



ASIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
ANNUAL REPORT 2010

REGIONAL ANALYSIS

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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 assassination¹.

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

^{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, Keochay and Khamphouvieng Sisa-At	Ongoing arbitrary detention / Fear for physical and psychological integrity / Impunity in death custody	Joint Press Release	October 23, 2009

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 high¹. 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 situations².

In February 2009, the Parliament passed, as a law, the Anti-Terrorism Ordinance 2009, which had been adopted in 2008 by the caretaker Government³. 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 Nations⁴. There is a risk that the law will be used as a tool to persecute political opposition, human rights

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 agencies⁵.

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)⁶. 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-finders 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 order⁷.

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 incident⁸. 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 Lalgar⁹, 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 2009¹⁰.

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/ Lalgar 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 Lalgar.

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 detention¹¹.

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

BURMA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
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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 Act¹. On August 11, she was sentenced to three years of imprisonment with hard labour, commuted to 18 months of house arrest². The case was riddled with irregularities and raised severe concern within the interna-

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 community³. 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 members⁴.

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 prisoners⁵. 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 released⁶. 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 phase⁷. During the year,

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 rights⁸. These concerns were backed up by a UN General Assembly Resolution of August 2009⁹. 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”¹⁰. 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)¹¹. 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”¹². 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 consultants¹³. 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, 2009¹⁴. 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 detained¹⁵.

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 welcome¹⁶. 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 hearing¹⁷. 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 detained¹⁸. On April 1, five members of the Federation of Trade Unions of Burma (FTUB)¹⁹, 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 2008²⁰, 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 him²¹. 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 years²². 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 again²³.

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 Burma²⁴. 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 Natmauk 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 period²⁵. As of the end of 2009, Mr. Ko Zaw Htay remained detained in Thayet prison²⁶.

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.

CAMBODIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
ANNUAL REPORT 2010

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 imprisoned¹.

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 eviction². 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 leaders³. In contrast, no prosecutions were instigated against the corporations or other entities responsible for violent land seizures and the destruction of property⁴.

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

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 history⁵. Nevertheless, the judicial system, as well as other aspects of public administration, continued to suffer from corruption⁶, 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 institutions⁷ and there were repeated political interferences in judicial proceedings⁸. 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 record⁹. 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.

dition, 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 Cambodia¹⁰.

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 violations¹¹. While the Law on Freedom of the Press provides for civil penalties, the crimes of “defamation” (Article 305)¹² 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 Cambodia¹³. 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)¹⁴.

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 agenda¹⁵. Given the lack of transparency during the adoption process, several questions remain as to the efficiency of this new instrument¹⁶. 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 ends¹⁷.

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

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 Lawyers¹⁸. 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 him¹⁹. 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 Ianuzzi²⁰.

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 areas²¹. 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 clash²².

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 fines²³.

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

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.

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 police²⁴. 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 out²⁵.

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-grabbing²⁶ 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 Ya²⁷. 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 Ratanakkiri²⁸. 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 villagers²⁹, 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 Mondulakiri³⁰. 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

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.

246 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 KDC³¹.

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 authorities³². 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 expelled³³.

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.

CHINA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
ANNUAL REPORT 2010

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 police¹. 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 authorities². 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 penalty³.

While China's State secrets system – consisting of laws and regulations accumulated since the early 1950s, with the Law on the Protection of

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

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 information⁴.

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 activists⁵. 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)⁶, prohibition of torture, media freedom and effective remedies for discrimination⁷. 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”⁸.

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

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 record⁹.

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 democracy¹⁰. 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 occasions¹¹. 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 reason¹². 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 8¹³. 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 issues¹⁴. 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.

Beijing¹⁵. 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 rights¹⁶. 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 Centre¹⁷.

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 4¹⁸. 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"¹⁹, threatened, monitored or forced to leave the capital²⁰. 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 anniversary²¹. 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 visit²². 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 Embassy²³. 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 CHR D 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 CHR D Statement, September 30, 2009.

22/ See CHR D China Human Rights Briefing, November 20-23, 2009.

23/ See CHR D 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 Jiangan**, **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**²⁴. 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 2008²⁵. The firm is also known for taking on controversial and sensitive rights cases, such as representing jailed activists Messrs. **Hu Jia**²⁶ and **Chen Guangcheng**²⁷. 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 CHR D Statement, September 30, 2009 and HRIC Press Releases, June 4 and September 30, 2009.

25 / See CHR D 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

violations²⁸. 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 cases²⁹.

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 camp³⁰. 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)³¹. 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.

256 31 / See CHRDR 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 computer³². 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 summoned³³. Police also searched his home, but did not confiscate any items. As of the end of 2009, Mr. Zheng remained under house arrest³⁴.

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 CHR D Statement, November 12, 2009.

33/ Mr. Zheng was imprisoned for three years for “leaking State secrets” in 2003.

34/ See CHR D 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 case³⁵. 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 deteriorated³⁶.

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. Yangkyi 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 Jianguang, 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

INDIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
ANNUAL REPORT 2010

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 equally¹. 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 Commissioner². 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 forces³. 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,

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 separatists 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 acts⁴.

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 support⁵. 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 people⁶. 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)⁷, 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 zone⁸. 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 Chhattisgarh⁹, were also subjected to various acts of harassment. On December 10, 2009, Messrs. **Kopa Kunjam**, VCA Rehabilitation Coordinator¹⁰, 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 pending¹¹. 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 organisation¹².

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 Code¹³. 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 Orissa¹⁴, 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 2004¹⁵ 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. **Lourebam Nganbi Devi**, AMKIL Vice-President, and Ms. **Yumlebam 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. Lourebam Nganbi was detained under the National Security Act, 1980 (NSA)¹⁶, 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”¹⁷. 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 them¹⁸. 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.

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 released¹⁹. On August 22, Mr. **Gopen Chandra Sharma**, District Human Rights Monitor of “Banglar Manabdhikar 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)²⁰ 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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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 smoothly¹, incidents of violence and protest in West Papua were reported². 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-

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 detention³. 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 abuses⁴, 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 churches⁵.

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.

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 Purwoprandjono announced that he would file a criminal defamation suit under Articles 310 and 314 of the Criminal Code⁶ 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 murderer⁷. 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 police⁸. 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 pending⁹. 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-

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”¹⁰. 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, 2009¹¹. 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 murder¹². 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 chief¹³. 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 Conference¹⁴. 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 Mandao 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 Code¹⁵. 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.

274 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 this¹⁶.

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 times¹⁷. 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 province¹⁸. 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 him¹⁹. 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 activities²⁰.

Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Munir Said Thalib	Impunity / Assassination	Press Release	January 15, 2009
Mr. Usman Hamid, Mr. Munir Said Thalib and Ms. Suciwati Munir	Judicial proceeding / Harassment	Open Letter to the authorities	November 10, 2009

19/ See INFID and Imparsial.

276 20/ *Idem*.

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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 death¹, 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 families².

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

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 interrogations³. 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) protests⁴.

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 equipment⁵. 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

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.

278 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 authorities⁶. 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 confessions⁷.

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

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 situation⁸.

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 months⁹.

Ongoing harassment against women's rights defenders

Women's rights defenders in Iran continued to face threats and harassment in 2009¹⁰. 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**¹¹, 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”¹². 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 Women¹³. 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 her¹⁴.

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"¹⁵. 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 arrears¹⁶. 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 June¹⁷.

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”¹⁸, **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)¹⁹, and **Sa’eed Matinpour**, an Azerbaijani journalist and cultural activist from the city of Zanjan²⁰.

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 Raïisian / 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 Touhidi 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

MALAYSIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
ANNUAL REPORT 2010

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 amended¹. However, as of the end of 2009, no substantive legislative or institutional reforms had been introduced². 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)³, the Sedition Act, the Official Secrets Act, which are both among the laws that most seriously infringe upon freedom of speech and expression in Malaysia⁴, and Section 27 of the Police Act

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”.

1967⁵ 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 DDA⁶.

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)⁷ 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' status⁸.

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

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 instruments⁹ and in welcoming the visit of several UN Special Procedures mandate-holders, despite a number of requests¹⁰. 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 issues¹¹. 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 liberties¹². However, the media remained tightly controlled in 2009 in Malaysia, with no substantial reforms implemented¹³.

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.

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 tabled¹⁴. 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 ISA¹⁵. 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 released¹⁶. 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 arrested¹⁷.

In addition to the dangers faced by peaceful demonstrators in Malaysia, their lawyers also face the risk of being arrested and detained, in blatant

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 8¹⁸.

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. Uthayakumar¹⁹ – 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 unions²⁰.

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 live²¹. 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*)²². 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.

292 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 Bekeni, she was released after the initial 60-day detention period, on March 15²³.

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 Acts²⁴, 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 Malaysia²⁵. 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 articles²⁶.

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. Ganabatirau	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

NEPAL

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
ANNUAL REPORT 2010

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 Minister¹. 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 army². There is a risk that increased violence by political parties and affiliated groups, as well as subsequent retaliation threats, further jeopardise the process³. 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 expires⁴.

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

1/ See Delegation of the European Union to Nepal Fact Sheet on 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 violations⁵. 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 development⁶. 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 opposition⁷.

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 war⁸. 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 districts⁹. 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)¹⁰. The poor security conditions and erosion

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 Bardia 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”¹¹.

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 intimidation¹². 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 far¹³.

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 it¹⁴. 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 police¹⁵. 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 months¹⁶.

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*

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 pending¹⁷. 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 FNJ¹⁸.

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 violence¹⁹. 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)²⁰, 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 injured²¹. Journalists were also manhandled and their vehicle vandalised by the police²².

Urgent Intervention issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
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 Bhattraï, 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 Bhattraï 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.

PAKISTAN

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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)¹. Counter-terrorism operations in the NWFP and FATA caused extensive involuntary displacement of civilians². 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 shooting³. 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.

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 establishments⁴. 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 disappearances⁵. 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”⁶.

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 intimidation⁷. 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 protection⁸.

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 2009⁹, 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 him¹⁰. 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 justice¹¹.

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 Haneef¹².

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 "obscenity" 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 measures¹³.

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 yet¹⁴.

13/ See HRCP Annual Report 2009, *State of Human Rights in 2009*, February 2010.

14/ *Idem*.

THE PHILIPPINES

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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 men¹. 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 situation².

This event sadly illustrates the deterioration of the human rights situation in the Philippines, which human rights record came under international scrutiny in 2009³. 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 detainees⁴. 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 squads⁵, continued. Reforms directed at institutionalising the

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 widespread⁶. 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 murders⁷.

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 dissent⁸. Moreover, they regularly label members of local communities as possible supporters or even secret combatants for armed insurgency groups⁹. 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"¹⁰.

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 Torture¹¹. 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 messages¹². 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 Olivias (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 people¹³. 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 Jolloso-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 2007¹⁴. 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 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 known¹⁵.

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 2009¹⁶. Similarly, since September 2009, members of “People Against Aerial Spraying” (MAAS)¹⁷ 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 result¹⁸.

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 AFP¹⁹. 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 them²⁰. However, their writ was dismissed by the Court for want of evidence on August 14, 2009²¹.

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 Mindanao²². 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 case²³.

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 activities²⁴. 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)²⁵, 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 Mindoro²⁶. 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

Names	Violations / Follow-up	Reference	Date of Issuance
Ms. Aurora Broquil, Ms. Emily Fajardo and Mr. Francisco Honra	Death threats	Urgent Appeal PHL 001/0709/OBS 093	July 1, 2009
Messrs. Rafael Limcumpao, Domingo Alcantara and Archie Bathan, Ms. Rita Melencio	Arbitrary detention / Ill-treatments / Judicial proceedings / Threats	Urgent Appeal PHL 002/0709/OBS 096	July 2, 2009

REPUBLIC OF KOREA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
ANNUAL REPORT 2010

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"¹. 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 administration². 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 most³.

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

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, 2010⁴.

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)⁵. 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 men⁶ 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 trial⁷, but the request was denied. In addition, the continuation of the procedure was

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

marred by obstruction from the side of the prosecution⁸. 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’ families⁹. 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 since¹⁰. 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 hours¹¹.

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

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 status¹², 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 Korea¹³ 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 activity¹⁴. 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 order¹⁵. 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, 2009¹⁶. 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 media¹⁷. 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 pending¹⁸.

Urgent Intervention issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Minod Moktan	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.

SRI LANKA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
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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 Lanka¹. 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”². 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 victory³.

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 commonplace⁴. 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 LTTE⁵. 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 2009⁶. 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.

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 experts⁷ “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”⁸. On March 12, the European Parliament also adopted a Resolution deploring the deteriorating humanitarian situation in Sri Lanka⁹ and on May 26 and 27, the UN Human Rights Council held a special session to address the human rights situation in the country¹⁰.

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 conflict¹¹. 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 authorities¹². 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"¹³. 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 them¹⁴. 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”¹⁵.

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 Relations¹⁶. 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.

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 28¹⁷.

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 Defence¹⁸.

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 LTTE¹⁹. 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 detained²⁰. 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 war²¹. 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 and LST.

20/ See LST.

detailed briefings that challenged the Government's official civilian death toll and the questioned adequacy of its arrangements for relief operations²².

Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Lasantha Wickrematunge	Assassination	Urgent Appeal LKA 001/0109/OBS 006	January 15, 2009
Mr. Upali Tennakoon	Assault	Urgent Appeal LKA 002/0109/OBS 015	January 27, 2009
Members of the Human Rights Centre "Right to Life" / Mr. Amitha Ariyaratne	Death threats	Urgent Appeal LKA 003/0209/OBS 022	February 3, 2009
Mr. Sinnavan Stephen Sunthararaj	Enforced disappearance / Fear for physical and psychological integrity / Harassment	Urgent Appeal LKA 004/0509/OBS 077	May 15, 2009
Mr. Paikiasothy Saravanamuttu	Death threats	Urgent Appeal LKA 005/0809/OBS 121	August 21, 2009

THAILAND

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
ANNUAL REPORT 2010

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 dead¹. 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 Narathiwat².

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-refoulement³. 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 protection⁴. Furthermore, the execution

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 movement⁵.

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 pretext⁶. MICT claimed to have shut down more than 2,000 websites on this basis and a blocking of numerous other websites continued⁷. The Government also announced on May 14 that it would introduce new regulations for community radio and TV stations, aimed at controlling programme content⁸. The regulations were eventually approved and community radio stations were required to register under a National Telecommunications Commission (NTC) scheme 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”⁹.

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 organisations¹⁰.

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 WGJP¹¹. 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 identified¹².

11/ *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 resources¹³, 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 identified¹⁴.

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 vomiting¹⁵. 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. Boonyod¹⁶.

Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
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.

VIET NAM

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
ANNUAL REPORT 2010

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”¹. 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 Refugees². 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 country³. Whilst accepting some general recommendations on the promo-

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-ICESCR³, 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 rejected⁴. 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 Code⁵, 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 offenders⁶. The Government also refused to recognise the rights of individuals and groups to “dissent publicly”, and to engage in dialogue with civil society organisations⁷.

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

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.

336 7/ See VCHR Statement, May 13, 2009.

to verify, as statistics on the number of death sentences and executions are not published by the Government⁸.

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”⁹, 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 2009¹⁰. 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”¹¹. 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 Prize¹², 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 prison¹³. 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)¹⁴, 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).

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 years¹⁵.

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”¹⁶, 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 Nam¹⁷. 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 sovereignty¹⁸. 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 2010¹⁹. 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, 2008²⁰.

Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Le Cong Dinh	Arbitrary detention / Judicial harassment	Joint Open Letter to the authorities	June 19, 2009
		Joint Press Release	December 23, 2009

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.