On July 16, 2009, Mr. Svetsik was fined 31 million rubles (7,500 euros) by the Regional Court of Vitsebsk, a conviction affirmed on appeal on September 15 by the Supreme Court despite serious procedural violations. In addition, Ms. **Yana Poliakova**, lawyer and member of the Alliance for Human Rights in Belarus, committed suicide on March 7, 2009, days after being sentenced under Article 400.2 of the Criminal Code to “deliberate false accusations” to two and a half years of “restricted freedom,” and a fine of one million

11 / *Idem*.

rubles (about 240 euros) by the District Court of Salihorsk. Ms. Yana Poliakovska defended the victims of police abuse and had herself been a victim of aggression by police officers. When she wanted to file a complaint against one of her attackers, she had been prosecuted for “harming the reputation of the police”<sup>12</sup>.

### Threats against journalists defending human rights

Independent journalists who expose human rights violations are particularly vulnerable to intimidation and threats. The journalist Ms. **Irina Khalip**, who has written numerous articles on human rights violations in Belarus, received death threats in her mailbox on November 23, 2009<sup>13</sup>. She had just sent an article to the Russian newspaper *Novaya Gazeta* on the involvement of the Belarusian authorities in a case of inheritance, and she received a message threatening that she would “join [the Russian journalist murdered in 2006] Anna Politkovskaya” if she did not withdraw her article. The fact that on that date only the Editor of *Novaya Gazeta* had been informed of the investigation conducted by Ms. Khalip suggests that the authors of the threats are members of secret services and that correspondence and telephone conversations of journalists are monitored. Journalists also received threats from neo-Nazis. For example, Ms. **Natalia Radzina**, Director of the *Charter 97* opposition website, received a letter containing particularly violent threats of assault, including rape, following the publication of an article on July 8, 2009 denouncing the impunity of racist crimes<sup>14</sup>.

### Obstacles to the visits by foreign defenders and travels abroad for Belarusian defenders

In 2009, the authorities sought to restrict and prevent contacts between Belarusian and foreign defenders. On the one hand, they impeded the access of foreign human rights defenders in Belarus. On July 31, 2009, the Consulate of Belarus to France refused to issue a visa to Ms. **Souhayr Belhassen**, FIDH President. During her stay, Ms. Belhassen was to meet with representatives of civil society and attend the hearing of the Supreme Court regarding the refusal to register the association *Nasha Viasna*. Similarly, in late August 2009, Mr. **Nikolai Zboroshenko**, Assistant Director of the Moscow Helsinki Group, was denied entry at

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12 / *Idem*.

13 / *Idem*.

14 / The article criticised the weakness of a conviction against a leader of the RNE who was prosecuted for engaging in racist attacks. The far-right activist was originally sentenced under Article 193.1, which normally sanctions unregistered organisations, and was then granted amnesty. See Charter 97, July 8, 2009.

the Lithuanian border. Mr. Zboroshenko then learned that he was under a ban on entry because of his participation in protests in Belarus in 2006<sup>15</sup>. On the other hand, Belarusian defenders were regularly subjected to disproportionate checks during their travels abroad. For instance, from mid 2008 until July 2009, the personal belongings and car of Mr. **Ales Bialiatski**, Mr. **Valentin Stepanovitch** and Mr. **Vladimir Labkovitch**, respectively President, Deputy President and lawyer for Viasna, were systematically searched by customs at the Belarusian border crossing.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Viasna Human Rights Centre	Registration refusal	Urgent Appeal BLR 001/0309/OBS 038	March 4, 2009
		Urgent Appeal BLR 001/0309/OBS 038.1	June 8, 2009
		Urgent Appeal BLR 001/0309/OBS 038.2	August 14, 2009
		Press Release	October 2, 2009
Dr. <b>Leanid Svetsik</b>	Judicial harassment	Urgent Appeal BLR 001/0608/OBS 095.1	April 16, 2009
Ms. <b>Souhayr Belhassen</b>	Visa refusal	Press Release	August 7, 2009

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15/ See Viasna.



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## Political context

The spring 2009 opposition demonstrations<sup>1</sup>, which called for the resignation of President Saakashvili and the holding of new elections, also strained the country's political atmosphere and led to an intensification of repressive measures against the opposition. The Ombudsman and local NGOs documented dozens of cases of violations against political activists and demonstrators, including verbal abuse, arrests of political activists on baseless grounds, cases of torture and mistreatment, as well as trials based on fabricated evidence<sup>2</sup>. Human rights defenders also complained of attacks by unidentified persons armed with sticks and wearing masks while demonstrators were returning home. These attacks appeared to specifically target the leaders of the movement and did not elicit any reaction from the police. In late 2009, no member of the security services who made use of weapons banned by the Police Code against the demonstrators who gathered outside the main police station in Tbilisi on May 6, 2009 had been identified or arrested<sup>3</sup>.

Despite the continuation of the reform of the judiciary, which was initiated in 2004 and led to positive developments such as the establishment of social guarantees for judges, the simplification of procedures for examinations and the possibility for judges to use legal mechanisms to avoid delays in hearings, the issue of judicial independence remained in 2009, as did the climate of impunity.

In this context, the repressive tendency against defenders, which took shape in previous years, was confirmed in 2009.

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1/ The demonstrations, which began on April 9, 2009, continued for three months.

2/ See Press Release of the Ombudsman of Georgia, April 10, 2009 and Report of the Human Rights Centre (HRIDC), *Repressive democracy?! - Chronicles of State-sponsored violence in Georgia during the spring 2009*, June 2009.

3/ Said weapons were plastic balls and rubber bullets. The use of these weapons by the security forces was legalised shortly after these events by the adoption of an amendment to the Police Code on July 17, 2009. President Saakashvili apologised publicly to journalists wounded by rubber bullets, which were illegally used by the security forces, but no investigation in connection with these facts was carried out. See Appeal of the South Caucasus Human Rights Defenders Network to the Georgian authorities,

## Obstacles to freedom of peaceful assembly

On July 17, 2009, Parliament adopted an amendment to the Act on Gatherings and Demonstrations that includes a minimum distance of 20 metres to be maintained between official buildings and rallies or demonstrations. This new provision gives way to arbitrary interpretations which could hinder freedom of peaceful assembly. In late 2009, three defenders had already been arrested and fined under this law. On November 23, 2009, the police arrested the leaders of the movement “November 7”<sup>4</sup>, Mr. **Dachi Tsaguria**, Mr. **Djaba Djishkariani** and Mr. **Irakli Kordzaia**, while they were leading a sit-in in front of Parliament to protest against the climate of impunity around the killing of Mr. **Amiran Robakidze**<sup>5</sup> by the police on November 23, 2004, and of Mr. **Sandro Girgvliani**<sup>6</sup> on January 28, 2006. The three men were tried by the Administrative Court of Tbilisi the same day they were arrested and fined 500 laris (about 200 euros) each for “exceeding the minimum authorised distance” and for having “hindered the movement of citizens”<sup>7</sup>. According to their lawyer, the judge’s decision was based only on the allegations made by the police and the judge refused to consider evidence and arguments of the defence that contradicted those accusations. The decision of the Court was upheld in appeal. Another amendment detrimental to the exercise of civil liberties was introduced on July 17, 2009 into the Code of Administrative Offences. This amendment extends the term of imprisonment for disturbing public order from a period of 30 to 90 days. The risk of arbitrary interpretation of the concept of “public order”, which would allow defenders to be charged easily when they carry out actions in favour of human rights, is also worrying.

Moreover, and in the context of the spring 2009 demonstrations, on June 15, 2009, a rally organised to condemn the detention of political opponents who were arrested on June 12 while participating in a protest before Parliament was strongly suppressed. According to the Ombudsman,

4/ The “November 7” movement was created during the wave of repression that accompanied demonstrations on November 7, 2007, in Tbilisi. This organisation acts for the protection of human rights and the promotion of democratic values in Georgia, by organising public protests and investigating video reports.

5/ Mr. **Amiran Robakidze** was shot dead at the age of 19 at a police checkpoint on November 23, 2004. According to the investigation, the young man was armed and tried to shoot at police. However, friends of the victim present at the scene of the crime, his lawyer and human rights defenders argue that the evidence was fabricated to cover the seriousness of the murder. After the trial, a policeman was convicted of “involuntary homicide” and then quickly released on bail.

6/ Mr. **Sandro Girgvliani**, a bank executive, died from injuries sustained in January 2006, after being beaten by officers of the Ministry of Home Affairs in a village near Tbilisi. Although four policemen were convicted and sentenced to seven to eight years in prison, the real instigators of the murder, who would be police officers, were never arrested or investigated.

7/ See Declaration of the Human Rights Defenders Network of the South Caucasus, November 26, 2009. 385

after opening a formal investigation into these events, two police officers received a severe reprimand, four policemen received a reprimand, and three others were suspended from their offices for the duration of the investigation, which was still not closed in late 2009. Some defenders were also victims of the violence which accompanied the demonstrations of spring 2009, in particular three members of the Egalitarian Institute, an association promoting freedoms of expression and peaceful assembly, Mr. Misha Meshki, Mr. Aleksandr Badzaghua and Mr. Murman Patariaia, who were brutally beaten by the police during the violent dispersal of the rally. Mr. Misha Meshki was arrested and sentenced the same day for “hooliganism” to one month in prison by the Court of Tbilisi. He was released on July 15, 2009<sup>8</sup>.

**Ongoing harassment of defenders who denounced the violations committed by the Government and local authorities, especially during and after the war of August 2008**

Defenders and organisations working on politically sensitive cases or defending people wrongfully convicted by the authorities were particularly targeted by acts of repression in 2009. On October 11, 2009, Ms. Lia Mukhashavria, lawyer and founder of the association Human Rights Priority, and known for her many complaints against the Government filed before the European Court of Human Rights (ECHR)<sup>9</sup>, was fined 100 laris (about 42 euros) for “petty hooliganism”<sup>10</sup> by the City Court of Tbilisi on the basis of unfounded allegations<sup>11</sup>. Ms. Mukhashavria appealed the decision on November 6, 2009. Although the legislation stipulates that a decision in appeal should be issued within a period of one month, the Court of Appeals of Tbilisi had not yet ruled on the case as of the end of 2009. Meanwhile, Ms. Mukhashavria appealed to the Ministry of Home Affairs on October 13, 2009 to denounce abuses committed by members of the police patrol who testified against her and opened administrative proceedings against her in connection with the case<sup>12</sup>. Ms. Mukhashavria would have been condemned because of her mobilisa-

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8/ See HRIDC.

9/ In October 2002, she filed a complaint with the ECHR to challenge the extradition of 13 Chechens threatened with deportation to Russia. In 2004, she represented the former Mayor Tengiz Asanidze, imprisoned illegally, in the case Asanidze against the State of Georgia, brought before the ECHR.

10/ Under Article 166 of the Administrative Code.

11/ The procedure followed a quarrel between Ms. Mukhashavria and another person, Ms. Manana Sosebashvili, who filed a complaint against Ms. Mukhashavria for harassment. Police officers testified in favour of Ms. Sosebashvili without taking into account the allegations of Ms. Mukhashavria, who said that she was the victim of harassment from the other woman. See Caucasus Women's Network and HRIDC.

12/ On January 21, 2010, Ms. Mukhashavria was informed by mail that, after examination of the complaint, no abuse of authority by police officers had been found.

tion for the fight against the climate of impunity surrounding human rights violations committed against civilians during the war in August 2008, in particular through cases submitted to the ECHR. Similarly, HRIDC was under pressure after they disclosed, at a press conference on September 15, 2009, the results of their investigation into the case of Mr. Vakhtang Maisaia, a military expert accused of spying during the conflict in August 2008. Mr. Maisaia had revealed he had been under severe pressure during his detention in 2009 to accuse certain political personalities of acts of espionage. On the day of the press conference, the police visited the premises of HRIDC in order to take down the names and contact information for all employees, as well as the license plates of those who attended the press conference. At the same time, a control operation was conducted at the home of the Director of HRIDC, Mr. Ucha Nanuashvili. No reason was given for this operation<sup>13</sup>.

Furthermore, defenders working in the regions and exposing the illegal practices of local authorities were often accused of not being “real Georgians” and the violations they denounce in their reports were never the subject of investigations by the authorities. Thus, in early September 2009, the Ombudsman contacted the Shida Kartli Regional Prosecutor by mail to learn about the progress of an investigation into acts of harassment against Mr. Saba Tsitsikashvili, a local coordinator of HRIDC and journalist, which had forced him to leave Georgia in early 2009. On September 22, 2009, the Prosecutor informed the Ombudsman that the investigation had been closed. Mr. Tsitsikashvili had suffered severe pressure in 2008 from the local authorities because of his investigations into the refugees situation in South Ossetia in the Gori region. On his return in spring 2009, pressures against him resumed. He was banned from accessing the premises of the municipality of Gori in August and September 2009, as he was investigating the protests of people living in buffer zones between the Georgian town of Gori and the breakaway region of South Ossetia and calling for financial and material aid. Still threatened in late 2009, Mr. Tsitsikashvili was therefore forced to censor himself about the investigation of corruption of local authorities in the region of Shida Kartli<sup>14</sup>. The representative of the Special Operations Unit (SOD) of the Ministry of Home Affairs also threatened an associate of Mr. Tsitsikashvili with retaliation if he revealed to the press corruption cases implicating the SOD. The threats intensified on December 15, 2009, following the publication by Mr. Tsitsikashvili of

13/ See Statement by HRIDC, September 15, 2009.

14/ See HRIDC.

an article on the illegal distribution by the Regional Governor of Shida Kartli of bonuses and allowances to members of the local government<sup>15</sup>.

In December 2009, a smear campaign aired in the media was launched against defenders through the manipulation of issues particularly sensitive to the population, such as the August 2008 conflict and minority issues. The campaign primarily targeted the Ombudsman of Georgia, Mr. **Sozar Subari**, who is particularly known for the quality of his human rights work. Mr. Subari was accused, in a false report circulated by a television channel said to be close to the Government, *Real TV*, to only defend minority religions to the detriment of the orthodox religions. Similarly, Mr. **Vakhtang Komakhidze**, Director of the NGO “Studio Reporter” and an investigative journalist specialising in human rights, corruption and electoral fraud, Ms. **Manana Mebuke**, Director of the Union of Wives of Invalids and Lost-Warriors, a Tbilisi NGO for the promotion of peace, and Mr. **Paata Zakareishvili**, a political scientist specialised in conflict, were designated as enemies of the nation by the Government following their trip to Tskhinvali on December 16, 2009 to inquire about the situation of three young Georgian prisoners. As part of this trip, the defenders had met with the leader of the breakaway Republic of South Ossetia, Mr. Shota Malashkhia. Moreover, on December 12, 2009, the Georgian Young Lawyers Association (GYLA) was accused, over a report broadcast on *Rustavi 2* television channel, of having hindered the release of Georgian hostages. The show referred particularly to complaints filed by GYLA with the ECHR on violations committed during the conflict in August 2008. Finally, on December 10, 2009, a highly critical report of the association Priority to Human Rights was circulated on the first public channel. The association was accused of harming the State by filing complaints with the ECHR, and “using the tragedy of war for its own interests”.

### Pressures against Mr. Arnold Stepanian

In 2009, Mr. **Arnold Stepanian**, Director of the Public Movement “Multinational Georgia” (PMMG), co-founder of the Centre for Multi-Ethnic Resources for the Development of Civic Education and co-author of an alternative critical report on the protection of minority rights in Georgia submitted to the Council of Europe in 2008, was repeatedly threatened and told to cease his activities. On March 19, 2009, a police inspector visited the offices of the Centre for Multi-Ethnic Resources for the Development of Civic Education to request information about the leadership of the organisation. On the same day, a stranger who refused

to identify himself questioned, by telephone, the staff of PMMG about Mr. Arnold Stepanian. Finally, the same day, the tax control office closed a small company named “Arnold Stepanian”, belonging to the father of the defender, as well as the company “Giperioni”, of which Mr. Stepanian was co-founder. Subsequently, on August 28, 2009, while travelling in the Samtskhe-Javakheti region<sup>16</sup> as part of a project funded by the association Open Society – Georgia<sup>17</sup>, Mr. Stepanian would have been followed by a member of the intelligence services. On his return, officials from the Ministry of Home Affairs met with him and tried to persuade him to stop his activities in the region. As of late 2009, the companies “Arnold Stepanian” and “Giperioni” were still closed. Mr. Stepanian sent a letter to the Ministry of Home Affairs informing them of his indignation following these events. His letter was forwarded to the service of counter inquiry, which had not yet responded as of late 2009.

### Police violence against LGBT defenders

LGBT defenders are also very vulnerable. On December 15, 2009, a violent and illegal search took place in the offices of the association for LGBT rights “Inclusive Foundation”. Members of the security forces, armed and in plain-clothes, raided the premises of the organisation where there was a meeting of the “Women’s Club”. Without giving their names or the reasons for their intrusion, and without presenting any warrant, they arrested Mr. **Paata Sabelashvili**, the Director of the association. In addition, other persons present were searched, verbally abused because of their sexual orientation, and humiliated. A law enforcement officer threatened with death two members of the organisation, Ms. **Eka Agdgomelashvili** and Ms. **Tinatin Japaridze**, when they tried to verify the legality of the search. Mr. Sabelashvili would have admitted to have eight grams of marijuana. This confession was made before the arrival of his lawyer, and only in the presence of law enforcement officers. In addition, members of the organisation remained under close surveillance as of late 2009. On December 26, 2009, following an agreement with the Prosecutor, Mr. Sabelashvili pleaded guilty and admitted to having purchased and transported the drugs. He was sentenced to five years’ suspended sentence and a fine of 4,000 laris (about 1,700 euros) and was released the same day.

16 / Border area of Turkey mainly populated by Armenians.

17 / This project aims at organising meetings between the foreign diplomatic corps, members of NGOs and local political representatives to provide them the opportunity to testify as to the problems of the region and the opportunity to consider international support.

## Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
M. Arnold Stepanian	Harassment	Urgent Appeal GEO 001/0309/OBS 054	March 30, 2009
Inclusive Foundation / Mr. Paata Sabelashvili, Ms. Eka Agdgomelashvili and Ms. Tinatin Japaridze	Police raid / Arbitrary arrests / Intimidation and insults / Death threats / Surveillance	Urgent Appeal GEO 002/1209/OBS 199	December 24, 2009

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# KAZAKHSTAN

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

Despite legislative reforms initiated in February 2009 regarding political parties, the media, elections and local governments<sup>1</sup>, in 2009 Kazakhstan continued not to honour commitments made in 2007, when the future presidency of Kazakhstan at the OSCE was decided for 2010<sup>2</sup>. In terms of political pluralism, while the new electoral law guarantees the representation of at least two political parties in the House of Representatives since it gives seats to the party that arrives in second place, whatever the number of votes received, even if it has not reached the threshold, the rule of 7% of votes needed to sit remains unchanged. Finally, to comply with OSCE standards, the Government should reconsider the constitutional amendment adopted in 2007, allowing the President to run for an unlimited number of terms.

Regarding the Media Act, one of the amendments adopted now exempts radio stations and television channels from the requirement of registering beforehand with the Ministry of Culture. However, this reform is not sufficient to guarantee freedom of the press, as independent journalists remain harassed, attacked and prosecuted. Defamation is indeed still criminalised, media bodies can be closed or suspended by decision of the executive and the independence of the body overseeing the registration of newspapers is not guaranteed.

Moreover, while one can welcome Kazakhstan's ratification of the Convention Against Torture and its Optional Protocol in 2008, the United Nations Special Rapporteur on Torture, Mr. Manfred Nowak, reported on May 13, 2009 during the conclusion of his visit to the country from May 5 to 13, 2009 that torture was still practiced in Kazakh prisons. He also deplored the absence of effective complaint mechanisms for victims

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1/ On February 6, 2009, Parliament adopted amendments to the Media Act and the Law on Political Parties. On February 9, Parliament adopted amendments to the Elections Act and the Local Government Act.

2/ During the OSCE Ministerial Council, held in Madrid on November 29, 2007, the Minister of Foreign Affairs Mr. Marat Tazshin said that Kazakhstan would introduce amendments to the Media Act that would reflect the recommendations made by the OSCE and continue to implement ODIHR recommendations relating to the issue of elections and the law on political parties.



of torture<sup>3</sup>. The European Union and the United States also criticised the lack of initiatives in Kazakhstan for democratisation and human rights<sup>4</sup>.

Therefore, Kazakhstan does not seem ready to assume the presidency of the OSCE and to defend human rights in all the countries of the organisation, and it is feared that Kazakhstan's OSCE presidency will not improve the situation of human rights and its defenders in the country in 2010.

### **Attacks on freedom of expression and harassment of journalists denouncing human rights abuses**

On June 24, 2009, Parliament adopted a law to regulate freedom of expression on the Internet<sup>5</sup> that considerably reduces the freedom of expression on the web, and that worries both NGOs and the OSCE<sup>6</sup>. Under the new law, all Internet resources are considered “media” in full and are subject to the same criminal, administrative and civil laws as any other media. Pursuant to Article 13 of the Act, the authorities are also entitled to block websites if they report without authorisation on elections, strikes, demonstrations or ethnic issues<sup>7</sup>. This law therefore reinforces censorship and encourages self-censorship, in particular because bloggers can be held criminally responsible for what they write<sup>8</sup>. While it is too early to measure the effects of this law, the effect it may have on the restriction of freedom of expression for human rights defenders is highly worrisome.

Moreover, protests against this law were repeatedly hampered by local authorities on several occasions. For example, on April 25, 2009, six members of the group “For a Free Internet!” tried to take action against the reform called “imprisoned bloggers” at the Intercontinental Hotel in Almaty. Early on in the rally, one of the protesters, Mr. **Aban Abrasilov**, was arrested by the police, surrounded by 16 police officers and then transferred to the Regional Department of Internal Affairs (ROVD). Other protesters decided to continue the demonstration outside of the premises of the Internet provider *Kazakhbtelecom*, but they were arrested and detained

3/ See Statement by the United Nations Special Rapporteur on Torture, Mr. Manfred Nowak, May 13, 2009.

4/ See Declarations of the Presidency of the European Union Council and the United States Mission to the OSCE, February 12, 2009.

5/ Law on Introducing Changes and Additions to Legislative Acts on the Issue of Information Networks and Communication.

6/ See Statement of OSCE Representative on Freedom and the Media, Mr. Miklos Haraszti, June 25, 2009.

7/ In Article 13, paragraphs 3 and 4, the new text extends the reasons leading to the suspension of media. Media can be temporarily suspended in case of disruption to the smooth conduct of a peaceful protest or campaign, or in cases of incitement to participation in a strike. The media may be permanently banned for disseminating speeches inciting ethnic hatred and religious. See OSCE Commentary of the Bill.

8/ See International Bureau for Human Rights and Rule of Law (IBHRRL).

in the premises of ROVD before joining the rally. Bloggers were released the same day, thanks to the intervention by the Presidential Adviser to the Media, who feared that the arrests would cause an international scandal<sup>9</sup>.

The restriction of freedom of the press also resulted in numerous physical attacks against journalists, as well as legal action for defamation. While this affected all opposition journalists, it particularly concerned journalists denouncing human rights abuses and corruption cases, such as the newspaper *Almaty Info* and its Editor, Mr. **Ramazan Esergepov**. On August 8, 2009, the Tribunal No. 2 of Taraz, Khambilsk district, condemned Mr. Esergepov to three years in prison and a two-year ban on his work for “illegal collection of information” and “disclosure of State secrets” under Articles 172.1 and 339.2 of the Criminal Code. Arrested on January 6, 2009 while he was in hospital for a check-up, Mr. Esergepov was prosecuted following the publication on November 20, 2008 of his article entitled “Who is governing our country, the President or the National Committee of Security (KNB)<sup>10</sup>?” in *Almaty Info*. The article contained allegations of corruption<sup>11</sup>. On October 22, 2009, the Regional Court of Khambilsk confirmed the conviction of Mr. Esergepov on appeal<sup>12</sup>.

### Obstacles to freedom of assembly and criminalisation of protests

The Law on the Organisation and Holding of Peaceful Meetings, Gatherings and Demonstrations contradicts the Kazakh Constitution, which guarantees the right to freedom of assembly, by allowing local authorities to prohibit assemblies “in light of local conditions” (Article 10) or relegate them to peripheral locations<sup>13</sup>. In practice, most of the time the authorities prohibit citizens to unite under various pretexts<sup>14</sup>, either directly or by preventing the conduct of peaceful gatherings, including by threatening potential organisers or participants. Petitions and complaints regarding the non-compliance of the right to assembly filed by representa-

9 / See IBHRR, *Report on the violations of the freedom to peaceful assembly in 2008 and from January to September 2009*, October 2009.

10 / The National Security Committee corresponds to intelligence services.

11 / The article reproduced a letter from the Head of the local KNB department of Khambilsk to the President of the KNB, Mr. Amageld Chabdarbaev. The letter referred to the criminal investigation against the company “Taraz” for non-payment of taxes and the fact that the company’s founder, Mr. Sultan Makhmadov, was in contact with members of the administration of President Nursultan Nazarbayev for his influence on preparations.

12 / See IBHRR.

13 / For example, a wasteland in the outskirts of Astana or a park on the outskirts of Almaty.

14 / Applications for assembly are rejected under various pretexts: simultaneous holding of a public event, prohibition to hold a rally near a government building, insufficient time between the date of application and the day of the event (less than ten days). Bans are mostly unmotivated or are issued too late, thus preventing the rally organisers to request a different place and to renew the request.

tives of the opposition and civil society are also almost always rejected by judges<sup>15</sup>. Otherwise, on very rare occasions, the judge decides to grant the applicants' request and authorise the rally in a place specially designated for hosting such events, most often on the outskirts of cities. For example, on October 6, 2009, the Kostanaïski municipality prohibited a meeting entitled "The right to a fair trial: the right of everyone" organised by the International Bureau for Human Rights and the Rule of the Law (IBHRRL). The gathering was to be held in silence near Tribunal No. 2 and the Town Hall without impeding traffic, but the city rejected the application on the grounds that the gathering "might interfere with the normal operation of transport", and deemed it possible to organise the assembly at Tselinikov, a place provided for this purpose. IBHRRL's second proposal was also refused on October 7, even though the organisation proposed a new meeting place<sup>16</sup>. Similarly, on April 21, 2009, members of the association "Ar-Rukh Kha", which fights against corruption in schools and takes an active part in student movements, were planning to gather with other youth organisations and human rights defenders in Almaty to meet journalists and share their concerns about a bill requiring all students and schoolchildren to comply with inspections for drug testing. An hour before the rally, the Deputy Prosecutor of the Almaty Region, the Deputy Head of the Regional Department of Internal Affairs and the Bostandinski Police Colonel Turispekov Abai appeared and proceeded to the arrest of members of the organisation as well as its President, Ms. **Bakhitjan Toregojina**. According to the police, the arrest was justified by the Internet broadcast of an advertisement calling for a planned rally that same day. The young activists were detained for two hours at the ROVD headquarters<sup>17</sup>.

If, despite denials and prohibitions, rallies were held, then the authorities dispersed demonstrators and arrested participants and organisers who were then exposed to convictions. The crackdown on protests mainly concerned "political" gatherings – that is to say, for example, those calling for the President's resignation or the replacement of a mayor, respect for freedom of peaceful assembly or the holding of fair elections, or protesting against the closure of a newspaper – led by civil society organisations and political opposition parties. Convictions varied from a simple warning to a fine or a deprivation of liberty for 15 days. For instance, after the Almaty

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15 / See IBHRRL, *Report on the violations of the freedom to peaceful assembly in 2008 and from January to September 2009*, October 2009.

16 / See IBHRRL, *Report on the violations of the freedom to peaceful assembly from September to December 2009*, January 2010.

17 / See IBHRRL, *Report on the violations of the freedom to peaceful assembly in 2008 and from January to September 2009*, October 2009.

municipality refused twice to hold a rally marking the International Day of Journalists scheduled for June 25, 2009, over one hundred people gathered on June 24 near the premises of the national news service to conduct a silent protest action by covering their mouths with white tape and black blindfolds. The Almaty Prosecutor took legal action against participants. On July 17 and 21, 2009, the Almaty Administrative Interregional Court sentenced Mr. **Bolata Abilova**, a leader of the opposition party “Azar”, as well as Ms. **Rizada Jakipbek**, a member of the organisation defending housing rights “El Korgan”, to a fine of 65,000 tenge (about 400 euros) for “organising an illegal gathering”. Similarly, in September 2009, rallies organised each Wednesday in support of Mr. Evgeny Zhovtis<sup>18</sup> were consistently concluded with convictions of participants. Journalists, researchers, advocates and opponents were fined and sometimes arrested. Among them, Mr. **Andrei Sviridov**, a journalist and member of IBHRRL, was arrested on September 16, 2009, detained for three hours at the police station, and sentenced to a fine of 12,730 tenge (about 80 euros) by the Administrative Court of Almaty on September 17, 2009 for “violating the law on the organisation and holding of peaceful gatherings, rallies, meetings and demonstrations” (Article 373.1 of the Code of Violations of Administrative Law).

### Persecution of defenders of social rights in a context of economic crisis

While the President and local officials have publicly called on the Kazakh people to refrain from conducting protests during the economic crisis<sup>19</sup>, the number of protests related to layoffs in companies and problems related to housing rights has risen sharply over the past two years<sup>20</sup>. Defenders of housing rights were particularly affected by the severe restrictions on freedom of assembly. Not only did they experience difficulties to organise peaceful rallies, but they were also victims of judicial harassment and were arrested and prosecuted for their actions in defence of housing rights. Thus, the President of the movement to defend housing rights and support for labour movements “Talmas”, Mr. **Ainur Kurmanov**, was har-

18 / See below.

19 / A “memorandum” prepared by the presidential administration and supported by local authorities on “understanding, collaboration and conservation of social and political stability in the region” was initiated in February 2009. The signatories pledged not to conduct protest action during a given period. Despite pressure from local authorities, opposition groups refused to sign the memorandum. See IBHRRL.

20 / The protests are varied. They sometimes relate to people whose homes have been requisitioned by the State for the development of the Kazakh economy and the “needs of the State” for little or no financial compensation. Tens of thousands of people have lost their homes and 80% of these dwellings have been granted to private companies, close to some officials. Action may also relate individuals who have been deceived by fraudulent construction companies investing money in ghost projects, or persons unable to honour loans incurred during an economic boom, and whose homes were seized. See IBHRRL.

assed because of his commitment. Sentenced ten times for having organised and participated in protest actions in 2009<sup>21</sup>, he was attacked and seriously wounded by unidentified persons with iron bars on September 22 in the village of Batir Outegen (not far from Alma-Ata). The attack took place shortly after his organisation supported the labour movement in a manufacturing plant of heavy machinery in Almaty that was recently purchased by the brother and sister-in-law of President Nursultan Nazarbayev. The police opened an investigation, but despite repeated requests by Mr. Kurmanov and Talmas members to question the managers of this company, no steps had been taken in this direction, and no suspect had been identified as of late 2009. Mr. **Ernek Koychinov**, Talmas lawyer, also received telephone threats during the fall of 2009<sup>22</sup>. The Kazakh State continued to impede not only the actions of Talmas, but also those of other organisations defending housing rights, such as the movement “Kazakhstan 2012, Let the People Have Housing” and the movement “For Decent Housing!”<sup>23</sup>. Similarly, the Homeless Soldiers Union (SV BOMJ) was repeatedly denied the right to peaceful gatherings on false grounds. The leader of the movement, Mr. **Daulet Jumabekov**, was tried *in absentia* on November 20, 2009 by the Special Interregional Economic Court of Almaty for “organising an illegal gathering”. He received an administrative warning<sup>24</sup>. On May 8, 2009, the police arrested Mr. **Imach Mamatraimov**, Ms. Rizada Jakipbek and Mr. **Amirbek Tagusov** for organising a press conference to inform journalists about the situation of a hundred people evicted from a home in Almaty. They were detained at the Regional Department of Internal Affairs for “organising a press conference”. Ms. Rizada Jakipbek was also charged with “unauthorised public use of the anthem of Kazakhstan”<sup>25</sup>. Released the same day, Ms. Rizada Jakipbek and Mr. Amirbek Tagusov were arrested again on May 12 for trial, without having been summoned by the Special Administrative Court of Almaty, under Article 373.1 of the Code of Administrative Offences for “organising and participating in meetings, rallies and other prohibited public events”. Because of procedural shortcomings, the judge decided to drop proceedings.

21/ Sentences ranged from five to 15 days in prison. See IBHRRL, *Report on the violations of the freedom to peaceful assembly in 2008 and from January to September 2009*, October 2009.

22/ See IBHRRL.

23/ For example, on October 18, 2009, the Kazakh security forces tried to prevent the unfolding of a broad national movement of protest for the right to land and housing rights started by the organisation “Kazakhstan 2012” and supported by the organisations “For Decent Housing”, “Let the People Have Housing” and other NGOs. See IBHRRL.

24/ See IBHRRL, *Report on the violations of the freedom to peaceful assembly in 2008 and from January to September 2009*, October 2009.

25/ *Idem*.

## Judicial harassment of human rights defenders

The severity of the sentence imposed in October 2009 on human rights defender Mr. **Evgeny Zhovtis**, Director of IBHRRL and member of several expert committees to Kazakh authorities and member of the Council of Experts of OSCE ODIHR, as well as the conditions of his trial and detention demonstrate the unwillingness of the authorities to protect those who defend human rights. On October 20, 2009, the Regional Court of Almaty in the city Taldy-Qorghan confirmed on appeal the charges against Mr. Evgeny Zhovtis and sentenced him to four years' imprisonment in a penitentiary colony near the city of Ust Kamenogorsk<sup>26</sup> under Article 926 of the Criminal Code – “violation of the Road Code leading to a fatal accident” – for accidentally killing a pedestrian in his car on July 27, 2009. Mr. Zhovtis was sentenced on September 3, 2009 in first instance by the Regional Court of Balkhash. The investigation and two trials were held in violation of the rules of criminal procedure and Mr. Evgeny Zhovtis was denied the right to an effective defence. Indeed, on July 27, 2009, Mr. Zhovtis was first called as a witness in the police investigation, and then his status was changed and he was declared a suspect on July 28, 2009. His lawyer was informed about this only on August 14, 2009, two weeks later, in violation of the law. In addition, the mother of the victim accepted Mr. Zhovtis' apologies. She also signed a statement that requested a stay of prosecution. Under Kazakh law, the charges against Mr. Zhovtis should, therefore, have to be lifted. During the trial, the judge refused to consider arguments by the defence and conclusions by experts that Mr. Zhovtis was sober, had not violated the Road Code at the time of the accident and could not have avoided collision with the pedestrian. It also seems that the verdict had been prepared in advance, since it did not take more than 25 minutes for the judge to write 25 pages of conclusions. In addition, Mr. Zhovtis do not enjoy the conditions of detention normally granted to inmates who committed a crime of negligence (such as a system of semi-freedom, the possibility of long-term visits and appropriate work for wages). Instead, the prison colony where he is located is subject to a very strict regime. As of late 2009, Mr. Zhovtis did not benefit from the medical assistance he needed<sup>27</sup>. On December 12, 2009, the Almaty Regional Court rejected the request of Mr. Zhovtis' lawyer to conduct a judicial review of the proceedings that led to the conviction of his client<sup>28</sup>.

26 / In north-east Kazakhstan, 1,000 km from Almaty.

27 / In late 2009, because of his conditions of detention, Mr. Zhovtis, and a large number of other prisoners, were suffering from the flu.

28 / Judicial review is an extraordinary remedy designed to modify the decision if there is evidence that the procedure is illegal, or that the sentence is not proportionate to the severity of the crime.

**Urgent Intervention issued by The Observatory in 2009**

<b>Name</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Mr. Evgeny Zhovtis	Judicial harassment	Open Letter to the authorities	October 19, 2009

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# KYRGYZSTAN

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In 2009, the human rights situation in Kyrgyzstan deteriorated, and tarnished a little more the image of “the country most respectful of human rights in the region”, as the country’s authorities like to boast. The presidential elections of July 23, 2009, which ended up with the re-election of Mr. Kurmanbek Bakiev with 76.12% of the votes, took place within amid the growing authoritarianism of the current president. Both during the presidential campaign and the election day, basic rules guaranteeing free and democratic elections were not met. Prior to the elections, media coverage of the campaign focused on the current President Bakiev<sup>1</sup>. Arrests and intimidation of political opponents also marked the election campaign. Observation missions from the OSCE Office for Democratic Institutions and Human Rights (ODIHR) pointed to massive fraud on polling day, including ballot stuffing, destruction of ballots, vote buying, as well as attempts to obstruct the work of observers<sup>2</sup>. Protests to demand fair elections and challenge election results were violently dispersed and accompanied by arrests<sup>3</sup>. As for the reform of the administration announced in October 2009, this was interpreted by independent civil society as an attempt at usurpation of power by the President. This reform places some organisations under the direct control of the President, in particular the National Security Service, and the Agency for Development, Investment and Innovation, of which the President’s son was nominated as head<sup>4</sup>. Finally, the Bill on the Reform of Bodies within the Ministry of Interior discussed during the year 2009 worried defenders because of the vagueness of provisions and the insufficient safeguards for intervention by the police, therefore threatening to encourage the impunity of the latter, to increase cases of arbitrary detentions, and to threaten fundamental freedoms<sup>5</sup>.

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1/ See Reporters Without Borders (*Reporters sans frontières* - RSF) Press Release, July 27, 2009.

2/ See Final Report of the Election Observation Mission of the ODIHR, October 22, 2009.

3/ For example, the demonstration held in Baliktchi on July 23, 2009 was violently dispersed: the police fired in the air, dispersed the demonstrators with truncheons and arrested ten persons. See Kyrgyz Committee for Human Rights (KCHR). That same day, 41 opposition members were arrested in Bishkek as they marched to protest the results of presidential elections. See *Radio Free Europe/Radio Liberty* Press Release, July 29, 2009. On July 29, 67 demonstrators were arrested and most were convicted to prison terms ranging from three to fifteen days in jail or fined for participating in demonstrations the same day. See Final Report of the Election Observation Mission of the ODIHR, October 22, 2009.

4/ See KCHR.

5/ See “Kylym Shami” association.



Moreover, the situation in the south was unstable due to the existence of regional tensions caused by border disputes between Kyrgyzstan and Uzbekistan on the one hand, and Kyrgyzstan and Tajikistan on the other (presence of Tajik and Uzbek enclaves in the Valley area of Ferguana); of tensions between the Kyrgyz majority and many minorities including Uzbek, Tajik and Kurdish; and of the activity of several Islamist groups, including the Islamist party Hizb-ut-Tahrir (Liberation Party), banned in Central Asia. Thus, under the cover of the fight against terrorism and religious extremism, Kyrgyz law enforcement agencies perpetuated, in the name of security and with impunity, violence against citizens, and among them, defenders<sup>6</sup>. Across the country, attacks against journalists<sup>7</sup>, discussions in the Kyrgyz Parliament concerning the restoration of the death penalty<sup>8</sup>, the reform adopted January 13, 2009 on registration and activities of religious groups that restrict freedom of conscience<sup>9</sup>, reforms on freedom of assembly, and attempted reforms on non-governmental organisations<sup>10</sup> worried human rights defenders and are indicative of the deterioration of the political and social climate in the country.

Harassed, threatened, arrested and convicted for expressing their discontent or denouncing human rights violations perpetrated by the Government, human rights defenders have become, along with political opponents and independent journalists, the first victims of authoritarianism by President Bakiev.

### **Freedom of assembly severely threatened**

The legislation governing the organisation of rallies was tightened again in 2009, while the restrictive laws adopted in 2008 allowing local authorities to restrict the space devoted to peaceful assembly were implemented. Defenders also worried about the effects of the law signed by President

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6 / See KCHR.

7 / According to RSF, eight attacks were carried out against journalists in 2009.

8 / The debate on capital punishment was revived in September 2009 when the Head of the State Committee on National Security, Mr. Murat Sutalinov, proposed to reinstate the death penalty at a meeting of the Security Council of the Republic of Kyrgyzstan. On November 10, the Parliament met with much reluctance a proposal made in Kyrgyzstan to sign the Second Optional Protocol to the International Covenant on Civil and Political Rights, which prohibits the death penalty. Reservations were mainly made by members of the majority party, in which some officials have proposed holding a referendum on restoring the death penalty.

9 / The reform makes the procedure of registration of religious organisations more complicated (including by increasing the number of people required to legally register the organisation from ten to 200 people) and prohibits proselytising.

10 / Under pressure from national and international organisations, consideration of the proposed amendment to the Law on Non-Commercial Organisations, submitted to Parliament on February 18, 2009 and which threatened to severely restrict the activities of NGOs, was postponed to a later date.

Bakiev on February 13, 2009 “On the Universal Conscription of Citizens of the Kyrgyz Republic, Military Service and Alternative Service” since it allows the military to participate in repression of peaceful rallies<sup>11</sup>.

In 2009, most of the peaceful rallies and demonstrations organised by defenders were hindered and the participants arrested, prosecuted and convicted for organising an illegal gathering under the Law of July 6, 2008 regulating peaceful gatherings. Thus, on July 24, 2009, Ms. **Tolekan Ismailova**, Director of the organisation Citizens Against Corruption (CAC), Ms. **Diana Makenbaeva**, Ms. **Evguenia Krapivina** and Ms. **Aida Baydzhumanova**, respectively lawyers and employee of CAC, Mr. **Timur Shaikhutdinov**, Coordinator of the Council for the Defence of the Rights of Youth to the Ombudsman of Kyrgyzstan, Ms. **Erkingul Imankozhoeva**, a member of the organisation “Karek”, as well as Mr. **Urmat Kizi Mirgul** and Mr. **Umutay Arikova** were arrested by security forces while participating in a rally to mark the “Global Day of Action on Iran”. They were subsequently sentenced to fines, or received a verbal warning in accordance with the Law of July 6, 2008, with the exception of Messrs. Umutay Arikova and Urmat Kizi Mirgul, who were acquitted<sup>12</sup>. On March 4, 2009, Mr. **Maxim Kuleshov**, Coordinator of the Tokmok Human Rights Resource Centre, was arrested while preparing to give a “street lesson in democracy,” to encourage people to peacefully struggle for human rights and the respect for the Constitution. Mr. **Mikhail Golovanov**, an active participant in the “lesson”, was also arrested. Mr. Kuleshov was placed in the psychiatric hospital of Bishkek for “improper behaviour” before being released the next day. Mr. Golovanov was sentenced to 15 days’ administrative detention. Released on March 6, he appealed the decision. Mr. Kuleshov, meanwhile, challenged the legality of his arrest. Their complaints were both rejected in first instance and before the Supreme Court of Kyrgyzstan. Under threat of being prosecuted criminally for failure to comply with a court order<sup>13</sup>, an offense punishable by imprisonment, Mr. Kuleshov left the country a few weeks later. On July 30 and 31, 2009, Ms. Tolekan Ismailova, Ms. **Asiya Sasikbaeva**, Director of the “Interbilim” Centre, Ms. **Aziza Abdirasulova**, Director of the Centre for Human Rights “Kylym Shami”, and Ms. **Gulanara Dzurabaeva** were arrested and sentenced to pay fines upon having gathered to protest the arbitrary arrests of opponents in Bishkek

11 / See Institute for Public Policy (IPP), *The right of Kyrgyz citizens to peaceful assembly: recent decisions by the authorities and the response of the society*, April 3, 2009.

12 / Ms. Aida Baydzhumanova, Mr. Timur Shaikhutdinov, Ms. Erkingul Imankozhoeva and Ms. Tolekan Ismailova were sentenced to a fine of 1,500 soms (25 euros), and Ms. Evguenia Krapivina received a verbal warning.

13 / Mr. Maxim Kuleshov was repeatedly arrested in 2008 for organising peaceful rallies and demonstrations and sentenced to fines he refused to pay on the grounds that said sentences were illegal.

and Baliktchi<sup>14</sup>. In addition, the municipality of Bishkek appropriated the space devoted to peaceful assembly to the outskirts of the city on the eve of the elections<sup>15</sup>. Similarly, Mr. **Sapar Argimbaev** and Mr. **Uran Riskulov**, respectively Director and member of the organisation for the rights of small farmers and social rights “Bolush” and leader of the opposition party “Kyrgyzstan Green”, were arrested and charged with organisation of “mass disorder” (Article 223 of the Criminal Code) in connection with the mass arrests that took place during peaceful gatherings organised by the villagers of Petrock in the Tchoui region on April 24 and 26, 2009 to denounce the lack of reaction by the authorities to the rape of a four year old child on April 8, 2009<sup>16</sup>. As of late 2009, the District Court of Moscow in the Tchoui region had not yet ruled on this case<sup>17</sup>.

### **Intensification of harassment and threats against defenders during presidential elections**

Anxious to silence any demonstration by the opposition calling into question the legitimacy of Mr. Bakiev’s presidency of the Republic, the authorities stepped up repression efforts during presidential elections. The determination of the Government to stifle critical voices during the presidential elections was demonstrated in particular by the number of threats and serious violence perpetrated against defenders. On June 29, 2009, the Kyrgyz Committee for Human Rights (KCHR) posted on its website an interview with the opposition candidate for the presidency of the Republic, Mr. **Almazbek Atambaev**, in which he testified to have been subjected to threats and alluded to kidnappings of opposition members and their families. The next day, three people showed up at the office of KCHR, and asked for its Chairman, Mr. **Ramazan Dyrlydaev**. As no one responded, they threatened to find him and “break his arms and legs”, and added that if Mr. Dyrlydaev wanted to stay alive, he would have to withdraw this interview from KCHR website. Following these events, the organisation decided to temporarily close all offices and did not re-open until November 2009. A few months later, on October 7, 2009, another member of KCHR, Ms. **Guliza Omurzakova**, was assaulted while she was in transit to Almaty in Kazakhstan, after returning from Warsaw where she spoke at a conference organised by ODIHR on the situation of migrants from Kyrgyzstan to Kazakhstan and the Russian Federation.

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14 / The arrests carried out in Bishkek and Baliktchi concerned members and supporters of the opposition party CDPK, who challenged the results of presidential elections on July 23, 2009.

15 / See KCHR.

16 / 83 people were arrested. Some were acquitted and others were sentenced to administrative penalties.

17 / See Klym Shami.

The driver of the taxi she used to get to Almaty airport, as well as another man who boarded the vehicle later, interrogated her about the purpose of her trip to Warsaw and then threatened to rape her. The men agreed to release her in the outskirts of the city only after she gave them 50 euros. They demanded that she no longer participate in international conferences on human rights, and that she stops to write reports on the situation of migrants in Kazakhstan. Back in Bishkek, Ms. Omurzakova filed a complaint with the Ministry of Home Affairs, as well as with the OSCE representation in Bishkek. In early November 2009, she was informed that the latter had forwarded her complaint to the Ministries of Internal Affairs and Foreign Affairs. Ms. Omurzakova subsequently had a meeting at the Ministry of Internal Affairs in late November 2009. However, no further steps had been initiated by the Ministry as of late 2009. Similarly, on July 23, 2009, Mr. **Sopiev Kanat**, Coordinator of the KCHR office in the region of Issik-Kul, was arrested and severely beaten by police officers while demonstrating outside the local administration of Baliktchi to challenge the manipulation of votes in presidential elections. Eighteen other protesters were arrested at the same time. Mr. Sopiev Kanat was placed in the detention centre of the city of Baliktchi. Suffering from a brain concussion and kidney pain following the beatings he received during his arrest, as well as aseptic meningitis that he suffers on a recurring basis, he has been under house arrest since September 1, 2009 by order of the judge of Baliktchi. On September 30, 2009, the latter ordered his detention. Fearful of being subjected to torture and pressure by the National Security Service, Mr. Sopiev Kanat left the country in early October to seek asylum abroad<sup>18</sup>. A search was launched against Mr. Kanat. The eighteen other protesters were sentenced on December 25, 2009 by the Court of Baliktchi for “obstructing the right to vote or the work of the electoral commissions”, “organising mass disorder”, and “public calls for a violent change of constitutional order” (Articles 139, 233 and 297 of the Criminal Code). Four of them were sentenced to four years in prison, and fourteen received prison sentences ranging from two to four years’ imprisonment. They declined to appeal the decision, fearing that the penalty would be increased.

### **Repression against Kyrgyz and international defenders for investigating into the events of Nookat**

In the South-West, where the geopolitical situation is very complex, defenders who denounced abuses committed by security forces against citizens in the name of the fight against terrorism were particularly targeted. In 2009, defenders who have investigated the events of Nookat and

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18/ See KCHR.

the conviction of 32 people which ensued<sup>19</sup> were systematically harassed. Persecution targeted both Kyrgyz and foreign defenders. On February 26, 2009, Mr. **Vitali Ponomarev**, Director of the Central Asian programme of the Centre for Human Rights “Memorial” in Russia, was blocked at Manas airport by customs officials, deported to Russia and banned from the territory for five years. The organisation Memorial had just published a report headed by Mr. Ponomarev on the serious human rights violations suffered by the accused of Nookat, including the use of torture and fabrication of false evidence<sup>20</sup>. A colleague of Mr. Ponomarev, M. **Bakhrom Hamroev**, who had travelled to Kyrgyzstan to investigate violations of the rights of the Muslim community in the south of the country by the police in the framework of the fight against terrorism, and specifically on the events of Nookat, was arrested in Osh on November 18, 2009. His Kyrgyz collaborator, Mr. **Izzatilla Rakhmatillaev**, Director of the organisation Law and Order<sup>21</sup>, was also arrested the same day by the Office of National Security Service, where he had gone to obtain information on Mr. Hamroev’s fate, and his apartment was searched. The latter was released the next morning. Mr. Hamroev was meanwhile held overnight by the National Security Service in Osh, and was threatened during his detention<sup>22</sup>. Accused of illegally collecting information on the social and political situation in Kyrgyzstan and “disseminating information” on the Islamist organisation Hizb-ut-Tahrir, he was deported to Russia on November 19, 2009<sup>23</sup>. Finally, Ms. **Nigina Bakhrieva**, former Director of the Centre for Human Rights and the Rule of Law in Tajikistan and currently a consultant for the United Nations High Commissioner for Human Rights on a project for the office of the Ombudsman in Tajikistan, was prevented from entering Kyrgyzstan on December 2, 2009 after having been invited by the Ombudsman of Kyrgyzstan. In September 2009, she had already visited the country to advise the lawyers defending the accused from Nookat on available remedies before the United Nations Human Rights Committee. Ms. Bakhrieva was told she was banned from living in Kyrgyzstan until 2019 because of her “problems” with the “institutions” of Kyrgyzstan,

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19 / On May 19, 2009, the Supreme Court sentenced, on appeal, 32 people (including two women and three minors at the time) accused of taking part in the events of October 2008 in the city of Nookat, to sentences ranging from five to 17 years in prison. Scores of the villagers clashed with police after the cancellation of the traditional celebrations of *Eid al Fitr*. Kyrgyz officials said those were members of Hizb-ut-Tahrir and their intention was to overthrow the constitutional order, charges denied by the defendants and their relatives. The defendants’ confessions would have been extracted under torture, and the defendants would have been deprived of their right to a fair trial.

20 / See Memorial.

21 / This association leads investigations on human rights violations in southern Kyrgyzstan.

22 / Mr. Hamroev was, for example, threatened to be delivered to the authorities in Uzbekistan, where he originally came from.

23 / See Memorial.

no further details being given to her<sup>24</sup>. Members of the Monitoring Commission to the Ombudsman on the events of Nookat were also pressured to dissuade them from conducting investigations<sup>25</sup>. Ms. Aziza Abdirasulova, President of the Commission, was particularly targeted. On October 2, 2009, a bullet was found in her handbag by customs officials at Sheremetyevo airport in Moscow upon her return from Warsaw, where she had participated in an OSCE meeting and was on a layover in the Russian capital. During customs control in Warsaw, no object of this sort had been found. The Russian police let her go on to Bishkek unhindered. On July 16, 2009, a member of the special services presented himself to the offices of the organisation she heads, warning her that she could be prosecuted if she kept making statements on counter-terrorism operations in the south of the country. On April 1, 2009, members of the Homicide Squad made simultaneously stops in different villages to question members of Ms. Abdirasulova's family on her activities<sup>26</sup>. On September 24, 2009, Ms. **Dinara Ochurakhunova**, President of the Coalition for Democracy and Civil Society and member of the Commission on Nookat events and the Human Rights Defenders' Council to the Ombudsman, was arrested at Bishkek airport after becoming the subject of an alert from the National Security Service. Released after one hour, it would appear that this action was carried out by the special services in order to intimidate her. Ms. Ochurakhunova sent a complaint to the head of the border services, the presidential administration and the President of the Agency for Tourism. As of late 2009, she had received no reply to her letter<sup>27</sup>.

### **Retaliation against Ms. Baktigul Imankozhoeva, defender of the rights of victims of Barkssoon**

In 2009, the judicial harassment increased against Ms. **Baktigul Imankozhoeva**, doctor, Director of the Diagnostic Centre of the City of Barkssoon and member of the organisation "Karek", an association of the rights of victims of the environmental disaster in Barkssoon<sup>28</sup>. The harassment seems to be intended to intimidate and cause the demobilisation

24 / See Open Viewpoint Public Foundation.

25 / During the summer of 1998, a truck full of cyanide spilled into the Barkssoon region. Twenty tons of toxic chemical waste spilled into the river, which flows into Lake Issik-Kul. This ecological disaster resulted in over 1,000 victims in the region. The truck driver is the only person who was prosecuted, the victims did not receive adequate medical care, and promised compensation to victims were never paid.

26 / See Press Release of the Human Rights Defenders Council to the Ombudsman, April 6, 2009.

27 / See Open Viewpoint Public Foundation.

28 / During the summer of 1998, a truck full of cyanide spilled into the Barkssoon region. Twenty tons of toxic chemical waste spilled into the river, which flows into Lake Issik-Kul. This ecological disaster resulted in over 1,000 victims in the region. The truck driver is the only person who was prosecuted, the victims did not receive adequate medical care, and promised compensation to victims were never paid.

of members of civil society acting to promote the rights of victims of the tragedy. On December 15, 2009, the Supreme Court upheld the conviction of Ms. Imankozhoeva, who was sentenced to a two-year suspended sentence despite the fact that the investigation was conducted in violation of rules of criminal procedure (illegal search, pressure on the plaintiffs) and that many witnesses testified to her innocence. The hearing took place in the absence of Ms. Imankozhoeva, who was hospitalised at the time, and of her lawyer, despite the request to postpone the hearing made by the defender's sister. In 2007, Ms. Imankozhoeva was indicted for misuse of building materials and non-payment of wages and then sentenced in June 2008 for "abuse of power" under Article 304 of the Criminal Code by the District Court of Jeti-Oguz, then again on appeal in September 2009 by the Regional Court of Issyk-Kulsk. Ms. Imankozhoeva had already been convicted in 2002 under Article 304 of the Criminal Code after being accused of having sold a newborn. She was then dismissed from her job, but the Supreme Court had overturned the conviction, holding that Ms. Imankozhoeva's guilt could not be proven<sup>29</sup>.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Mr. Maxim Kuleshov and Mr. Mikhail Golovanov	Arrest / Harassment	Urgent Appeal KGZ 001/0309/OBS 045	March 10, 2009
Mr. Ramazan Dyryldaev / Kyrgyz Committee for Human Rights (KCHR)	Harassment / Threats	Urgent Appeal KGZ 002/0709/OBS 099	July 7, 2009
Ms. Tolekan Ismailova, Ms. Diana Makenbaeva, Ms. Evguenia Krapivina, Ms. Aida Baydzhumanova, Mr. Timur Shaikhutdinov, Ms. Erkingul Imankozhoeva, Mr. Urmat Kzyz Mirgul, Ms. Umutay Arykova, Ms. Asiya Sasykbaeva, Ms. Aziza Abdirasulova and Ms. Gulnara Dzhurabaeva	Arbitrary arrest / Sentencing / Obstacles to freedom of peaceful assembly	Open Letter to the authorities	August 4, 2009
Messrs. Bakhrom Hamroev, Izzatilla Rakhmatillaev and Vitaly Ponomarev	Arrest / Deportation	Urgent Appeal KGZ 003/1109/OBS 171	November 23, 2009
Ms. Nigina Bakhrieva	Prohibition from entering the territory	Urgent Appeal KGZ 004/1109/OBS 179	December 3, 2009

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# RUSSIAN FEDERATION

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In Russia, the year 2009 was marked by an unprecedented number of murders and violent attacks on human rights defenders and independent journalists. These attacks were intended to establish a reign of terror<sup>1</sup>. Government measures to identify, try and sentence the culprits and, more generally, to ensure the protection of human rights defenders, independent journalists and members of the opposition remained insufficient. There was a general climate of insecurity and violence throughout the country. Fascist groups continued to make xenophobic speeches as the number of public demonstrations and racist crimes and attacks increased<sup>2</sup>. In parallel, the idea that Russia is invaded by an uncontrollable flood of migrants who have come to steal work from Russians was widely relayed in the press and in official speeches, giving legitimacy to the stigmatisation and impunity for the attacks endured by defenders of migrants' and minorities' rights. Insecurity was aggravated by the general climate of impunity that reigned in the country, the violence commonly used by the police force, and by a defective legal system. Faced with this situation, at the end of December 2009 the Russian President promised to revise the judicial system, the police and the prisons.

Moreover, the Russian President's promises to democratise the country resulted in little that was concrete. The opposition still had considerable difficulty in making itself heard and there was no end to attacks on freedom of expression. Dissident voices were harshly repressed and were still considered as threats. Once again this year, demonstrations by the "nesoglasnikh"

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1/ A symbolic case is that of the Ingush activist Mr. Maksharip Aushev, the owner and former Editor-in-chief of the opposition website [www.ingushetiya.ru](http://www.ingushetiya.ru). He was shot dead on October 25, 2009. A member of the Experts' Council for the North Caucasus attached to the Russian Human Rights Ombudsman, he had been threatened on several occasions before his murder and had escaped an attempt to kidnap him on September 15, 2009.

2/ For instance, on November 4, 2009, the concert by the Russian fascist cult rock group Kolovrat brought thousands of neo-Nazis together to chant racist slogans in complete freedom in the centre of Moscow. The fact that this kind of assembly might be permitted led to the belief that these groups benefit from special protection on the part of the authorities, which is a cause for concern for human rights defenders. See Russian Research Centre for Human Rights (HRO). Furthermore, the warnings given by the Young Europe organisation concerning fascist meetings provoked no reaction from the Prosecutor. See *Caucasian Knot*. According to the Moscow Bureau for Human Rights (MBHR), from January 1 to December 15, 2009, 75 people were killed and 282 people were injured following attacks of a racist nature. During the same period, 300 people were prosecuted for racist crimes. Most of them were sentenced.



movement, the “Dissenters’ marches” that call for a “Russia without Putin”, were brutally dispersed and accompanied by arrests. In addition, the last day of the year was marked by the arrest of 50 people during a demonstration calling for freedom of assembly in Moscow, amongst whom was the former Soviet dissident, founder and President of the Moscow Helsinki Group, Ms. **Liudmila Alexeeva**<sup>3</sup>.

Furthermore, the security situation worsened throughout the North Caucasus in 2009. Although in April 2009, ten years after the war had started again in Chechnya, President Dmitri Medvedev announced the end of the “anti-terrorist operation” and that the work of reconstruction would continue, the security situation in the republic of the North Caucasus continued to be of great concern. Under cover of apparent “normalisation”, abductions, enforced disappearances, acts of torture and murders continued while the Chechen President Ramzan Kadyrov established a reign of terror, at the same time cultivating a form of cult of personality and exercising power that is almost absolute. Despite efforts by the current President of Ingushetia, Mr. Yunous-Bek Yevkurov, to begin a dialogue with human rights organisations and civil society associations, together with his willingness to reform the bodies responsible for implementing the law, the situation in the small neighbouring republic of Chechnya worsened in 2009, as was the case for the rest of North Caucasus. The atrocities committed by the forces of law and order and agents of the Federal Security Service (FSB, formerly the KGB) in Dagestan and Ingushetia in particular, such as acts of torture, arbitrary detentions and abductions, fuelled the revolt of young people who swell the ranks of the Islamic groups. Attacks on State representatives increased, as demonstrated by the killing of the Dagestan Minister of the Interior, Mr. Adilgeriy Magomedtagirov, on June 5, 2009 and the attack on the Ingush President on June 22, 2009. Instability, corruption, arbitrary acts and impunity reigned throughout the other republics of North Caucasus. Finally, the crimes committed in the past and that continued to be committed in the context of the fight against terrorism went unpunished. In this context, defenders who denounced these atrocities and impunity for them were subjected to brutal repression.

## **Serious persecution of defenders in the North Caucasus**

### **Killings, attacks, threats and harassment of defenders in Chechnya**

During the summer of 2009, the Chechen authorities publicly accused members of human rights organisations of being “enemies of the Republic”

and “accomplices of terrorist groups”. As an example, on June 24, 2009, the Chechen President, criticising work by experts who contested the so-called “stabilisation” of the republic, in which the “Memorial” Human Rights Centre had in particular participated, announced on the *Grozny* television channel that he connected the activities of the authors of the report “with banditry, terrorism, criminality”. On July 1, 2009, Mr. Adam Delimkhanov, a member of the Duma close to Mr. Kadyrov, also spoke in hostile terms on the *Grozny* channel about human rights defenders, saying that they “help these devils [i.e. terrorists and fighters] and defend their interests and their actions”. “They do just as much damage as the ones that hide in the woods (...). These devils, these terrorists, the ones that help and support them, we will destroy them”.

This clear hostility was accompanied by murders, attacks and serious threats against defenders. On July 15, 2009, Ms. **Natalia Estemirova**, a member of Memorial, was kidnapped in Grozny and murdered; her brutal death immensely traumatised the community of defenders in Russia and worldwide. The President of the Chechen Republic had personally threatened Ms. Estemirova because of her investigation into cases of abduction, enforced disappearances and summary executions in Chechnya. Following her murder, several other members of the Memorial office in Grozny were threatened. On July 17, 2009 Memorial therefore decided to close the offices of the organisation in Chechnya<sup>4</sup>. In August 2009, the organisation’s employees were the subject of surveillance and pressure. This persecution in particular concerned Mr. **Akhmed Guissaev**, who helped Ms. Natalia Estemirova on the case of the abduction of two men in Grozny on June 28, 2009. Mr. Guissaev had been under surveillance by unknown persons since the beginning of the month of July 2009. This surveillance continued after the killing of Ms. Estemirova, while Mr Guissaev continued the investigation. During the evening of August 13, 2009, unknown armed persons checked Mr. Guissaev’s papers. In addition, Chechen “siloviki” (members of the Government forces of law and order) placed the Grozny premises of the organisation under surveillance. Following serious threats, several members of Memorial also had to leave the country. Furthermore, on August 11, 2009, the President of the organisation “Save the Generation”, a support association for handicapped children, Ms. **Zarema Sadulayeva**, and her husband, Mr. **Umar Dzhabrailov**, were abducted and killed. Their bodies were found in their car and bore traces of torture. The fact that their abduction took place in broad daylight and that the assailants’ faces were not covered leads to the suspicion that the authors of the crime were

4 / They were re-opened on December 16, 2009.

members of the security forces. At the end of 2009, a criminal investigation had been opened but no suspect had been arrested. On October 31, Ms. **Zarema Gaissanova**, a member of the Grozny branch of the Danish Refugee Council, was abducted from her home. Her attackers, probably members of the security forces, also shot at her house, which they partially burned. As of the end of 2009, Ms. Gaissanova's whereabouts remained unknown. On November 9, 2009, the Prosecutor's representative simply informed the mother of the victim that the latter was still alive.

The campaign to discredit members of Memorial and other human rights organisations continued in parallel with these attacks. For instance, in an interview for the newspaper *Zavtra* that was published on September 24, 2009, President Kadyrov accused Memorial of being an association created to "destroy Russia". Similarly, the Chechen Republic Human Rights Commissioner assimilated *Caucasian Knot*, the independent news website responsible for numerous articles on violations in the Caucasus, to a terrorist website. In an interview given on *Radio Freedom* shortly after the murder of Ms. Estemirova, President Ramzan Kadyrov denigrated the defender's work, stating that it was of no interest, and described the activist as a person who had "never had any honour or decency". The Chechen President also filed a complaint against Mr. **Oleg Orlov**, President of the Memorial executive office, for "defamation", demanding 10 million roubles in damages and interest for "moral prejudice". This complaint was made after Mr. Orlov had accused on July 15, 2009 the President of being responsible for the murder of Ms. Estemirova, on Memorial website. On October 6, 2009, the Tverskoy Court sentenced the association to pay a fine of 50,000 roubles (1,140 euros) and Mr. Orlov to a fine of 20,000 roubles (450 euros). In parallel, a criminal investigation was opened against Mr. Orlov on October 20, 2009 by the Central Department of Internal Affairs (GUVd), for "defamation". At the end of 2009, Mr. Orlov, who risked a prison sentence, and one of his colleagues, Ms. **Svetlana Ganuchkina**, were questioned by the police services but no charge was held against them<sup>5</sup>.

### **Intensification of the repression of defenders throughout the region**

All the republics of North Caucasus were also affected by repression. For example, in Dagestan, during the night of August 19 to 20, 2009, a fire was criminally started in the premises of the "Mothers of Dagestan for Human Rights" organisation in Makhachkala, which were totally destroyed. All of the organisation's documents and other property, includ-

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410 5/ On February 9, 2010, the Chechen President announced that he would withdraw his complaint.

ing computer equipment, went up in smoke, depriving the organisation of its main working tools. A criminal investigation was opened in the month of October 2009 but, as of the end of 2009, no prosecution had been initiated<sup>6</sup>. In addition, at the beginning of September, hundreds of leaflets were distributed in the town of Makhachkala containing hostile messages against defenders, lawyers and journalists. The authors of the tracts, presenting themselves as “family members of murdered policemen”, called for revenge and openly threatened 250 people with death. Amongst those named were Ms. **Svetlana Isayeva**, Director of the organisation “Mothers of Dagestan for Human Rights”, two Memorial colleagues, Ms. **Bakanay Guseynova** and Mr. **Zaur Gaziyeu**, and Mr. **Isalmagomed Nabiyeu**, a human rights activist<sup>7</sup>.

### **Impunity for killings and attacks against defenders in the rest of the country**

Killings and attacks against defenders were not restricted to North Caucasus, but were carried out throughout the Russian Federation. On March 31, 2009, Mr. **Lev Ponomarev**, Director of the Public Movement “For Human Rights”, was the victim of a particularly violent attack that led to him being hospitalised. In 2008, Mr. Ponomarev had tried to alert the police to the fact that he was being followed, without the latter taking any steps to ensure his safety. At the end of 2009, the case was termed as “banditry committed by a group formed by prior agreement” (Article 162.2 of the Criminal Code), but no arrest had been made.

At the same time, investigations into murders and attacks on defenders saw little progress and no investigation was made into the real people behind the attacks – evidence of the incompetence or the authorities’ lack of willingness to bring those really responsible for the murders of defenders to justice. As an example, as of the end of 2009 it was still not known who was behind the killing of the journalist Ms. **Anna Politkovskaya** on October 7, 2006. On February 19, 2009, the Moscow Military Court acquitted the persons who had until then been accused of carrying out the killing. On June 25, 2009, the Supreme Court quashed the verdict and, on September 3, 2009, ordered the case to be sent back to court and a new

6/ The criminal nature of the fire was confirmed by an agent of the Ministry of Emergency Situations, who found pieces of newspaper soaked in petrol under the window of the premises. After the fire, the Sovietsky district police station in Makhachkala (ROVD) had nevertheless refused to register the complaint filed by Ms. Svetlana Isayeva: it was claimed that an assessment had been carried out by experts from the Ministry of Emergency Situations, attributing the fire to a short circuit in the cabling on the premises. However, at the time of the fire, the current to the office had been cut off two and a half weeks previously. None of the machines was plugged in. See Mothers of Dagestan for Human Rights.

7/ See Memorial.

investigation to be opened. In addition, as of the end of 2009, no-one had been identified as being responsible for the attacks carried out in 2008 against Ms. **Carine Clément**, a French sociologist and defender of social rights in Russia, Mr. **Mikhail Beketov**, Editor-in-chief of *Khimkinskaya Pravda*, a newspaper that denounces local authority corruption, and an activist to safeguard the forest from building projects, and Mr. **Sergey Fedotov**, a defender of the rights of smallholders in the Moscow suburbs. In addition, with regard to Mr. Beketov, who remained in a coma for several weeks after being attacked, a criminal investigation was opened under Article 111 of the Criminal Code for “intention to seriously damage health” and not for “attempted murder”<sup>8</sup>. The investigation was ongoing as of the end of 2009.

### **Killings, attacks, threats and harassment against defenders who combat discrimination, racism and right-wing extremist groups**

In 2009, once again, members of organisations that combat racism and the activities of extreme right-wing movements were victims of violence by neo-Nazi groups that issue increasingly frequent calls for the elimination of defenders and publish on Internet lists of the names and contact details of the persons targeted. The beginning of the year was marked by the killing on January 19, 2009 of the lawyer Mr. **Stanislav Markelov** and the *Novaya Gazeta* journalist, Ms. **Anastasia Baburova**, who accompanied him. Mr. Markelov was investigating the atrocities committed by the forces of law and order in Chechnya and was defending victims of the Nord Ost tragedy. The investigation that followed the killing led to the arrest and conviction for of Messrs. Nikita Tikhonov and Evgenya Khacis on November 3 and 4, 2009<sup>9</sup>. According to the statements of the accused, they killed Mr. Markelov because he was defending persons belonging to the anti-fascist movement. On November 16, 2009, Mr. **Ivan Khutorskoy**, one of the young anti-fascist movement activists, was found dead on the landing of his Moscow apartment building with two bullets in his head. The young 26 year-old activist had been violently attacked with a knife on three occasions since 2005. His name and address were included on neo-Nazi websites calling for him to be killed. Shortly after his murder, the person in charge of the Prosecutor’s Investigation Committee stated that he did not exclude the possibility that the murder was linked to the young man’s anti-fascist activities. The investigation was ongoing as of the end of 2009<sup>10</sup>. Similarly, threats against the “SOVA” Centre for Information

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8/ *Idem*.

9/ Mr. Markelov was attempting to incriminate the same two people for the murder of a young anti-fascist. See HRO.

10/ See HRO.

and Analysis<sup>11</sup> intensified in 2009. On February 8, 2009, the day before the publication of a report on the issue of nationalism and racism in Russia, Ms. **Galina Kozhevnikova**, Vice-President of the SOVA Centre, received death threats by e-mail informing her that she would soon join Mr. Markelov and the anti-racist activist Mr. **Nikolai Guirenko**, murdered in 2004. At the beginning of the year, unknown persons tried to enter the apartment of Mr. **Alexander Verkhovsky**, the Centre Director. The latter had already been the victim of such intrusions in July 2008 and his name and address were included in a list published on the extreme right website *www.vdesyatki.net*. An investigation had then been opened for “revealing personal information” and “death threats”. A new investigation was opened but, as of the end of 2009, no suspect had been identified in either of the two investigations.

The extreme right threat is all the greater because the neo-Nazi movements can express themselves in complete freedom. In July 2009, Mr. **Konstantin Baranov**, in charge of the Rostov-on-the-Don branch of the Young Europe organisation, which promotes the values of tolerance and combats racism, received threats after taking steps to warn the Prosecutor that neo-Nazis would meet in the city of Rostov-on-the-Don. On July 15, 2009, a web page on the Internet site of a member of the Slavic Union extreme right movement published Mr. Baranov’s contact details and a call to “all extreme right sympathisers in Russia” to take “appropriate” action in response to the initiatives of the defender. New threats were published on the same site after Mr. Baranov alerted the SOVA Centre. In Krasnodar, on October 12, 2009, an illegal control<sup>12</sup> was made of the “ETHnICS” association for the promotion of tolerance by the Department of Economic Crimes (OBEP). Three computers were seized and OBEP agents tried to arrest Ms. **Anastasia Denisova**, President of the organisation, member of the coordinating committee of the Youth Human Rights Movement and the Citizens’ Union for a Green Alternative (GROZA) and a collaborator of Memorial. Ms. Denisova refused to submit to being arrested since there was no warrant. Following this search, in December 2009, a criminal investigation was opened against Ms. Denisova for “violation of copyright in the course of her job” on the basis of Article 146.3 § D of the Criminal Code, liable to a six years’ prison sentence and a fine of 500,000 roubles

11 / The SOVA Centre is an organisation that monitors and analyses displays of racism and xenophobia and studies relations between the churches and secular society, as well as political radicalism in Russia.

12 / A complaint that the organisation used pirated software was used as grounds for the search. However, the complaint did not correspond to the address of the office.

(12,400 euros)<sup>13</sup>. Finally, on October 4, 2009, she was stopped at Krasnodar airport and prevented from attending a human rights meeting organised by the OSCE. The day after the search, on October 13, 2009, fearing new reprisals, Ms. Denisova left Krasnodar. In September 2009, Ms. Denisova had additionally been the victim of a slander campaign in the Krasnodar municipal newsletter<sup>14</sup>.

### Judicial harassment of defenders of the rights of detainees

In the context of considerable concern regarding the state of prisons in Russia and in which the rights of prisoners are not respected, people who denounce the situation are deemed to be an obstacle to the stability of the Russian State and are legally prosecuted for their activities to defend the rights of detainees. The Volgograd correspondent of the *Svobodnoe slovo* (Free Speech) newspaper, Ms. **Elena Maglevannaya**, was sentenced on May 12, 2009 by the Kirov District Court in Volgograd to pay 200,000 roubles (4,613 euros) in damages and interest to the Volgograd penitentiary, in accordance with Article 152 of the Civil Code relating to the “honour and protection of a professional reputation”. This sentence was related to articles by the journalist published in several newspapers and on Internet on the detention conditions of a Chechen prisoner and the ill-treatment that he suffered. The journalist refused to pay the damages and interest and to publish a disclaimer. With the risk of criminal prosecution, she sought asylum in a European country at the end of May 2009. She was not only afraid of being deprived of her freedom but also feared for her safety, as she received death threats from an extreme right-wing group. The defender of detainees’ rights, Mr. **Aleksei Sokolov**, President of the organisation “Legal Basis”, member of the Non-Governmental Commission of Observation of Places of Detention in the Sverdlovsk region and well-known for his denunciations of the use of torture in Russian prisons, has been the victim of judicial harassment since May 2009. Accused of being a “crook” and of “large scale robbery” (Articles 162 and 158.4 of the Criminal Code), he was placed in provisional detention on May 13, 2009 in Yekaterinburg prison No. 1. On December 23, 2009, the Bogdanovich Court, in a closed hearing, extended his provisional detention until March 9, 2010. The accusations against Mr. Sokolov were based on statements

13 / On February 11, 2010, Ms. Anastasia Denisova was charged with “violation of copyright in the course of her job” as well as with “using harmful computer programmes”, an offence liable to a three years’ prison sentence and a fine of 200,000 roubles (around 4,970 euros).

14 / An article published in the municipal newsletter dated September 30, 2009 accused her of inciting national discord and hatred because of her writings on the problem of xenophobia in the Krasnodar region and her work to promote Russo-Georgian dialogue.

forcibly obtained from detainees. Examination of the grounds of the case began in January 2010.

### **Administrative and judicial harassment of human rights organisations**

In 2009, President Medvedev confirmed his willingness to carry out reforms aimed at strengthening civil society in the country. A working group responsible for proposing improvements to the Law on Non-Profit Making Organisations was created by presidential decree on May 8, 2009. The reform process should continue into 2010. The first stage consisted of adopting amendments on the registration and checking of NGOs. These amendments came into force on August 1, 2009 and in particular reduce the checks that NGOs must undergo and the number of authorised grounds for refusal to register. Although these reforms are an important step, they are still not enough since they do not guarantee NGOs protection against arbitrary or politically motivated decisions. The second stage was the drafting of a law to support NGOs that have a social character<sup>15</sup>, which would encourage work in the social domain, particularly thanks to State funding and tax benefits. As a result, this support would allow the Government to transfer to NGOs part of its responsibilities relating to the social damage caused by the crisis. However, at the end of 2009, this reform had not been implemented yet. The third stage, planned for the beginning of 2010, will consist in codifying legislation on NGOs and removing the contradictions, regulating NGO taxation and cooperation between NGOs and the State, settling the issue of funding NGOs, and changing legislation relating to the activities of foreign NGOs and international organisations on the territory of the Russian Federation. The human rights organisations call for far greater changes to effectively guarantee the conditions of independence of civil society<sup>16</sup>.

However, despite the reforms and the declarations of the head of the executive regarding the reinforcement of freedom of association, the latter was constantly hindered in 2009, particularly on the part of the local authorities. Several organisations encountered obstacles in particular during their attempts to register. In Saratov, for example, in violation of the provisions of the new law, the local department of the Ministry of Justice considered the presentation of a certificate signed by the municipality guaranteeing an address was insufficient for registering organisations, stating that NGOs could only obtain premises at auction, so creating an absurd situation, since in order to sign any property contract, organisations must

15 / These changes were promised by President Dmitri Medvedev during his speech to the nation on November 12, 2009, when he promised to modernise the country on a democratic basis.

16 / See HRO Press Release, December 22, 2009.



have prior legal existence<sup>17</sup>. Similarly, as from January 1, 2010, Voronej city council planned to triple the rent of the Human Rights House<sup>18</sup>, which was additionally in poor condition<sup>19</sup>. Furthermore, NGOs were subjected to checks, including the seizure of their archives, and were prosecuted on unsubstantiated grounds. On the night of July 20 to 21, 2009, in the town of Kazan in Tatarstan, the Agora association and the Kazan Human Rights Centre were searched by agents of the Ministry of Internal Affairs Tax Offences Investigation and Intervention Unit. The laptop computers of the Director of the Kazan Human Rights Centre, Mr. **Igor Sholokhov**, and the organisation's accountant were seized. On August 5, 2009, representatives of the Inter-Regional Federal Tax Service of the Republic of Tatarstan came to the Agora offices to carry out a tax inspection. In September, Agora filed recourse with the General Prosecutor of the Russian Federation to contest the legality of the search. The Regional Prosecutor responsible to the General Prosecutor concluded that the search was illegal. On November 19, 2009, the Bakhitovsky Regional Court also declared that the search was illegal<sup>20</sup>. Furthermore, on December 18, 2009, the Minister of Internal Affairs of the Republic of Tatarstan cancelled the tax inspection<sup>21</sup>. Similarly, it was only in March that the Memorial Saint Petersburg Research Centre was able to collect the equipment that had been confiscated during the search carried out in December 2008, after a ruling on March 24, 2009 by the Dzerzhinsky District Court of Saint Petersburg<sup>22</sup>.

Furthermore, this year human rights associations were again affected by the Law Against Extremism<sup>23</sup>. Based on an imprecise definition, the provisions give rise to numerous abuses with regard to the representatives of civil society. Political extremism is one of the Government's favourite

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17/ See Human Rights Resource Centre.

18/ The Voronej Human Rights House groups together several associations, such as the Voronej branch of Memorial, a consumers' association, the International Human Rights Defence Group, the Free Labour Confederation, the Youth Human Rights Movement and the Voronej Journalists' Club.

19/ See HRO.

20/ According to the court, agents of the Tatarstan Interior Ministry violated bank secrets, filmed defenders without any grounds, and ordered their financial documents to be handed over with no legal grounds.

21/ See HRO.

22/ The association had contested the legality of the search and demanded the return of the confiscated equipment. On January 14, 2009, the Dzerzhinsky District Court considered that the search had been illegal and demanded that the confiscated archives should be returned. On February 24, 2009, at the request of the Public Ministry, the Saint Petersburg Court cancelled this ruling. The Dzerzhinsky District Court, during re-examination of the case, ruled again on March 24, 2009 and considered that the search was illegal in form since the organisation's lawyer had been prevented from being present during the search.

23/ This law extends the definition of extremism to incitation to racial, religious, political and social hatred and modifies the definition of hate crime in the Criminal Code (Article 63).

accusations for silencing defenders. During the summer and the beginning of the autumn of 2009, the Novorossiysk Prosecutor led a long campaign to discredit the Novorossiysk Human Rights Committee in the name of the fight against extremism. On May 21, 2009, the Prosecutor issued a warning to Ms. **Tamara Karasteleva** and her husband, Mr. **Vadim Karestelev**, members of the organisation, for “inadmissible extremist activity” for having enjoined minors to adopt “antisocial behaviour”. The defenders were accused of having incited agitation in schools, meeting school students to invite them to take part in a demonstration against Law 1539-KZ. Yet, although the defenders denounced the law, which plans to fine parents who do not respect the compulsory curfew for minors, in reality they had carried out no such activity in schools. On September 11, 2009, the Prosecutor tried to set in motion judicial proceedings against the organisation for extremism, calling for the latter to be closed down on the grounds of the warnings and for having displayed the slogan “Freedom is not granted, it’s taken” during a demonstration held on April 4, 2009 and considered to be “extremist”. On September 30, 2009, the Otyabrsky District Court of Novorossiysk ruled that the Prosecutor’s complaint was inadmissible.

### Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Stanislav Markelov	Murder	Urgent Appeal RUS 001/0109/OBS 010	January 19, 2009
Ms. Galina Kozhevnikova	Death threats	Closed Letter to the authorities	February 13, 2009
Mr. Stanislav Markelov, Ms. Anastasia Baburova, Ms. Galina Kozhevnikova and Mr. Nikolai Girenko	Assassination / Death threats	Press Release	February 18, 2009
Mr. Alexandre Verkhovsky and Ms. Galina Kozhevnikova	Threats / Harassment	Urgent Appeal RUS 002/0209/OBS 033	February 26, 2009
Memorial Saint Petersburg Research Centre	Illegal confiscation of equipment / Judicial proceedings / Harassment	Urgent Appeal RUS 011/1208/OBS 207.1	March 4, 2009
Ms. Elena Maglevannaya	Judicial proceedings	Urgent Appeal RUS 003/0309/OBS 052	March 24, 2009
	Sentencing	Urgent Appeal RUS 003/0309/OBS 052.1	May 18, 2009
Mr. Lev Ponomarev	Attack	Urgent Appeal RUS 004/0409/OBS 057	April 1, 2009
Mr. Aleksei Sokolov	Arbitrary detention / Ill-treatments / Risk of torture / Judicial harassment	Urgent Appeal RUS 005/0509/OBS 080	May 20, 2009

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
		Urgent Appeal RUS 005/0509/OBS 080.1	August 21, 2009
		Urgent Appeal RUS 005/0509/OBS 080.2	October 27, 2009
		Urgent Appeal RUS 005/0509/OBS 080.3	November 20, 2009
<b>Ms. Tamara Karasteleva and Mr. Vadim Karestelev</b>	Judicial and administrative harassment	Urgent Appeal RUS 006/0609/OBS 087	23 June 2009
<b>Ms. Natalia Estemirova</b>	Assassination / Threats	Press Release	July 15, 2009
<b>Memorial Human Rights Centre</b>	Suspension of activities	Press Release	July 22, 2009
<b>Ms. Natalia Estemirova, Mr. Akhmed Guissaev, Mr. Alexander Cherkasov and Mr. Oleg Orlov / Memorial Human Rights Centre</b>	Threats	Press Release	September 24, 2009
<b>Kazan Human Rights Centre and "Agora"</b>	Search / Harassment	Urgent Appeal RUS 007/0809/OBS 113	August 3, 2009
<b>Ms. Zarema Sadulayeva and Mr. Alik (Umar) Dzhabrailov, Mr. Murad Muradov, Ms. Natalia Estemirova</b>	Assassination	Press Release	August 11, 2009
<b>Mr. Oleg Orlov / Memorial Human Rights Centre / Ms. Natalia Estemirova, Mr. Stanislas Markelov, Ms. Anastasia Baburova, Ms. Zarema Sadulayeva, Mr. Alik (Umar) Dzhabrailov</b>	Judicial harassment	Press Release	October 7, 2009
<b>Mr. Oleg Orlov and Ms. Svetlana Gannushkina</b>	Judicial proceedings	Urgent Appeal RUS 006/1109/OBS 164	November 9, 2009
		Press Release / International Judicial Observation Mission Report	December 21, 2009
<b>ETHNICS / Ms. Anastasia Denisova, Mr. Yuriy Ivaschenko</b>	Search and illegal seizure of equipment / Attempted arbitrary arrest	Urgent Appeal RUS 008/1009/OBS 150	October 15, 2009
<b>Ms. Zarema Gaisanova</b>	Enforced disappearance	Urgent Appeal RUS 009/1209/OBS 189	December 15, 2009

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# SERBIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In 2009, as part of the process of drawing closer to the European Union, Serbia implemented a large number of the reforms required for deregulation of the visa system<sup>1</sup>. On March 25, 2009, the Serbian Parliament adopted a draft law against discrimination that defined a legal framework for the protection of all Serbian citizens, whatever their political, religious or sexual orientation or their state of health, whether physical or mental. Despite pressure from the Orthodox Church and conservative opinion that spurred the Government to adopt amendments restricting sexual and religious freedoms, the law was adopted without major changes<sup>2</sup>. Welcomed by human rights organisations, it will come into force at the beginning of 2010.

Serbia must nonetheless ensure resolution of the criminal proceedings opened against Mr. Ratko Mladić and Mr. Goran Hadžić, indicted by the International Criminal Court and still on the run.

In addition, extremist groups continued to carry out violent acts of a racist or homophobic nature, which the authorities seem incapable of combating, although first steps have been recently taken in this direction. On September 26, 2009, the police arrested around thirty activists from extreme right-wing groups, including the head of the extreme right-wing group "Obraz", Mr. Mladen Obradović. At the end of 2009, these organisations were being investigated and key political figures and authorities also called for a ban on "Obraz" and the "1389" movement<sup>3</sup> and their dissolution. However, the ban on demonstrators who marched on November 9,

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1/ With regard to this, lifting of the Schengen visa system came into effect on December 19, 2009.

2/ The law prohibits all discrimination, whether racial, national, social or denominational and provides protection against political, cultural, linguistic, physical or psychological discrimination. It also provides for the appointment of a commissioner for the protection of equality responsible for defining violations of this legislation and for taking warning and prevention measures. Fines of up to 10,000 to 100,000 dinars (105 to 1,050 euros) are planned.

3/ The Prosecutor of the Republic of Serbia called for the Supreme Court of Serbia to ban the extreme right-wing groups "Obraz" and "1389" in September 2009. Similarly, at the end of February 2009, the Secretary of State for Human Rights and Minorities, Mr. Marko Karadžić, called for "Obraz" to be banned and petitioned the court to verify the constitutionality and legitimacy of its activities. As of the end of 2009, the Supreme Court had not yet issued a ruling and the court was still considering the case.

2009, the International Day Against Fascism, Racism, Anti-Semitism and Xenophobia, prohibiting them from approaching the Parliament although they had initially been authorised to do so, was interpreted as a sign of the Government's refusal to fully assume its responsibilities in combating extreme right-wing groups<sup>4</sup>. Human rights defenders complained in general about the lack of political will to protect them from attacks by extreme right-wing groups and to guarantee their rights fully. Furthermore, no sentence resulted from the complaints filed by defenders who were attacked in 2008, which creates a climate of impunity and insecurity that is prejudicial to the work of civil society protagonists.

### **LGBT defenders are still threatened and their freedom of assembly is frequently flouted**

In 2009, defenders of lesbian, gay, bisexual and transgender rights (LGBT) were again subject to violence by extremist groups and suffered from the State's lack of willingness to guarantee their right to freedom of expression and ensure their protection. As an example, the organisation "Gay Straight Alliance" (GSA) encountered numerous problems in organising a press conference to announce the publication of a report on the situation of the rights of homosexuals in Serbia. The press conference, which was to be held on February 26, 2009 at the press centre in the Sava conference centre, was cancelled by the centre's management on February 24, as the use of the premises by an organisation for the promotion and defence of the rights of homosexuals was deemed "inappropriate". The conference was finally held on March 9 in the town of Kragujevas. Defenders who participated were attacked and insulted by young members of extreme right-wing groups (including "Naši", "Obraz", "1389" and hooligans), who threw stones at the windows and doors of the building where the conference was being held, at the same time making death threats<sup>5</sup>. Three of these members were later arrested.

Neither did the Serbian State guarantee freedom of peaceful assembly for defenders of LGBT rights, banning the "Belgrade Pride" parade from taking place as planned on September 20, 2009. Following the organising committee's announcement of the precise date of the event, extreme right-wing organisations launched an intimidation campaign, threatening to invite themselves along to prevent it from taking place and scrawling homophobic slogans such as "death to gays" on the walls of Belgrade. In

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4/ The demonstration had been organised by the Women in Black organisation, the lesbian rights organisation Labris (*Organizacija za lezbejska ljudska prava* - "Labris") and the Centre for Peace and Democracy Development (CAA).

5/ See CAA.

parallel, the “Gay Pride” organisation committee made recommendations to the police services to ensure safety at the event, recommendations that were not taken into account. Two weeks before the event was held, the media published calls for violence made by extreme right-wing organisations<sup>6</sup>. On September 19, the organisation committee met the Prime Minister, who presented a letter from the police chief banning the event from the centre of Belgrade due to “considerable risk”<sup>7</sup>. Despite their commitments<sup>8</sup> and under pressure from extremist groups, the authorities failed in their duty to guarantee LGBT defenders their right to peaceful assembly and freedom of expression. On October 19, five members of the Belgrade Pride organisation committee filed a complaint before the Constitutional Court, which had still not issued a ruling as of the end of 2009<sup>9</sup>. The Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe expressed their regret following the cancellation of the Gay Pride, recalling the fundamental freedoms of assembly and expression<sup>10</sup>.

### Attacks on defenders remain unpunished

At the end of 2009, those responsible for the assassination attempt on the independent journalist Mr. **Dejan Anastasijevic**, who had in particular investigated war crimes committed during the war and the illegal activities of the police and the secret services, had still not been identified. On April 14, 2007, a bomb had been thrown into the room of the journalist. Similarly, as of November 2009, no enquiry had been opened into attacks on the Humanitarian Law Centre (HLC) premises and threats against its Director, Ms. **Nataša Kandić**, who had been the subject of a slander campaign in 2008 because of her opinions on the independence of Kosovo. Such a climate of impunity merely encourages attacks against Serbian human rights defenders.

6/ The Helsinki Committee denounced a “campaign of fear” started by the police and the media to sabotage the parade.

7/ See CAA.

8/ On September 18, 2009, Serbian President Boris Tadic declared that the State would protect LGBT activists who took part in the parade and “would do everything possible to protect citizens without taking into consideration their religious, sexual or political persuasion”.

9/ See Belgrade Pride, [www.belgradepride.rs](http://www.belgradepride.rs).

10/ See Press Release issued by the OSCE Mission and the European Commission Delegation and the Council of Europe's Office in Serbia, September 21, 2009.

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# TURKMENISTAN

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Contexte politique

As in previous years, the progress promised by President Berdymukhammedov in terms of political and civil freedoms was minimal. With the exception of the wish of the President to bring the country out of its isolation at the international level and to continue to develop partnerships with Europe, the United States, Russia and China, no major policy change was noted. Whilst cooperation between the European Union and Turkmenistan since 2007 has permitted the start of a human rights dialogue by way of annual meetings such as the one that took place in Brussels in June 2009<sup>1</sup>, these debates appear to remain superficial and it is to be feared that EU interests in the region, particularly because of the rich gas reserves and progress in the Trans-Caspian pipeline<sup>2</sup>, remain the priority. Furthermore, after trying to block participation of Turkmen human rights organisations at the annual OSCE Human Dimension Implementation Meeting (HDIM), which took place in Warsaw from September 28 to October 9, 2009, the Turkmen delegation refused to participate in this event, which it condemned in a letter published on September 24, 2009<sup>3</sup>, a sign of the lack of willingness to carry out reforms that further respect for human rights in the country<sup>4</sup>.

Dissidents, political opponents, independent journalists and human rights defenders remained subject to severe repression and members of their families were threatened. Political pluralism still does not exist, despite the Constitutional reform adopted in 2008, officially giving citizens the right to form political parties. As was previously the case, the State is run by a single party and everything has been done to put obstacles in the way of

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1/ See European Union Press Release PRES/09/203, June 30, 2009.

2/ The Trans-Caspian gas pipeline will carry gas from Central Asia to Azerbaijan across the bottom of the Caspian Sea, permitting the transport of gas to Europe.

3/ According to the Head of the Turkmenistan Delegation to the OSCE, certain people on the guest list would be "terrorists", and the OSCE ODIHR would be becoming a "platform for expression by terrorists who are being sought", obliging the delegation to propose to the Turkmen Government that it should revise the terms of its cooperation with ODIHR. See Statement by the Delegation of Turkmenistan to the OSCE at the meeting of the OSCE Permanent Council under the agenda item entitled "Any other business", September 24, 2009.

4/ In a Statement by the Swedish Presidency of the EU on October 18, 2009, the EU regretted the absence of the Turkmen delegation from HDIM.

opponents who might have any vague thoughts of creating new parties. The latter were victims of intimidation acts – with summonses from agents of the Ministry of Domestic Security, threats to their families – or convinced to give up their places in exchange for sums of money<sup>5</sup>. Although the release of the political prisoner Mukhametkuli Aymuradov on May 2, 2009 after serving the whole of his 14 years' prison sentence might have been interpreted as a sign of change, no political prisoner benefited from the three presidential amnesties that freed thousands of people in 2009<sup>6</sup>. In addition, the media remain under total supervision and it is impossible to find any independent sources of information. Foreign media are banned. Certainly, the number of Internet cafés has increased (even though there are still less than thirty throughout the country), but access to independent websites is still blocked, all the sites visited by Internet users are registered and any e-mail exchanges between persons suspected of being "traitors to the country" or considered as opponents are monitored<sup>7</sup>. While freedom of peaceful assembly is inexistent, the right to freedom of movement is strictly controlled, with a "blacklist" of people who are forbidden to leave the country. The new Immigration Services Law, ratified by the President of the Republic on December 2, 2009, still limits the Turkmen people's right to freedom of movement and grants considerable privileges to the Department of Migration<sup>8</sup>. Defenders and their family members are particularly affected by this violation of their right to move freely, which is one of the authorities' favourite ways of isolating any dissident voice<sup>9</sup>.

### Violation of the right to freedom of association

The 2003 Law on Public Associations, which gives the Government total control over the activities and funding of non-governmental organisations, remained in force in 2009. Although several hundred associations exist that are officially registered with the Ministry of Justice, in reality they are only Government mouthpieces. Once again this year, no independent

5/ See Turkmenistan Helsinki Foundation.

6/ 3,934 prisoners were released on December 12, 2009 for the Turkmen National Holiday. The first amnesty was on February 19, 2009, National Flag Day, when 990 prisoners were released. Finally, 1,284 detainees were released for Layat Al-Qadr, marking the end of Ramadan, on September 15, 2009.

7/ See Turkmen Initiative for Human Rights (TIHR) Press Release, June 16, 2009. In December 2009, the *Youtube* video website and the on-line *LiveJournal* blog were blocked.

8/ This particularly relates to passport control for Turkmen citizens who leave or enter the country, and research and investigation activities (Article 14 of the Law on Migration Services). The use of force by the Migration Services is authorised (Article 3.1 and Part III of the Law on Migration Services), and the law additionally creates a new paramilitary force and a new security service. During the summer of 2009, the ban on hundreds of students leaving Turkmenistan to go and study abroad, especially in Turkey, Kazakhstan, Kyrgyzstan, Russia and the United States, illustrated the determination of the Turkmen authorities to restrict the free movement of its citizens. See Turkmenistan Helsinki Foundation.

9/ See Turkmenistan Helsinki Foundation.



association was able to register officially in Turkmenistan, a reflection of the State's fear of losing the slightest control over the social, political and economic life of the country<sup>10</sup>. The amendment of Article 28 of the Law on Public Associations<sup>11</sup>, adopted on July 2, 2009, made the situation of NGOs worse with the provision that associations that receive foreign funding up to a certain unspecified threshold and those whose activities extend beyond the scope of their usual remit will be subject to investigation by the Ministry of Justice. The lack of clarity of the law, especially regarding the threshold for foreign investment and the nature of the scope of usual remit, leads to the fear of arbitrary interpretation<sup>12</sup>. In the general environment of intimidation, this amendment could discourage associations from applying for foreign funding from now on, even though no domestic funding exists. Members of independent associations are therefore obliged to work clandestinely and are strictly controlled. Their telephone calls are bugged, their e-mails monitored and they are regularly summoned by the intelligence services. Their family members are subjected to the same repressive measures. Pressure is put in particular on defenders and independent journalists who have contacts abroad.

### **Repression of journalists and the independent media that denounce human rights violations**

In an atmosphere of total control of the media, persecution of independent journalists who report on human rights violations and denounce the political system, as well as their family members, continued in 2009. Once again this year, journalists from *Radio Free Europe/Radio Liberty (RFE/RL)* were the principal targets of Government services. On November 17, 2009, the journalist Ms. **Kurbansoltan Atshilova** was summoned by the National Security Committee (KNB) and threatened with being charged if she did not end her work as a journalist. She was also warned that, if she did not do so, she and her children and grandchildren would encounter serious problems<sup>13</sup>. Similarly, Mr. **Osman Halliev**, a correspondent for *RFE/RL* in the Lebap region, who had in particular covered the 2008 parliamentary elections, received threats. Pressure was also put on members of his family. At the beginning of January 2009, he was arrested and then held for several hours in the Lebap province prison. Following this, his Internet connection was restricted, his telephone line was cut, and his son, his daughter-in-law and his son-in-law lost their jobs. In the

10 / See Institute for War and Peace Reporting (IWPR) Press Release, August 11, 2009.

11 / The amendments to the Law on Public Associations were made in the framework of the Law on the Introduction of Amendments and Additions to Certain Legislative Acts, adopted on July 2, 2009.

12 / See TIHR Press Release, October 12, 2009.

13 / See Turkmenistan Helsinki Foundation.

middle of January 2009, Mr. Halliev again received threats by telephone. He tried to file a complaint concerning the persecution suffered by his family and himself, but the authorities refused to start an investigation on the pretext that the facts reported were not in breach of the law<sup>14</sup>. Mr. **Sazak Durdymuradov**, an *RFE/RL* correspondent who had been arrested and interned in a psychiatric hospital then released in 2008, was also relentlessly harassed. He was constantly summoned and tailed by the intelligence services in Bakhaden, where he lives. He was advised not to go to the capital, Ashgabat. Finally, the letters he sent to the Presidential Council and the Presidential Commission concerning the pressures to which he is subjected were regularly diverted<sup>15</sup>. Furthermore, in 2009, the Turkmen authorities still refused to open an investigation into the death in prison, in September 2006, of the *RFE/RL* journalist Ms. **Ogulsapar Muradova**. Even worse, all attempts by the journalist's entourage to inform international organisations and foreign governments of the situation were repressed<sup>16</sup>. At the end of 2009, journalists Messrs. **Annakurban Amanklitchev** and **Sapardurdy Khadjiev**, arrested at the same time as Ms. Ogulsapar Muradova and sentenced on August 25, 2006 to seven years in prison for having worked together on a documentary entitled "The Niyazov dictatorship – Turkmenistan: in the country of shadows" (*"La dictature de Niazov – Turkmenistan: au pays des ténèbres"*) for the "Envoyé spécial" programme for the French TV channel *France 2*, remained in Turkmenbachi prison. The two requests for amnesty that they made in 2009 were met with silence on the part of the President. As well as their telephones being bugged, all those close to Mr. Annakurban Amanklitchev and the extended family of Mr. Sapardurdy Khadjiev, even including distant cousins, were placed on the "blacklist" and were not allowed to leave the country<sup>17</sup>.

### Judicial harassment of a defender of the right to the environment

Justice was still a weapon used by the authorities to harass critical voices and the courts sentence defenders who represent a threat to the government on the basis of fabricated evidence and at the end of hearings that violate the rules for a fair trial. On October 29, 2009, the Dashoguz Court sentenced Mr. **Andrei Zakota**, a biology researcher and environmental activist who holds Turkmen and Russian nationality, to five years in prison for "causing injuries of medium severity"<sup>18</sup> on the basis of fabricated evi-

14/ See *RFE/RL*.

15/ See Turkmenistan Helsinki Foundation.

16/ *Idem*.

17/ *Idem*.

18/ In application of Article 108, paragraph 2, of the Criminal Code.

dence and following an unfair trial. He had been arrested on October 20, 2009 after being attacked by an unknown person in Dashoguz market. His attacker was quickly released while Mr. Zakota was detained, charged and sentenced. Following considerable international mobilisation, the Dashoguz Court re-examined his case on November 6, 2009 and commuted his prison sentence to a fine of 1,000 Turkmen manats (around 230 euros). His arrest came at the end of three years of intimidation and harassment by the Turkmen authorities<sup>19</sup>. His release was conditional on him giving up Turkmen nationality and Mr. Andrei Zakota left the country on November 7, 2009 to go to Russia, his second country of nationality.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Name</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
<b>Mr. Andrei Zatoka</b>	Arbitrary detention / Judicial harassment	Urgent Appeal TKM 001/1109/OBS 161	November 5, 2009
	End of proceedings / Release	Urgent Appeal TKM 001/1109/OBS 161.1	November 6, 2009

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19/ Arrested in December 2006, he had been charged with "hooliganism" and then the charges against him had been changed to "illegal possession of weapons or explosives, and illegal distribution of active or poisonous substances" particularly after deadly snake poison was apparently found at his home. He had spent 46 days in detention and had been released. In January 2007, the Dashoguz City Court had given him a suspended three-year prison sentence. The sentence had been quashed as part of a collective presidential pardon for around 9,000 prisoners. Mr. Zakota had been forbidden to leave Turkmenistan since June 2008.

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# UZBEKISTAN

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

On October 27, 2009, the European Union lifted the arms embargo in Uzbekistan, the last of the sanctions imposed on the country following the Andijan massacre in May 2005, with the aim of “encouraging the Uzbek authorities to take further substantive steps to improve the rule of law and the human rights situation”<sup>1</sup>. The human rights situation remains worrying, however. Although several prisoners of conscience were released, such as the opposition politician Mr. Sanjar Umarov on November 7, 2009<sup>2</sup>, at least sixteen human rights defenders and around thirty political opponents were still being held in detention in appalling conditions<sup>3</sup> at the end of 2009.

Freedoms of expression and association remained highly restricted in 2009 under the heading of the fight against terrorism and religious extremism. Journalists, members of associations and political opponents continued to be harassed, ill-treated and prosecuted when trying to communicate any kind of information concerning the socio-political situation in the country, or to demonstrate any disagreement with government policy. The Government’s security policy also permits close surveillance of the population. Members of civil society are tailed, their communications bugged and their homes placed under surveillance. The increase in arrests and sentencing on political grounds has been made possible by a criminal justice system that is corrupt and follows orders<sup>4</sup>. No human rights association or political party was registered in 2009. Government refusal to authorise the registration of opposition political parties made it impossible for the latter to take part in the election process. For the December 27, 2009 parliamentary elections, which took place in a climate of intensified

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1/ See European Union General Affairs and External Relations Council (GAERC) Decision of October 27, 2009.

2/ Arrested in October 2005 after having openly criticised the events in Andijan in May 2005, Mr. Sanjar Umarov had been sentenced to 14 years in prison. The reasons for his release, which was not related to a collective amnesty, remain unexplained.

3/ See Human Rights Society of Uzbekistan (HRSU).

4/ Indeed, the nomination of Supreme Court judges is the exclusive responsibility of the President, and there is no guarantee of the right to a fair trial since confessions are regularly obtained under torture and evidence is fabricated.

repression of defenders, journalists and all independent voices<sup>5</sup>, the two opposition parties “Erk” and “Birlik” remained banned and the Central Election Committee authorised only four pro-Government parties<sup>6</sup> already seating in Parliament to take part in the elections. Mr. Bahodir Choriev, the leader of the “Birdamlik” opposition movement, was expelled from Uzbek territory on December 11, 2009, two months after his return from exile and two weeks before the first round of the parliamentary elections<sup>7</sup>. Moreover, despite the government decree adopted in 2008 banning child labour and the ratification on March 6, 2009 of ILO Convention 138 on the Minimum Age for Admission to Employment or Work, children were again forced to work in the cotton fields in the autumn of 2009<sup>8</sup>.

In general, human rights defenders are among primary victims of the authoritarian power of President Islam Karimov, based on a system of widespread corruption, the regular use of repression, criminalisation of social protest and silencing of all dissenting voices.

### **Ongoing arbitrary detentions and judicial harassment of human rights defenders**

In 2009, several defenders were prosecuted on the basis of false accusations, false evidence and false testimony and sentenced following unfair trial. As an example, Mr. **Farkhad Mukhtarov**, a member of the Uzbekistan Human Rights Alliance (*Pravozashchitni Alians Uzbekistana* – PAU), was sentenced on December 3, 2009 to four years’ imprisonment for “fraud” (Article 168.3 of the Criminal Code) and “corruption” (Article 28.211.2 of the Criminal Code) by the Iunussabatski District Criminal Court in Tashkent<sup>9</sup>. He would have been subjected to ill-treatment and pressure during his detention. Mr. Mukhtarov was arrested while he was going to file a complaint with the Prosecutor against members of the security forces.

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5/ See Report of November 6, 2009 by the ODIHR of OSCE on the December 27, 2009 parliamentary elections in Uzbekistan. In the report, ODIHR justified its decision to send only one limited observation mission by the fact that fundamental freedoms continued to be restricted, that current general policy did not offer electors a real choice of competing political alternatives, that previous ODIHR recommendations had remained unaddressed and that no progress had been made in bringing the legislative framework in line with OSCE recommendations.

6/ These are the Uzbekistan People’s Democratic Party, the “Adolat” (justice) Social Democrat Party, the Liberal Democrat Party and the “Milliy Tiklanish” National Revival Party.

7/ Altogether 506 candidates stood for 135 seats in the lower chamber of the Uzbek Parliament. 94 members of Parliament were elected in the first round. The officially reported 87.8% rate of participation is contested by human rights associations, which estimate it at between 22 to 26%. The second round took place on January 10, 2010. See Human Rights in Central Asia.

8/ See Human Rights in Central Asia.

9/ On October 2, 2009, the Yunnusabad District Criminal Court in Tashkent had initially sentenced Mr. Mukhtarov to five years in prison.

Frequent use is also made of accusations of terrorism to charge defenders and place them in detention. For instance, Mr. **Gaybullo Jalilov**, a member of the Karshi branch of the Human Rights Society of Uzbekistan (HRSU) and a defender of the rights of prisoners of conscience, remained prosecuted as of the end of 2009, for intending, supposedly, to organise an attack at Karshi airport. His place of detention was still unknown<sup>10</sup>. At the end of 2009, the photographer Ms. **Umida Akhmedova** was subject to judicial proceedings following an investigation carried out by the Uzbek Press and Information Agency<sup>11</sup> into films and books by the photographer on the issue of gender equality. Prosecuted for “defamation” and “insulting the Uzbek people” (Articles 139 and 140 of the Criminal Code), she risks a sentence of six months’ detention, or two or three years of “correctional labour”.

Furthermore, although two defenders were granted amnesties and released in August 2009<sup>12</sup>, at least twelve others, arrested between 2005 and 2008 and sentenced to five to ten years’ imprisonment, remained detained in Uzbek jails in appalling conditions. Most defenders in prison suffered from serious health-related problems and received none of the treatment needed. The deterioration in detainees’ health is related to detention conditions as well as to the ill-treatment of prisoners. Furthermore, the mental health of detainees is undermined by the pressures they are put under as well as by the authorities’ systematic refusal to accede to their requests for amnesty. The health of certain defenders was particularly alarming at the end of 2009. Mr. **Nasim Isakov**, a member of the Djizak branch of HRSU, was suffering from violent headaches and his hearing had deteriorated due to the torture he was subjected to at the time of his arrest<sup>13</sup>. Similarly, the ill-treatment and constant humiliation of Mr. **Yusuf Jumaev** led to the deterioration of his health. In September, for no official reason, he was placed in isolation, where the only food he was given was bread and water.

10 / On January 18, 2010, Mr. Jalilov was sentenced in a closed hearing to nine years in prison by the Kashkadaria Regional Court.

11 / The investigation by the Press and Information Agency was opened following the launch in March 2009 of a “Programme to reinforce national sentiment and the fight against phenomena and activities that are foreign to the Uzbek way of life and mentality”. The programme began with the examination of publications and projects produced by international organisations in order to determine whether they should be considered as being “hostile to national culture and traditions”.

12 / These are Ms. Oyazimkhon Khidirova, a member of the Djizak branch of HRSU, released on August 30, 2009, and Mr. **Abdulsattor Irzaev**, a member of the Ishtikan branch of HRSU, released on August 10, 2009 following a request for amnesty that had been made one year before, following a collective amnesty in February 2008. Arrested on June 4, 2005, he had been sentenced to six years in prison on October 18, 2005 for “defamation, extortion and fraud”.

13 / Arrested on October 27, 2005 and sentenced to eight years in prison, Mr. Isakov is held in prison colony U/Ya 64/3 (Tavaskai, Tashkent region).

He has great difficulty in walking and has lost a considerable amount of weight<sup>14</sup>. Mr. **Norboy Kholjigitov**, a member of the Ishtikhan branch of HRSU, has lost 40 kg since the start of his detention. He suffers from diabetes, black marks have appeared on his body, indicating the beginnings of gangrene, and he has lost all his teeth. On December 5, 2009, his health became even worse as he suffered from bronchitic asthma, and he was transferred to a health care facility (U/Ya 64/18) in Tashkent<sup>15</sup>. As of the end of 2009, Mr. **Khabibilla Okpulatov**, a member of the Ishtikhan branch of HRSU – who weighs no more than 55 kg, can no longer use his right leg and has serious sight problems –, also remained in detention. Although he was due to be released on August 4, 2009, the Navoy Court extended his sentence for a further three years on September 29, 2009 and then in appeal on November 26, 2009, for having violated detention centre regulations. Mr. Okpulatov's lawyers received no notification of the hearings. The defender appealed to the Uzbekistan Supreme Court<sup>16</sup>. The state of health of the journalist defender Mr. **Salidjon Abdurakhmanov** was also extremely critical. He has lost a considerable amount of weight and suffers from an allergy due to the poor quality of the water. In spite of undertakings by the prison management to transfer him to a prisoners' hospital ward, no steps had been taken to do this by the end of the year<sup>17</sup>. Finally, Mr. **Agzam Turgunov**, Director of the "Mazlum" Human Rights Centre<sup>18</sup>, weighed only 40 kg in December 2009. Furthermore, as of the end of 2009, it had not been possible to obtain any information about the state of health of Mr. **Yuldosh Rasulev**, a member of the Kashkadaria branch of HRSU, sentenced to ten years in prison in 2007<sup>19</sup>, Mr. **Azamjon Formonov**, Chair of the Sirdaria branch of HRSU<sup>20</sup>, Mr. **Jamshid Karimov**, a member of the

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14 / Arrested on December 17, 2007 and sentenced to five years in prison, Mr. Jumaev is held in prison colony 64/71, Karakalpak Republic.

15 / In 2005, Mr. Kholjigitov was sentenced to 10 years in prison.

16 / Arrested on June 4, 2005 and sentenced to six years in prison, Mr. Okpulatov remained imprisoned as of the end of 2009 in prison colony U/Ya 64/29, in Navoy. In January 2010, Mr. Okpulatov was transferred to the U/Ya 64/45 strict regime prison colony in Almalik, Tashkent region.

17 / Mr. Abdurakhmanov has been detained since June 7, 2008 in prison colony U/Ya 64/5, in the Kashkadaria region.

18 / "Mazlum" is an association that defends prisoners of conscience. Arrested on July 11, 2008, tortured during interrogation on July 14, 2008 (boiling water was poured over him), and sentenced to 10 years in prison, Mr. Turgunov is detained in prison colony U/Ya 64/49 of the city of Karchi, Kashkadaria province.

19 / At the end of 2009, Mr. Rasulev would still be held in prison colony U/Ya 64/25, in the Bukhara region.

20 / Arrested and sentenced to nine years in prison in 2006, Mr. Formonov was being held as at the end of 2009 in prison colony U/Ya 64/71 (Djaslik, Karakalpak Republic), where he was tortured. On January 22, 2010, Mr. Formonov was transferred for a few days to the U/Ya 64/SI-9 prison in Nukus, Karakalpak Republic. This transfer aimed to remove the defender from the attention of the international community at the time of an International Red Cross visit.

Djizak branch of HRSU<sup>21</sup>, Mr. Abdurasul Khudoynazarov, Director of the Angren branch, Tashkent region, of the organisation “Ezgulik”<sup>22</sup>, and Mr. Zafar Rakhimov, a member of the Kashkadaria branch of HRSU<sup>23</sup>. On the other hand, the state of health of Mr. Alisher Karamatov, Director of the Mirzabad branch of HRSU, improved in 2009 but his wife is under constant supervision<sup>24</sup>.

### Repression of defenders of economic, social and cultural rights

In 2009, defenders of the right to land were particular targets of repression in a context in which many peasant farmers have seen their land confiscated in recent years. Mr. Dilmurod Saidov, a journalist, member of the “Ezgulik” human rights organisation and defender of the rights of smallholders, was arrested on February 22, 2009, then sentenced on July 30, 2009 in first instance and in appeal on September 2, 2009 to twelve and a half years’ detention for “extortion” (Article 165 of the Criminal Code) and “falsification of documents” (Article 228 of the Criminal Code)<sup>25</sup>. At the end of 2009, Mr. Saidov was detained in prison colony U/Ya 64/47 in very harsh conditions that caused his health, which was already poor as he suffers from tuberculosis, to deteriorate. Ms. Oyazimkhon Khidirova, a member of the Djizak branch of HRSU, was arrested on July 28, 2009 and charged with “banditry” (Article 277.3 of the Criminal Code), “tax evasion” (Article 184), “abuse of power” (Article 205), and “fraud” (Article 168), because of the publication of information on the situation of smallholders in the district of Dustlik, blaming the local authorities. Ms. Khidirova was released on August 30, 2009 by a ruling of the Arnassayski District Court in Djizak following a collective amnesty. Similarly, Mr. Ganikhon Mamatkhanov, a member of the Independent Human Rights Society in Uzbekistan, an activist against forced child labour and in favour of farmers’ rights, was sentenced on November 25, 2009 to five years in prison for “corruption” (Article 211.3 of the Criminal Code) and “fraud” (Article 168.3 of the Criminal Code) by the Akhunbabaev District Court in Ferghana. Just

21/ On September 12, 2006, M. Karimov was sentenced to three years’ detention in a psychiatric hospital. As of the end of 2009, he was apparently still being held at the Samarkand psychiatric hospital. Unable to keep on bearing the ill-treatments, he had attempted to commit suicide in 2008.

22/ Sentenced to nine and a half years in prison in 2006, Mr. Khudoynazarov would still be held at the U/Ya 64/21 strict regime prison colony.

23/ Mr. Rakhimov was sentenced to six years in prison in October 2007.

24/ Sentenced in 2006 to nine years in prison, as of the end of 2009 Mr. Karamatov was still detained in the U/Ya 64/18 medical facility to which he had been transferred on October 12, 2008 due to his alarming health status.

25/ During the trial, key witnesses changed their testimonies, stating that they had been put under pressure. In addition, Mr. Saidov did not benefit from the assistance of a lawyer during the hearings.



before his arrest, Mr. Mamatkhanov had sent a letter to President Karimov to denounce the implementation of a decree that led to the confiscation of lands belonging to smallholders, to the benefit of large landowners. Mr. Mamatkhanov would have suffered two heart attacks since the start of his detention and his state of health would require medical attention. On October 7, 2009, Mr. Mamatkhanov had also been the victim of a defamation campaign after he had denounced the problem of non-payment of salaries and pensions in Ferghana valley, in an interview on radio *Ozodlik*<sup>26</sup>.

Furthermore, on October 14, 2009, several defenders were prevented from holding a rally in Djizak to denounce the exploitation of children in the cotton fields. Ms. **Nuria Imankulova**, Ms. **Gavkhar Berdieva-Iuldacheva** and Ms. **Mukhabbat Khassanova**, defenders from Djizak city, and Ms. **Elena Urlaeva**, a member of PAU, were arrested as they left their homes, and held in different police stations in the town, where they were insulted before being released a few hours later. After their arrest, Ms. Imankulova and Ms. Urlaeva were forcibly taken to the town hall to begin negotiations on the issue of child labour in cotton fields. The police nonetheless filed a complaint against Ms. Urlaeva for violating the rules on holding rallies and demonstrations, under Articles 201-2 and 202 of the Administrative Code. As of the end of 2009, the Galaarle District Criminal Court in Djizak had still not issued a verdict<sup>27</sup>. In order to discourage defenders, threats were also made against their families. As an example, a few days before the day the rally was due to be held, a member of the Djizak Regional Department of Internal Affairs threatened to stone to death Ms. Gavkhar Berdieva and her relatives. Similarly, on the morning of October 14, 2009, Ms. Urlaeva's husband was arrested by the special services, who demanded that he throw his wife out of his home and threatened to arrange so that he be dismissed from his job if his wife held rallies before the elections<sup>28</sup>.

### **Harassment and intimidation of defenders to dissuade them from taking part in peaceful rallies**

Considerable pressure was put on defenders who took part in peaceful rallies. As an example, defenders were intimidated on several occasions in order to dissuade them from taking part in the rally planned for May 13, 2009 to commemorate the Andijan massacre. The day before the rally, a police inspector and a member of the Anti-Terrorist Division arrested Mr. **Bakhodir Namazov**, Chair of the Committee for the Release of

26 / *Ozodlik* is the Uzbek branch of *Radio Free Europe/Radio Liberty*.

27 / See PAU.

28 / *Idem*.

Prisoners of Conscience and Director of HRSU, at the home of Mr. **Oleg Sarapulov**, Director of PAU Press Centre. After his papers were checked, Mr. Namazov was warned that he should not take part in the rally. The two men were followed as they left their meeting place by car. The homes of two members of PAU, Ms. **Victoria Bajenova** and Ms. **Lyudmilla Kutepova**, of Ms. **Tatyana Dovlatova**, member of the Committee for the Release of Prisoners of Conscience, and of Ms. Elena Urlaeva were placed under surveillance. Ms. Dovlatova and Mr. **Surat Ikramov**, Head of the Initiative Group of Independent Human Rights Activists of Uzbekistan, also received calls to dissuade them from going to the demonstration. Pressure was also put on members of the families of Ms. Dovlatova and Ms. Bajenova. On the day of the demonstration, the special services put pressure on two members of PAU, Mr. **Shukhrat Rustamov** and Mr. **Syd Yanishev**, who were unable to go to the rally location. Mr. Ikramov was arrested by the Anti-Terrorist Division, held at Sabir Rakhimovski police station in Tashkent and then released and forbidden to leave his home, which was being watched by the police. Mr. **Abdulov Ilnur**, a member of PAU, was arrested and held at the Iunusabadski district police station, where he was ill-treated. Mr. **Anatoli Volkov** and Ms. **Salomat Baymatova**, both members of PAU, Mr. **Abdulla Tadjibay-Ugli**, active in promoting fair and transparent elections, Ms. Urlaeva, Ms. Dovlatova and Mr. Sarapulov were also arrested and held at different police stations in Tashkent. Ms. Baymatova was insulted and threatened with being charged during her detention, while Ms. Dovlatova and Ms. Urlaeva did not receive the medical assistance they requested. Mr. Bakhodyr Namazov was threatened with arrest and his house was placed under surveillance.

### **Increased systematic repression of defenders, including foreigners, during the election campaign and on the day of the parliamentary elections**

Repression of defenders increased as the parliamentary elections approached. On December 8, 2009, Ms. Berdieva and Ms. Imankulova were arrested in Tashkent while they prepared to hold a peaceful meeting in front of the presidential palace to challenge the arbitrary practices of judges and security forces in the Djizak region. They were taken to Djizak police station and held in the cold and with no food until the middle of the night. The next day, the two women were again arrested at their home and held in the same conditions until 11 pm. On December 10, 2009 the police banned them from leaving their homes until the day of the elections<sup>29</sup>. Similarly, many defenders from the Djizak region were victims of a general campaign of intimidation. On November 9 and 11, 2009, Mr. **Uktam**

29/ *Idem*.

**Pardaev**, Chair of the Djizak branch of the Independent Human Rights Association, was detained for the whole day in a café by members of the Department of Internal Affairs (ROVD) without being given any reason for the “meeting”. On November 9, 2009, Ms. **Saida Kurbanova**, Chair of the Pakhtakorski district branch of HRSU, was arrested by members of the Department of Criminal Investigation and held at the police station, and then at Pakhtakorski town hall for six hours. On November 11, 2009, a similar attempt failed because Ms. Kurbanova could not get around because of health reasons. Her home was nevertheless watched for the whole day. As the elections approached, the Uzbek Government also prevented Ms. **Tatiana Lokshina**, a researcher with the Human Rights Watch association based in Moscow, from meeting two members of HRSU, Mr. **Nodir Akhatov** and Ms. **Gulshan Karaeva**, in Karshi on December 5, 2009. Indeed, police officers arrested Mr. Akhatov in the bus that was taking him to the appointment location, and then held him until the evening. Furthermore, while Ms. Lokshina was walking to Ms. Karaeva’s home, she was violently attacked by a woman. The police then arrested Ms. Lokshina, accusing her of starting the fight and disturbing public order. After her arrest, Ms. Lokshina was searched, questioned about the reasons for her stay, held for four hours and then obliged to leave Karshi. The next day, Ms. Lokshina was unable to meet Mr. **Akhmadjon Madumarov** either, a member of the Independent Human Rights Organisation of Uzbekistan in Margilan, in the Fergana valley, since the latter was held at the police station for no reason and only released following Ms. Lokshina’s departure<sup>30</sup>. Repression of defenders continued on the day of the elections. Mr. Bakhodiy Namazov was unable to leave his home because the Anti-Terrorism Department had banned him from going to the polling station unless he was accompanied by one of its agents. Similarly, the homes of Ms. Gulshan Karaeva and Mr. Nodir Akhatov were placed under surveillance on voting day. They had regularly been tailed during the previous week<sup>31</sup>. Finally, on December 21, Uzbek State television broadcast a documentary that presented Mr. Salidjon Abdurakhmanov, Mr. Yusuf Jumaev, Ms. Oyazimkhon Khidirova and a political opponent as dangerous persistent offenders. Mr. Abdurakhmanov was presented as being a drug trafficker, Mr. Jumaev a dangerous criminal and Ms. Khidirova as being a swindler. The documentary would have been commissioned by the Uzbek Government which, with the parliamentary elections in view, was attempting to increase pressure and intimidation of representatives of the opposition and of the Uzbekistan human rights movements<sup>32</sup>.

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30/ See HRSU and Human Rights Watch.

31/ *Idem*.

32/ See HRSU.

## Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Norboy Kholjigitov and Mr. Alisher Karamatov	Serious health deterioration / Torture / Arbitrary detention / Sentencing in appeal	Urgent Appeal UZB 001/0109/OBS 005	January 14, 2009
	Ongoing arbitrary detention	Urgent Appeal UZB 007/0809/OBS 118	August 20, 2009
	Deterioration of health	Press Release	August 28, 2009
Mr. Akzam Turgunov	Sentence upheld in appeal / Arbitrary detention	Urgent Appeal UZB 002/0908/OBS 153.2	January 14, 2009
	Deterioration of health	Press Release	August 28, 2009
Ms. Lyudmila Kutepova, Ms. Victoria Bajenova, Ms. Elena Urlaeva, Ms. Salomat Baymatova, Ms. A. Kim and Ms. Tatyana Dovlateva, Messrs. A. Mukhitdinov, Zulkhumor Tuychieva, Anatoli Volkov and Oleg Sarapulov	Sentence upheld in appeal	Urgent Appeal UZB 003/1208/OBS 212.1	February 16, 2009
Ms. Elena Urlaeva	Assault	Urgent Appeal UZB 002/0409/OBS 064	April 23, 2009
Ms. Victoria Bajenova, Ms. Lyudmila Kutepova, Ms. Tatyana Dovlatova, Ms. Elena Urlaeva and Ms. Salomat Baymatova, and Messrs. Surat Ikramov, Bakhodiy Namazov and Oleg Sarapulov	Arbitrary arrest / Harassment	Urgent Appeal UZB 003/0509/OBS 075	May 14, 2009
Mr. Dilmurod Saidov	Arbitrary detention / Judicial harassment	Urgent Appeal UZB 004/0709/OBS 106	July 20, 2009
	Sentencing	Urgent Appeal UZB 004/0709/OBS 106.1	July 31, 2009
	Ongoing arbitrary detention	Urgent Appeal UZB 007/0809/OBS 118	August 20, 2009
Ms Oyazimkhon Khidirova	Arbitrary detention / Harassment	Urgent Appeal UZB 005/0809/OBS 114	August 5, 2009
	Ongoing arbitrary detention	Urgent Appeal UZB 007/0809/OBS 118	August 20, 2009
	Release	Urgent Appeal UZB 005/0809/OBS 114.1	September 1, 2009
Mr. Farkhad Mukhtarov	Arbitrary detention / Harassment	Urgent Appeal UZB 006/0809/OBS 116	August 10, 2009
	Ongoing arbitrary detention	Urgent Appeal UZB 007/0809/OBS 118	August 20, 2009
	Sentencing	Urgent Appeal UZB 006/0809/OBS 116.1	October 14, 2009

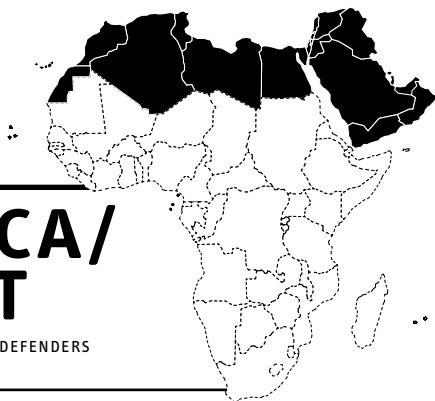
<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
	Arbitrary detention / Appeal against sentence	Urgent Appeal UZB 006/0809/OBS 116.2	November 25, 2009
<b>Mr. Abdulsattor Irzaev</b>	Arbitrary detention / Health deterioration / Release	Urgent Appeal UZB 007/0809/OBS 118	August 20, 2009
<b>Mr. Khabibulla Okpulatov</b>	Ongoing arbitrary detention	Urgent Appeal UZB 007/0809/OBS 118	August 20, 2009
	Health deterioration	Press Release	August 28, 2009
<b>Messrs. Salidjon Abdurakhmanov, Yusuf Jumaev and Alisher Karamatov</b>	Health deterioration / Arbitrary detention	Press Release	August 28, 2009
<b>Messrs. Bakhtior Khamraev and Mamir Azimov</b>	Assault / Harassment	Urgent Appeal UZB 008/1109/OBS 167	November 16, 2009
<b>Mr. Ganikhon Mamatkhanov</b>	Sentencing / Defamation campaign	Urgent Appeal UZB 009/1109/OBS 175	November 27, 2009
<b>Mr. Gaybullo Jalilov</b>	Arbitrary detention / Judicial harassment	Urgent Appeal UZB 010/1209/OBS 183	December 8, 2009
<b>Ms. Umida Ahmedova</b>	Judicial harassment	Urgent Appeal UZB 011/1209/OBS 197	December 22, 2009

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# **NORTH AFRICA/ MIDDLE EAST**

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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# REGIONAL ANALYSIS NORTH AFRICA AND MIDDLE EAST

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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In North Africa, 2009 was an election year. Not surprisingly, presidential elections in *Algeria* and *Tunisia* kept the countries' presidents in power thanks to constitutional amendments in violation of the principle of alternation in power, which is one of the guarantees of a democratic system. These elections resulted in various measures to weaken the main opposition figures through the adoption of repressive measures and the silencing of any voice of protest. Moreover, the ongoing state of emergency in several countries of North Africa and Middle East – *Syria* since 1963, *Egypt* since 1981, *Algeria* since 1992 and *Yemen* in the province of Saada since August 2009<sup>1</sup> – submits human rights defenders and all dissenting voices to emergency legislation that violates fundamental rights and freedoms and restricts rights to freedoms of association and peaceful assembly. In *Egypt*, *Syria* and *Yemen*, these laws are accompanied by special courts, including military tribunals and State security courts, also found in *Iraq*, *Libya* and *Oman*, before which civilians – including human rights defenders – were tried in open defiance of the right to a fair trial. Finally, in States affected by armed conflicts or political unrests, the authorities increasingly used those disorders to restrict the activities of defenders (*Israel and the Occupied Palestinian Territory (OPT)*, *Morocco and Western Sahara*, *Yemen*).

Several States in the region also continued to refuse to cooperate with the United Nations (UN) mechanisms protecting human rights. *Saudi Arabia*, the *United Arab Emirates*, *Oman* and *Qatar* are neither parties to the International Covenant on Civil and Political Rights nor to the International Covenant on Economic, Social and Cultural Rights. Other States have also refused access to UN Special Procedures, such as the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (*Algeria*, *Israel*, *Libya*, *Saudi Arabia*, *Tunisia*), the Special Rapporteur on Torture and other Cruel, Inhuman or

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1/ The situation of total isolation of the region of Saada and a 12-hour curfew imposed by the Government of Sana'a rendered the province in a state of emergency.

Degrading Treatment (*Algeria, Egypt, Iraq, Israel, Libya, Saudi Arabia, Syria, Tunisia, Yemen*), the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (*Algeria, Egypt, Saudi Arabia, Yemen*), the Special Rapporteur on Human Rights and the Fight Against Terrorism (*Algeria, Egypt*), and the Working Group on Arbitrary Detention (*Algeria, Egypt, Libya, Morocco, Saudi Arabia*). Moreover, apart from *Israel and the OPT*, the UN Special Rapporteur on the Situation of Human Rights Defenders has never visited any country in the region, even though in recent years she has made such a request in several countries (*Egypt, Syria, Tunisia*)<sup>2</sup>.

In some countries where repression is systematic, again, independent and organised human rights movements could not form openly (*Libya, Saudi Arabia*), and defenders paid a heavy cost, sometimes lifetime, their commitment towards freedoms, which has a strong dissuasive impact on civil society. In other countries, to the Observatory's knowledge, there was a limited number of direct infringements against human rights defenders. But in reality, in those countries, methods of repression used by the authorities are less visible and target less human rights defenders than the legal framework in which they operate (*Jordan, Oman, Qatar, United Arab Emirates*). Finally, in countries affected by a conflict like in *Iraq*, the analysis of the situation of human rights defenders remained very difficult owing to the grave security situation.

### **Restrictive legislation and administrative abuse to impede freedom of association**

Even when recognised, freedom of association remains a very fragile right in the region. The constitution of associations, particularly independent human rights NGOs, remains banned in *Saudi Arabia* and *Oman*. In several States, the formation of an association is further subject to obtaining prior administrative authorisation (*Bahrain, Egypt, Jordan, Libya, Syria*). Such permits are rarely granted when the association actively defends human rights. In some countries, legislative and administrative barriers also considerably restrict the right of association. In *Egypt*, the law prohibits associations from engaging in political activities or trade unions or engaging in activities that threaten national unity or violate public order or morality. In *Morocco*, an association cannot legally exist if its goals are considered indecent, offensive to Islam, the monarchy or territorial integrity, or if it involves discrimination. These vague formulations can be used by authorities to ban human rights organisations. Moreover, in countries covered by the declaration regime, where no administrative authorisation

2/ Following a request made in 2005, the Rapporteur was invited to Iraq but was ultimately unable to go because of, among other things, safety reasons.



is required to carry out activities within an association, the authorities may refuse to enforce that law. Some associations are thus denied at the time of notification of the constitution of the association the provision of a receipt without which they are not entitled to legal personality and therefore cannot operate (*Algeria, Morocco and Western Sahara, Tunisia*). The declaration scheme provided by the law thus becomes in practice a prior authorisation system. Moreover, defenders who conduct their activities within associations considered undeclared are liable to prosecution and criminal sanctions (*Algeria, Bahrain, Egypt, Syria*). In *Libya*, the Law No. 71 of 1972 and the Criminal Code also sanction the death penalty for any person belonging to proscribed groups, including associations.

Moreover, in several countries in the region, authorities continued in 2009 to systematically obstruct the registration of human rights NGOs (*Algeria, Bahrain, Egypt, Syria, Tunisia*) and maintained control over the functioning of associations. In *Jordan*, in particular, the new Law on Associations adopted by Parliament on July 15, 2009 allows governmental interference in NGOs activities and provides a subtle pattern of restricting freedoms and controlling the activities of defenders. Under the provisions of this law, which prevents the development of an independent movement to defend freedoms, authorities must be informed in advance of the date, place and agenda of all meetings held by the associations' boards. In addition, the Government can send representatives to these meetings, and some decisions must be submitted to the Government. The law also allows the Ministry having the authority to regulate such NGOs to replace the board with an interim board. Finally, the law requires associations to seek formal approval for all foreign donations. Similarly, in *Libya*, the General People's Congress adopted Decision 312/2009 in June 2009, which requires any new association to provide 30 days notice before a meeting or a public event and notify the authorities with a list of all participants and issues to be addressed. Finally, in *Egypt*, the Law on Associations gives the Ministry of Social Affairs, rather than a judicial authority, the right to dissolve an association considered to conduct "illegal" activities.

### **Defamation, criminalisation and judicial harassment of human rights defenders**

In 2009, the Government media launched repeated slanderous campaigns against human rights defenders. Described as "agitators [who] defy the teachings of God and the Prophet" (*Morocco*), "mercenaries", "traitors" and "spies" (*Tunisia*), or authors of "crimes against the internal and external security of the State" (*Bahrain*), These smear campaigns are part of a comprehensive strategy of criminalisation of the human rights movement. Defenders were indeed repeatedly charged with "defamation" and "insult-

ing the constituted body” or “spreading false information” for engaging in human rights activities (*Algeria, Bahrain, Morocco, Syria, Yemen*). When found “guilty,” those defenders are punishable by up to 15 years in prison (*Syria*). Moreover, defenders who denounced the violations committed in the context of armed conflicts and political tensions were arrested by the authorities (*Israel and the OPT*) and prosecuted, accused of sympathising with an armed insurgency or separatist movement (*Morocco and Western Sahara, Yemen*).

Furthermore, the use of repressive laws for political purposes was reinforced by the instrumentalisation of judicial proceedings: trials before courts of exception, closed hearings, lawyers denied access to records, use of “evidence” obtained through torture and disregard for the rights of the defence (*Bahrain, Egypt, Syria, Tunisia, Yemen*). State supreme courts, even when they come under ordinary law, most often confirmed the sentences in first instance against defenders (*Algeria, Morocco, Tunisia*). The independence of justice was thus undermined by the campaigns of judicial harassment defenders increasingly faced and which, sometimes, did not expire until an amnesty was granted by the Head of State (*Bahrain, Tunisia, Yemen*).

In other countries, the practice of enforced disappearances (*Syria, Yemen*), torture (*Bahrain, Egypt, Tunisia, Yemen*) and administrative detention without charge or trial (*Egypt, Israel*) remained also widespread. On May 21, 2009, Mr. **Fathi al-Jahmi**, a famous defender in *Libya*, died when the Libyan authorities were transferring him to Jordan in order to “receive emergency medical care”. Yet, since his arrest in October 2002, several NGOs had repeatedly denounced the inhuman conditions of his detention.

### **Obstacles to freedom of movement of defenders**

In States affected by armed conflicts, human rights defenders were often prevented from carrying out investigations because of limitations imposed on their freedom of movement. The authorities increasingly instrumentalised these disorders to restrict the activities of human rights defenders. In 2009, in the *OPT*, Israeli and Egyptian authorities completely closed access to the Gaza Strip during Israel’s military offensive and strictly limited its access thereafter. Since 2007, for “security reasons,” no Israeli journalist has been allowed to visit the Gaza Strip. In addition, the maintenance in 2009 (despite a slight decline) of checkpoints in the West Bank and construction of the separation wall in East Jerusalem restrict access to Palestinian territory for Palestinian, Israeli and international defenders. In *Yemen*, the province of Saada was also closed to journalists and human rights organisations. These barriers have had a direct impact on the collection of

information on the situation of human rights in these territories, including the effects of those armed conflicts on civilian populations.

Many defenders were also prevented from leaving the country or arrested following their participation in international conferences on human rights (*Egypt, Israel, Saudi Arabia, Syria, Tunisia*). For example, in *Saudi Arabia*, Mr. **Mohammed Saleh al-Bejadi**, Head of the website *Monitor of Human Rights in Saudi Arabia-Al-Marsad*, was informed on July 23, 2009 that he continued to be banned from travelling. In March 2009, he had been summoned by the intelligence services of the police and questioned about articles he had posted on the Internet where he called for democratic reforms and the release of detainees. In addition, for reasons of “internal security,” some foreign human rights defenders were denied access to countries in the region where they exercised human rights activities (*Egypt*).

### **Acts of violence and intimidation against human rights defenders**

In 2009, human rights defenders continued to be targets of violence, intimidation and even murder. In *Iraq*, a series of assassinations targeted trade unionists and defenders of economic and social rights, including Mr. **Majeed Sahib Kareem**, Secretary of Internal Relations for the General Federation of Iraqi Workers (GFIW), who was killed on November 26, 2009 by a bomb in his car. In the *OPT*, the Israeli army fired with impunity on demonstrators gathered to peacefully express their opposition to the construction of the separation wall. Some human rights defenders were also regularly abused and humiliated and even physically assaulted in public places (*Tunisia*). Moreover, the authorities increased surveillance of defenders, who were increasingly harassed in their private and professional life: phone lines and Internet turned off, ban on all visitors to access the defender’s home (*Tunisia*), redundancies (*Algeria*), night raids on the homes (*Israel and the OPT*), etc. In addition, in 2009, headquarters of NGOs were the target of raids by the police or strangers who seized defenders’ work equipment: computers, phones, cameras, etc. (*Israel and the OPT, Tunisia, Yemen*).

### **Acts of harassment against lawyers**

In 2009, lawyers also faced growing hostility from the authorities for their intervention in cases deemed sensitive by the Government (*Morocco, Syria, Yemen*) or when they acted as counsel for prosecuted human rights defenders (*Syria*). The sanctions imposed against them ranged from professional censure (*Morocco*) to disbarment (*Syria*), to judicial proceedings and possible criminal conviction (*Syria, Yemen*). Others were subjected to acts of surveillance, intimidation and restrictions on their freedom of movement (*Tunisia*).

## Muzzling of the media

In 2009, freedom of the press continued to be flouted in the countries of the region. Newspapers were seized or banned from broadcasting (*Algeria, Morocco, Yemen*), media centres were closed by the authorities (*Israel and the OPT, Syria, Tunisia*) and journalists were prosecuted for exercising their freedom of expression and denouncing human rights violations (*Algeria, Bahrain, Egypt, Morocco, Syria, Tunisia, Yemen*). Internet users (bloggers, forum leaders and ordinary participants in chat sites) were increasingly the target of these repressive measures (*Egypt, Morocco, Yemen*). *Algeria* also passed a law legitimising the control and supervision of electronic communications. The Press Codes in the region also maintained prison sentences for press offences (*Algeria, Egypt, Morocco, Tunisia*). In countries where the Press Code was more liberal, the authorities used the Criminal Code to prosecute journalists denouncing human rights violations (*Bahrain*). In *Yemen*, a special court was set up to try to press offences. In addition, restrictions on freedom of the press are very broad and often defined in vague terms: “libel” (*Algeria, Jordan, Tunisia, Yemen*), “threats to national security” (*Egypt*), “damage to Islam, the monarchy, territorial integrity or public order” (*Morocco*), “attacking the culture and customs of the country” (*Oman*), “weakening national sentiment” (*Syria*) or “damaging national unity” (*Yemen*). In the *United Arab Emirates*, the Federal National Council adopted a new Press Code on January 20, 2009. Although it abolishes prison sentences against journalists, it imposes heavy fines and a ban on publications that denigrate members of the Government or the royal family or that publish “misleading” information to “mislead the public into error” and “hurt the economy”.

## Urgent Interventions issued by The Observatory in 2009 on countries of the region for which there is no country fact-sheet

COUNTRY	Names	Violations / Follow-up	Reference	Date of Issuance
IRAQ	Mr. Majeed Sahib Kareem	Assassination	Urgent Appeal IRQ 001/1209/OBS 178	December 2, 2009
JORDAN	NGOs	Obstacles to freedom of association	Joint Press Release	July 22, 2009
LIBYA	Mr. Fathi al-Jahmi	Death	Joint Press Release	June 3, 2009
SAUDI ARABIA	Mr. Mohamed Saleh al-Bejadi	Obstacles to freedom of movement	Urgent Appeal SAU 001/0809/OBS 117	August 13, 2009

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# ALGERIA

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## Political context

On April 9, 2009, the Algerian President Abdelaziz Bouteflika, in power since 1999, was re-elected for a third consecutive term following the adoption on November 12, 2008 of a constitutional reform abolishing the restriction on the number of presidential mandates. This election took place in a climate of surveillance that made it almost impossible to contest, or even to cover, the ballot. For instance, the day before the presidential election the Algerian authorities banned the distribution of three French publications, *L'Express*, *Marianne* and *Journal du Dimanche*, which criticised the elections<sup>1</sup>. Furthermore, on April 9, 2009, the Algerian authorities arrested two Moroccan journalists working for the Moroccan weekly *Assabae al-Ousbouiya*, Messrs. Hicham El Madraoui and Mahfoud Aït Bensaleh, who had come to cover the presidential election in Algeria. They were questioned for several hours at the Algiers central police station before being released without being charged. When they returned to their hotel, they discovered that their room had been ransacked. The next day, while they were preparing to leave for the airport, they were again stopped by the police and their passports were confiscated. They were finally able to leave Algeria on the next day, after the Moroccan embassy intervened<sup>2</sup>.

Moreover, although private newspapers enjoy more freedom than the National Television Company (*Entreprise nationale de télévision* – ENTV), the sole State-run TV channel, repressive laws on the press, newspaper dependence on public sector revenue and other factors restrict their freedom to criticise the Government, the army and the political and economic elite. In particular, the press laws provide for prison sentences and fines for slander and insults against Government representatives and State institutions. Furthermore, the ban remained on any critical debate on the internal armed conflict that split Algeria in the 1990s. The Algerian authorities indeed refuse to carry out the work of justice and remembrance relating to the events in this conflict.

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1/ See Algerian Human Rights Defence League (LADDH) and Reporters Without Borders (RSF) Press Release, April 8, 2009.

2/ See LADDH and RSF Press Release, April 10, 2009.

Another sign of the hardening of the climate of surveillance came in June 2009, when the National People's Assembly (*Assemblée populaire nationale* – APN) adopted a law including special regulations to prevent and fight crimes linked to information and communication technology including cyber-criminality. This law, the second part of which relates to the surveillance of electronic communication for prevention purposes, permits the surveillance of electronic communication in order to “prevent crimes qualified as terrorist or subversive activity and crimes against State security”, for “the requirements of legal investigations when it is difficult to obtain results relevant to enquiries in progress without resorting to electronic surveillance” and when there exists “information on a probable attack on a computer system representing a threat to State institutions, national defence or public order”. These very general provisions give rise to the fear that this law will be used to monitor and repress human rights activities.

### **Ongoing restrictions to the freedom of association**

In 2009, the Algerian authorities continued to prevent human rights organisations from being given legal recognition. Thus, associations of the families of disappeared persons, such as SOS-Disappeared (*SOS-Disparu(e)s*), still do not legally exist because they are not given a receipt by the local authorities<sup>3</sup>. The Mich'al Association of the Children of the Disappeared from Jijel (*Association Mich'al des enfants de disparus de Jijel* – AMEDJ), created on May 22, 2009, also met with the refusal of the Jijel “wilaya” associations office to issue a receipt on May 24, 2009 for filing their application to create the association<sup>4</sup>. Similarly, the Citizen Generations (*Génération citoyennes*) association had still not been registered as of the end of 2009.

### **Ban on peaceful assemblies for human rights**

In 2009, the Algerian authorities continued the frequent bans on holding meetings on human rights issues, in violation of Article 19 of the Constitution, which guarantees freedom of peaceful assembly. On July 16, 2009, the authorities banned a symposium on “rebuilding society through remembrance of victims”, organised at the trade union house in Algiers by the Coalition of Victims of the State and Victims of Terrorism (*Coalition des associations des victimes de l'Etat et des victimes du terrorisme*), including SOS-Disappeared, “Somoud”, “Djazairouna”, the Collective of the Families of the Disappeared in Algeria (*Collectif des familles de disparus en Algérie* – CFDA) and the Euro-Mediterranean Federation Against Forced

3/ This document establishes legal recognition of an association and permits it to operate. See Law No. 90-31 on Associations.

4/ See LADDH and AMEDJ Press Release, June 30, 2009.

Disappearances (FEMED). The Head of security of the “daïra”, an administrative subdivision of the wilaya, informed the organisers that the ban on the symposium was issued by the “Wali” (Governor) of Algiers for reasons of “public safety”. The symposium was finally held at the headquarters of SOS-Disappeared with far fewer participants and under very difficult conditions: it was held in a room that was too small and was unheated, and it was not possible to warn all the participants of the change of venue<sup>5</sup>. In addition, in a ruling dated May 25, 2009 and for which no reason was given, the services of the Office of General Affairs Legislation (*Direction de la réglementation des affaires générales* – DRAG) of the Algiers wilaya banned a training seminar for journalists on “the role of the journalist in protecting human rights”. The seminar, organised by the Algerian Human Rights Defence League (*Ligue algérienne de défense des droits de l’Homme* – LADDH), was due to be held in Zeralda, west of Algiers, on May 26, 27 and 28, 2009, bringing together 25 journalists from different towns. Similarly, on October 8, 2009, LADDH received a written notification from DRAG, with no reason given, banning it from holding a “National Meeting on the Abolition of Capital Punishment” planned for October 10 to celebrate the World Day Against the Death Penalty. The meeting, which was due to be held at the Hotel El Biar in Algiers, was finally held at LADDH headquarters.

### **Obstacles to trade union freedom and judicial harassment of union members**

In 2009, trade union freedom was still not guaranteed and considerable pressure was put on people who tried to form a trade union. For instance, in 2009, Mr. **Yacine Zaïd**, Secretary General of the local branch of the General Union of Algerian Workers (*Union générale des travailleurs algériens* – UGTA) with Eurest Support Services (ESS), a subsidiary of the Compass group, who had been laid off in 2007, was victim of judicial harassment for having created a trade union branch to defend the interests of employees within the company. He was summoned on March 31, October 20, November 3, 17 and 24, December 1, 8 and 30, 2009 to attend a hearing with the judge of the Ouargla Court, in the east of the country, in connection with seven complaints filed against him by his company’s Director of Human Resources and the Director of the oil platform for which he worked. As of the end of 2009, he remained prosecuted for “defamation” and “insult and injury” after statements were published on Internet denouncing his dismissal and the working conditions of employees in foreign companies established in Algeria<sup>6</sup>.

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5/ See LADDH.

6/ *Idem*.

Furthermore, the police broke up, sometimes violently, several peaceful rallies organised by trade unions and demonstrators were subject to judicial proceedings. For example, on November 10, 2009, 50 members of the National Independent Union of Public Administration Personnel (*Syndicat national autonome des personnels de l'administration publique* – SNAPAP), who were taking part in a large strike movement started two days earlier by six independent civil service unions in Algeria, were arrested by the police as they were preparing to spend the night opposite the headquarters of the President of the Republic to protest against the precarious situation of Algerian civil servants. Those arrested, mostly women, were manhandled then taken to a police station where they stayed for several hours before being released. Similarly, union members of the National Committee of Contract Teachers (*Conseil national des enseignants contractuels* – CNEC) who were taking part in the same movement were rushed by the police when they tried to approach the Education Ministry, to which entry was blocked by heavy police contingents<sup>7</sup>. As of the end of 2009, the police had carried out no investigation following these acts of violence.

### **Acts of intimidation and judicial harassment against a defender of religious minority rights**

This year, a defender of religious minority rights was harassed. On June 15, 2009, Mr. **Kamel Eddine Fekhar**, a LADDH activist, was arrested by State security agents from Ghardaïa, in the centre of Algeria, and wrongly accused of “destruction of public property and setting fire to a police vehicle”, incidents that had taken place during the month of January during riots that had shaken the town of Berriane, in Ghardaïa wilaya. The Prosecutor of the Republic released him 24 hours later and placed him on probation. Mr. Kamel Eddine Fekhar is one of the initiators of the appeal to make the Ibadi rite<sup>8</sup> official in Algeria, and his arrest appeared to be due to his activities for recognition of the rights of Mozabite citizens<sup>9</sup>. At the end of 2009, the investigation against him continued.

### **Harassment of defenders who denounce corruption**

In 2009, several defenders were prosecuted for having denounced local authority corruption. For example, Mr. **Ghoul Hafnaoui**, in charge of the LADDH branch in Djelfa, south of Algiers, and a journalist for the daily newspaper *al-Wassat*, was attacked at his home during the night of January 6 to 7, 2009 by a group of hooded individuals who were waiting

7/ See SNAPAP Statement, November 10, 2009.

8/ Ibadism is a form of Islam distinct from Sunni and Shi'a.

9/ Inhabitants of the M'zab valley and members of the Ibadi sect. See LADDH and *al-Watan* article, June 17, 2009.



for him to return. This attack appeared to be related to his condemnation of the corruption that pervades the city of Djelfa<sup>10</sup>. Mr. Ghoul Hafnaoui filed a complaint against unknown persons but, as of the end of 2009, no investigation had been opened<sup>11</sup>. Furthermore, on October 27, 2009, the Djelfa Court gave Mr. Hafnaoui a suspended sentence of two months in prison and a heavy fine in one of the cases brought against him by local authority bodies. He was sentenced to pay a fine of 50,000 dinars (around 500 euros) in a case brought against him by the Local Administration Department (*Direction de l'administration locale* – DAL) and the Head of DRAG following the publication of an article in *al-Wassat* on September 9, 2008, which called for “the opening of an enquiry concerning a case of corruption involving wilaya officials”<sup>12</sup>. Mr. Hafnaoui was also given a six months’ suspended prison sentence in a case brought against him by the Wali of Djelfa, who accused him of slander following the publication in *al-Wassat* on February 18, 2008 of an article that denounced local authority violation of the Constitution and the law, following the ban of a meeting organised by one NGO<sup>13</sup>. Similarly, on July 6, 2009, Mr. **Hassan Bouras**, a journalist and LADDH activist, was sentenced for “defamation” to three months in prison and a fine of 500,000 dinars (around 5,000 euros) by the Court of El Bayadh, in the west of the country. He was prosecuted following the publication of an article one month earlier in the weekly newspaper *al-Khabar Hawadith* that denounced the corruption practised by certain members of Parliament. Mr. Bouras, who had received no summons for the trial, was given the news by a lawyer who was present at the hearing. He opposed the decision but, on November 9, 2009, the El Bayadh Court upheld the sentence<sup>14</sup>. Mr. Bouras appealed against the ruling and remained free at the end of 2009. On October 13, 2009, the Sedrata Court sentenced Mr. **Ouahid Boulouh**, a correspondent for *al-Khabar* in Souk Ahras, in east Algeria, to a fine of 500,000 dinars and damages of 500,000 dinars for the civil party for “defamation” after publishing an article that referred to misappropriation of funds for community services at the Local Public Health Centre (*Entreprise publique de santé de proximité* – EPSP). He appealed against the ruling. At the end of 2009, an appeal date had still

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10 / See LADDH.

11 / *Idem*.

12 / See LADDH Press Release, October 11, 2009 and *al-Watan* article, October 28, 2009,

13 / *Idem*. Furthermore, as of the end of 2009, the four appeals made by Mr. Ghoul Hafnaoui in 2004 before the Court of Appeals against four sentences to a total of eleven months in prison and a fine of 2,262,000 dinars (around 22,143 euros) in damages and interest were still pending. These sentences followed several complaints filed in particular by the Wali of Djelfa and his family for “defamation”, “insult to the constituent bodies of the State” and “removal of a document from prison”.

not been set<sup>15</sup>. In addition, on February 11, 2009, the Appeal Court in Mascara, in west Algeria, sentenced Mr. **Layadi El Amine Yahia**, the correspondent in Mascara for the daily newspaper *Le carrefour d'Algérie*, in his absence, to one year in prison plus a fine of 20,000 dinars (around 200 euros) in a case of defamation. Proceedings had been started against him by the Director of Commerce of Mascara wilaya for an article implicating the latter in acts of corruption. Mr. Layadi El Amine Yahia, who had been acquitted by the Mascara Court at first instance on December 3, 2008, had received no summons for the hearing. He therefore opposed the decision and, at the end of 2009, he was waiting for publication of the final ruling<sup>16</sup>. Finally, Mr. **Nouri Benzenine**, a former correspondent for *Echourouk al-Youmi*, was sentenced to two months in prison and a fine of 50,000 dinars (around 500 euros) for “defamation” by the Court of Maghnia, in the west of the country, after a complaint was filed by the Senator of the province concerning a report published on March 14 and 15, 2007 denouncing petrol trafficking in the region. Mr. Benzenine opposed the decision since he had not been informed of the trial date<sup>17</sup>.

### **Urgent Intervention issued by The Observatory in 2009**

<b>Name</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Algerian Human Rights Defence League (LADDH)	Obstacles to freedom of assembly	Urgent Appeal DZA 001/1009/OBS 145	October 9, 2009

15/ *Idem*.

16/ *Idem*.

17/ *Idem*.

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# BAHRAIN

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

Despite the commitments taken by the authorities and the recommendations made by the Member States of the Human Rights Council during the Universal Periodic Review (UPR) of Bahrain in April 2008, the year 2009 saw the adoption of none of the principal reforms expected to guarantee improved respect for citizens' rights<sup>1</sup>. Bahrain civil society, heavily implicated in the fight against discrimination and corruption, continued to be subjected to the interference of an all-powerful executive body. In addition, the laws regulating freedoms of association<sup>2</sup>, public assembly<sup>3</sup>, expression<sup>4</sup> and trade union freedom remained extremely restrictive.

Freedom of expression in particular deteriorated considerably, notably through blocks on Internet websites, proceedings against journalists and media campaigns against defenders. Since January 5, 2009, a Ministry of Culture and Information By-law authorises the suspension of websites by simple request of the Minister and without any judicial control. Under this by-law, "telecommunication companies and Internet service providers are required to prohibit any means that allow access to sites blocked by the Ministry, whether by Internet address, use of a proxy server or any other means" (Article 3). This measure deprives human rights defenders of a basic tool for denouncing human rights violations. At the beginning of 2009, the authorities ordered the blocking of the *Aafaq.org* information website, based in Washington (United States), the *Bahrain-eve* blog of the President of the Women's Petition Committee and the blog of the *Bahrainblogs.org* aggregator. At the end of 2009, nearly 600 websites were still inaccessible within the country<sup>5</sup>. Moreover, the blocking of websites occurred in a climate of widespread censorship; trials of journalists also increased in 2009. In addition, the draft amendment of Law No. 47 on the

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1/ An action plan for the implementation of UPR recommendations was adopted on July 10, 2008, but the principal reforms contained in the plan, relating to fundamental freedoms, remained pending at the end of 2009.

2/ See Law No. 21 of 1989 on Associations. A new Bill on Associations, drawn up in 2007 by the Ministry of Social Development in consultation with civil society organisations, had still not been presented to Parliament by the end of 2009.

3/ See Law No. 32 of 2006 on Public Assemblies.

4/ See Law No. 17 of 2002 on the Press and Publications.

5/ See Reporters Without Borders (RSF) Press Release, May 14, 2009 and BCHR.

Press, which was approved in 2008 by the Shura Council and which annuls most prison sentences against journalists, had still not been submitted by the Government to the National Assembly by the end of 2009.

2009 was also marked by the pardon granted in April 2009 by the King of Bahrain to 178 political prisoners<sup>6</sup> sentenced or prosecuted for attacks on security. Nevertheless, those who voiced opposition to the Government, especially those who denounced discrimination against the Shia population, continued to be subjected to acts of harassment.

### **Ongoing obstacles to freedom of association**

In 2009, several human rights organisations were still obliged to carry out their work without being registered, in particular the Bahrain Youth Human Rights Society (BYHRS), the National Committee for the Unemployed and the Bahrain Centre for Human Rights (BCHR). Without legal recognition, the founders of these NGOs remained liable to judicial proceedings. As an example, proceedings against Mr. **Mohammed Abdul Nabi al-Maskati**, BYHRS Director, was still being prosecuted since the end of 2007 for “operating an unregistered association before the issue of a registration license”. He risks a six months’ prison sentence and a fine of 5,000 dinars (around 9,450 euros). The hearing was postponed from November 16, 2009 to January 25, 2010.

### **Obstacles to freedom of peaceful assembly**

In 2009, there were considerable restrictions on the organisation of peaceful assemblies. On May 16, 2009, special forces prevented the organisation of a public seminar on the “political naturalisation” process in Bahrain, by which the Government naturalises foreigners belonging to the Sunni obedience in order to counteract the demographic weight of the Shia community on the country’s population, and to denounce discrimination against the Shia population. The seminar was organised by six political groups<sup>7</sup> and was due to be held at the premises of the National Democratic Action Society (Waad) in the village of Arad on Muharraaq Island. The special forces surrounded the building and prevented most of the seminar organisers and participants from entering on the grounds that the authorities had not authorised the seminar. In addition, on August 25, 2009, Mr. **Nabeel Rajab**, President of BCHR, was arrested and held for

6/ Including Mr. **Hassan Abdulnabi**, a member of the Unemployed and Underpaid Committee (UUC), Mr. **Naji al-Fateel**, a member of the Bahrain Youth Society for Human Rights (BYSHR), Mr. **Mohammed Abdullah al-Sengais**, founder of the Committee to Combat High Prices (CCHP), and Mr. **Isa al-Sarh**, a member of the Amal Political Society.

7/ These were the Waad, the Progressive Forum, al-Wefaq, Amal, the National Coalition and al-Ekha.

several hours by the police when he and three other people protested in front of the Saudi embassy against the arbitrary detention of a Bahraini citizen held for seven years in Saudi prisons. Mr. Rajab was threatened with reprisals if he returned to protest in front of the Saudi embassy even if there were no more than four protesters<sup>8</sup>. The police also resorted again to the use of violence to break up demonstrations or unauthorised peaceful assemblies, with complete impunity. As an example, on March 13 and 15, 2009, the special forces, which are responsible to the security services, opened fire on families who had gathered peacefully in Sitra to call for the return of their lands confiscated by the army, and at the Duraz roundabout near Manama to demand the release of political detainees. Several demonstrators were injured<sup>9</sup>. Moreover, on February 11, 2009, Mr. **Sayed Sharaf Ahmed**, a board member of the National Committee of Martyrs and Victims of Torture, was arrested at his home and held for several days with no contact with his family or with a lawyer. Mr. Sayed Sharaf Ahmed is known for his role in the organisation of peaceful sit-ins in Sitra in support of prisoners' rights. He was arrested firstly without a warrant, and then later accused of "burning tyres" and "holding up the traffic". He was released six months later due to lack of evidence<sup>10</sup>.

Bahraini defenders in exile abroad were also targets of acts of intimidation because of their participation in rallies to condemn human rights violations in their country. For instance, Messrs. **Abbass Abdul Aziz al-Omran**, a former member of BCHR, and **Ali Mushaima**, a former member of the Unemployed and Underpaid Committee (UUC), were attacked in London by three masked men on July 2, 2009. Three days later, Mr. Mushaima received a telephone call from an unknown person who threatened that he would be attacked again if he continued his protests against the Bahrain Government. Messrs. Abbas al-Omran and Ali Mushaima are regular participants in demonstrations opposite the Bahrain embassy in London<sup>11</sup>.

### **Recourse to anti-terrorist legislation to prosecute human rights defenders**

In 2009, a wave of arrests on the basis of anti-terrorist legislation, followed by a defamation campaign, targeted 35 activists including several human rights defenders accused of being involved in an "planned attack"

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8/ Law No. 32 of 2006 on Public Assemblies prohibits any unauthorised assembly of more than four people. See BCHR.

9/ See BCHR Press Release, March 26, 2009.

10/ See BCHR Press Release, March 2, 2009 and BHRs.

11/ *Idem*.

foiled by the authorities in December 2008. On January 26, 2009, Mr. **Hassan Mushaima**, President of the unauthorised political organisation *al-Haq*, Mr. **Abduljalil al-Sengais**, Head of the human rights unit of the same organisation, and Mr. **Habib al-Moqdad**, a religious dignitary, were arrested at their homes by security agents and then taken to Dry Dock prison on Muharraq Island. M. Abduljalil al-Sengais was released on bail on January 27, 2009. The accusations against all three included their participation in creating an illegal association in opposition to the Bahrain Constitution and resorting to terrorism to achieve its objectives, a charge that is punishable by life imprisonment, under Article 6 of Law No. 58 of 2006 on Terrorism<sup>12</sup>. Several other activists arrested in December 2008 in relation to the same case complained of being subjected to ill-treatment and torture during questioning. The police would also have forced them to make false declarations and accusations against several human rights defenders, “confessions” that were then relayed through the press and television. The trial of the 35 people involved in the so-called “terrorist plot” case, or case No. 1403/2008, was opened on February 23, 2009 before the Manama High Criminal Court. Amongst the people charged were Messrs. Hassan Mushaima, Abduljalil al-Sengais, Habib al-Moqdad, Abbass Abdul Aziz al-Omran<sup>13</sup>, **Abdul-redha Hassan al-Saffar**, known for his ties with UUC and arrested on December 21, 2008, Ali Mushaima and **Abdulraoof al-Shayeb**, former President of the Committee of Martyrs and Victims of Torture. All these people are known for their demands for equal rights. All the activists prosecuted in this case were finally granted a royal pardon by the King on April 12, 2009.

### **Judicial harassment of journalists who denounce human rights violations**

In 2009, judicial proceedings were opened against several journalists who denounced human rights violations. As an example, Ms. **Maryam al-Shoroogi**, a journalist with the *al-Wasat* daily paper, was accused of making remarks that “damage the unity of the country by introducing discrimination between Sunni and Shia Muslims”, following the publication of an article in the edition of August 27, 2008 in which she condemned discriminatory employment practices by the Civil Service Bureau (CSB). On October 17, 2009, the Manama High Criminal Court sentenced her to payment of a fine of 50 dinars (around 92 euros). She appealed against

12/ The other charges - “incitement to overthrow the Government and the political system” and “incitement to hatred of the regime” - are punishable under the Criminal Code by five and three years’ imprisonment respectively.

13/ The name of Mr. Abbass Abdulaziz al-Omran was only added on February 10, 2009 to the indictment sent by the Prosecutor to the High Criminal Court in relation to this case.

the decision<sup>14</sup>. Similarly, on March 5, 2009, the General Prosecutor summoned Ms. **Lamees Dhaif**, a journalist with the daily newspaper *al-Waqt*, after a series of articles entitled “the Dossier of Great Shame” appeared between November 22 and 26, 2008, in which she denounced the failings in the legal system and called for the adoption of a new family code. Ms. Dhaif is being prosecuted for “public insult to the constituent body” under Article 216 of the Criminal Code, punishable by a prison sentence of up to two years, rather than Law No. 47 on the Press. As of the end of 2009, proceedings against her continued<sup>15</sup>.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Messrs. <b>Abdulhadi al-Khawaja, Ali Mushaima, Abdulraoof al-Shayeb, Hasan Mushaima, Abduljalil al-Sengais, Mohamed Habib al-Meqdad, Ali Ahmed and Abdul-redha Hassan al-Saffar</b>	Defamation campaign / Arbitrary detention / Torture	Urgent Appeal BHR 001/0109/OBS 003	January 7, 2009
Messrs. <b>Abduljalil al-Sengais, Hasan Mushaima and Mohamed Habib al-Meqdad</b>	Secret detention / Harassment	Urgent Appeal BHR 001/0109/OBS 003.1	February 6, 2009
Messrs. <b>Abbass Abdul Aziz al-Omran, Abduljalil al-Sengais, Hasan Mushaima, Mohamed Habib al-Meqdad, Abdul-redha Hassan al-Saffar, Ali Mushaima and Abdulraoof al-Shayeb</b>	Judicial harassment / Arbitrary detention / Ill-treatments	Urgent Appeal BHR 001/0109/OBS 003.2	February 24, 2009
<b>Ms. Ghada Jamsheer</b>	Harassment	Joint Open Letter to the authorities	January 28, 2009
<b>Mr. Mohamed Abdul Nabi al-Maskati</b>	Judicial harassment	Press Release	March 30, 2009
<b>Mr. Maytham Bader Jassim al-Sheikh</b>	Release / Ill-treatments / Torture	Urgent Appeal BHR 001/0208/OBS 017.2	April 7, 2009
<b>Mr. Jaafar Kadhim</b>	Abduction / Attacks / Ill-treatments	Urgent Appeal BHR 002/0509/OBS 071	May 13, 2009

14/ The trial at appeal was planned for January 17, 2010. See BCHR and BHRS.

15/ See BCHR and IFEX Joint Press Release, March 10, 2009, and RSF Press Release, May 14, 2009.

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# EGYPT

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In 2009, the human rights situation in Egypt was still very worrying. Law No. 162 of 1958 imposing the state of emergency has been in force since 1981 and gives the executive powers that it uses to restrict the activities of human rights defenders. Article 3 of the State of Emergency Law indeed permits the Minister of the Interior to give orders for administrative detention, a ruling that can be renewed for an unspecified period without a charge or trial, for any person suspected of “threatening public order or State security”. The State of Emergency Law also permits the President of the Republic to refer cases implicating civilians to a military court. These courts, which are made up of the military, and whose rulings may not be appealed before an independent higher court, flout the right of all persons to a fair hearing in public before an impartial, independent court. For example, on February 11, 2009, Mr. Magdi Ahmad Hussein, a journalist and Secretary General of the Labour Party, was sentenced to two years in prison and a fine of 5,000 pounds (around 637 euros) by the al-Ismailia Military Tribunal for “illegally entering” the Gaza Strip<sup>1</sup>. He had entered Palestinian territory in January 2009 in protest against the closure of the border by the Egyptian Government at the time of the Israeli army’s massive air raids on the Gaza Strip. His hearing took place in camera and his lawyers were prevented from seeing his case file<sup>2</sup>.

Furthermore, recourse to torture in Egypt remained frequent in spite of the campaigns led by Egyptian civil society to denounce this practice<sup>3</sup>. For instance, between January and April 2009, the Egyptian Organisation for Human Rights (EOHR) had knowledge of ten cases of torture and five

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1/ At the end of 2009, Mr. Magdi Ahmad Hussein was still being held in al-Morj prison, north of Cairo. Proceedings were set in motion in accordance with Presidential Decree No. 298 of 1995, which prohibits unauthorised access to Gaza through the eastern border.

2/ See Egyptian Organisation for Human Rights (EOHR) Press Release, February 4, 2009 and al-Karama Press Release, March 9, 2009.

3/ On July 26, 2009, EOHR invited the Egyptian Government to modify the articles of the Criminal Code relating to torture and ill-treatment to bring them in line with the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Egypt in 1986. Furthermore, the National Committee Against Torture, a coalition of civil society organisations, launched a campaign in July 2009 entitled “Towards a Nation without Torture”, which planned several activities to raise awareness of the issue.



deaths due to or as a result of acts of torture. In addition, the perpetrators of these acts are protected by very restrictive legislation. Indeed, under Article 126 of the Criminal Code, torture is only considered a criminal offence as such when it is practised by an agent of the State on an accused person with the intention of obtaining a confession<sup>4</sup>.

Finally, exercise of the right of freedom of expression continued to be severely repressed in 2009. Between January and April 2009, EOHR registered 132 cases of violation of the right of freedom of expression and opinion, including 110 appearances before a civil or military court for “violation of State security and peace” through subversive statements, defamation, contempt or insult to a police officer and four cases of the unwarranted use of force against journalists during political demonstrations, either by the police or by university security services<sup>5</sup>.

### **Legal and administrative obstacles to freedom of association**

Law No. 84 of 2002 on Associations provides a very strict framework for the creation and the activities of Egyptian non-governmental organisations. The latter are answerable to the executive authority both at the time of their creation and their dissolution. Under Article 11 of the law, the Ministry of Social Solidarity may indeed refuse to licence an association when it is likely to “threaten national unity, violate public order or morals”, or if it “calls for discrimination between citizens on the grounds of race, origin, colour, language, religion or creed”. In addition, under Article 6, although the Law on Associations provides for a system of declaration for the creation of an association, the practice imposed by the authorities, which refuse to issue a receipt when a dossier is filed for the creation of an association, makes approval compulsory. Under Article 42, the Ministry of Social Solidarity may also, without a judicial order, dissolve an association that, amongst other things, receives foreign funding without prior Government approval, in violation of Article 17.

For example, on April 27, 2009, EOHR received a letter from the Ministry of Social Solidarity threatening the association with dissolution and closure under Articles 42 and 17 of the law. This measure followed the organisation by EOHR, in partnership with the Centre for Media Freedom in the Middle East and North Africa, Morocco (CMF MENA), of a conference in Cairo on January 27 and 28, 2009 entitled “Information is a Right for All”. On July 31, 2008, EOHR had requested the authorities’

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4/ See EOHR, *Report presented to the UN Human Rights Council in the framework of the Universal Periodic Review*, August 31, 2009.

456 5/ *Idem*.

authorisation to receive funds from its partner CMF MENA to cover the costs of this conference. There was no response to the request. On May 10, 2009, EOHR received a letter from the Ministry of Social Solidarity indicating that no step had been taken to dissolve or close the organisation, and that the letter from the Ministry was simply a reminder of the legal procedure to be followed for foreign subsidy<sup>6</sup>. Furthermore, as of the end of 2009, the Ministry of Social Solidarity had still not implemented the decision to re-register the Association of Human Rights and Legal Aid (AHRLA), issued on October 26, 2008 by the Administrative Court<sup>7</sup>.

### Obstacles to freedom of peaceful assembly

Public assemblies are governed by Law No. 10 of 1914 on Assemblies, Law No. 14 of 1923 on Public Meetings and Demonstrations and Law No. 162 of 1958 on the State of Emergency. These laws limit the number of people who can take part in a public assembly to five (1914 Law) and authorise the police to ban or break up demonstrations (1923 Law). In 2009, several people were arrested after taking part in peaceful assemblies. On January 2, 2009, 309 people were arrested in several towns throughout the country as they were on their way to Cairo to take part in a demonstration to support the Palestinian people in Gaza who were victims of Israeli army air raids. On January 5, 2009, they were charged with “membership of an unauthorised group” and “possession of illegal documents” (Article 86 of the Criminal Code). The Prosecutor of the National Security Court<sup>8</sup> ordered their provisional detention during the investigation and they were finally released by a legal decision after 45 days of detention, without being charged<sup>9</sup>. Similarly, on February 6, 2009, Mr. **Philip Rizk**, author of the blog *Tabula Gaza*, which describes the life of Palestinians in Gaza, was arrested in Cairo together with fourteen other activists, when they were returning from a demonstration to support the Palestinian people. Members of the State security intelligence services held him secretly for five days and questioned him about his relationship with Hamas and Israel. He was released without being charged on February 11, 2009<sup>10</sup>. In addition, on May 4, 2009, the forces of law and order violently dispersed a sit-in organised in front of the Egyptian State Council and arrested around ten

6 / Article 17 of the Law on Associations does not specify whether the authorities' silence is equivalent to acceptance or rejection of the request. See EOHR Statement, May 11, 2009.

7 / AHRLA had been closed in September 2007 by order of the Ministry on the basis of allegations of financial offences.

8 / The National Security Court is a court of exception that has jurisdiction for all offences relating to “terrorist” acts or threats to State security.

9 / See EOHR Press Release, January 6, 2009.

10 / See EOHR Press Release, February 9, 2009 and Arabic Network for Human Rights Information (ANHRI) Statement, February 11, 2009.

demonstrators, including journalists and members of the “Chabab April 6” movement<sup>11</sup>. They were protesting against the export of gas to Israel because of the serious human rights violations committed in that country and the non-application of a ruling issued on November 18, 2008 by the Court of Administrative Justice ordering a halt to the export of Egyptian natural gas to a certain number of countries<sup>12</sup>. All the demonstrators were released without being charged a few hours after their arrest.

Furthermore, at the end of 2009, two defenders of the economic and social rights of the Sinai Bedouins, Mr. **Musaad abu-Fagr**, whose real name is Mus’ad Suleiman Hassan Hussein, a novelist and founder of the “Wedna N’ish” (We want to live) movement for the Sinai Bedouins, and Mr. **Yehia abu-Nusseira**, a member of the same movement, were still being held in Borg al-Arab prison near Alexandria, in spite of several legal decisions and a decree issued on June 16, 2009 by the Cairo Court of Administrative Justice ordering their release or the suspension of the detention decision<sup>13</sup>. Arrested on December 26, 2007, they were accused of “incitation to demonstrate” and “rebellion against the authorities”, following demonstrations organised in al-Arish, in the north of Sinai, to call for economic and social rights for the Sinai Bedouins<sup>14</sup>.

### **New obstacles to human rights defenders’ freedom of movement**

In 2009, several defenders were again subjected to obstacles to their freedom of movement because of their human rights activities. For instance, on June 30, 2009, Mr. **Wael Abbas**, a blogger on the site *Misr Digital*, was arrested by customs services at Cairo international airport and held without reason for ten hours when he returned from the Tällberg Forum 2009, organised from June 24 to 29, 2009 in Sweden on the theme “How on earth can we live together, within the planetary boundaries”<sup>15</sup>. Mr. Abbas’ belongings were searched thoroughly and his computer was confiscated. There has been no outcome to the complaint filed by Mr. Abbas to protest

11 / A movement created following workers’ strikes and social protests in Mahalla in the Delta region in April 2008.

12 / See EOHR Press Release, May 4, 2009.

13 / On February 12, 2008, the Ismailia Appeal Court acquitted Mr. Musaad abu-Fagr and Mr. Yehia abu-Nusseira, confirming the verdict handed down in their favour by the al-Arish Court. However, they were kept in prison by decision of the Minister of the Interior in accordance with the powers granted to him under Article 3 of the State of Emergency Law. See Egyptian Organisation for Anti-Discrimination and Defence of Children’s Rights (EGHR) Press Release, June 2, 2009.

14 / The inhabitants of Sinai, amongst other claims, call for the right to building permits, entitlement to the land they cultivate and the release of the Bedouins arrested after the bombings in Taba, Sharm el-Sheikh and Dahab, committed between 2004 and 2006.

15 / During this conference participants sought to address the causes of the global crisis and to take initiatives to find ways out of it.

against this arrest. In addition, on September 29, 2009, the police at Cairo international airport seized Mr. Abbas' passport as he was to go to London to attend a conference on the media organised on September 30 by the Media Diversity Institute. His passport was returned to him just before his plane took off. Similarly, on September 11, 2009, Mr. **Kamal Abbas**, General Coordinator of the Centre for Trade Unions and Workers Services (CTUWS), was arrested by security agents at Cairo international airport when he was on his way to Pittsburgh in the United States to attend the 26th Congress of the American Labour Federation, due to take place from September 14 to 17, 2009. His passport was confiscated for two hours and was returned to him just before his plane took off. Furthermore, on September 29, 2009, Mr. **Per Bjorklund**, a freelance journalist who covers social demonstrations and denounces human rights violations in Egypt, was arrested by the immigration services at Cairo international airport. He was informed that for reasons of "internal security", he could no longer come to Egypt, a country where he has lived for the last three years. On October 1, 2009, Mr. Bjorklund was deported to Prague, where his flight had come from.

### **Ongoing harassment of journalists who denounce human rights violations**

In 2009, journalists who denounce human rights violations continued to be subjected to acts of harassment. For example, on December 16, 2009, the al-Rahmaniyah Appeal Court sentenced journalist **Kamal Murad** at appeal for "insulting a police officer" to a fine of 200 Egyptian pounds (around 28 euros). Mr. Murad had been arrested on June 17, 2008 while he was interviewing peasant farmers in Exbat Mohram and photographing police officers who were beating the peasants to force them to sign leases with a local businessman in Rahmánya, in the Buhaira region in the Delta. On July 8, 2008, the Rahmánya police had started judicial proceedings against him for "assuming a false identity", "assaulting the police", "inciting to violence" and "defamation". He risked a prison sentence of between six months to three years. In addition, on May 26, 2009, the blogger **Tamer Mabrouk** was sentenced at appeal by the al-Zohor Court in Port-Said, east of Cairo, to a fine of 45,000 Egyptian pounds (around 5,760 euros) for "defamation" and "insult" for having accused the Trust Chemical Company of pollution in one of his articles. In June 2008, Mr. Tamer Mabrouk had published an article on his blog *elhakika* that accused the Trust Chemical Company of being the cause of water pollution in the region<sup>16</sup>.

## Urgent Interventions issued by The Observatory in 2009

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Egyptian Organisation for Human Rights (EOHR)	Obstacles to freedom of association	Joint Press Release	April 30, 2009
<b>Mr. Wael Abbas</b>	Arbitrary arrest / Confiscation of material	Urgent Appeal EGY 001/0709/OBS 094	July 1, 2009
Human rights organisations	Obstacles to freedom of association	Press Release	September 24, 2009
<b>Messrs. Per Bjorklund, Wael Abbas and Kamal Abbas</b>	Obstacles to freedom of movement / Risk of deportation	Urgent Appeal EGY 002/0909/OBS 142	September 30, 2009

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# ISRAEL / OCCUPIED PALESTINIAN TERRITORY

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

The beginning of 2009 was marked in Israel and the Occupied Palestinian Territory (OPT) by the operation called “Cast Lead,” a broad military offensive by the Israeli army in the Gaza territory that caused the death of 1,419 Palestinians and injured 5,300 others<sup>1</sup>. During and after the conflict, Israeli forces have prevented the delivery of adequate humanitarian assistance and relief to this territory, exacerbating the humanitarian crisis caused by the blockade that has been imposed continuously by Israeli authorities since June 2007<sup>2</sup>. The blockade, which constitutes a form of collective punishment, violates numerous fundamental human rights, including the freedom of movement of persons and goods and the right to adequate shelter, and denies inter alia Palestinian civilians their right to reconstruct the thousands of homes and buildings destroyed during Cast Lead; as such, the population of Gaza continues to struggle to resume their lives in the aftermath of the offensive. In this context, the United Nations Human Rights Council adopted on October 16, 2009 the report of the international fact-finding mission headed by Judge Richard Goldstone, which concluded that war crimes or crimes against humanity had been committed by the Israeli military and Palestinian armed groups<sup>3</sup>. However, at the local level, both in OPT and Israel, no action had been taken as of late 2009 to

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1/ The operation lasted from December 27, 2008 to January 18, 2009. Among the victims, 926 were civilians. 1,600 children and 860 women were injured. See Report of the Palestinian Centre for Human Rights (PCHR), *23 days of war, 928 days of closure*, December 2009. B'Tselem considers for its part that there were 1,387 deaths and over 5,300 injured. See B'Tselem Press Release, September 9, 2009. See also the report of the fact-finding mission of the UN Human Rights Council, known as the Goldstone Report, *Report of the United Nations Fact Finding Mission on the Gaza Conflict*, UN Document A/HRC/12/48, September 25, 2009. The UN General Assembly, in a resolution on November 5, 2009, approved the recommendations of this report.

2/ The embargo was imposed after Hamas took power in the Gaza Strip and was maintained throughout 2009. In the context of the embargo, 60.5% of Gazans suffer from food shortages, 24% of essential drugs are unavailable, agricultural land has been largely destroyed, more than 50% of fuel needs are unmet, etc. See above-mentioned PCHR Report and the report of the Association for Civil Rights in Israel (ACRI), *Report on the Human Rights Situation in Israel and the Occupied Territories*, 2009.

3/ See conclusions of the above-mentioned Goldstone Report.

conduct independent investigations into these serious violations of human rights and international humanitarian law<sup>4</sup>.

In this context, human rights activities were severely hampered. Access to the Gaza Strip by the media, journalists and human rights organisations was impossible during the military offensive and very difficult thereafter. The Israel Defence Forces (IDF) indeed refused access to Gaza for several Israeli and international NGOs<sup>5</sup>.

Israel also continued to use the procedure of administrative detention, under the military legal framework applicable to the West Bank, to detain without charge or trial hundreds of Palestinian civilians, including minors, as well as several defenders who peacefully denounced Israeli policy, including the construction of the separation wall in the West Bank<sup>6</sup>. This procedure takes place outside of any judicial procedure. Administrative detainees are not informed of the charges against them and therefore can not challenge them. Over a period of three to six months, administrative detention can be renewed without limit. As of December 2009, according to B'Tselem, 278 Palestinians were under administrative detention, some for over three years<sup>7</sup>.

In the OPT, the deep crisis between the Hamas-led Government in Gaza and the Palestinian Authority in the West Bank resulted in further human rights violations. The two factions resorted to arbitrary arrests – at times with force – and torture and repressed their opponents, at times with force. In May 2009, nearly 500 people were arrested by the security services of the Palestinian Authority because of their alleged relationship with Hamas. Similarly, in the Gaza Strip, dozens of people were arrested for their alleged support to the Fatah party of the Palestinian Authority President. Dozens of others were kidnapped, tortured and executed, outside of any legal framework, for their relationship with Israel<sup>8</sup>. The December 2009 decision by the Organisation for the Liberation of Palestine to extend

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4/ According to Israeli authorities, 140 investigations were opened into the “incidents”, of which only six could lead to criminal prosecution, but these surveys were conducted by the Israeli Military Police Investigation Unit (MPIU), an institution under the military authority that can not be regarded as independent and impartial. See B'Tselem Press Release, November 4, 2009.

5/ For example, the following NGOs were forbidden access to Gaza : Human Rights Watch on January 29, B'Tselem on February 9, the Euro-Mediterranean Human Rights Network (EMHRN) in April and FIDH in January, April and May 2009.

6/ In June 2004, in an Advisory Opinion, the International Court of Justice ruled that the construction of the wall in the OPT was contrary to international law.

7/ See B'Tselem Report, *Without Trial: Administrative detention of Palestinians by Israel and the Incarceration of Unlawful Combatants Law*, October 2009.

8/ See Al-Haq Press Release, June 13, 2009.

the mandate of the President of the Palestinian Authority<sup>9</sup> is also likely to increase tensions between Hamas and Fatah.

### **Repression of defenders who denounced the construction of the separation wall and Israel's offensive**

The year 2009 was marked by intensification of repression against defenders who peacefully expressed their opposition to the construction of the separation wall in the West Bank. For instance, Mr. **Mohammed Othman**, a volunteer in the West Bank for the “Stop the Wall” Campaign<sup>10</sup>, was arrested on September 22, 2009 by Israeli soldiers while returning from Norway, where he had met with various Palestinian groups and Government members to discuss the question of the separation wall in the West Bank. He was detained for questioning for two months without any charges brought against him. The Israeli Security Agency (ISA) also questioned him about his relatives and his contacts with several European organisations and about his activity within the “Stop the Wall” Campaign. On November 22, 2009, the Court of Military Appeals ordered his release on bail on the condition not to leave the West Bank and to regularly report to a police station in Israel. However, on November 25, 2009, the Military Court of Administrative Detainees endorsed a Military Prosecutor's decision to place Mr. Mohammed Othman in administrative detention. As of late 2009, Mr. Othman was still detained without charge in the absence of judicial review at the Kishon interrogation centre in Jalameh, north of Israel<sup>11</sup>. Similarly, on December 16, 2009, Israeli authorities arrested Mr. **Jamal Juma'**, Coordinator of the “Stop the Wall” Campaign and a founding member of several other NGOs, including the Palestinian Agricultural Relief Committees. In his and his family's presence, Mr. Juma's house was searched by the army, and his computer and phones were seized. Mr. Juma' was taken to the interrogation centre of Moskobiyyeh, west Jerusalem, and his lawyer was prevented from visiting him. As of late 2009, Mr. Juma' was still in administrative detention without charge by the Israeli army, which extended twice the length of his detention period<sup>12</sup>.

Public rallies denouncing Israel's offensive were also routinely banned or repressed by Israeli authorities: those that were held were regularly met with force from Israeli military forces, including rubber bullets, sound bombs, and tear gas, and hundreds of demonstrators were arrested in Israel

9/ This mandate expired in January 2009.

10/ This campaign brings together Israeli, Palestinian and international activists.

11/ Mr. Othman was finally released on bail on January 13, 2010.

12/ Mr. Juma' was released without condition on January 13, 2010.



and the West Bank during such gatherings. Palestinians, in the OPT and citizens of Israel, in particular were victimised during arrests with physical and verbal abuse by the police<sup>13</sup>. Furthermore, since June 23, 2009, waves of night arrests, organised by the Israeli army, targeted the inhabitants of villages that weekly organised peaceful meetings against the construction of the separation wall. Between June and August 2009, over 26 residents of Bil'in, West Bank village, in which 51% of agricultural land was annexed by Israel<sup>14</sup>, were arrested at their homes during the night by the IDF<sup>15</sup>. Members of the Popular Committee of Bil'in Against the Wall and Settlements were prosecuted for "incitement", "throwing stones" and "participation in protests" under the Military Order No. 101 on the Prohibition of Acts of Incitement and Hostile Propaganda applicable to the West Bank, whose Article 3 prohibits "processions, meetings or gatherings without military authorisation"<sup>16</sup>. For example, Mr. **Abdullah Abu Rahma**, a teacher and Coordinator of the Committee, was arrested by Israeli soldiers on the night of December 9-10, 2009 and charged on December 22, 2009 by the Ofer Israeli Military Court for "inciting violence and participation in an unsanctioned meeting". As of late 2009, Mr. Abdullah Abu Rahma was still held at the Ofer military base, west of Ramallah<sup>17</sup>. Mr. **Mohammad Khatib**, member of the same movement and Secretary of the village council, was arrested on the night of August 2-3, 2009 and charged with "inciting violence". He was released on August 16, 2009 on the condition that he presents himself to an Israeli military post every day of protests, and until the end of his trial. As of late 2009, the condition was still applicable and his trial remained pending.

### **Breaking and burglary of NGO headquarters to intimidate human rights defenders**

During the year 2009, several Palestinian human rights non-governmental organisations were victims of burglary clearly aimed at intimidating them. On November 15, 2009, members of the al-Dameer Association for Human Rights, based in Gaza, reported that the headquarters of their

13/ See above-mentioned ACRI Report. The disproportionate use of force by the Israeli army in order to disperse demonstrators resulted in the death of Mr. **Bassem Ibrahim Abu Rahma**, who was killed on April 17, 2009 by a tear-gas bomb while participating in a peaceful demonstration.

14/ In September 2007, the Israeli Supreme Court ruled that the wall in Bil'in was prejudicial and ordered its modification, which would allow the village to recover nearly 50% of land that was confiscated in late 2004. Nonetheless, as of late 2009, this decision had not yet been implemented.

15/ Twelve among them were liberated on August 26, 2009, but other inhabitants of the village were arrested in the following months, including Mr. **Abdallah Abu Rahma**. See above-mentioned ACRI Report and B'Tselem Statement, August 18, 2009.

16/ Article 7 of the Order also prohibits incitement, defined as "every attempt, oral or by other means, to influence public opinion in the West Bank, in a way which attacks public peace and public order [...]".

17/ See B'Tselem Statement, April 22, 2009.

association had been burglarised. Papers were scattered and two computers were taken. A memory card from the association's camera was also erased. The association filed a complaint against this attack the same day. Similarly, on December 13, 2009, the offices of the Palestinian Non-Governmental Organizations Network (PNGO) and those of the Cooperative Housing Foundation (CHF), located in Gaza city, were burglarised. One thousand dollars (about 700 euros) were stolen from PNGO. An investigation was opened but, as of late 2009, none of the authors of the three burglaries had been identified.

### Obstacles to human rights defenders' freedom of movement

Freedom of movement within the OPT remained seriously hampered by the Israeli authorities, who have stepped up flying checkpoints – between 60 and 80 in the West Bank as of late 2009 – and blocked several roads (630 roadblocks as of late 2009)<sup>18</sup>. In addition to these major obstacles, the Israeli military authorities also banned defenders from leaving the West Bank and the Gaza Strip and travelling between the two. Such was the case of Mr. **Shawan Jabarin**, General Director of the Palestinian NGO “Al-Haq”, who scheduled to travel to the Netherlands from March 11 to 19, 2009 in order to receive, on behalf of Al-Haq, the Geuzenpenning Human Rights Award. On March 10, 2009, the Israeli Supreme Court decided to maintain the travel ban issued by the Israeli military authorities against him. From March 5 to 9, 2009, after two hearings conducted in part *ex parte*, that is, in the sole presence of judges, the General Attorney and members of the General Security Services (GSS), the judges considered possessing “secret evidence” to prove that Mr. Jabarin is an “active member of a “terrorist” organisation”<sup>19</sup>. Moreover, in the Gaza Strip, Hamas security services prevented in May 2009 a delegation of 90 women from the General Union of Palestinian Women (GUPW) from leaving the Gaza Strip to attend a GUPW conference in Ramallah, West Bank<sup>20</sup>.

Moreover, foreign nationals who come in the OPT to work for human rights organisations were confronted with increasing difficulties with regard to freedom of movement. Since August 2009, the Interior Ministry no longer issues them work permits but tourist visas, which prevent them from working or only permit them the access to areas designated by the

18/ See PCHR.

19/ Since March 23, 2006, the date on which Israeli authorities confiscated the travel documents of Mr. Jabarin, queries to obtain a travel authorisation have been systematically rejected by the Israeli army and Justice Department.

20/ Conducting activities in the economic and social fields, in 1993, GUPW established a charter for the political, economic, social and cultural rights of Palestinian women and seeks to promote the implementation of the contents of the charter. See Al-Haq Press Release, June 13, 2009.

Israeli leadership. Moreover, in January 2010, the Israeli Interior Ministry stopped granting work permits to foreign nationals working in most international NGOs operating in the OPT. These people will have to depend on the Coordinator of Government activities in the OPT, under the Ministry of Defence, who issues tourist visas with permission to work in the OPT. This measure may block the access of international NGOs in Jerusalem and 60% of the West Bank (area C), territories that are not considered by the Israeli Government as part of OPT.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
<b>Mr. Shawan Jabarin</b>	Obstacles to the freedom of movement / Harassment	Urgent Appeal ISR 001/0607/OBS 069.2	March 18, 2009
<b>Mr. Mohammed Othman</b>	Arbitrary detention / Judicial harassment	Urgent Appeal ISR 001/1109/OBS 162	November 6, 2009
		Urgent Appeal ISR 001/1109/OBS 162.1	December 1, 2009
<b>Al-Dameer Association for Human Rights</b>	Burglary / Harassment	Urgent Appeal PAL 001/1109/OBS 170	November 19, 2009
<b>Palestinian Non-Governmental Organizations Network (PNGO) and the Cooperative Housing Foundation (CHF)</b>	Burglary / Harassment	Urgent Appeal PAL 002/1209/OBS 191	December 15, 2009
<b>Mr. Jamal Juma'</b>	Arbitrary detention / Judicial harassment	Urgent Appeal ISR 002/1209/OBS 198	December 23, 2009

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# MOROCCO / WESTERN SAHARA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

Although in 2009, on the occasion of the tenth anniversary of the accession of King Mohamed VI to the throne, the national media saluted the progress made by Morocco in terms of human rights, the assessment of the reforms has remained mixed with regard to the hopes raised by the many commitments and initiatives taken by the country in both the national and international contexts. At the end of 2009, the Moroccan Government had adopted no decree to implement the Royal Declaration of December 2008 announcing the lifting of reservations made in 1993 during the ratification of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women. Neither the recommendations made by the Equity and Reconciliation Commission (*Instance équité et réconciliation* – IER) nor those expressed by the UN Human Rights Council during the Universal Periodic Review in April 2008 had been put into operation.

In 2009, there was considerable deterioration of freedom of expression, exposing many journalists to judicial proceedings and prison sentences. As an example, the Press Code, whose reform has been under discussion for three years, upholds detention sentences for press offences (Article 41). Although the press enjoys a greater freedom of tone than in many countries in the region, certain subjects remain taboo, such as religion, the King and the monarchy, the country and territorial integrity. Indeed, the Criminal Code provides for prison sentences for anyone who “insults” State bodies or “offends” the national flag (Articles 263, 265 and 267). For instance, on October 31, 2009, the Casablanca Court passed a suspended sentence of one year’s imprisonment for Mr. Taoufiq Bouachrine, Director of the newspaper *Akhbar al-Youm*, and Mr. Khalid Gueddar, a caricaturist with the daily paper, together with a fine of 10,000 dirhams (around 900 euros), following the publication in the September 27, 2009 edition of a caricature relating to the marriage ceremony of Prince Moulay Ismail. The Moroccan police closed down the newspaper’s premises on September 28, 2009 by order of the Minister of the Interior even before the court had handed down

a sentence on the case<sup>1</sup>. In addition, on October 15, 2009, the Rabat Court of First Instance sentenced Mr. Driss Chahtane, Publishing Director of the newspaper *al-Michael*, to one year in prison and a fine of 10,000 dirhams, and Messrs. Rachid Mahamid and Mustapha Hayrane, journalists with the same weekly newspaper, to a sentence of three months' imprisonment and a fine of 5,000 dirhams (around 450 euros) for publishing an article about the King's health in September 2009<sup>2</sup>. These sentences lead to fear a climate of censorship that is a deterrent for human rights defenders.

Finally, the conflict in Western Sahara remained unresolved since the failure of direct negotiations advocated by the UN Security Council Resolution dated April 30, 2007. On May 1, 2009, as every year, the mandate of the UN Mission for the Referendum in Western Sahara (MINURSO) was extended by one year. The human rights situation in this region saw no improvement in 2009. The authorities continued in particular to hamper and suppress any form of challenge to the official position that Western Sahara is part of Morocco.

### **Certain movements are still deprived of freedom of association**

Although freedom of association in Morocco is guaranteed by the Moroccan Constitution (Article 9) and is governed by Dahir No. 1-58-376 of November 15, 1958, modified in 2002 and in 2006, and despite the declarative nature for the registration of associations, many obstacles to obtaining the status of association were still encountered not only at a legal level but also, and especially, at an administrative level. Article 3 of the Law on Associations indeed bans the creation of an association whose aim is contrary to good morals or undermines the Islamic religion, the monarchy or the territorial integrity of the country, or if it calls for discrimination. The authorities could use these very vague terms to justify a ban on the creation of an association, even though this is rarely the case. Furthermore, the system of declaration introduced in 2002 is undermined by the fact that the authorities in certain cases refuse to issue a receipt, a document that proves that a declaration has been filed and that starts the two month period following which an association is legally created<sup>3</sup>.

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1/ See Joint Press Release by the Moroccan Organisation for Human Rights (*Organisation marocaine des droits humains* - OMDH) and FIDH, October 9, 2009. The premises remained closed as of the end of 2009.  
2/ See OMDH.

3/ There are two stages in the creation of an association. The founders of an association are firstly required to file a declaration of formation of an association together with a certain number of documents with the local authorities responsible to the Ministry of the Interior (bachas, caïds). At this point, the local authorities issue a provisional receipt and then, within 60 days, a final receipt. An association may operate freely without legal recognition without obtaining a final receipt (Article 5 of the Law on Associations), as lack of the receipt does not prevent the organisation from functioning.

For example, the National Association of Unemployed Graduates (*Association nationale des diplômés chômeurs* – ANDCM) and the Group Against Racism and for Assisting and Defending Foreigners and Migrants (*Groupe antiraciste d'accompagnement et de défense des étrangers et des migrants* – GADEM), which filed in 1991 and in 2006 respectively a declaration of foundation at the headquarters of the wilaya of Rabat-Salé-Zemmour-Zâir, had still not obtained a receipt as of the end of 2009<sup>4</sup>. Sometimes, the local authorities even refuse to accept the declaration presented by the representatives of an association for its registration. In November 2004, the local Casablanca wilaya authorities refused to accept the declaration of the Ennassir Association for the Support of Islamist Prisoners, on the pretext of needing to investigate the association's founder members. The association, which nevertheless at the same time declared its formation by recorded delivery letter, in accordance with the law, had still not received a receipt in 2009<sup>5</sup>. Similarly, the Laayoun local authorities have refused since 2005 to receive the foundation documents for the Saharawi Association of Victims of Grave Human Rights Violations Committed by the State of Morocco (*Association sahraouie des victimes de violations graves commises par l'Etat marocain* – ASVDH), in violation of a ruling by the Agadir Administrative Court in September 2005, which stated that the authorities had exceeded their power by refusing the ASVDH constitution papers. Without a provisional receipt, an association cannot carry out its activities fully since it is not authorised to rent premises, open a bank account, declare its employees, receive funding or subscriptions or organise a demonstration in a public space. Members of these associations are furthermore liable to prosecution for "membership of an unauthorised association", under Article 8 of the Law on Associations<sup>6</sup>. The 2002 reform that introduced the declarative regime therefore tends to be voided of meaning by those various obstacles, maintaining associations in a situation of vulnerability.

### Obstacles to freedom of peaceful assembly

In 2009, peaceful assemblies organised to defend human rights were again sometimes severely suppressed. For instance, as in 2008, several sit-ins organised by ANDCM, mainly in front of the Parliament, were dispersed by the police forces, sometimes violently. On April 8, 2009, the

4/ See GADEM.

5/ See Ennassir.

6/ "The founders, directors or administrators of an association that operates in violation of the provisions of Article 5 are punishable by a sentence of three to six months' imprisonment and a fine of 10,000 to 50,000 dirhams".

police violently broke up a peaceful sit-in organised by ANDCM in front of the Ministry of Justice, injuring at least four demonstrators<sup>7</sup>.

Furthermore, 22 people were still in detention at the beginning of 2009 following the repression of a social movement in the city of Sidi Ifni in south west Morocco in 2008<sup>8</sup>, including Mr. **Brahim Bara**, Secretary General of the local committee for the Association for the Taxation of Financial Transactions for Aid to Citizens (ATTAC) and a member of the National Union of Moroccan Students (*Union nationale des étudiants marocains* – UNEM), and several members of ATTAC Morocco. On April 10, 2009, the Agadir Court sentenced 19 people to up to one and a half years' imprisonment for "contributing to and leading a criminal gang", "attempted murder", "armed assembly", "openly carrying a weapon during a demonstration", and "destruction of an industrial installation and a port installation". Mr. Brahim Bara was given an eight months' prison sentence and a two months' suspended sentence. Three people were acquitted. At the end of 2009, two were still in prison and were finishing to serve their sentences.

### **Two defenders given prison sentences for denouncing drug trafficking in northern Morocco**

In 2009, two defenders who had questioned the responsibility of the authorities in cases of drug trafficking were arrested and given prison sentences. On November 24, 2009, Mr. **Chakib El-Khayari**, President of the Rif Association of Human Rights (*Association du Rif des droits de l'Homme* – ARDH) and a member of the Federal Council of the World Amazigh Congress (*Congrès mondial amazigh* – CMA), was sentenced in appeal by the Casablanca Court to three years in prison and a fine of 750,000 dirhams (around 68,500 euros) for "undermining a constitutional body", in accordance with Articles 263 and 265 of the Criminal Code, for revealing to foreign sources information concerning senior State officials involved in a drug trafficking network in the Rif region. Held at Okacha prison in Casablanca since February 21, 2009, he was transferred on December 25 to Meknès prison without either his family or his defence lawyers being informed. Furthermore, Mr. **Hassan Barhoon**, a representative in Morocco of the Palestinian Human Rights Foundation (Monitor), a blogger and journalist for the website *Internet sans frontières*, was arrested

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7/ See Moroccan Association for Human Rights (*Association marocaine des droits humains* - AMDH) Press Release, April 8, 2009.

8/ On June 7, 2008, the forces of order brutally dispersed protesters who were blocking access to the port of the city of Sidi Ifni in protest against the socio-economic situation in the region and to call for a development policy that had been promised by the local and national authorities for several years to be accelerated.

on February 26, 2009 and sentenced by the Tétouan Court on March 8, 2009 to six months in prison and a fine of 5,000 dirhams (around 450 euros) for “defaming the judiciary” after the publication of an article questioning the responsibility of the King of Morocco’s General Prosecutor with the Tétouan Appeal Court in the escape of a drug trafficker in the city of Tétouan. The King of Morocco granted him a pardon in August 2009 after five months’ imprisonment<sup>9</sup>.

### **Ongoing harassment of defenders who denounce abuses in the fight against terrorism and prisoners’ conditions of detention**

In 2009, many defenders who fight for the respect of suspected Islamist prisoners’ rights met with reprisals by the Moroccan authorities. For instance, on April 22, 2009, the Court of Cassation upheld the decision of the Rabat Court of Appeal on July 24, 2008 that imposed a reprimand on Mr. **Taoufik Moussaif Behammou**, a lawyer at the Rabat Bar, following statements that appeared on August 19, 2006 in the daily newspaper *Annahar al-Maghribia* and in which Mr. Moussaif denounced the abuses committed by the security services and the judiciary during criminal proceedings against a terrorist network. The Court of Cassation hearing was held in the office of the President of the court, at the request of the latter, and not in the room normally used for this purpose<sup>10</sup>. Similarly, the Ennassir Association for the Support of Islamist Prisoners and its President, Mr. **Abderrahim Mouhtad**, were the target of intimidation on several occasions. The association’s headquarters were under constant surveillance by an agent standing a few metres from the entry to the premises and national security agents on several occasions came to question the association’s President about his activities. For instance, on November 26, 2009, four national security members came to the association’s headquarters to question Mr. Mouhtad about the organisation’s sources of funding and its links with international terrorism. In addition, on February 27, 2009, Mr. Mouhtad, who had broken no rule of the Highway Code, was arrested by two policemen in the Sidi Bernoussi district of Casablanca while he was riding his motorbike to the association. The policemen asked him for his papers and then accused him of answering them in a haughty tone. They immediately handcuffed him and beat him. As he retaliated to the blows he received, Mr. Mouhtad was taken to the police station and an investigation found that the blows and injuries were reciprocal<sup>11</sup>. No proceedings were subsequently opened against him.

9 / See Monitor and National Organisation for Human Rights in Syria (NOHR-S) Press Release, August 8, 2009 and OMDH.

10 / See Annual Report 2009.

11 / See OMDH.



Furthermore, the authorities brought pressure to bear on defenders and human rights organisations that have denounced police violence in Moroccan prisons and the deterioration in conditions of detention in 2009. For instance, on December 2, 2009, acts of intimidation were carried out against Ms. **Khadija Riyadi**, President of the Moroccan Association for Human Rights (*Association marocaine des droits humains* – AMDH), and Mr. **Abdel-ilah Benabdesselam**, Vice-President of the association and member of OMCT General Assembly. They were accused by Mr. Hafid Benhachem, Delegate General of the prison administration, of publishing negative reports about Morocco in order to “obtain funding” and to “betray their country”. In addition, he “advised” them to leave Morocco “if they were not happy”. These events followed the publication by AMDH on November 25, 2009 of two letters denouncing the conditions of detention of prisoners in the Casablanca and Settat centres. In addition, on December 4, 2009, a sit-in organised in front of the Ministry of Justice in Rabat by the Ennassir Association for the Support of Islamist Prisoners was violently dispersed by the police, who surrounded the demonstrators, wives, mothers and sisters of Islamist prisoners, and made them climb into buses that took them back to Casablanca, where the majority of demonstrators had come from. Many of them reported that they were insulted and even pushed around violently by plain-clothed police. The demonstration was organised in support of the hunger strike started by 91 prisoners on November 24, 2009 to denounce the poor conditions of detention in Moroccan prisons, especially in Okacha prison in Casablanca and Kenitra central prison<sup>12</sup>.

### **Harassment of defenders who denounce human rights violations in Western Sahara**

In 2009, Saharawi human rights defenders continued to be subjected to repression and intimidation. On June 24, 2009, the Agadir Court of Appeal upheld the 15-year prison sentence handed down at first instance against Mr. **Yahya Mohamed al-Hafed Aaza**, a member of the Collective of Saharawi Human Rights Defenders (*Collectif des défenseurs sahraouis des droits de l'Homme* – CODESA). Mr. Aaza was arrested on February 29, 2008 in his shop in Tan-Tan, in the south of Morocco, for having participated in peaceful protests that had taken place two days before and during which a policeman had been killed. During the hearing, the Court took no account of allegations of torture to which the accused was submitted after his arrest and during his imprisonment. As of the end of 2009, he was being held in the Aït Melloul prison, near Agadir<sup>13</sup>. Furthermore, Mr. **Ennaama Asfari**, co-President of the Committee for the Respect of

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12/ See Ennassir.

13/ See ASVDH.

Liberties and Human Rights in the Western Sahara (*Comité pour le respect des droits de l'Homme au Sahara occidental* – CORELSO), was placed in detention on August 14, 2009 after an argument with a policeman during a police check at a road block near the city of Tan-tan in the south of Morocco. The cause of the dispute was apparently a key ring carried by Mr. Asfari, which showed the flag of the Saharawi Arab Democratic Republic. Sentenced on August 27, 2009 to four months in prison by the Tan-tan Court for “insulting a public agent”, Mr. Asfari was released on December 14, 2009<sup>14</sup>. Furthermore, on October 8, 2009, seven human rights defenders from the Western Sahara, Mr. **Ali Salem Tamek**, Vice-President of CODESA, Mr. **Brahim Dahane**, President of ASVDH, Mr. **Ahmad Anasiri**, Secretary General of the Saharawi Committee for the Defence of Human Rights (*Comité sahraoui pour la défense des droits humains*) in Smara, a member of the ASVDH Coordinating Committee and Director General of AMDH in Smara, Mr. **Yahdih Ettarrouzi**, member of AMDH in Laayoun, Mr. **Saleh Lebayhi**, President of the Forum for the Protection of Saharawi Children (*Forum pour la protection des enfants sahraouis*) and in charge of AMDH Smara branch, Ms. **Degja Lachgar**, member of the ASVDH Executive Council, and Mr. **Rachid Sghaer**, member of the Committee Against Torture (*Comité contre la torture*) in Dakhla, were arrested by Moroccan security agents at the Mohamed V airport in Casablanca when they returned from a visit to Saharawi refugee camps in south-west Algeria. In December, they were brought before the Examining Magistrate of the Rabat Military Tribunal. At the end of 2009, they were still held without a trial in the Salé prison<sup>15</sup>. For their part, Ms. **Elghalia Djimi** and Mr. **Duihi Hassan**, respectively Vice-President and member of ASVDH, were intimidated by plain-clothes police who came to their homes on November 3 and 10, 2009 respectively, while they were being visited by Spanish lawyers who were carrying out an international investigation into the human rights situation in Western Sahara. The police officers ordered the lawyers to return to their hotel and incorrectly informed the two human rights defenders that under Moroccan law it is forbidden to receive foreigners without the authorisation of the local authorities.

### **Intimidation and defamation campaign against a group of defenders of individual freedoms**

In 2009, the organisers and participants in a protest action to support respect for individual liberties were subjected to severe intimidation, a sign of the nervousness of the authorities when they queried certain dogmas.

14/ See ASVDH Press Release, November 18, 2009.

15/ See ASVDH and AMDH. Ms. Degja Lachgar was provisionally released on health grounds on January 28, 2010.

Indeed, several acts of intimidation targeted members of the Alternative Movement for Individual Liberties (*Mouvement alternatif pour les libertés individuelles* – MALI), following an attempt by the movement to organise a picnic on September 13, 2009 in a forest close to Mohammedia, as a sign of protest against the law forbidding Muslims to eat in public during the Ramadan fasting hours. On September 13, 2009, when the members of the group arrived at Mohammedia station by train, a strong police contingent intercepted, searched, molested, insulted and took the names of six of them: Ms. **Ibtissame Betty Lachgar** and Ms. **Zeineb el-Rhazoui**, co-Founders and members of the movement, students **Abderrahim Mouktafi**, **Ghassan Bouyaghrouni** and **Nizar Benzimate** and journalist **Aziz el-Yaakoubia**. They then forced them to get back into the train. All the members later received death threats on their “Facebook” page and their e-mail and Facebook accounts were hacked. On September 15, 16 and 17, 2009, Messrs. Abderrahim Mouktafi, Ghassan Bouyaghrouni, Aziz el-Yaakoubia and Nizar Benzimate were arrested by the police and taken to Mohammedia police station. They were released very late at night without being charged. Several Moroccan newspapers subsequently published articles and comments condemning the group. In addition, in October 2009 Ms. Ibtissame Lachgar and Ms. Zeineb El-Rhazoui were banned from leaving the country when they were due to travel to Paris to take part in a meeting on October 19, 2009 to debate freedom of conscience and religion with the Association for the Manifesto for Liberties (*Association du manifeste des libertés*). This measure was lifted shortly after the meeting and debate at the request of their lawyer.

### **Urgent Interventions issued by The Observatory in 2009**

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
Mr. Chakib El-Khayari	Arbitrary detention	Urgent Appeal MAR 001/0309/OBS 044	March 9, 2009
	Sentencing / Arbitrary detention	Urgent Appeal MAR 001/0309/OBS 044.1	June 30, 2009
		Urgent Appeal MAR 001/0309/OBS 044.2	December 2, 2009
Ms. Ibtissame Betty Lachgar and Ms. Zeineb El-Rhazoui and Messrs. Abderrahim Mouktafi, Ghassan Bouyaghrouni, Nizar Benzimate and Aziz el-Yaakoubia	Obstacle to freedom of movement / Defamation campaign / Harassment / Death threats	Urgent Appeal MAR 002/1009/OBS 151	October 19, 2009
Ms. Elghalia Djimi and Mr. Duihi Hassan	Harassment / Attack on freedom of association	Urgent Appeal MAR 003/1109/OBS 166	November 12, 2009
Ms. Khadija Riyadi and Mr. Abdel-ilah Benabdesselam	Intimidation / Harassment	Urgent Appeal MAR 004/1209/OBS 184	December 9, 2009

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# SYRIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

Despite the improvement in diplomatic relations between Syria and several European States, the year 2009 was marked once again by regular violations of basic freedoms. The provisions of the state of emergency in force since 1963 together with those of the Criminal Code continued to give the authorities broad powers that they use to repress all forms of opposition. In particular, Articles 285 and 286 of the Criminal Code were, due to their extremely vague wording, again used frequently for passing heavy sentences on human rights defenders<sup>1</sup>. The Syrian regime moreover still tolerated no political party other than the ruling Baath party. All other political parties and movements are considered to be illegal organisations and their members are liable to prosecution under Article 288 of the Criminal Code<sup>2</sup>. Furthermore, the provisions of the state of emergency included the creation of a Supreme State Security Court (SSSC), an exceptional court established by Decree No. 47 of 1968, and jurisdiction for military courts to try civilians. SSSC trials do not respect guarantees of the right to a fair trial: its decisions are final and cannot be appealed (Article 8) and the admission of “confessions” obtained as evidence under torture is regularly reported<sup>3</sup>. For example, on September 13, 2009 the SSSC sentenced Mr. Antoine Arabji, a blogger, to three years in prison for having published criticism of the Syrian authorities on the political discussion forum *Akhawiya* (Fraternity) in 2007. At the end of 2009, he was still being held at Sednaya prison, near Damascus<sup>4</sup>.

Furthermore, the practice of forced disappearances was still widespread in Syria. In 2009, more than fifty people were victims of forced disap-

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1/ Under these articles, any person who voluntarily spreads “information known to be false or exaggerated” or “weakening national sentiment” is liable to a sentence of three to 15 years’ imprisonment. All the defenders referred to in this fact-sheet who have been given prison sentences were charged under Articles 285 and/or 286 of the Criminal Code.

2/ Article 288 provides for sentences of imprisonment or house arrest of from three months up to three years for anyone involved with a political or social association that is international in nature without government permission.

3/ See National Organisation for Human Rights in Syria (NOHR-S), *Annual Report 2009*, June 2009.

4/ See Committees for the Defence of Democratic Freedoms and Human Rights (CDF) Press Releases, August 29 and September 13, 2009.

pearance in Syria<sup>5</sup>. Human rights defenders were also arbitrarily arrested and secretly detained with no way of communicating with their family or their lawyer. In addition, the fate of detainees in Sednaya prison, where 17 people were killed on July 5, 2008 during clashes between prisoners and prison staff, was still unknown at the end of 2009. The Syrian authorities never revealed the names of the victims and visits have been banned since this incident.

In 2009, Kurdish activists were once more victims of a harsh repression and were frequently given heavy sentences. As an example, Mr. Meshal al-Tammo, Spokesman for the “Kurdish Future Movement” (*Sepela Kurdi*), an unauthorised political party, was sentenced on May 11, 2009 to three and a half years in prison under Articles 285 and 286 of the Criminal Code<sup>6</sup>. Furthermore, on April 14, 2009, the SSSC sentenced seven Kurdish activists<sup>7</sup> to between five and seven years in prison for “attempting to partition a portion of Syrian territory in order to annex it to a foreign State” (Article 267 of the Criminal Code), and for belonging to the unauthorised party “Democratic Union”. Their lawyers did not obtain the right to visit them in prison during the proceedings, nor to meet them in private<sup>8</sup>. In 2009 the Syrian security forces also suppressed several peaceful assemblies, in particular those organised in protest against Presidential Decree No. 49 of 2008 forbidding the purchase or sale of property without government authorisation in certain regions where the majority of the population is Kurdish<sup>9</sup>.

Finally, in its resolution of September 17, 2009, the European Parliament condemned “the significant repression human rights defenders in Syria still have to face”. Concerned by “the absence of progress in respect for human rights by Syrian authorities”, this body called on the Syrian authorities to “put an end to this policy of persecution and harassment against human rights defenders and their families”<sup>10</sup>.

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5/ See NOHR-S Report, *Forced Disappearances*, September 8, 2009.

6/ He was arrested in August 2008 while he was driving his car towards Aleppo. See Observatory Annual Report 2009 and CDF Report, *Report released on the occasion of Political Prisoner Day*, June 22, 2009.

7/ Messrs. Mohammed Habchi Rachou, Ibrahim Sheikhou Alouch, Salih Mastou Ibn Mohammed, Nouri Mostafa Hussein, Rachad Ibrahim Binaf, Ms Latefa Mohammed Mannan and Ms. Zaynab Mohammed Horo.

8/ See NOHR-S Press Release, April 15, 2009.

9/ See Human Rights Watch Report, *Group Denial: Repression of Kurdish Political and Cultural Rights in Syria*, November 2009.

10/ See European Parliament Resolution on Syria P7\_TA(2009)0024, September 17, 2009.

## Ongoing obstacles to the exercise of freedom of association

In Syria, the legal restrictions that require government authorisation for the creation of an association (Law No. 93 of 1958) are reinforced by the courts' lack of diligence in examining the legality of refusals to register human rights organisations. In 2009, many Syrian organisations continued to operate without confirmation of their registration by the authorities. At the end of 2009, the appeal lodged on December 27, 2006 by the National Organisation for Human Rights in Syria (NOHR-S) for annulment of Decree No. 617 of 2006 relating to the refusal to register the association, still remained pending. The Damascus Administrative Court indeed postponed the hearing on several occasions. Furthermore, on April 14, 2009 the Ministry of Social Affairs presented a written request to the Administrative Court with a view to prosecute the association's members under Article 71 of the Law on Associations, according to which any activity carried out for an unregistered association is liable to a fine and a three months' prison sentence. As of the end of 2009, the members of NOHR-S had not been informed of any progress in the new proceedings.

At the end of 2009, the Syrian authorities also blocked access to the Internet websites of three human rights organisations: the Arab Organisation for Human Rights, the Kurdish Committee for Human Rights in Syria and NOHR-S<sup>11</sup>. Furthermore, on September 13, 2009, the security services, the police and the Mayor of the district of Maza, west of Damascus, with no explanation and without presenting a legal warrant, closed the office of Mr. **Mazen Darwich**, Director of the Syrian Centre for Media and Freedom of Expression (SCM). The authorities terminated the lease contract for the premises on the pretext that they were used for commercial purposes. Members of the security services had summoned Mr. Darwich on three occasions during the previous week and ordered him to end his activities. In May 2009, Mr. Mazen Darwich had published a joint report with Front Line on the travelling ban for human rights defenders. At the end of 2009, the SCM remained closed.

## Acts of intimidation and harassment against lawyers who condemn human rights violations

In 2009, the authorities targeted lawyers who denounce human rights violations in Syria. As an example, Mr. **Muhannad al-Hassani**, a lawyer and President of the human rights organisation "Sawasiyah", was arrested on July 28, 2009. Held secretly for 12 days, proceedings against him were

11/ See Syrian Centre for Media and Freedom of Expression (SCM) Press Release, December 6, 2009. The Centre counted 244 sites censored by the Syrian authorities, but it believes the real number of blocked sites is greater.

ongoing as of the end of 2009 for “weakening national sentiment” and “spreading false information likely to weaken national sentiment” (Articles 285 and 286 of the Criminal Code), for having attended and denounced the trials of persons brought before the SSSC. In addition, on November 10, the Damascus Bar Disciplinary Committee issued a life ban on him practising as a lawyer. He was accused of infringing the code governing the legal professions by directing Sawasiyah, “created without official authorisation, to carry out its activities in a manner that is harmful to Syria” and for having “attended and documented the proceedings of the SSSC without being the lawyer of those involved in these proceedings”. Mr. al-Hassani appealed against this decision on December 10, 2009<sup>12</sup>. As of the end of 2009, he remained in provisional detention in wing seven of Adra prison<sup>13</sup>, where he was waiting to be tried before the Criminal Court. He is liable to a sentence of up to fifteen years’ imprisonment. Furthermore, Mr. **Haitham al-Maleh**, Mr. al-Hassani’s lawyer and the former President of the Human Rights Association in Syria (HRAS), was himself arrested on October 14, 2009 by State security agents and held in incommunicado detention for five days. On November 3, he was informed by the Investigating Judge of the Damascus Military Tribunal that he was being prosecuted for “spreading false information likely to weaken national sentiment” and “insulting the judiciary” (Articles 286 and 376 of the Criminal Code). These accusations followed an interview he had given in September to *Baradda TV*, a satellite television channel based in Europe, and articles in which he condemned corruption within the Government and attacks on human rights in Syria. Mr. al-Maleh risks from three to fifteen years’ imprisonment and, as of the end of 2009, he was still held at Adra prison<sup>14</sup>.

### Ongoing arbitrary detention of numerous human rights defenders

Although some defenders were released after serving their sentences, most were still held in arbitrary detention at the end of 2009. For example, although Messrs. **Michel Kilo** and **Mahmoud Issa** were released in May and June 2009 after serving the full sentence pronounced against them<sup>15</sup>, Mr. **Anwar al-Bunni**, a lawyer and founder member of HRAS, who was

12 / As of the end of 2009, examination of the appeal against disbarment was still ongoing.

13 / Wing seven is allocated to detainees sentenced for sexual offences. He is subjected to numerous acts of reprisal in prison: he does not have a bed, he is refused access to the library, he is forbidden to write, he has fewer visiting hours than are normally granted, etc.

14 / See SCM Press Release, November 4, 2009. On January 31, 2009, the Damascus Appeal Court confirmed referral of the case before the military courts but, as of the end of 2009, no date had been set for his trial.

15 / Arrested in May 2006, the two men had been sentenced on May 13, 2007 to three years in prison for having signed the Beirut-Damascus Declaration, which called for diplomatic relations to be re-established between the two countries.

sentenced to five years in prison on the same charges, was still being held at Adra prison at the end of 2009. Mr. **Walid al-Bunni**, also a member of HRAS who has been held at Adra prison since December 2007<sup>16</sup>, was again prosecuted for “spreading false information likely to weaken national sentiment” after a co-detainee accused him of having openly made insulting remarks about the Special Tribunal for Lebanon, the Syrian President, the Head of the Military Intelligence Division, and about Lebanese-Syrian relations. The Damascus Criminal Military Court finally acquitted him on June 17, 2009 for “lack of evidence”. The defenders responsible for the Damascus Declaration, Messrs. **Akram al-Bunni**, **Ali Abdallah**, **Fayez Sara**, **Jaber al-Shouf**, **Mohammed Haj Darwish**, **Ahmad Tohma**, **Yasser Tayser Aleiti**, **Riad Seif**, **Talal abu Dan**, **Marwan al-Esh** and Ms. **Fida al-Hurani** also remained in detention in Adra prison at the end of 2009. In December 2009, they asked to benefit from an amnesty provided for in the Criminal Code (Article 172) after serving three quarters of their sentence but the judge had still issued no ruling on their request as of the end of 2009. Similarly, the Appeal Court had still not considered the appeal filed in 2008 after they had been sentenced. Mr. **Kamal al-Labwani**, who is serving a twelve years’ prison sentence for having defended the idea of peaceful reform in Syria, and who was sentenced to a further three years in prison on April 23, 2008 for having criticised the Syrian authorities in the presence of other detainees, was also still being held at Adra prison. In addition, the family of Mr. **Nizar Ristnawi**, founder of the Arab Organisation for Human Rights in Syria (AOHRS) and a member of the Committees for the Defence of Democratic Freedoms and Human Rights (CDF), who should have been released in April 2009, still had no news of him by the end of 2009, in spite of their approaches to the authorities<sup>17</sup>. Finally, on March 15, 2009, the Damascus Criminal Court sentenced Mr. **Habib Saleh**, a writer, to three years in prison under Articles 285 and 286 of the Criminal Code. He had been arrested on May 7, 2008 for having published articles on the Internet, particularly on the website *Elaph.com*, which is censored in Syria, calling for the introduction of democracy. As of the end of 2009, he was still held at the Damascus central prison.

16 / On October 29, 2008, he was sentenced to two and a half years in prison for his involvement in the National Council of the Damascus Declaration for National Democratic Change, a huge activist opposition coalition for political reform and the establishment of a democratic regime in Syria. On December 9, 2007, in response to a meeting organised on the initiative of the Damascus Declaration, which ended with the creation of the National Council of the Damascus Declaration, the police arrested around forty activists in several cities in Syria.

17 / Arrested in April 2005, the SSSC sentenced Mr. Ristnawi on November 19, 2006 to four years in prison for having spoken about human rights in Syria and having been overheard by a member of the security services.



## Harassment of defenders of the rights of the Kurdish minority

In 2009, civil society activists who claim respect for the rights of the Kurdish minority were again subjected to reprisals. For instance, on December 12, 2009, Mr. **Mustafa Ismail**, a lawyer and Kurdish activist, was arrested after having been summoned by the local security office in Aleppo. As of the end of 2009, his family still knew neither where he was being detained nor the reasons for his arrest. Shortly before his arrest, Mr. Mustafa Ismail has published several articles on the Internet to denounce the discrimination inflicted on Syrian Kurds<sup>18</sup>.

## Obstacles to freedom of movement

Bans on leaving the country continued to affect many human rights defenders in 2009. At least 101 people were victims of a ban on leaving the country in 2009 after taking part in human rights activities<sup>19</sup>. NOHR-S members were particular targets of bans on leaving the country in 2009. For example, on January 4, 2009, Ms. **Jameela Sadeq**, NOHR-S Secretary, was prevented from going to Egypt to take part in a training on fair trials after a ban was issued on November 10, 2008 by the security services in Aleppo province. Similarly, by order of Al-Hassaq province political security services dated December 3, 2008, Mr. **Ibraheem Issa** was prevented on January 31, 2009 from travelling to Jordan to take part in a seminar on minority rights. Furthermore, at the end of June 2009, the Syrian authorities prevented Mr. **Danial Saoud**, President of CDF, from going to Switzerland to take part in a seminar organised by OMCT from June 29 to July 3, 2009 which related to ways of “addressing the economic, social and cultural root causes of violence through the UN special procedures system”. The authorities provided no reason for these bans on leaving the country.

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18 / See NOHR-S Press Release, December 16, 2009.

19 / See SCM. The authorities do not acknowledge their regular recourse to this practice.

## Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Ms. Jameela Sadeq and Messrs. Ibraheem Issa and Muhammad Badee Dakelbab	Obstacles to freedom of movement / Harassment	Urgent Appeal SYR 001/0209/OBS 027	February 17, 2009
Mr. Khalil Maatuq	Judicial harassment	Urgent Appeal SYR 002/0409/OBS 065	April 24, 2009
Mr. Kamal Labwani	Arbitrary detention	Joint Press Release	April 29, 2009
Mr. Walid al-Bunni	Arbitrary detention / Judicial harassment	Urgent Appeal SYR 003/0509/OBS 081	May 29, 2009
	Acquittal / Arbitrary detention	Urgent Appeal SYR 003/0509/OBS 081.1	June 23, 2009
Mr. Danial Saoud	Obstacles to freedom of movement	Urgent Appeal SYR 004/0709/OBS 097	July 3, 2009
National Organisation for Human Rights in Syria (NOHR-S) / Mr. Ammar Qurabi	Obstacles to freedom of association / Judicial harassment	Joint Press Release	July 24, 2009
Mr. Muhannad al-Hassani	Arbitrary detention / Judicial harassment	Joint Press Release	July 31, 2009
		Joint Open Letter to the authorities	November 6, 2009
		Joint Press Release	November 19, 2009
Syrian Centre for Media and Freedom of Expression (SCM)	Obstacles to freedom of association	Joint Press Release	September 15, 2009
Mr. Haitham al-Maleh	Forced disappearance	Urgent Appeal SYR 005/1009/OBS 149	October 15, 2009
Mr. Nizar Ristnawi	Forced disappearance	Press Release	December 22, 2009

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# TUNISIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2010

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## Political context

In 2009, Tunisian President Zine el-Abidine Ben Ali's discourse on respect for human rights remained ambivalent, a sign of the regime's concern for his image among the international community. While on the eve of the announcement of results of the presidential and legislative elections on October 25, 2009, he threatened to take "measures" "against those who issue accusations or doubts about the integrity of the electoral process without providing concrete evidence", in his speech opening the electoral campaign, delivered on October 11 in Rades, south of Tunis, the President reiterated his commitment since his accession to power in 1987 "to protect [human rights], to propagate culture [...] and to support civil society in their fields". He also committed "to advancing the system of protection of human rights". However, during the election campaign and since the re-election of Mr. Ben Ali<sup>1</sup>, repression of political activists and human rights defenders was further strengthened. Throughout 2009, the Tunisian authorities indeed implemented various measures of harassment against all dissenters, including defenders: creating obstacles to freedom of movement, blocking means of communication, increased police monitoring, arbitrary detention and acts of violence were daily occurrences for independent civil society.

While more than 250 newspapers, three radio stations and two television channels exist in Tunisia, almost all media remained subject to Government control in 2009. On the one hand, this is due to the fact that, at the time of the creation of media in Tunisia, the administration refused to issue receipts for submission of declarations, transforming it into a system of prior authorisation. On the other hand, opposition newspapers, like *Mouatinoun* and *El mawkif*, continued to suffer severe financial restriction insofar as they do not always have access to public funding granted to newspapers, they are deprived of public advertising, and private advertisers do not place ads with them for fear of reprisal. Finally, distribution is sometimes hampered by a series of measures limiting circulation.

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1/ The President was re-elected with 89.62% of votes in presidential elections. The Democratic Constitutional Rally (*Rassemblement constitutionnel démocratique* - RCD), the ruling party, won the elections with a score of 84.59% of the vote, retaining the majority of its seats in Parliament.

Moreover, the response of the Tunisian authorities during the review of Tunisia by the United Nations Human Rights Committee, which requested additional information, reflects the contempt it has for international commitments to human rights. The information provided by Tunisia – including on torture, the protection of defenders' activities and the review of specific requests and refusals of registration of associations defending human rights – were deemed insufficient by the Committee<sup>2</sup>.

Tunisia furthermore continued to observe severe shortcomings in the protection of fundamental rights and freedoms in 2009. State officials accused of torture and violence indeed continued to enjoy impunity on the national territory and those responsible for the violent repression of demonstrations in the Gafsa region during summer 2008 were neither disturbed for their actions<sup>3</sup>. Tunisian authorities also continued to ignore requests for visits by the United Nations Special Rapporteur on Torture, despite his request in 1998 and again in 2005, 2006 and 2007, while they had committed to a visit during the election of Tunisia to the United Nations Human Rights Council in 2006. Similarly, and despite a further request in 2008, the UN Special Rapporteur on Human Rights Defenders has still not been invited by Tunisia.

### Ongoing repression of social protest movements

The year 2009 was marked by a succession of unfair trials against human rights defenders involved in movements of social protest. On February 3, 2009, the Gafsa Court of Appeal upheld the conviction of 38 people accused of “criminal conspiracy” for leading social protests in the mining area of Gafsa-Redeyef<sup>4</sup>. The appeal trial, as with that of first instance, was

2/ See Letter from the Special Rapporteur in charge of following up final observations of the Human Rights Committee, July 30, 2009.

3/ In 2008, a broad movement of social protest against corruption, unemployment and poverty emerged in the mining region of Gafsa. This movement, which lasted several months, received widespread support from the local, national and international public. As of the end of 2009, no independent inquiry had been conducted into the death of three demonstrators in Redeyef or allegations of torture reported by the detainees. The judges did not order medical examinations despite repeated requests by the defense as evidence of the mistreatment some prisoners recorded in the appraisal report. See National Council for Freedoms in Tunisia (CNLT) and Tunisian League for the Defence of Human Rights (LTDH), *rapport de suivi des observations finales du Comité des droits de l'Homme*, March 2009.

4/ Arrested during the months of June and July 2008, they were subsequently convicted on December 11, 2008 for “belonging to a gang, participating in an agreement established for the purpose of preparing or committing an attack against persons or property” and “distribution of [...] leaflets and bulletins that may be detrimental to public order”. On appeal, five of those who were convicted in the first instance to 10 years in prison had their sentences reduced to six to eight years in prison. Nine other defendants initially sentenced to six years' imprisonment had their sentences reduced to three or four years. The Court of Appeal also reduced to one-year the four years' sentences for four defendants and issued or renewed conditional sentences for others.

marred by irregularities. Issues relating to allegations of torture, procedural deficiencies and non-hearing for defendants during the investigation phase were not addressed. The Presiding Judge also refused to read the indictment at the beginning of one hearing and the defendants had only a very short time to present their case. On August 22, 2009, the Tunis Court of Cassation rejected an appeal in cassation brought by lawyers for the defendants. However, on November 4-5, 2009, inmates still in prison were granted conditional release to mark the 22nd anniversary of accession to power of President Ben Ali. However, they could be returned to prison to finish their sentences if, within five years, they are convicted of having committed a crime punishable by deprivation of liberty. However, a case was still maintained against Mr. **Fahem Boukaddous**, correspondent for *al-Hiwar* satellite television and the online newspaper *al-Badi*<sup>5</sup>, and Mr. **Mohieddine Cherbib**, founding member of the Committee for the Respect of Freedoms and Human Rights in Tunisia (*Comité pour le respect des libertés et des droits de l'Homme en Tunisie* – CRLDHT) and President of the Federation of Tunisians for a Two-Banks Citizenship (*Fédération des Tunisiens pour une citoyenneté des deux rives* – FTCTC), who resides in France, was convicted in absentia.

Furthermore, a wave of repression in 2009 targeted unionised Tunisian students, including activists of the General Union of Tunisian Students (*Union générale des étudiants de Tunisie* – UGET). On December 14, 2009, a trial was scheduled before the Court of Manouba, a suburb of Tunis, for 20 students arrested on November 1, 2009 for holding a peaceful sit-in at al-Bassatine University in support of students of the Faculty of Manouba who claimed their right to university housing. When the court was meant to consider the case, the police beat several of the defendants with batons, as well as their lawyers. On December 22, 2009, 17 students were sentenced to terms ranging from twelve to 37 months in prison

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5/ In December 2008, Mr. Fahem Boukaddous was convicted *in absentia* and sentenced to six years' imprisonment after he published a series of articles and news stories describing the mobilisation of the inhabitants of the region. This decision was upheld on appeal on February 3, 2009. In the context of the repression of the protest movement and its relays, Mr. Boukaddous went into hiding. Following the release of prisoners of the Gafsa-Redeyef movement, Mr. Boukaddous went to the police for objecting to the sentence against him, although the authorities had not announced any leniency in his favour. On January 13, 2010, the Gafsa Court of First Instance sentenced Mr. Boukaddous to four years in prison for "participating in an agreement to prepare and commit attacks against persons and property". The decision was not accompanied by an order of imprisonment, pending appeal, which was set for February 23, 2010. Similarly, Mr. **Hassen Ben Abdallah**, an activist of the Local Committee of the Unemployed (*Comité local des chômeurs*) and the Gafsa-Redeyef Protest Movement, on the run since June 2008, was also sentenced *in absentia* to ten years in prison for the same charges on February 4, 2009. He was scheduled to be brought before the Court of Appeal on February 23 and before the Court of First Instance on February 24, 2010, for the official implementation of his sentence.

and a fine of 9.6 dinars (about five euros) for “restrictions on freedom of work”, “theft”, “degradation of property of others” and “noise”<sup>6</sup>. The cases of the other three were dismissed. On December 4, 2009, police stopped Mr. **Najeh Saghrouni**, Secretary General of the Federal Bureau of UGET in the Sfax Faculty of Economics and Legal Studies, a few days after he signed an international petition of solidarity with the UGET activists victims of repression. On December 14, 2009, he was sentenced to two months’ imprisonment by the Court of Sfax<sup>7</sup>. The 17 UGET members and Mr. Saghrouni appealed their convictions. As of late 2009, they remained detained at the Mornaguia prison in the outskirts of Tunis, where they began a hunger strike on December 24, 2009 to protest against the unfairness of their trial<sup>8</sup>.

### Restrictions on human rights defenders’ freedom of movement

In 2009, human rights defenders, both Tunisian and foreign, were again subjected to severe restrictions on their freedom of movement. Mr. **Abdelhamid Amine**, Secretary General of the Moroccan Human Rights Association (*Association marocaine des droits humains* – AMDH), was intercepted on January 23, 2009 by several officers of the border police upon his arrival at Tunis airport from Casablanca (Morocco). The agents then told him without explanation that he was “undesirable in Tunisia” and he was forced to re-embark for Casablanca. Mr. Amine went to Tunisia to present the Maghreb Coordination of Human Rights Organisations (*Coordination maghrébine des organisations des droits humains* – CMODH) to the authorities and public in Tunisia. Mr. Amine sent an open letter to the President of the Tunisian Republic to protest against his illegal removal and ask for an investigation but, as of late 2009, he had received no response. On October 20, 2009, Ms. **Radhia Nasraoui**, lawyer and President of the Tunisian Association Against Torture (*Association tunisienne de lutte contre la torture* – ALTT) and former member of OMCT Assembly of Delegates, was informed by officials of the border police at Tunis airport that she was prohibited from leaving the territory due to a criminal complaint filed against her and her husband in 2008 by an unknown person. Ms. Nasraoui was to go to France to participate on October 21 in a conference on “the situation in Redeyef and in the mining area of Gafsa”, held during the plenary session of the European Parliament in Strasbourg. Despite her efforts, as of late 2009 she had not obtained information about neither the author of the complaint nor its purpose. In late 2009, Mr. **Ali Ben Salem**, Vice-President of the Bizerte section of

6/ See LTDH Statement, December 24, 2009 and CRLDHT.

7/ See UGET Solidarity (*UGET Solidarité*) Statement, December 14, 2009.

8/ See UGET Solidarity Statement, January 1, 2010. The strike ended at the end of 2009.

the Tunisian League for the Defence of Human Rights (*Ligue tunisienne pour la défense des droits de l'Homme* – LTDH), remained banned since 2006 from leaving the country, sometimes Bizerte and even his home when he tries to move.

### **Acts of harassment against *Radio Kalima* and its contributors**

Since *Radio Kalima*, radio and online journal founded by Ms. **Sihem Bensedrine**, a journalist and Spokesman for the National Council for Freedoms in Tunisia (*Conseil national pour les libertés en Tunisie* – CNLT), began on January 26, 2009 to broadcast via satellite, several acts of harassment and intimidation targeted its journalists. Thus, on January 30, 2009, after three days of the office of *Kalima* being blockaded and encirclement by a large police presence throughout the neighbourhood, the police entered the offices of *Kalima*, confiscated all communications equipment (computers, telephones, video equipment, etc.) and put the location under seal in the presence of the Deputy Prosecutor of the Republic. A judicial inquiry was opened concerning a radio transmission without prior authorisation and a broadcast satellite from Italy, even though only the radio transmission is regulated and no law in Tunisia regulates Internet broadcasting. The radio journalists subsequently experienced various acts of intimidation by the authorities. For example, on January 29, a police officer threatened Mr. **Omar Mestiri**, Managing Editor of *Kalima*, by brandishing a knife while the latter was leaving the building. In addition, on February 1, Mr. Mestiri was unable to board a flight at Tunis airport. His business was confiscated, and upon his refusal to undergo a body search, his belongings were only returned to him after his departure of the aircraft. As of late 2009, *Kalima's* premises remained under seal and no information had been given on the progress of the criminal investigation opened against *Kalima*.

### **Attempts to cripple civil society organisations**

In 2009, the authorities continued to build barriers against the action of independent organisations of civil society. Thus, on June 11, 2009, the Court of Appeals upheld the decision of the courts of first instance and appeal of 2001 annulling the fifth congress of the LTDH, held in October 2000, and invalidating the proceedings and the resulting decisions. The proceedings had been launched following a complaint by four militants close to the ruling party who had applied to the fifth congress to serve on governing bodies within the LTDH. As they had not been elected, they had challenged the legality of the congress. Furthermore, on September 8, 2009, the Tunis Court of First Instance attributed the offices of National Union of Tunisian Journalists (*Syndicat national des journalistes tunisiens* – SNJT) to the new union's executive board, whose members, close to the

Government, were appointed on the basis of an extraordinary illegal congress. Even before the verdict, the local SNJT was surrounded by police. The Chairman of the legitimate board, Mr. **Neji Bghouri**, was also physically and verbally assaulted by police. These measures came after the publication in May 2008 of the SNJT first annual report on freedom of the press in Tunisia. Moreover, a large number of independent human rights associations remained illegal in 2009.

### **Judicial harassment, unfair trials and violence against journalists in the electoral context**

Journalists were victims of violence, acts of harassment and judicial sentences in prison because of their mobilisation in 2009 for denouncing human rights violations and practices and acts contrary to international standards that proliferated in the electoral context. On November 26, 2009, the Criminal Chamber of Tunis Tribunal of Great Instance sentenced Mr. **Taoufik Ben Brik**, a journalist and co-founder of CNLT, to six months in prison for “violating morality”, “defamation”, “aggression”, “damage to the property of others” and “blasphemy.” The accusation followed a complaint from a woman claiming to have been assaulted after a collision between her vehicle and that of Mr. Ben Brik, when in fact the opposite occurred. Mr. Ben Brik was arrested on October 2. His lawyers appealed the decision<sup>9</sup>. In late 2009, he remained detained in the Siliana prison, 200 km from Tunis. In addition, on December 1, 2009, the Criminal Chamber of the Court of First Instance of Grombalia found Mr. **Zouhair Makhoul**, independent Tunisian journalist and Secretary General of the association for the defence of freedoms “Freedom and Equality” (*Liberté et équité*), jailed since October 21, 2009 in Mornaguia prison near Tunis, guilty of “having damaged a third party through a public telecommunications network”. He was sentenced to three months in jail, a 200 dinars (about 104 euros) fine and ordered to pay 6,000 dinars (about 3,114 euros) in damages to the complainant. His lawyers appealed the decision<sup>10</sup>. This conviction followed the production by Mr. Makhoul and dissemination on “Facebook” of a documentary denouncing pollution and environmental degradation of the city of Nabeul because of certain industrial activities. During the trials of Mr. Ben Brik and Mr. Makhoul, which took place on November 19 and 24, 2009 respectively, several violations of the right to a fair trial were reported. Lawyers for both defendants were repeatedly prevented from visiting their clients in prison, at the expense of preparing

9 / On January 30, 2010, the Tunis Court of Appeals upheld the sentence imposed by the court of first instance.

10 / On February 3, 2010, the Court of Appeal of Nabeul lengthened the sentence imposed by the court of first instance of one month in prison.



their defence. The principle of public hearings was not respected, and all members of civil society were denied access to the courthouse. Lawyers for the defendants were barely allowed to plead and they were constantly interrupted during the hearing. Furthermore, on October 28, 2009, Mr. **Slim Boukhdir**, journalist and founding member of the association “Freedom and Equality”, was kidnapped outside his home by unknown assailants in civilian clothes, who blindfolded him, forced him to board a vehicle and then drove to the hills of Belvedere, in the heights of Tunis, where they beat him. Mr. Boukhdir, stripped of his clothes, his wallet and his phone, was left at the scene, suffering from a broken nose and multiple bruises. Finally, Mr. **Mohamed Soudani**, a member of UGET, was arrested on October 22, 2009 following an interview on the situation of human rights in the electoral context with French journalists, and sentenced on October 24 for “violating morality”, “state of inebriety” and “blasphemy” to four months in prison, violating all principles of fair trial. Detained in the al-Mernaqia prison in a suburb of Tunis, he was finally released on December 31, 2009, after having served his sentence.

Foreign journalists also suffered reprisals in the context of presidential and legislative elections. Ms. **Florence Beaugé**, Head of the Maghreb international department of the French newspaper *Le Monde*, was expelled from Tunisia on October 21, 2009. Upon her arrival at Tunis airport, she was banned from Tunisian soil by the Tunisian authorities, which had put forward, in a statement, her “systematically hostile bias” against Tunisia, without giving further details. On the occasion of a previous mission, in early October, Ms. Beaugé had in particular interviewed the Minister of Justice and of Human Rights, Mr. Bechir Tekkari, and reported the daily life of an opponent, Mr. Hama Hammami, and his wife, lawyer Ms. Radhia Nasraoui.

### **Continuation of smear campaigns to discredit human rights defenders**

At the end of 2009, slanderous and defamatory articles against several defenders appeared each week in newspapers close to the regime. In its December 12, 2009 edition, the weekly *Koll Ennass* launched a smear campaign against Mr. **Kamel Jendoubi**, Chairman of the CRLDHT, member of OMCT Executive Council and President of EMHRN, Ms. Sihem Bensedrine, Ms. **Sana Ben Achour**, President of the Tunisian Association of Democratic Women (*Association tunisienne des femmes démocrates* – ATFD), Mr. **Mokhtar Trifi**, President of the LTDH, and Mr. **Khemais Chammari**, board member of the Euro-Mediterranean Foundation of Support to Human Rights Defenders (EMHRF) and former Vice-President of FIDH, accusing them of collusion with the Israeli secret services and European intelligence agencies, and plotting

against the Palestinian resistance and Arab States by revealing secrets about them to reporters. The paper then shifted focus to Mr. **Michel Tubiana**, Honorary President of the French League of Human Rights (*Ligue des droits de l'Homme* – LDH, Executive Committee member of EMHRN and former Vice-President of FIDH, describing him as “a Jewish lawyer who enlists Tunisians”. The newspaper also stated that these revelations might trigger violent reactions in Beirut and Palestinian circles, thus justifying the form of a thinly disguised call for violence that might ensue from such statements. Several of these defenders lodged a complaint but, as of the end of 2009, no action had been taken.

### **Intensification of verbal and physical attacks against human rights defenders by State agents**

Violence against defenders also increased in 2009. On October 20, the police violently assaulted Ms. Sihem Bensedrine as she was preparing to attend a training course in Tunis organised by a coalition of five local NGOs in the ATFD office – which itself is undergoing continuing harassment (arbitrary restrictions on activities, freezing of grants from abroad, etc.) – on the evaluation of media coverage of electoral processes. Ms. Bensedrine was brutally thrown out of her vehicle by several members of the police, beaten and brutally expelled from the Ilhem Marzouki Institute. Moreover, on June 23, 2009, lawyers Ms. Radhia Nasraoui, Mr. **Abdelraouf Ayadi**, former Secretary General of CNLT and member of the Executive Committee of “Freedom and Equality”, and Mr. **Samir Dilou**, lawyer and member of the International Association to Support Political Prisoners (*Association internationale de soutien aux prisonniers politiques* – AISPP), were welcomed at Tunis airport by plainclothes police who asked them to submit to a body search. Faced with the refusal of the lawyers who stated that, rightly, this procedure was illegal, the policemen dragged them off in rooms isolated from the airport, where they inspected the contents of their luggage. The police then deliberately tore the clothes of Mr. Ayadi and stained the contents of Mr. Dilou’s baggage. Inside and at the exit of the control area, Mr. Ayadi and Ms. Nasraoui were publicly insulted, and Mr. Ayadi received a violent blow to the knee. That same day, Mr. **Abdelwahab Maatar**, member of the AISPP, experienced similar acts upon his arrival at Sfax airport, where he was detained for two hours and violently assaulted. These acts followed the constituent congress of the International Organisation for the Return of Political Exiles (*Organisation internationale pour le retour des exilés politiques*), on June 20 and 21 in Geneva, Switzerland, which these lawyers attended. In addition, on May 19, 2009, Ms. Radhia Nasraoui returned from Paris where she had intervened on the state of freedom in Tunisia and in particular on the events of mining in response to an invitation from the “Europe-Ecologie” list.

Upon her arrival at Tunis airport, a group of officials and security agents in plain clothes stopped her. After conducting a search of her luggage and her briefcase, the officers forcibly pushed her into a small office during which time a customs official asked her to undergo a body search, which she refused. Following this, several officers insulted her and then followed her outside the airport. Similarly, on November 28, 2009, while Ms. **Néziha Rejiba**, Vice-President of the Observatory for Freedom of the Press, Publishing and Creation in Tunisia (*Observatoire pour la liberté de la presse, d'édition et de création en Tunisie* – OLPEC), was returning from the United States where she had just received a award from the Committee to Protect Journalists (CPJ), she suffered a humiliating body search at Tunis Carthage airport<sup>41</sup>.

### Increased police surveillance of human rights defenders

Close monitoring of defenders intensified in 2009, with police blocking their means of communication (telephone, Internet and mail) and encircling their private homes. Thus, the residence of Mr. Khemais Chammari was repeatedly surrounded by plainclothes police officers, preventing visitors from accessing it. On June 24, police physically blocked such access to the home of Mr. Chammari by Mr. **Ayachi Hammami**, Secretary General of the Tunis section of the LTDH, and Mr. **Lotfi Hajji**, a journalist and Vice-President of the Bizerte section of the LTDH. On July 7, 2009, Mr. Nejib Chebbi, a lawyer and Secretary General of the Democratic and Progressive Party (*Parti démocratique et progressiste* – PDP), and his wife were prevented from entering the home of Mr. Chammari. As of late 2009, the home of Mr. Ali Ben Salem and the local section in Bizerte of LTDH also remained prohibited from receiving any external visitors. Similarly, police surveillance increased outside the homes and offices of lawyers Mr. Abderraouf Ayadi, Mr. Ayachi Hammami, Mr. Mohamed Abbou and Ms. Radhia Nasraoui. Pressure was also put on their clients for them to stop using the lawyers' services, preventing them from exercising their legal work and depriving them of their livelihoods. For instance, on May 21, 2009, police officers forbade Ms. Nasraoui to speak with her client, Mr. Ammar Amroussia, at the entrance to the town of Gafsa. The latter reportedly tried to enter Ms. Nasraoui's vehicle but was refused by the police. Mr. Amroussia had solicited the services of Ms. Nasraoui for representation in a complaint filed against policemen who allegedly assaulted him on May 15 and 16, 2009. Finally, from October 2009 onwards, Ms. Nasraoui has been denied the right to visit her clients detained either by the courts or by the prison administration.

## Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Ms. Sihem Bensedrine / <i>Radio Kalima</i>	Defamation campaign / Harassment	Urgent Appeal TUN 001/0109/OBS 001	January 6, 2009
Mr. Dhafer Otay / <i>Radio Kalima</i>	Forced disappearance / Harassment / Intimidation	Urgent Appeal TUN 001/0109/OBS 001.1	January 27, 2009
	Release / Harassment / Intimidation	Urgent Appeal TUN 001/0109/OBS 001.2	January 28, 2009
<i>Radio Kalima</i> / Mr. Omar Mestiri, Ms. Faten Haamdi, Mr. Hatem Boukersra and Ms. Zakia Dhifaoui	Search and seizure / Closure / Arbitrary arrest / Threats / Judicial harassment / Obstacle to freedom of movement	Urgent Appeal TUN 001/0109/OBS 001.3	February 3, 2009
The "Gafsa 38"	Judicial harassment	Press Release	January 9, 2009
	Conviction in appeal / Violation of the right to a fair trial	Press Release	February 11, 2009
Tunisian League for Human Rights (LTDH) / Mr. Mohamed Ben Saïd, Mr. Lofti Hajji, Mr. Salam Haddad and Mr. Abderahman Hedhili	Obstacles to freedom of movement	Press Release	June 2, 2009
The "Gafsa 38", including Mr. Béchir Labidi	Judicial harassment / Arbitrary detention	Joint Open Letter to the authorities	July 17, 2009
	Conviction / Arbitrary detention	Urgent Appeal TUN 004/0408/OBS 049.3	August 27, 2009
The "Gafsa 38", including Mr. Fahem Boukaddous and Mr. Mohieddine Cherbib	Conditional release / Judicial harassment	Joint Press Release	November 5, 2009
Mr. Abdelhamid Amine	Refoulement / Obstacles to freedom of movement	Urgent Appeal TUN 002/0109/OBS 016	January 28, 2009
Mr. Taoufik Ben Brik	Obstacles to freedom of movement	Urgent Appeal TUN 003/0509/OBS 067	May 6, 2009
Messrs. Taoufik en Brik, Slim Boukhdhir and Mouldi Zouabi	Arbitrary arrest / Judicial harassment / Aggression / Intimidations	Joint Press Release	October 29, 2009
Mr. Taoufik Ben Brik, Ms. Sihem Bensedrine, Messrs. Omar Mestiri, Lotfi Hajji, Abdelkrim Harrouni and Mohamed Soudani	Judicial harassment	Joint Press Release	November 20, 2009
	Conviction	Joint Press Release	November 26, 2009
	Arbitrary detention	Joint Press Release	December 2, 2009
Ms. Radhia Nasraoui	Burglary / Acts of harassment	Urgent Appeal TUN 004/0509/OBS 079	May 15, 2009
		Urgent Appeal TUN 004/0509/OBS 079.1	June 2, 2009
		Joint Press Release	October 21, 2009

<b>Names</b>	<b>Violations / Follow-up</b>	<b>Reference</b>	<b>Date of Issuance</b>
LTDH		Press Release	June 15, 2009
Ms. Radhia Nasraoui, Messrs. Abdelraouf Ayadi, Samir Dilou, Abdelwahab Maatar, Khemais Chammari, Ayachi Hammami and Lotfi Hajji		Joint Press Release	June 25, 2009
Mr. Khemais Chammari	Acts of harassment	Urgent Appeal TUN 005/0709/OBS 101	July 8, 2009
National Union of Tunisian Journalists (SNJT)	Obstacles to freedom of association	Press Release	September 9, 2009
Ms. Sihem Bensedrine	Ill-treatments / Harassment / Obstacles to freedoms of peaceful assembly and association	Urgent Appeal TUN 006/1009/OBS 152	October 22, 2009
Mr. Zouhair Makhoulouf	Arbitrary detention / Fear for physical and psychological safety / Judicial harassment	Urgent Appeal TUN 007/1009/OBS 154	October 26, 2009
		Joint Press Release	October 29, 2009
Mr. Zouhair Makhoulouf and Mr. Said El Jazi	Judicial harassment	Joint Press Release	November 26, 2009
	Conviction	Joint Press Release	December 2, 2009
Ms. Sihem Bensedrine, Mr. Mohamed Abbou, Mr. Chouki Tebib, Mr. Ayachi Hammami, Mr. Nejib Chebbi and Mr. Zouhair Makhoulouf	Aggression / Non respect for defence rights	Joint Press Release	November 3, 2009
Mr. Abdelkrim Harouni, Mr. Hamza Hamza, Mr. Omar Mestiri and Mr. Abdelraouf Ayadi	Arbitrary arrests / Aggression / Harassment	Joint Press Release	November 17, 2009
Ms. Sihem Bensedrine, Ms. Sana Ben Achour, Mr. Khemais Chammari, Mr. Michel Tubiana and Mr. Kamel Jendoubi	Defamation	Joint Press Release	December 18, 2009

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# YEMEN

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Political context

In Yemen, the year 2009 was marked by the violent war in the North of the country that opposed the Yemeni army and supporters of the Zaidi religious leader Hussain Badr al-Din al-Huthi<sup>1</sup>. This conflict, which began in 2004, was resumed with force in August 2009, giving rise to the forced displacement of nearly 175,000 people and causing the death of hundreds of civilians<sup>2</sup>. The air raid of September 16, 2009 on the village of Adi, in the south of the Sa'ada region, resulted in the deaths of 80 civilians<sup>3</sup>. Since November 5, 2009, the civilian population has also been victim of attacks by the Saudi air force, which accuses Yemeni rebels of having infiltrated the country. These attacks have resulted in the death of several dozen people, mostly women and children<sup>4</sup>. Moreover, it was almost impossible for humanitarian workers and journalists to gain access to the region.

In southern Yemen, the protest movement led by a coalition of political groups called the Southern Movement also intensified since April 2009, during a year marked by the fifteenth anniversary of the start of the civil war between the Yemeni Government in Sana'a and the southern separatists<sup>5</sup>. The authorities' response to this protest movement was accompanied by grave human rights violations: indeed, between January and October 2009, the security forces arrested over 2,300 people, mostly without a

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1/ In the 1990s, Mr. Hussain Badr al-Din al-Huthi created the Young Believers Movement (Huthis) in protest against the expansion of Sunni Islam in the majority Zaidi northern provinces. After the invasion of Iraq in 2003 by the coalition forces led by the United States, the supporters of Mr. al-Huthi organised several demonstrations, particularly in Sana'a, chanting anti-American and anti-Israeli slogans. A wave of arrests followed these demonstrations. Mr. Hussain Badr al-Din al-Huthi was killed in 2004. Violent fighting broke out between his followers and the Yemeni army. They have continued since then, interrupted by periods of truce. The Sana'a Government currently accuses the Huthis of separatist tendencies.

2/ See United Nations High Commission for Refugees (UNHCR) Briefing Note, December 11, 2009.

3/ See Cairo Institute for Human Rights Studies (CIHRS), FIDH, National Organisation for Defending Rights and Freedoms (Hood) and Sister's Arab Forum for Human Rights (SAF) Joint Press Release, September 24, 2009.

4/ See Yemen Centre for Human Rights Studies (YCHR) Press Release, December 21, 2009.

5/ The Southern Movement denounces discrimination against the inhabitants of south Yemen, especially the despoilment of lands previously nationalised after the end of the 1994 inter-Yemeni war and the forcible retirement of soldiers and civil servants of the Democratic Republic of Yemen (south Yemen) in 1994. Some protestors also call for independence for south Yemen.

warrant, several people were subject to forced disappearance, demonstrators were killed and 40 others injured during the repression of the demonstrations. Over 130 of the 2,300 people arrested were transferred to be tried by exceptional courts that do not respect international standards for fair trials<sup>6</sup>.

In addition, freedom of the press deteriorated considerably in 2009. During the month of May, publication of several newspapers, including *al-Ayyam*, *al-Nidaa*, *al-Sharq*, *al-Mustaqila*, *al-Watani*, *al-Masdar*, *al-Diar* and *al-Ahali*, was banned and they were seized because of their coverage of the demonstrations disturbing the South of the country. On May 4, 2009, the forces of law and order blocked access to the premises of *al-Ayyam*, which was accused of supporting the “secessionist movement” in the south in its articles. At the end of 2009, there was still a ban on distribution of the newspaper. Furthermore, on May 11, 2009, based on a proposal by the Justice Minister, the High Judicial Council upheld the creation of a special press court, with the status of an exceptional court, for the trial of press offences<sup>7</sup>. This measure leads to fear a worsening of the climate of repression that could also target human rights activities<sup>8</sup>. Since its creation this court has passed heavy sentences on several journalists<sup>9</sup>.

In May 2009, the UN Human Rights Council examined Yemen in the framework of the Universal Periodic Review. Although several recommendations prompted Yemen to put an end to the torture and ill treatment meted out by the Department of Political Security and members of the prison administration, the authorities have taken no steps to do so. Several recommendations also called on the authorities to end censorship, arbitrary detentions of journalists and to pay full respect to freedom of expression. The authorities were absent during the 43rd session of the UN Committee Against Torture that was due to review the second periodic report presented by Yemen in November 2009. The Committee, which expressed its concern at the widespread use of torture and ill treatment in Yemen, therefore presented its conclusions and recommendations in the absence of the State party. The Committee also expressed its “concern at reports of enforced disappearance and of the widespread practice of mass arrests without a warrant and arbitrary and prolonged detention without

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6 / See Yemen Observatory for Human Rights (YOHR).

7 / The High Judicial Council upheld this decision on May 11, 2009. See Hood.

8 / See Yemeni Organisation for the Defence of Democratic Rights and Freedoms (YODRFD) and Hood.

9 / On October 31, 2009, the Press Court gave Mr. Samir Joubrane, Editor-in-chief of the newspaper *al-Masdar*, a one year suspended sentence and suspension of his work as journalist and Editor-in-chief for one year, and sentenced the journalist Mounir al-Mawri to two years in prison and a life ban on his work as a journalist, following the publication in *al-Masdar* of an article criticising the President of the Republic. See Hood.

charges and judicial process”, and “at allegations of extrajudicial killings by security forces and other serious human rights violations in different parts of the country, in particular the northern Sa’ada province and in the south”. Finally, the Committee expressed its concern regarding the situation of human rights defenders, political opponents and journalists, who are subject to arrest and arbitrary detention, as well as secret detention<sup>10</sup>.

### **Serious attacks on freedom of peaceful assembly and violent repression of demonstrators**

In 2009, there continued to be considerable restrictions on the right of peaceful assembly in Yemen. Law No. 29 of 2003 on Marches and Demonstrations indeed stipulates that notification of public demonstrations and marches must be given at least three days in advance to the local authority security department (provinces or districts). Organisers must inform this body of the place, time, cause and object of the demonstration, and also present the slogans to be chanted. The security department then has jurisdiction to forbid or alter the demonstration route (Articles 4 and 5).

In 2009, several demonstrations that took place in various towns in provinces in the south of the country were violently broken up by the forces of law and order using tear gas or firing live bullets at the demonstrators. As an example, on January 13, 2009, a peaceful assembly organised in the main square in the city of Aden to celebrate the day of forgiveness and reconciliation<sup>11</sup> was brutally broken up by the forces of law and order, which fired at the demonstrators. Five people were seriously injured and at least 144 others were arrested, including a minor who was leaving school, before being released without charge after being obliged to give a written undertaking not to take part in other rallies<sup>12</sup>. Furthermore, on July 15, 2009, Mr. **Anis Mansour**, member of the Lahaj branch of the Yemen Observatory for Human Rights (YOHR) and a journalist with *al-Ayyam*, was sentenced by the al-Qobaita Court in Lahaj to 14 months in prison for “attacking national unity”, “participation in unauthorised demonstrations” and “calling for instability” for participating in various demonstrations to denounce the discrimination of which the inhabitants of south Yemen are victim. The complaint would have been filed by the

10 / See Committee Against Torture, *Provisional concluding observations of the Committee Against Torture*, United Nations Document CAT/C/YEM/CO/2, December 17, 2009.

11 / A celebration to commemorate a conflict in 1986 that had opposed two rival families in the south of the country, leading to the death of several people and which is celebrated so that such tragedies are not repeated.

12 / See YOHR Press Release, January 13, 2009.



Organisation to Defend the Unity of Yemen, an organisation close to the Government. During the hearing, recordings dating from 2007 showed Mr. Mansour's cover of demonstrations in the Karch district. Mr. Mansour appealed against this ruling<sup>13</sup>. Similarly, on September 30, 2009, the forces of law and order used violence to disperse a peaceful demonstration in the town of al-Dale', in the south of the country, firing live bullets at the demonstrators who called for the reopening of the newspaper *al-Ayyam*, the principal independent newspaper that had been closed by the authorities in May, and for the release of prisoners arrested after taking part in demonstrations in the south during the year. Two people were killed and eight were injured. 45 people were arrested. Several reported having been ill-treated by members of national security during their detention. At the end of 2009, 12 people were still detained and accused of shooting at the police force, while the others were released without charge<sup>14</sup>. On October 6, 2009, Ms. **Tawakkol Karman**, President of Women Journalists Without Chains (WJWC), and Ms. **Lubna al-Gedsi**, Coordinator of the Rights and Freedoms Section of the same organisation, were attacked by police agents during a sit-in organised on Freedom Square in Sa'ana to call for the reopening of the *al-Ayyam* newspaper and the release of Mr. Muhammad al-Maqalih<sup>15</sup>. Violence was used to break up the sit-in and police agents brutally snatched banners out of the hands of Ms. Karman and Ms. al-Gedsi and broke their cameras<sup>16</sup>.

In addition, several journalists were targets of various acts of harassment for having denounced violations related to the repression of these demonstrations. For example, Mr. Anis Mansour and Mr. **Wajdy al-Shuaiby**, an *al-Watani* newspaper journalist specialising in human rights, who covered the demonstration on January 13, 2009 in order to denounce the violations committed during the repression of this rally, were arrested on that occasion and were only released without charge on January 15 and 27, 2009 respectively. In August 2009, the Immigration and Passport Service also refused to renew the passport of Mr. **Hisham Basharahil**, Editor-in-chief of the *al-Ayyam* daily newspaper, who was due to travel to Saudi Arabia for medical reasons. This refusal appeared to be related to the authorities' campaign against the *al-Ayyam* newspaper<sup>17</sup>.

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13/ See YOHR Press Release, July 18, 2009.

14/ See YOHR Press Releases, October 1, 2009 and January 7, 2010.

15/ See below.

16/ See YOHR and Hood.

17/ See Women Journalists Without Chains Press Release, August 19, 2009.

## Intimidation of defenders who denounce massive human rights violations, particularly in the context of the armed conflict in the northern provinces and the tensions in the southern provinces

In 2009, several defenders who denounced the serious human rights violations committed by the authorities, particularly in the context of the armed conflict in the North and the tensions in the southern provinces, were themselves the victim of abductions, incommunicado detention and judicial proceedings. As an example, on June 18, 2009, Mr. **Salah Yahya el-Saqladi**, a journalist in charge of the Aden branch of the Yemeni Organisation for the Defence of Democratic Rights and Freedoms (YODRFD) and political Editor for the human rights forum *Hewar*, was arrested at his home in Aden then put in the Sana'a political police prison following articles that criticised the Yemeni authorities and the human rights violations they commit in South Yemen. On December 7, 2009, he appeared before the Sana'a Special Criminal Court for "disturbing public order" and "incitement to hatred through his articles on Internet". The trial, which was due to be held on December 24, 2009, was postponed to January 4, 2010<sup>18</sup>. On September 17, 2009, Mr. **Muhammad al-Maqalih**, a member of the Yemeni Socialist Party and Editor-in-chief of the *al-Ishtiraki* Internet website, was kidnapped in the streets of Sana'a by men suspected of belonging to the security services. His fate remained unknown at the end of 2009. This kidnapping seemed to be related to the articles published by Mr. al-Maqalih on *al-Ishtiraki*, in which he accused the Yemeni army of having caused the death of several civilians in the war against the Huthi rebels in the north of the country<sup>19</sup>. Similarly, several members of YODRFD were abducted in 2009 and held at a secret location because of their work in support of detainees' rights, particularly those arrested on the fringes of the Sa'ada conflict. As an example, on September 28, 2009, Mr. **Ali Ahmad al-Saqqaf** was abducted in Sana'a when he came out of a pharmacy. He had apparently previously received several anonymous telephone calls telling him to stop his human rights activities. At the end of 2009, Mr. al-Saqqaf was still being held incommunicado without being charged<sup>20</sup>. In addition, on November 1, 2009, the trial of Mr. **Yaser Abdul-Wahab al-Wazeer**, who was accused of forming an armed group, began. Mr. al-Wazeer had been abducted on June 5, 2008 by members of the security services and held incommunicado until September of the same year. At the end of 2009, he was still being held in the Sana'a political security prison. The first trial hearing was held in camera before the Sana'a

18 / The trial verdict was due to be issued on May 24, 2010. See YOHR, Hood and Women Journalists Without Chains Press Release, November 1, 2009.

19 / See YOHR and Hood.

20 / See YODRFD.

Special Criminal Court<sup>21</sup>, without Mr. al-Wazeer's lawyer being present as he had not been informed of the hearing<sup>22</sup>. On January 26, 2009, the Yemen Appeal Court upheld the six years' prison sentence pronounced against Mr. **Abdul-Karim al-Khaiwani**, the former Editor-in-chief of the newspaper *al-Shoura*, for "collaborating with the rebellion" following the publication of articles denouncing repression linked to the Sa'ada war<sup>23</sup>. He was granted presidential pardon on March 14, 2009. As for Ms. **Amal Basha**, President of the Sister's Arab Forum for Human Rights (SAF), she was the victim of various acts of intimidation following the publication on October 12, 2009 of a report on torture in Yemen. On November 17, 2009, her car brakes were deliberately damaged. A few days later, when she was leaving a court hearing, she was attacked by an unknown person who sprayed her face with water, imitating a practise used by fundamentalists against women who do not wear a veil. In addition, on November 22, 2009, individuals broke into SAF premises and ransacked documents and archives there. Nothing was stolen. The organisation filed a complaint and an investigation was ongoing but had still not been concluded as of the end of 2009.

### Urgent Intervention issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Sister's Arab Forum for Human Rights (SAF) / Ms. <b>Amal Basha</b>	Break-in / Threats against physical and psychological integrity / Intimidation	Urgent Appeal YEM 001/1109/OBS 172	November 24, 2009

21/ The Sana'a Special Criminal Court was created by Decree No. 391 of 1999. This court has jurisdiction to try cases relating to national security (armed gangs, air and sea piracy, kidnapping of foreigners, etc. under application of Article 3 of the decree).

22/ The other hearings took place on November 8 and 15 and December 6, 2009. See YODRFD.

23/ Mr. Abdul-Karim al-Khaiwani had been given the same sentence at first instance on June 9, 2008 as was given by the Sana'a Court of State Security. See Hood.

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# ANNEXES

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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# ANNEX 1

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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## Partner organisations and contributors

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### INTERNATIONAL NGOS

- Action Against Hunger
- Agir ensemble pour les droits de l'Homme
- Amnesty International
- Article 19
- Association for the Prevention of Torture (APT)
- Centre de conseils et d'appui pour les jeunes en droits de l'Homme (CODAP)
- Committee to Protect Journalist (CPJ)
- Defence for Children International (DCI)
- Doctors Without Borders (MSF)
- Foundation Martin Ennals
- Front Line
- Human Rights First
- Human Rights Information and Documentation System (HURIDOCS)
- Human Rights Watch (HRW)
- Integrated Regional Information Networks (IRIN)
- Inter LGBT
- International Centre for Trade Union Rights (ICTUR)
- International Commission of Jurists (ICJ)
- International Committee of the Red Cross (ICRC)
- International Crisis Group
- International Federation for Actions by Christians for the Abolition of Torture (FIACAT)
- International Freedom of Expression Exchange (IFEX)
- International Gay and Lesbian Human Rights Commission (IGLHRC)
- International Lesbian and Gay Association (ILGA)
- International Rehabilitation Council for Torture Victims (IRCT)
- International Service for Human Rights (ISHR)
- International Trade Union Confederation (ITUC)
- International Union of Food Workers (IUF)
- Ligue internationale pour les droits et la libération des peuples (LIDLIP)
- Minority Rights Group International (MRG)
- Norwegian Helsinki Committee
- Open Society Institute (OSI)

- Pax Christi International
- Peace Brigades International (PBI)
- Protection International
- Reporters Without Borders (RSF)
- Solidarité internationale gay lesbiennes, gay bi et trans (SI-LGBT)
- Tjenbé Red

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## REGIONAL NGOS

### Africa

- African Centre for Democracy and Human Rights Studies (ACDHRS)
- East and Horn of Africa Human Rights Defenders Project (EHAHRDP)
- Ligue des droits de la personne dans la région des Grands lacs (LGDL)

### Americas

- Central Latinoamericana de Trabajadores (CLAT)
- Centro por la Justicia y el Derecho Internacional (CEJIL)
- Comisión Latinoamericana por los Derechos Humanos y Libertades de los Trabajadores y Pueblos (CLADEHLT)
- Comisión para la Defensa de los Derechos Humanos en Centroamérica (CODEHUCA)
- Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM)
- Enlace Mapuche Internacional
- Federación Latinoamericana de Asociaciones de Familiares de Detenidos-Desaparecidos (FEDEFAM)
- Federación Luterana Mundial
- Organización Regional Interamericana de Trabajadores (ORIT)
- Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo (PIDHDD)

### Asia

- Asian Federation Against Involuntary Disappearances (AFAD)
- Asian Forum for Human Rights and Development (Forum Asia)
- Asian Legal Resource Centre (ALRC)
- Human Rights in Central Asia
- South Asian Human Rights Documentation Centre (SAHRDC)

### Europe and CIS

- Association européenne pour la défense des droits de l'Homme (AEDH)
- Caucasian Institute for Peace, Democracy and Development (CIPDD)
- Caucasian Knot

## **North Africa / Middle East**

- Cairo Institute for Human Rights Studies (CIHRS)
- EuroMed Non-Governmental Platform
- Euro-Mediterranean Human Rights Network (EMHRN)

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## **NATIONAL NGOS**

### **Afghanistan**

- Armanshahr Foundation - OPEN ASIA

### **Albania**

- Albanian Human Rights Groups (AHRG)
- Albanian Rehabilitation Centre for Trauma and Torture (ARCT)

### **Algeria**

- Association Djazairouna des victimes du terrorisme
- Collectif des familles de disparus en Algérie (CFDA) / SOS Disparu(e)s
- Coordination nationale des familles de disparus (CNFD)
- Ligue algérienne de défense des droits de l'Homme (LADDH)

### **Angola**

- Associação Justiça, Paz e Democracia
- Central General de Sindicatos Independentes e Livres de Angola (CGSILA)

### **Argentina**

- Abuelas de la Plaza de Mayo
- Centro de Estudios Legales y Sociales (CELS)
- Comité de Acción Jurídica (CAJ)
- Comité para la Defensa de la Salud, la Ética Profesional y los Derechos (CODESEDH)
- Derechos Human Rights - United-States
- Equipo Argentino de Antropología Forense - United-States
- Fundación Servicio de Paz y Justicia (SERPAJ)
- Hijas e Hijos por la Identidad y la Justicia contra el Olvido y el Silencio (HIJOS)
- Liga Argentina por los Derechos del Hombre (LADH)

### **Armenia**

- Civil Society Institute (CSI)

### **Australia**

- Pax Christi Australia
- Survivors of Torture and Trauma Assistance (STTARS)

## **Austria**

- Österreichische Liga für Menschenrechte (OLFM)
- Pax Christi Austria

## **Azerbaijan**

- Human Rights Centre of Azerbaijan (HRCA)
- Institute of Peace and Democracy (IPD)

## **Bahrain**

- Bahrain Centre for Human Rights (BCHR)
- Bahrain Human Rights Society (BHRS)

## **Bangladesh**

- Bangladesh Human Rights Commission (BHRC)
- Bangladesh Rehabilitation Centre for Trauma Victims (BRCT)
- Hotline Human Rights - Bangladesh (HHRB)
- ODIKHAR

## **Barbados**

- Caribbean Rights / Human Rights Network

## **Belarus**

- Helsinki Committee for Human Rights
- Human Rights Center “VIASNA”

## **Belgium**

- Actions by Christians for the Abolition of Torture (ACAT) - Belgique francophone
- ACAT - Belgique Vlaanderen
- Association fraternelle internationale (AFI)
- Justice et paix
- Liga Voor Menschenrechten (LVM)
- Ligue des droits de l'Homme (LDHB)
- Pax Christi Vlaanderen
- Pax Christi Wallonie-Bruxelles

## **Benin**

- ACAT - Benin
- Enfants solidaires d'Afrique et du monde (ESAM)
- Ligue béninoise pour la défense des droits de l'Homme (LBDH)
- Tomorrow Children



## **Bhutan**

- Peoples' Forum for Human Rights and Democracy (PFHRB)  
(based in Kathmandu, Nepal)

## **Bolivia**

- Asamblea Permanente de los Derechos Humanos de Bolivia (APDHB)
- Centro de Estudios Jurídicos e Investigación Social (CEJIS)
- Instituto de Terapia e Investigación sobre las Secuelas de la Tortura y la Violencia Estatal (ITEI)

## **Botswana**

- The Botswana Centre for Human Rights (DITSHWANELO)

## **Brazil**

- ACAT - Brazil
- Agencia de Noticias Direitos da Infancia (ANDI)
- Centre for the Study of Violence (CSV)
- Centro de Defesa da Criança e do Adolescente Yves de Roussan (CEDECA/BA)
- Centro de Justiça Global (JC)
- Comissão Pastoral da Terra (CPT)
- Conectas Direitos Humanos
- Conselho Indigenista Missionário (CIMI)
- Departamento Nacional dos Trabalhadores da CUT (DNTR-CUT)
- Justiça e Paz
- Movimento dos Trabalhadores Rurais Sem Terra (MST)
- Movimento Nacional de Meninos et Meninas de Rua (MNMMR)
- Movimento Nacional dos Direitos Humanos (MNDH)
- Sociedad Paraense de Defesa dos Direitos Humanos (SDDH)
- Tortura Nunca Mais - RJ

## **Bulgaria**

- Assistance Centre for Torture Survivors (ACET)

## **Burkina Faso**

- ACAT - Burkina Faso
- Mouvement burkinabé des droits de l'Homme et des peuples (MBDHP)

## **Burma**

- Alternative ASEAN Network on Burma (ALTSEAN)
- Assistance Association for Political Prisoners in Burma (AAPPB)
- Burma Lawyers' Council (BLC)
- The Burma Campaign UK
- US Campaign for Burma

## **Burundi**

- ACAT-Burundi
- Association des femmes juristes du Burundi (AFJB)
- Centre indépendant de recherches et d'initiatives pour le dialogue (CIRID) - Switzerland
- Ligue burundaise des droits de l'Homme (ITEKA)
- Observatoire de lutte contre la corruption et les malversations économiques (OLUCOME)

## **Cambodia**

- Cambodian Association for Development and Human Rights (ADHOC)
- Cambodian Centre for Human Rights (CCHR)
- Cambodian League for the Promotion and Defence of Human Rights (LICADHO)
- Community Legal Education Centre (CLEC)

## **Cameroon**

- ACAT - Cameroon
- ACAT - Littoral
- Association for the Reconstruction of the Moko-Oh People (AFTRADEMOP)
- Maison des droits de l'Homme du Cameroun (MDHC)
- Mouvement pour la défense des droits de l'Homme et des libertés (MDDHL)

## **Canada**

- ACAT - Canada
- Human Rights Internet (HRI)
- Ligue des droits et des libertés du Québec (LDL)

## **Central African Republic**

- ACAT - Central African Republic
- Ligue centrafricaine des droits de l'Homme (LCDH)
- Organisation pour la compassion et le développement des familles en détresse (OCODEFAD)

## **Chad**

- Association jeunesse anti-clivage (AJAC)
- Association tchadienne pour la promotion et la défense des droits de l'Homme (ATPDH)
- Collectif des associations de défense des droits de l'Homme (CADH)
- Ligue tchadienne des droits de l'Homme (LTDH)

## **Chile**

- Centro de Salud Mental y Derechos Humanos (CINTRAS)

- Centro Regional de Derechos Humanos y Justicia de Género
- Corporación de Promoción y Defensa de los Derechos del Pueblo (CODEPU)
- Fundación de Ayuda Social de Las Iglesias Cristianas (FASIC)
- Fundación de Protección a la Infancia Dañada por los Estados de Emergencia (PIDEE)
- Observatorio Ciudadano

## China

- Asian Centre for the Progress of Peoples
- Chinese Human Rights Defenders (CRD)
- Human Rights in China (HRIC)
- International Campaign for Tibet (ICT)
- Tibetan Centre for Human Rights and Democracy - India

## Colombia

- Asamblea Permanente de la Sociedad Civil por la Paz
- Asociación de Abogados Laboralistas al Servicio de los Trabajadores
- Asociación Campesinas de Arauca (ACA)
- Asociación Nacional de Ayuda Solidaria (ANDAS)
- Central Unitaria de Trabajadores (CUT)
- Centro de Investigación y Educación Popular (CINEP)
- Comisión Colombiana de Juristas (CCJ)
- Comisión Intereclesial de Justicia y Paz (CJP)
- Comité Permanente por la Defensa de Derechos Humanos (CPDH)
- Comunidad de Paz de San José de Apartadó
- Consultoría para los Derechos Humanos y el Desplazamiento (CODHES)
- Coordinación Colombia - Europa - Estados Unidos
- Corporación Colectivo de Abogados “José Alvear Restrepo” (CCAJAR)
- Corporación Jurídica Libertad (CJL)
- Corporación Jurídica “Yira Castro”
- Corporación para la Defensa y Promoción de los Derechos Humanos (REINICIAR)
- Corporación Regional para la Defensa de los Derechos Humanos (CREDHOS)
- Escuela Nacional Sindical de Colombia (ENS)
- Federación Nacional Sindical Unitaria Agropecuaria (FENSUAGRO - CUT)
- Fundación Comité de Solidaridad con los Presos Políticos (FCSP)
- Fundación Comité Regional de Derechos Humanos “Joel Sierra”
- Fundación Desarrollo y Paz (FUNDEPAZ)
- Instituto Latino Americano de Servicios Legales Alternativos (ILSA)
- Movimiento Nacional de Víctimas de Crímenes de Estado (MOVICE)
- Organización Femenina Popular (OFP)
- Organización Internacional de Derechos Humanos - Acción Colombia (OIDHACO)

- Sindicato Nacional de Trabajadores de las Industrias de Alimentos (SINALTRAINAL)
- Unión Sindical Obrera (USO)

### **Congo (Democratic Republic of)**

- Action contre l'impunité pour les droits humains (ACIDH)
- Association africaine de défense des droits de l'Homme (ASADHO)
- Centre des droits de l'Homme et du droit humanitaire (CDH)
- Comité d'action pour le développement intégral (CADI) - Burundi
- Comité des observateurs des droits de l'Homme (CODHO)
- Comité pour le développement et les droits de l'Homme (CDDH)
- Femmes chrétiennes pour la démocratie et le développement (FCDD)
- Groupe Lotus (GL)
- Haki Za Binadamu-Maniema (HBM)
- Journalistes en danger (JED)
- Justice Plus
- Les amis de Nelson Mandela pour les droits de l'Homme (ANMDH)
- Ligue congolaise des droits de l'Homme (LDH)
- Ligue des électeurs (LE)
- Ligue de la zone Afrique pour la défense des droits des enfants et des élèves (LIZADEEL)
- Observatoire congolais des droits humains (OCDH)
- Observatoire national des droits de l'Homme (ONDH)
- Solidarité pour la promotion et la paix (SOPROP)
- Voix des sans voix pour les droits de l'Homme (VSV)

### **Congo (Republic of)**

- Association pour les droits de l'Homme et l'univers carcéral (ADHUC)
- Coalition congolaise publiez ce que vous payez
- Femmes congolaises chefs de famille et éducatrices (FCFE)
- Observatoire congolais des droits de l'Homme (OCDH)
- Rencontre pour la paix et les droits de l'Homme (RPDH)

### **Costa Rica**

- Asociación Centroamericana de Familiares (ACAFADE)
- Asociación Servicios de Promoción Laboral (ASEPROLA)

### **Côte d'Ivoire**

- ACAT - Côte d'Ivoire
- Femme et développement durable (FDD)
- Femmes actives de Côte d'Ivoire (OFACI)
- Ligue ivoirienne des droits de l'Homme (LIDHO)
- Mouvement ivoirien des droits humains (MIDH)

**Croatia**

- Civic Committee for Human Rights (CCHR)

**Cuba**

- Coalición de Mujeres Cubano-Americanas
- Comisión Cubana de Derechos Humanos y Reconciliación Nacional (CCDHRN)
- Consejo de Relatores de Derechos Humanos de Cuba
- Damas de Blanco
- Directorio Democrático Cubano

**Cyprus**

- Action for Support, Equality and Anti-Racism (KISA)

**Czech Republic**

- Human Rights League

**Denmark**

- Treatment and Counselling for Refugees (OASIS)

**Djibouti**

- Ligue djiboutienne des droits de l'Homme (LDDH)
- Union djiboutienne du travail (UDT)
- Union des travailleurs du port (UTP)

**Dominican Republic**

- Comisión Nacional de los Derechos Humanos (CNDH)

**Ecuador**

- Asamblea Permanente de Derechos Humanos del Ecuador (APDH)
- Centro de Derechos Económicos y Sociales (CDES)
- Centro de Documentación de Derechos Humanos “Segundo Montes Mozo” (CSMM)
- Comisión Ecuménica de Derechos Humanos (CEDHU)
- Comité de Familiares de Presos Políticos de Ecuador (COFPPE)
- Confederación de Nacionalidades Indígenas del Ecuador (CONAIE)
- Fundación Regional de Asesoría en Derechos Humanos (INREDH)

**Egypt**

- Arab Centre for the Independence of the Judiciary and the Legal Profession (ACIJLP)
- Arab Lawyers' Union (ALU)
- Arab Program for Human Rights Activists (APHRA)

- Association for Human Rights and Legal Aid (AHRLA)
- Centre for Trade-Unions and Workers' Services (CTUWS)
- Egyptian Initiative for Personal Rights
- Egyptian Organisation for Human Rights (EOHR)
- Hisham Mubarak Law Centre
- Human Rights Centre for the Assistance of Prisoners (HRCAP)
- Land Centre for Human Rights (LCHR)
- Nadeem Center

## **El Salvador**

- Comisión de Derechos Humanos de El Salvador (CDHES)

## **Ethiopia**

- Action Aid Ethiopia
- Ethiopian Free Press Journalists' Association (EFJA)
- Ethiopian Human Rights Council (EHRCO)
- Ethiopian Teachers' Association (ETA)

## **Finland**

- Finnish League for Human Rights (FLHR)

## **France**

- ACAT - France
- Justice et paix
- Ligue des droits de l'Homme et du citoyen (LDH)
- Observatoire international des prisons (OIP)
- Pax Christi France
- Pax Romana - Mouvement international des juristes catholiques
- Réseau d'alerte et d'intervention pour les droits de l'Homme (RAIDH)
- Santé, éthique et libertés (SEL)
- Service œcuménique d'entraide (CIMADE)

## **Gambia**

- International Society for Human Rights (ISHR)

## **Georgia**

- Georgian Association to Facilitate Women's Employment (AMAGDARI)
- Georgian Young Lawyers' Association (GYLA)
- Human Rights Centre (HRIDC)
- Public Health and Medicine Development Fund (PHMDF)

## **Germany**

- ACAT - Germany

- Diakonisches Werk der EKD - Human Rights Desk
- European Centre for European and Human Rights
- Internationale Liga für Menschenrechte (ILMR)
- Pax Christi Germany

## **Greece**

- Greek Helsinki Monitor (GHM)
- Hellenic League for Human Rights
- Marangopoulos Foundation for Human Rights
- Rehabilitation Centre for Torture Victims (RCTVI)

## **Guatemala**

- Casa Alianza
- Central General de Trabajadores de Guatemala (CGTG)
- Centro para la Acción Legal en Derechos Humanos (CALDH)
- Comisiatura de los Derechos Humanos de Guatemala
- Comisión de Derechos Humanos de Guatemala (CDHG)
- Coordinadora Nacional de Organizaciones Campesinas (CNOC)
- Grupo de Apoyo Mutuo (GAM)
- Hijos e Hijas por la Identidad y la Justicia contra el Olvido y el Silencio (HIJOS - Guatemala)
- Justicia y Paz - United States
- Movimiento Nacional de Derechos Humanos de Guatemala (MNDH)
- Unidad de Protección de Defensoras y Defensores de Derechos Humanos - Guatemala (UDEFEHUA-Guatemala)

## **Guinea - Bissau**

- Liga Guineense dos Direitos Humanos (LGDH)

## **Guinea**

- Organisation guinéenne des droits de l'Homme (OGDH)

## **Haiti**

- Centre œcuménique pour les droits humains (CEDH)
- Comité des avocats pour le respect des libertés individuelles (CARLI)
- Justice et paix (JILAP)
- Réseau national de défense des droits de l'Homme (RNDDH)

## **Honduras**

- Asociación ANDAR
- Centro de Investigación y Promoción de los Derechos Humanos (CIPRODEH)

- Centro para la Prevención, el Tratamiento y la Rehabilitación de las Víctimas de la Tortura (CPTRT)
- Comité de Familiares de Detenidos-Desaparecidos en Honduras (COFADEH)
- Comité para la Defensa de los Derechos Humanos en Honduras (CODEH)

## **India**

- Association internationale des juristes démocrates (AIJD)
- Centre for Organisation Research and Education (CORE)
- Committee for the Protection of Democratic Rights (CPDR)
- Committee on Human Rights - Manipur
- Commonwealth Human Rights Initiative (CHRI)
- India Centre for Human Rights and the Law (ICHRL)
- Jeevan Rekha Parishad (JRP)
- Manabadhikar Suraksha Mancha (MASUM)
- NGO Forum Combating Sexual Exploitation and Abuse of Children
- People's Initiative for Human Rights (JANANEETHI)
- People's Union for Civil Liberties (PUCL)
- People's Union for Democratic Rights (PUDR)
- People's Watch
- Rural People's Sangam (RPS)
- Society for Rural Education and Development

## **Indonesia**

- The Commission for Disappearances and Victims of Violence (KONTRAS)
- Imparsial - The Indonesian Human Rights Monitor
- TAPOL - The Indonesia Human Rights Campaign - United-Kingdom

## **Iran**

- Defenders of Human Rights Centre (DHRC)
- Ligue pour la défense des droits de l'Homme en Iran (LDDHI) - France

## **Iraq**

- Iraqi Network for Human Rights Culture and Development (INHRCDC)

## **Ireland**

- Free Legal Advice Centre (FLAC)
- Irish Council for Civil Liberties (ICCL)
- Law Society of Ireland
- Pax Christi Ireland

## **Israel and Occupied Palestinian Territory (OPT)**

- Addameer



- Al-Haq
- Al-Mezan Centre for Human Rights
- Association for Civil Rights in Israel (ACRI)
- B'Tselem
- DCI - Palestine
- HaMoked - Centre for the Defence of the Individual
- Jerusalem Centre for Human Rights
- Legal Centre for Arab Minority Rights in Israel (Adalah)
- Palestine Human Rights Information Centre (PHRIC)
- Palestinian Centre for Human Rights (PCHR)
- Palestinian Human Rights Monitoring Group (PHRMG)
- Physicians for Human Rights - Israel
- Public Committee Against Torture in Israel (PCATI)
- Ramallah Centre for Human Rights Studies (RCHRS)
- The Association of Forty
- Palestinian Human Rights Organisation (PHRO)

## **Italy**

- ACAT - Italy
- Liga Italiana dei Diritti dell'Uomo (LIDU)
- Pax Christi Italy
- Unione Forense per la Tutela dei Diritti dell'Uomo (UFTDU)

## **Japan**

- Buraku Liberation and Human Rights Research Institute
- Center on Prisoner's Rights (CPR)

## **Jordan**

- Amman Centre for Human Rights Studies (ACHRS)

## **Kazakhstan**

- Kazakhstan International Bureau for Human Rights and Rule of Law

## **Kenya**

- Independent Medico-Legal Unit (IMLU)
- International Commission of Jurists (ICJ) - Kenya
- Kenyan Human Rights Commission (KHRC)

## **Kyrgyzstan**

- Citizens Against Corruption (CAC)
- Kyrgyz Committee for Human Rights (KCHR)
- Legal Clinic "Adilet"
- Social Found Kylym Chamy

**Kosovo**

- Council for the Defence of Human Rights and Freedoms (CDHRF)

**Kuwait**

- Kuwait Human Rights Society (KHRS)

**Latvia**

- Alliance of LGBT and their friends “Mozaika”
- Latvian Human Rights Committee (LHRC)

**Lebanon**

- Association libanaise des droits de l’Homme (ALDHOM)
- Centre libanais des droits de l’Homme (CLDH)
- Fondation libanaise pour la paix civile permanente
- Frontiers Center
- Khiam Rehabilitation Centre
- National Association for Lebanese Detainees in Israeli Prisons (NALDIP)
- Soutien aux Libanais détenus arbitrairement (SOLIDA)

**Liberia**

- Foundation for Human Rights and Democracy (FOHRD)
- Liberia Watch for Human Rights

**Libya**

- Libyan League for Human Rights

**Lithuania**

- Lithuanian Human Rights Association (LHRA)

**Luxembourg**

- ACAT - Luxembourg
- Pax Christi Luxembourg - Entraide d’église

**Madagascar**

- ACAT- Madagascar

**Malaysia**

- ALIRAN
- Suara Rakyat Malaysia (SUARAM)

**Mali**

- Association malienne des droits de l’Homme (AMDH)
- Association pour le progrès et la défense des droits des femmes (APDF)

- Comité d'action pour les droits de l'enfant et de la femme (CADEF)
- LAKANA SO

## **Malta**

- Malta Association of Human Rights (MAHR)

## **Mauritania**

- Association des femmes chefs de familles (AFCF)
- Association mauritanienne des droits de l'Homme (AMDH)
- SOS Esclaves

## **Mexico**

- Academia Mexicana de Derechos Humanos (AMDH)
- ACAT - Mexico
- Asociación de Familiares de Detenidos-Desaparecidos y Victimas (AFADEM-FEDEFAM)
- Centro de Derechos Humanos "Fray Bartolomé de las Casas"
- Centro de Derechos Humanos "Miguel Agustín Pro Juárez" (PRODH)
- Centro de Derechos Humanos y Asesoría a Pueblos Indígenas
- Centro Regional de Derechos Humanos "Bartolomé Carrasco Briseño"
- Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH)
- Comisión de Solidaridad y Defensa de Derechos Humanos (COSYDDHAC)
- Comité Cerezo
- Fomento Cultural y Educativo AC
- Liga Mexicana por la Defensa de los Derechos Humanos (LIMEDDH)
- Nuestras Hijas de Regreso a Casa
- Red Nacional de Organizaciones Civiles de Derechos Humanos "Todos por los Derechos Humanos"
- Servicio Internacional para la Paz (SIPAZ)
- Sin Fronteras

## **Moldova**

- League for the Defence of Human Rights of Moldova (LADOM)
- Moldova Helsinki Committee for Human Rights (MHC)

## **Morocco and Western Sahara**

- Annassir
- Association marocaine des droits humains (AMDH)
- Association sahraouie des victimes de violations graves des droits de l'Homme commises par l'Etat marocain (ASVDH)
- Centre marocain des droits de l'Homme

- Forum marocain vérité et justice (FMVJ)
- Organisation marocaine des droits humains (OMDH)

## **Mozambique**

- Liga Mocanbicana dos Direitos Humanos

## **Nepal**

- Advocacy Forum Nepal
- Forum for the Protection of Human Rights (FOPHUR)
- Informal Sector Service Centre (INSEC)
- Institute of Human Rights and Democracy (IHRD)
- International Institute for Human Rights, Environment and Development (INHURED)
- Group for International Solidarity (GRINSO)
- Women's Rehabilitation Centre (WOREC)

## **Netherlands**

- ACAT - Netherlands
- Global Initiative on Psychiatry
- Liga Voor de Rechter Van de Mens (LVRM)
- Pax Christi Netherlands
- Studie-en Informatiecentrum Mensenrechten (SIM)

## **Nicaragua**

- Centro Nicaragüense de Derechos Humanos (CENIDH)

## **Niger**

- Association nigérienne de défense des droits de l'Homme (ANDDH)
- Collectif des organisations de défense des droits de l'Homme et de la démocratie (CDDHD)
- Comité de réflexion et d'orientation indépendant pour la sauvegarde des acquis démocratiques (CROISADE)
- Comité national de coordination de la Coalition équité / qualité contre la vie chère au Niger
- Ligue nigérienne de défense des droits de l'Homme (LNDH)

## **Nigeria**

- Centre for Law Enforcement Education (CLEEN)
- Civil Liberties Organisation (CLO)
- Consulting Centre for Constitutional Rights and Justice (C3RJ)
- DCI - Nigeria
- Media Rights Agenda (MRA)
- Prisoners Rehabilitation and Welfare Action (PRAWA)

## **Pakistan**

- Human Rights Commission of Pakistan (HRCP)
- Umeed Welfare Organisation
- Voice Against Torture (VAT)
- World Peace Forum (WPF)

## **Peru**

- Asociación Pro Derechos Humanos (APRODEH)
- Centro de Asesoría Laboral (CEDAL)
- Centro de Estudios y Acción para la Paz (CEAPAZ)
- Coordinadora Nacional de Derechos Humanos (CNDDHH)
- Federación Nacional de Trabajadores Mineros, Metalúrgicos y Siderúrgicos del Perú (FNTMMSP)
- Instituto de Defensa Legal (IDL)

## **Philippines**

- Alliance for the Advancement of People's Rights (KARAPATAN)
- Episcopal Commission on Tribal Filipinos
- Free Legal Assistance Group (FLAG)
- Kababaihan Laban sa Karahasan Foundation (KALAKASAN)
- KAIBIGAN
- Kilusang Mayo Uno Labour Center (KMU)
- Medical Action Group (MAG)
- National Alliance of Women's Organisation in the Philippines (GABRIELA)
- National Secretary of Social Action Justice
- Pax Christi Philippines
- Philippine Alliance of Human Rights Advocates (PAHRA)
- Regional Council on Human Rights in Asia
- Task Force Detainees of the Philippines (TFDP)

## **Poland**

- Helsinki Watch Committee

## **Portugal**

- Civitas
- Comissão para los Direitos do Povo Maubere
- Confederação Geral dos Trabalhadores Portugueses
- Pax Christi Portugal

## **Puerto Rico**

- Pax Christi Puerto Rico

## **Republic of Korea**

- Korean Confederation of Trade Union (KCTU)
- MINBYUN - Lawyers for a Democratic Society
- SARANBANG

## **Romania**

- The League for the Defence of Human Rights (LADO)

## **Russian Federation**

- All-Russia Public Movement “For Human Rights”
- Anti-Discrimination Centre “Memorial”, Saint-Petersburg
- Centre for the Development of Democracy and Human Rights
- Centre Sova
- Citizens’ Watch
- “Demos” Centre
- Human Rights Centre “Memorial”, Moscow
- Mothers of Dagestan for Human Rights
- Moscow Helsinki Group
- Nizhny Novgorod Foundation for the Promotion of Tolerance
- Research Centre “Memorial”, Saint-Petersburg
- Russian-Chechen Friendship Society (RCFS)
- Russian Research Centre for Human Rights
- Soldiers’ Mothers of Saint-Petersburg

## **Rwanda**

- Association pour la défense des droits de l’Homme et libertés publiques (ADL)
- Collectif des ligues pour la défense des droits de l’Homme (CLADHO)
- Forum des activistes contre la torture (FACT)
- Ligue rwandaise pour la promotion et la défense des droits de l’Homme (LIPRODHOR)
- Réseau international pour la promotion et la défense des droits de l’Homme au Rwanda (RIPRODHOR)

## **Senegal**

- Organisation nationale des droits de l’Homme (ONDH)
- Rencontre africaine des droits de l’Homme (RADDHO)

## **Serbia**

- Anti Sex Trafficking Action (ASTRA)
- Centre for Peace and Democracy Development (CPDD)
- Helsinki Committee for Human Rights in Serbia
- Humanitarian Law Centre (HLC)

- LABRIS
- Queeria

## **Sierra Leone**

- Centre for Democracy and Human Rights (CDHR)
- DCI - Sierra Leone
- Forum of Conscience (FOC)

## **South Africa**

- Human Rights Institute of South Africa (HURISA)
- Lawyers for Human Rights (LHR)

## **Spain**

- ACAT - Spain / Cataluña
- Asociación pro Derechos Humanos de España (APDHE)
- Federación de Asociaciones de Defensa y de Promoción de los Derechos Humanos (FADPDH)
- Justicia y Pau
- Pax Romana / Grupo Juristas Roda Ventura
- Taula Catalana por la Paz y los Derechos Humanos en Colombia

## **Sudan**

- African Centre for Justice and Peace Studies (ACJPS)
- Amel Centre for Treatment and Rehabilitation of Victims of Torture
- Darfur Relief and Documentation Centre (DHRC)
- Khartoum Centre for Human Rights and Environment Development (KCHRED)
- Save Darfur Coalition
- The Darfur Consortium

## **Sri Lanka**

- Centre for Rule of Law
- Home for Human Rights (HHR)
- Law and Society Trust (LST)

## **Switzerland**

- ACAT - Switzerland
- Action de carême catholique suisse / Fastenopfer
- Antenna International
- Justice et paix - Commission nationale suisse
- Ligue suisse des droits de l'Homme (LSDH)
- Pax Christi Switzerland
- Pax Romana Switzerland

## Syria

- Comités de défense des libertés démocratiques et des droits de l'Homme en Syrie (CDF)
- Damascus Centre for Human Rights Studies (DCHRS)
- Human Rights Association in Syria (HRAS)
- National Organisation for Human Rights in Syria (NOHR-S)
- Syrian Centre for Media and Freedom of Expression (SCM)
- Syrian Human Rights Organisation (SHRO)
- Syrian Organisation for Human Rights "Sawasiya"

## Tajikistan

- Bureau on Human Rights and Rule of Law
- International Centre of Non Commercial Law

## Tanzania

- Centre pour l'éducation et la défense des droits de l'Homme (CEDH)
- Legal and Human Rights Centre (LHRC)

## Thailand

- Union for Civil Liberty (UCL)
- Working Group on Peace and Justice

## Togo

- ACAT-Togo
- Association togolaise de lutte contre la torture (ATLT)
- Ligue togolaise des droits de l'Homme (LTDH)

## Tunisia

- Association de lutte contre la torture en Tunisie (ALTT)
- Association tunisienne des femmes démocrates (ATFD)
- Centre d'information et de documentation sur la torture en Tunisie - France
- Comité pour le respect des libertés et des droits de l'Homme en Tunisie (CRLDHT)
- Conseil national pour les libertés en Tunisie (CNLT)
- Ligue tunisienne des droits de l'Homme (LTDH)

## Turkey

- Centre d'action sociale, de réhabilitation et d'adaptation (SOHRAM)
- Human Rights Agenda Association (HRAA)
- Human Rights Association (IHD)
- Human Rights Foundation of Turkey (HRFT)
- Legal Research Foundation (TOHAV)



## **Turkmenistan**

- Turkmen Initiative for Human Rights (TIHR)

## **Uganda**

- Foundation for Human Rights Initiative (FHRI)
- Human Rights and Development Torch
- Sexual Minorities in Uganda (SMUG)

## **United Kingdom**

- ACAT - UK
- Anti-Slavery Society for the Protection of Human Rights
- Committee on the Administration of Justice (CAJ)
- Justice
- Justice for Victims of Human Rights Violations in Armed and Civil Conflicts
- Liberty
- Pax Christi - UK
- Quaker Peace and Service Abolition of Torture

## **United States**

- Center for Constitutional Rights (CCR)
- Center for Human Rights and Constitutional Law
- Center for Justice and Accountability (CJA)
- Human Rights Advocates
- National Council of Churches - Human Rights Office
- Pax Christi USA
- World Organization for Human Rights

## **Uruguay**

- Instituto de Estudios Legales y Sociales del Uruguay (IELSUR)
- Servicio Paz y Justicia - Uruguay

## **Uzbekistan**

- Human Rights in Central Asia
- Human Rights Society of Uzbekistan (HRSU)
- Legal Aid Society (LAS)

## **Venezuela**

- Comité de Familiares de Víctimas de los sucesos ocurridos entre el 27 de febrero y los primeros días de marzo de 1989 (COFAVIC)
- Comisión Latinoamericana por los Derechos y Libertades de Trabajadores y Pueblos (CLADEHLT)
- Observatorio Venezolano de Prisiones (OVP)

- Programa Venezolano de Educación-Acción en Derechos Humanos (PROVEA)
- Red de Apoyo por la Justicia y la Paz (REDAPOYO)

### **Viet Nam**

- Vietnam Committee on Human Rights

### **Yemen**

- Human Rights Information and Training Centre (HRITC)
- National Organization for Defending Rights and Freedoms (Hood)
- Sisters Arab Forum for Human Rights (SAF)
- Yemen Centre for Human Rights Studies (YCHRS)
- Yemen Observatory for Human Rights (YOHR)

### **Zimbabwe**

- Catholic Commission for Justice and Peace
- Media Monitoring Project of Zimbabwe (MMPZ)
- Women of Zimbabwe Arise (WOZA)
- Zimbabwe Human Rights Association (ZimRights)
- Zimbabwe Human Rights NGO Forum
- Zimbabwe Lawyers for Human Rights (ZLHR)

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# ANNEX 2

## The Observatory for the Protection of Human Rights Defenders: an FIDH and OMCT Joint Programme

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
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### Activities of the Observatory

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims. The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With this aim, the Observatory seeks to establish:

- a) a mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- b) an observation of judicial proceedings, and whenever necessary, direct legal assistance;
- c) international missions of investigation and solidarity;
- d) a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- e) the preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- f) sustained action with the United Nations (UN) and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- g) sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the

Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the “operational definition” of human rights defenders adopted by OMCT and FIDH:

“Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments”.

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger.

This system, known as the Emergency Line, is available by:

**Email:** [Appeals@fidh-omct.org](mailto:Appeals@fidh-omct.org)

**Tel:** + 33 1 43 55 55 05 / **Fax:** + 33 1 43 55 18 80 (FIDH)

**Tel:** + 41 22 809 49 39 / **Fax:** + 41 22 809 49 29 (OMCT)

### **Animators of the Observatory**

From the headquarters of FIDH (Paris) and OMCT (Geneva), the Observatory is supervised by Antoine Bernard, FIDH Executive Director, and Juliane Falloux, Deputy Executive Director, as well as Eric Sottas, OMCT Secretary General, and Anne-Laurence Lacroix, OMCT Deputy Secretary General.

At OMCT, the Observatory is run by Delphine Reculeau, Coordinator, with the assistance of Carlos Pampín García and Mercedes Rodríguez Martel, Project Officers. OMCT wishes to thank Andrea Meraz for her collaboration in writing this report, as well as Clemencia Devia Suárez, Guro Engstrøm Nilsen, from OMCT-Europe, Valérie Van Goethem and Monica Zwaig. The OMCT also thanks Rocío Ahuja, Neus Barres, Inés Díaz de Atauri, Jany May, Christine Oram, Isabelle Rossier, José Ricardo Sáenz, Iris Tejada and Jorge Zavaleta for their contribution to the translation of the report.

At FIDH, the Observatory is run by Alexandra Poméon, Head of the Programme, and Hugo Gabbero, Programme Officer, with the assistance of Claire Colardelle and the support of the teams responsible for the geographic regions and delegations, including Isabelle Brachet, Emmanouil Athanasiou, Jimena Reyes, Delphine Raynal, Silvia Gonzales, Alexandra Koulaeva, Vanessa Rizk, Shiwei Ye, Marceau Sivieude, Florent Geel, Tchérina Jerolon, Pouline Kimani, Stéphanie David, Marie Camberlin, Lobna Abulhassan, Antoine Madelin, Grégoire Théry, Catherine Absalom, Julie Gromellon and Samuel Dansette. FIDH wishes to thank Farah Chami, Laurence Cuny and Riwanon Quere for their collaboration in writing this report, as well as Katia Kokorina, Khaled Ould-Kaci, Annick Pijnenburg, Mary Regan, Lizzie Rushing, Christopher Thiéry and Anna Tognetti for their contribution to the report translation.

The Observatory's activities are assisted by all OMCT and FIDH local partners.

## **Operators of the Observatory**

### **FIDH**

Created in 1922, the International Federation for Human Rights (FIDH) brings together 164 leagues in more than 100 countries. It coordinates and supports their work and provides a relay for them at international level. FIDH works to protect the victims of human rights violations, to prevent these violations and to prosecute those responsible. FIDH takes concrete action for respect of the rights enshrined in the Universal Declaration of Human Rights – civil and political rights as well as economic, social and cultural rights. Seven priority themes guide the work of FIDH on a daily basis: protection of human rights defenders, promotion of women's rights, promotion of the rights of displaced migrants and refugees, promotion of the administration of justice and the fight against impunity, strengthening of respect for human rights in the context of economic globalisation, strengthening of international and regional instruments and mechanisms to protect and support human rights and the rule of law in conflict periods, emergency situations and during political transition periods.

FIDH has either consultative or observer status with the United Nations, UNESCO, the Council of Europe, the OIF, the African Commission on Human and Peoples' Rights (ACHPR), the OAS and the ILO.

FIDH is in regular, daily contact with the UN, the EU and the International Criminal Court through its liaison offices in Geneva, New York, Brussels

and The Hague. FIDH has also opened offices in Cairo, Nairobi and Bangkok to further its work with the League of Arab States, the AU and the Association of Southeast Asian Nations (ASEAN). Every year, FIDH provides guidance to over 200 representatives of its member organisations, and also relays their activities on a daily basis.

The International Board is comprised of: Souhayr Belhassen, President; Artak Kirakosyan (Armenia), Roger Bouka Owoko (Republic of the Congo), Khadija Cherif (Tunisia), Paul Nsapu Mukulu (Democratic Republic of Congo), Luis Guillermo Perez (Colombia), General Secretaries; Jean-François Plantin, Treasurer; and Yusuf Atlas (Turkey), Aliaksandr Bilaltski (Belarus), Amina Bouayach (Morocco), Juan Carlos Capurro (Argentina), Karim Lahidji (Iran), Fatimata Mbaye (Mauritania), Asma Jilani Jahangir (Pakistan), Paulina Vega Gonzalez (Mexico), Sorraya Gutierrez Arguello (Colombia), Raji Sourani (Palestine), Kristiina Kouros (Finlande), Katherine Gallagher (United States), Arnold Tsunga (Zimbabwe), Dan Van Raemdonck (Belgium), Dismas Kitenge Senga (DRC), Vice-Presidents.

## OMCT

Created in 1985, the World Organisation Against Torture (OMCT) is today the main international coalition of NGOs fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 297 affiliated organisations in its SOS-Torture Network, OMCT is the most important network of non-governmental organisations working for the protection and the promotion of human rights in the world. Based in Geneva, OMCT International Secretariat provides personalised medical, legal and/or social assistance to victims of torture and ensures the daily dissemination of urgent interventions across the world, in order to prevent serious human rights violations, to protect individuals and to fight against impunity. Moreover, some of its activities aim at protecting specific categories of vulnerable people, such as women, children and human rights defenders. OMCT also carries out campaigns relating to violations of economic, social and cultural rights. In the framework of its activities, OMCT also submits individual communications and alternative reports to the United Nations mechanisms, and actively collaborates in the respect, development and strengthening of international norms for the protection of human rights.

A delegation of the International Secretariat has been appointed to promote activities in Europe and to represent OMCT to the EU. It constitutes the link with European institutions; its role is to support and to implement the International Secretariat's mandate at the European level. 525

OMCT has either a consultative or observer status with the United Nations Economic and Social Council (ECOSOC), the ILO, the OIF, the ACHPR and the Council of Europe.

Its Executive Council is composed of Mr. Yves Berthelot, President (France), Mr. José Domingo Dougan Beaca, Vice-President (Equatorial Guinea), Mr. Anthony Travis, Treasurer (United Kingdom), Mr. José Burle de Figueiredo (Brazil), Ms. Aminata Dieye (Senegal), Mr. Kamel Jendoubia (Tunisia), Ms. Tinatin Khidasheli (Georgia), Ms. Jahel Quiroga Carrillo (Colombia), Ms. Christine Sayegh (Switzerland) and Mr. Henri Tiphagne (India).





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The Observatory  
for the Protection  
of Human Rights Defenders

*“A true society, where discussions and debates are an essential technique, is a society full of risks”.* Although written over thirty years ago, these words of Moses I. Finley strongly summarise the spirit of this twelfth annual report of the Observatory. Drawing up an inventory as accurate as possible of the situation of human rights defenders in the world in 2009, this report illustrates forcefully the difficulty and danger of promoting the exchange of ideas, pluralism, protection of fundamental freedoms and the democratic ideal, on all continents, and also shows how defenders, everywhere, play an important role as a bulwark against arbitrariness and abuse, and that they remain, more than ever, a cornerstone of the rule of law.

Created in 1997 by the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), the Observatory for the Protection of Human Rights Defenders is an action programme based on the belief that strengthened co-operation and solidarity with and among human rights defenders and their organisations will contribute to break their isolation. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims.

In 2009, the Observatory issued 424 urgent interventions concerning 719 human rights defenders and 100 organisations, in 72 countries.



International Federation for Human Rights



World Organisation Against Torture