



India

11 March 2011

Head of the organization Citizen for Justice and Peace prevented from communicating with the OHCHR - IND 002 / 0311 / OBS 032

The Observatory for the Protection of Human Rights Defenders, a joint programme of the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH), has received new information and requests your urgent intervention in the following situation in India.

Description of the situation:

The Observatory has been informed by reliable sources that Ms. **Teesta Setalvad**, Head of the organization Citizen for Justice and Peace (CJP), a human rights organisation involved in the legal support of victims of the Gulbar Society Massacre of February 2002, has been prevented from communicating with the United Nations Office of the High Commissioner for Human Rights (OHCHR) in Geneva.

According to the information received, on March 3, 2011, the Supreme Court of India reportedly issued a public written order, stating that Ms. Teesta Setalvad should not send any communication to the OHCHR in Geneva anymore concerning the investigation of the Gulbar Society Massacre of February 2002. No information could be obtained as to the reasons provided by the court to justify this restriction.

This massacre, causing the death of 69 people, happened during the riots in the state of Gujarat in 2002. The proceedings of investigations of the Gulbar Society Massacre are led by a Special Investigation Team (SIT) appointed within the Gujarat police by the Supreme Court.

Ms. Teesta Setalvad has been actively involved into the investigation of the massacre through legal support to victims, including the documentation of several cases and their defence in hearing sessions at the Supreme Court.

Ms. Teesta Setalvad has also been denouncing the lack of protection given by the SIT to witnesses and victims. In this context, she had sent two communications to OHCHR to keep it informed about the letters that she had sent to the SIT in which she called for more protection:

- On October 5, 2010, Ms. Teesta Setalvad wrote a letter to Mr. RK. Raghavan, the Chairman of the SIT, regarding the lack of protection provided to Mr. SM Vora, a senior advocate, witness and survivor of the massacre, who had received threatening phone calls allegedly related to his involvement into the investigations. Ms. Setalvad also sent a copy of this letter to the OHCHR in Geneva.

- On October 7, 2010, Ms. Setalvad wrote another letter to Mr. RK. Raghavan regarding her safety since she had been facing reportedly false allegations that she had tutored several victims of the massacre to give false testimonies before the Supreme Court. Here again, Ms. Teesta Setalvad sent a copy of this letter to the OHCHR.

On February 17, 2011, Mr. Harish Salve, a senior advocate appointed at the Supreme Court of India, submitted an amicus curiae to the Court drawing its attention on Ms. Setalvad's practice of furnishing copies of her letters to the OHCHR, thus triggering the decision of the Supreme Court of India.

The Observatory expresses its deepest concern about the prohibition faced by Ms. Setalvad to communicate with the OHCHR, which merely aims at sanctioning her human rights activities.

The Observatory recalls that such act is in flagrant violation of article 5(c) of the Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, which states that "For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels to communicate with non-governmental or intergovernmental organizations."

The Observatory further recalls that of the Resolution 12/2 on cooperation with the United Nations, its representatives and mechanisms in the field of human rights, adopted by the Human Rights Council on October 12, 2009. Its article 1 urges "Governments to prevent and refrain from all acts of intimidation or reprisal against those who (a) Seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights, or who have provided testimony or information to them; (...) (c) Submit or have submitted communications under procedures established by human rights instruments, and all those who have provided legal or other assistance to them for this purpose".

Actions requested:

The Observatory urges the authorities of India to:

- i. Put an end to all forms of harassment and restrictions on Ms. Teesta Setalvad, as well as of all human rights defenders in India, and guarantee in all circumstances that human rights defenders and organisations are able to carry out their work, including through communication with non-governmental and intergovernmental organisations;
- ii. Comply with the provisions of the United Nations Declaration on Human Rights Defenders, adopted by the UN General Assembly on December 9, 1998, especially:
 - Article 1, which states that "Everyone has the right, individually or in association with others, to promote the protection and realization of human rights and fundamental freedoms at the national and international levels";
 - Article 5(c), which states that "For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (c) To communicate with non-governmental or intergovernmental organizations";
 - Article 6, which provides that: "Everyone has the right, individually and in association with others: (a) to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms (...); (b) freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms";

- Article 9 (c), which states that "everyone has the right, individually or in association with others, to offer and provide professionally qualified assistance in defending human rights and fundamental freedoms";
 - Article 12.2 which provides that "The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration";
- iii. Ensure in all circumstances the respect for human rights and fundamental freedoms in accordance with the Universal Declaration of Human Rights and with international and regional human rights instruments ratified by India.
- iv. Comply with the Resolution 12/2 of the Human Rights Council on cooperation with the United Nations, its representatives and mechanisms in the field of human rights.

Adresses:

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- Justice Kapadia, Chief Justice of India and RK. Raghavan, Chairman of the Special Investigation Team, Supreme Court, Tilak Marg, New Delhi -1, Fax: +91 11 233 83792, Email: supremecourt@nic.in

- Justice K. G. Balkrishnan, Chairperson of the National Human Rights Commission of India, Faridkot House, Copernicus Marg, New Delhi 110 001, Tel: +91 11 230 74448, Fax: +91 11 2334 0016, Email: covdnhrc@nic.in ; ionhrc@nic.in

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Please also write to the diplomatic representations of India in your respective countries.

<http://www.fidh.org/Head-of-the-organization-Citizen-for-Justice-and>