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Main Submission to the 41st UPR Working Group session on India

The South Asia Human Rights Documentation Centre (SAHRDC) works for the protection and promotion of human rights by collecting, verifying and disseminating information on civil and political rights in the South Asian region. It is independent of any government, political ideology, economic interest or religious creed.

SAHRDC, in association with its sister organisations, played a key role at the UN Commission on Human Rights (CHR), where it brought out a special series of Human Rights Features focusing on CHR-specific issues. HRF in Geneva was the only publication of its kind at the CHR, reporting on the developments at the CHR session, analysing the issues on the CHR's agenda and providing focused recommendations. All issues are available at:
<http://www.hrdc.net/sahrdc/hrfeatures.htm>.

We are happy to learn that India will be up for its fourth periodic review later year. We trust that this review will be beneficial for India and strengthen existing institutional mechanisms for the protection and enhancement of Human Rights in India.

We are aware that many of you will be take this opportunity to address some of the concerns that go to the heart of common democratic ideals that all member states of the United Nations cherish.

Patterns of domestic human rights abuses in India are relatively well documented thanks to a brave, but increasingly beleaguered civil society. Here are five examples, amongst numerous issues, that are most relevant and important. With the exception of the issues of the Armed Forces Special Powers Act (AFSPA) and the issue of the Freedom to convert, the other issues have not figured in previous cycles of the UPR on India.

Issue 1.

Hate Crimes, Religious Discrimination and Intolerance towards Christians in Karnataka: A State-Sanctioned Paralysis of Legal Safeguards

For the 8 years that India's Bharatiya Janata Party (BJP) led government has been in power, the country has undergone a pronounced and visible decay of democratic principles. This deterioration of human rights standards is steeped in bigotry, politics of populism and a blatant disregard towards international law. The discriminatory measures adopted against Christians living in the southern state of Karnataka serves as a troubling example of the current state of affairs in India. Discrimination, bigotry and hate crimes are no longer solitary or isolated incidents. With the full complicity and support of the state machinery, they seem to have become the status quo.

Recommendation for consideration: It is important that the Union Government direct the State Government to implement the recommendations and directions of the Supreme Court with respect to mob violence and hate crimes. This will ensure that those who act with impunity are held responsible for the crimes that they commit.

Please see Annexure 1

Issue 2 Anti-Conversion Laws in states in India: An Antithesis to Religious Freedom

In December 2021, the Karnataka state assembly in southern India passed the Protection of Right to Freedom of Religion Bill, 2021, prohibiting religious conversions made allegedly under duress or inducement, following Madhya Pradesh, Gujarat, and Uttar Pradesh, and a few others who had done so, earlier.

These laws have been widely criticised and challenged in various constitutional courts. The state laws, which are strikingly similar in their text, criminalise the direct or indirect conversion of any person from one religion to another by means of various "fraudulent means", which include misrepresentation, force, undue influence, coercion, allurement or the promise of marriage. They do not require that the conversion actually take place. They criminalise any associated abetment and conspiracy. An accused under these laws can be arrested without a warrant and denied bail.

Recommendation for consideration: India must protect the Freedom of Religion by enacting changes in the Constitution that stipulate that Freedom of Religion means the freedom to propagate and proselytize.

Please see Annexure 2

Issue 3 Collective Punishment in India: The Erosion of Democratic Principles, Religious Freedom and International Law

Collective punishment has often been employed as a tool to suppress dissent in India, without due cause and in violation of due process. This stands in violation of India's international human rights obligations.

In December 2019, people took to the streets to protest against the CAA and NRC, with citizens viewing the law as an affront to the secular principles of the constitution. The protests in the state of Uttar Pradesh (UP) were set apart by the scale of police brutality inflicted against protestors, the widespread violence and agitation and the damage caused to public and private property by vigilante groups close to the ruling party. Not surprisingly, the UP government took a rather unconventional approach to resolve the situation, by attempting to recover the losses caused by damage to public property from 'identified' anti-CAA protestors.

'Economic boycott' has been defined under Section 2(bc) of the Act and includes a refusal to deal with or do business with another person, denying opportunities including access to services, refusing anything that would commonly be done in the ordinary course of business or abstaining from professional or business relations with the other person. 'Social boycott' would mean a refusal to permit a person to render to other person or receive from him any customary service or to abstain from social relations that one would maintain with the other person or to isolate him from others. The list of offences under the legislation includes the imposition of a collective social or economic boycott on the family or group belonging to a scheduled caste or tribe. Therefore, any collective punishment inflicted on members of a family or group belonging to a scheduled caste or tribe is considered to be unlawful under the provisions of the Act.

There have been several instances of collective punishment in Indian-administered Kashmir. For example, in 2020, the Indian army demolished several houses during a military operation against militants. Further, villagers who live in close proximity to the line of control (LOC) are under the constant fear of being fired at or injured. These are but a few examples of the multiple times that the armed forces have used collective punishment in Kashmir, thus breaching India's obligation under IHL and customary international law.

The sweeping powers afforded to the armed forces in the North-East allow for impunity without accountability. Collective punishment is used quite often to quell supposed violence and insurgency. For instance, on one occasion, the government received information about violence in the Mizo Hills and it was immediately declared to be a disturbed area. After the army reached the district the security forces advanced towards Lunglei, where the rebels were operating. They threatened to bomb the entire town if the surrender of the rebels was not secured.

Urban Gujarat is witnessing an unmistakable division between Hindus and Muslims, made more noticeable by prevailing communal tension. Juhapura, for example, is a Muslim ghetto which is located at the periphery of Ahmedabad. "Land jihad", a coercive tactic to force Muslims to sell their land, has increased with startling persistence, forcing many Muslims in Gujarat to relocate. The Disturbed Areas Act, 1991 facilitates this forced ghettoization. It allows the state government to declare certain areas as "disturbed", making it difficult to sell or transfer

property in such localities. The intentions of the government are clear, considering that several new areas have been classified as “disturbed” despite no history of rioting or violence. After the 2002 riots, most Muslims in Ahmedabad, fearing for their safety, decided to migrate to “Muslim” localities like Juhapura. This forced relocation coupled with general governmental neglect, lack of access to municipal resources, education and healthcare is yet another method of collective punishment. In 2021, the Gujarat High Court ordered the state government not to issue any notifications declaring a locality a “disturbed area”. It is yet to be seen how the situation will pan out.

Recommendations for consideration: Every human being is entitled to a right to liberty and security as well as a right to fair trial, which would by implication, prohibit collective punishment. For instance, Article 9 of the ICCPR states that no person shall be deprived of his liberty unless on such grounds that is in accordance with the procedure established by law. The UNHRC has also noted that State Parties are not permitted to invoke a state of emergency as a means to violate the principles of IHL by imposing collective punishments.

See Annexure 3

Issue 4 : AFSPA in North East India- The never ending trauma

In theory, the Central Government could give permission upon application for prosecution. According to a question raised in the Rajya Sabha (upper house of Parliament) in 2018, a total of 17 requests for the sanction of prosecution under AFSPA were made between 2008 and 2016. Of the 17, permission was denied in 15 cases while the remaining two requests – kidnapping of a civilian and killing of a civilian – were pending as of April 2019. The 2006 Kakopathar killings in Assam, the Bomdilla incident in 2018 and the Longding killing in 2020 in Arunachal Pradesh, the strafing from the air in 1966 in Mizoram, the killing of two unarmed civilians near Kharkutta Bazaar in the Garo Hills area in Meghalaya in 2015,

Oinam and Malom in Manipur to name a few, and Oting only the latest in a long list in Nagaland.

Periodic massacres, little domestic concern, inadequate international scrutiny. Signposts that belie the lie that we a civilian democracy.

Recommendation for consideration: End the AFSPA in all the states of Northeast India

See Annexure 4

Issue 5: Rohingya Refugees in India- Detain and Deport The new norms of an insensitive government

In India, no legislation exists that specifically refers to refugees. It has in practice often clubbed Rohingya refugees with the class of illegal immigrants who may be deported by the government under the Foreigners Act 1946 and the Foreigners Order 1948. Legally, however, a refugee is a special category of immigrant and cannot be clubbed with an illegal immigrant.

The April 2021 order of the Supreme Court airbrushes international norms and India's obligations under international law. The court places reliance on national security concerns put forward by the government without questioning the alleged dangers that the refugees may present. The Indian government has not shared the details of the purported national security concerns it claims the Rohingya refugees pose. In the meanwhile, hundreds of Rohingya refugees remain in detention in Jammu and other parts of India in miserable conditions.

Recommendation: Enact a domestic refugee law that has due process at every point of its application and allows for individual determination for all claims for asylum. Recourse to courts of law against all executive decisions of governmental departments and tribunals.

See Annexure 5

Conclusion

We have for reasons of brevity chosen to highlight only five key concerns for your consideration. In addition to the Annexures, we would be happy to furnish detailed notes on any of the subjects mentioned above. We could also furnish notes on other major violations on civil and political rights in India on request.

Annexures: As above