

India

Submission to the UN Universal Periodic Review

First session of the UPR Working Group, 7-11 April 2008

In this submission, Amnesty International provides information under sections B, C and D (as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review):

- Under section B, Amnesty International raises concern over shortcomings in the implementation of national legislation and policies, criminal justice and legal reform, impunity for human rights violations, the role of national statutory bodies in the protection of human rights and the cooperation with international human rights mechanisms;
- In section C, we describe ongoing concerns related to the treatment of religious minorities in Gujarat State post the communal violence of 2002 and economic rights violations.
- In section D, Amnesty International makes a number of recommendations in the areas of concerns listed.

B. Normative and Institutional Framework of the State

Implementation of legislation

Despite the proliferation of legal protections, these are often rendered ineffective by other legislative provisions or are not consistently implemented. The gap between constitutional and legislative protection and the human rights reality on the ground is wide and further exacerbated by a slow legal process. A strong contradiction continues to be seen in the gap between India's constitutional provisions and forward-looking policies and the implementation of these by administrative and social structures which discriminate against the most socially and economically marginalized. This discrimination affects all aspects of the legislative, executive and administrative apparatus in the country. Amnesty International has documented such discrimination and has consistently expressed its concerns in this regard in a number of reports.¹

Furthermore, legislative powers rest with both the central and state governments and the extent to which centrally enacted legislation is applicable in each state of India remains unclear. This leads to considerable delays in the notification of legislation in each state, and thereby its entry into force.

Criminal justice and legal reform

The implementation of laws which do conform to international human rights standards is often compromised by a crumbling policing structure and a legal system that is prone to lengthy delays and does not provide easy access to justice. Notwithstanding the extensive remedies available in the general criminal and civil law, as well as through constitutional provisions, full redress for human rights violations is often outside the reach of the most vulnerable. Widespread torture in police custody – particularly of members of marginalized groups – is generally acknowledged, as are political interference and widespread corruption, and safeguards to protect the rights of detainees are rarely implemented.² In the past 25 years there has been a series of attempts to strengthen policing in India. However it is only very recently that a concerted attempt to introduce reform has been made with the Supreme Court delivering a judgement -- *Prakash Singh vs. Union of India* -- instructing central and state governments to comply with a set of seven directives (to introduce functional autonomy for the police and enhance police accountability) to kick-start police reform. However, these have met with stiff resistance from state governments who have filed for review or modification of the Court's directives. Some states have begun drafting new Police Acts and some have been passed. However, while the spirit of the reform behind the Court's directives is generally supported, many have argued against immediate implementation of the apex court's directives. Additionally, however, there has been little involvement or input by civil society groups to these reform initiatives. Separate to this initiative, the government in 2005 set up a "Police Act Drafting Committee" which submitted a draft Police Act to the Home Minister in October 2006. There are, however, a number of serious concerns about this bill which is currently with the Ministry of Home Affairs.

¹ For further information see: *India The battle against fear and discrimination – the impact of violence against women in Uttar Pradesh and Rajasthan* (AI Index: ASA 20/16/2001), 8 May 2001: <http://web.amnesty.org/library/Index/ENGASA200162001?open&of=ENG-IND> and *India Five Years on – the bitter and uphill struggle for justice in Gujarat* (AI Index: ASA 20/007/2007), 8 March 2007: <http://web.amnesty.org/library/Index/ENGASA200072007?open&of=ENG-IND>

² For further information see: *India: Words Into Action – Recommendations for the Prevention of Torture* (AI Index ASA 20/003/2001) 31 January 2001

Investigation into allegations of human rights abuses

Despite the various types of investigation which can be initiated into allegations of human rights violations and the various legal provisions, seeking justice in India remains a slow process. While investigations into deaths in custody are mandatory under section 176 of the Code of Criminal Procedure such inquiries have mostly only taken place following a public outcry. However, such inquiries remain under executive control, as opposed to the more independent inquiries carried out by magistrates. Magisterial inquiries are often inconclusive, as in most cases, magistrates depend on the police to investigate allegations of misconduct by their own forces. The police are often reluctant to bring forward evidence which might implicate their colleagues and senior officials have been known to participate in routine cover-ups of deaths resulting from torture.

The state or central government authorities can also order an investigation to be conducted under the Commissions of Inquiry Act, 1952. However, the findings of such investigations are not binding, and even where they recommend prosecution, this is not always carried out. Commissions of Inquiry have been appointed in the past to investigate the immediate causes of, responsibility for and the conduct of security and police forces in periods of heightened unrest. However in several instances, the terms of reference of such Commissions of Inquiry have been criticised by activists in India, including as a way of deliberately avoiding action against the perpetrators. Commissions of Inquiry have also been criticised for their lengthy proceedings, often taking several years to hear evidence and produce their findings. Even when Commissions of Inquiry have completed their work subsequent prosecutions have been extremely rare.

Impunity for human rights violations of state actors

Amnesty International is concerned that impunity prevails for members of the police and security forces alleged to have committed human rights violations. Although in some cases, police officers have been publicly prosecuted for human rights violations, the majority of offences go unpunished. Under section 197 of the Code of Criminal Procedure no court can take cognizance of an offence alleged to have been committed by a public servant or member of the armed forces while "acting or purporting to act in the discharge of his official duty except with the previous sanction of the Central or State Government". Section 45 of the Code also protects members of the armed forces from arrest "for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government". This can also be extended to any forces charged with the maintenance of public order in states.

The unwillingness to pursue cases of human rights violations by state officials was particularly evident when in 2006 the National Human Rights Commission (NHRC) concluded its investigations into findings by the Central Bureau of Investigations (CBI) regarding human rights violations committed by Punjab police officials. In 1995, the CBI findings confirmed that 2,097 individuals had been illegally cremated by Punjab police during the period between the mid-1980s to the mid-1990s. Upon completion of its investigations, the CBI indicated that it was ready to initiate prosecutions against police officials in several cases, but did not make its findings public, arguing that disclosure could hamper further investigations and cause embarrassment. In 1996, when examining the CBI's findings, the Supreme Court observed that these disclosed a "flagrant violation of human rights on a mass scale" and entrusted the NHRC "in accordance with the law" to "determine all the issues" and investigate the pattern of human rights violations in Punjab. They further mandated the NHRC to make recommendations in relation to perpetrators' criminal responsibility or liability. However, during the NHRC's 10 year hearing into the allegations, the statutory body instead operated within self-imposed limitations, confining itself to matters of financial compensation with no attempt to underpin individual liability of police officers and with no inquiry into the facts. During the process, the police merely admitted custody of 109 victims, but maintained that the detainees were killed in the cross-fire after militants attacked police convoys searching for hidden weapons. In May 2005, when pushed by human rights organizations to determine individual liability, the NHRC stated instead that it would confine itself to investigating the legality of the cremations. On 9 October 2006 the NHRC effectively closed the case, failing to investigate any cremation cases or record the testimony of a single victim family and relying exclusively on admissions and denials of state agencies to reach its determinations.

Ongoing concerns about statutory bodies

The government holds up the NHRC and other statutory bodies as evidence of its commitment to human rights and a progressive democracy. However, closer inspection of these bodies reveals a lack of authority, restricted mandate, lack of adequate resources and often an unwillingness to address key human rights concerns in the country. Amnesty International has for years expressed concern about limitations of the mandate and lack of resources of the NHRC. In 1998 Amnesty International submitted recommendations to the Advisory Committee established to review the mandate of the NHRC, under the Protection of Human

Rights Act, after calls by various human rights organizations, including the NHRC, to address its limitations. Most of the recommendations made by the Committee and reviewed by the NHRC, however, failed to be included in the recent amendments to Act in August 2006 which instead significantly undermined the power and the independence of the NHRC. Some of Amnesty International's most pressing concerns in this regard are listed below:

- The amendments do not address restrictions in section 19 of the PHRA which concern complaints or reports of violations committed by the armed forces. Section 19 allows the NHRC to only seek a report from the central government on allegations of human rights violations by the armed forces (and not conduct an investigation of its own) thus confining itself to the government's version or even the version of events given by the alleged perpetrators themselves.
- The amendments do not affect section 36(2) of the Act under which the NHRC is only permitted to take cognizance of complaints relating to events which took place within the last year. This provision is problematic as many victims approach the NHRC as a last resort, after exhausting other mechanisms, such as local courts. This may delay their approach to the NHRC to well beyond a year.
- The apparent lack of regard by the legislature for the NHRC's important role in protecting and promoting fundamental human rights in India, as suggested by the fact that the NHRC's annual report is often placed before Parliament without any discussion. At present, annual reports are not published until months or years after their preparation by the NHRC because Parliament has not considered them. Despite the NHRC's calls that there be a "statutory ensurement" that the NHRC's recommendations receive "full and faithful consideration," these concerns are not addressed in the amendments.

India and international instruments

Despite its clear intentions to secure a seat on the UN Security Council and re-election to the UN Human Rights Council, India has a poor record of openness to international scrutiny on human rights. Amnesty International welcomes the government's signature of the International Convention for the Protection of All Persons from Enforced Disappearances. However, India has yet to ratify two of the seven main human rights treaties: the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the UN Convention of the Rights of All Migrant Workers and Members of Their Families, as well as the two Optional Protocols to the International Covenant on Civil and Political Rights. India has also yet to sign the Rome Statute of the International Criminal Court and instead has signed a bilateral impunity agreement with the United States which prevents it from surrendering or transferring US nationals accused of genocide, crimes against humanity or war crimes to the International Criminal Court or other multi-lateral courts.

Amnesty International regrets that India continues to display an unwillingness to cooperate with the UN Special Procedures. Significant delays continue in issuing invitations to the Special Rapporteur on extrajudicial, summary or arbitrary executions (despite the request for a visit dating back to October 2000) and to the Special Rapporteur on torture (this request goes back to 1993). Invitations to the Working Group on arbitrary detention as well as the Working Group on enforced or involuntary disappearances are also outstanding.

At the beginning of December 2000, Amnesty International sent its recommendations for the prevention of torture to the government. During meetings with officials in New Delhi, Amnesty International delegates received assurances that addressing the continuing and widespread use of torture was high on the government's agenda and although progress might be slow, there was an ongoing commitment to its eradication, including through their intention to ratify the UN Convention Against Torture. Ten years since signing the Convention, the government has not yet ratified it, the use of torture is still widespread, and torturers still enjoy impunity.

Following the review of India's second report to the Committee on the Elimination of All Forms of Discrimination against Women in January 2007, the Committee expressed serious concern about the inadequacy of its reporting on the "impact of the Gujarat massacres on women" in which Muslim women were widely reported to have been targeted for attack. The Committee had in 2003 requested the government to include further information on these incidents as part of its second report. The Committee has asked the government to submit a special report by January 2008.

C. Protection and promotion of human rights in India

Gujarat State: Ongoing impunity for human rights violations

Five years since the 2002 communal violence in the Indian state of Gujarat in which more than 2,000 people were killed Amnesty International remains concerned about the ongoing impact of that violence on the Muslim minority in Gujarat. An overwhelming number of the cases of alleged violence have not been investigated or resolved, with the result that the majority of the perpetrators have gone unpunished and remain at large in the state; this is despite the reopening of 1,594 cases for reinvestigation after a Supreme Court of India order in August 2004. Moreover, Amnesty International is concerned that while criminal investigations are ongoing there are wide-scale reports of social and economic boycotting of Muslim communities in Gujarat and as many as 5,000 families are living in "relief colonies" without basic amenities or recognition from the government of Gujarat. The government of Gujarat, however, continues to assert that all those displaced as a result of the violence have been rehabilitated.³

Amnesty International believes that, five years on, the government of Gujarat remains unrepentant for its failings to protect the Muslim minority and to ensure that victims and survivors obtain justice, truth and reparations. The organization strongly disagrees with the claim by the government of Gujarat (under the leadership of the Bharatiya Janata Party (BJP) who were also in power during the 2002 communal violence) that normalcy has returned to the state.

Human rights activists report that a climate of alienation and fear has been deliberately fostered among the Muslim minority in Gujarat since the violence in 2002 and they themselves are subject to frequent harassment for their human rights work. Reports of alienation, including social and economic boycotting, suffered by the Muslim community have recently been corroborated by the findings of a central government-appointed Committee led by former Supreme Court judge Rajinder Sachar and mandated to look into the "social, economic and education status of the Muslim community in the country".

Once again, concerns about complicity of senior government officials in the communal violence in Gujarat (an allegation made by the human rights community in India as well as Amnesty International, Human Rights Watch and others) were brought to the fore in October 2007 when fresh evidence was unearthed by the Indian media in the form of interviews with some of those charged with perpetrating the 2002 killings and violence in Gujarat. Several of those interviewed claimed that the Chief Minister, Mr Narendra Modi, explicitly encouraged them by giving them a "free reign for three days" and that several senior police officials, still in office, not only aided and abetted these killers by their actions and inactions, but in many cases themselves participated in the killings and other violence, including rape. Following the expose the NHRC has directed an inquiry by the Central Bureau of Investigations into the authenticity of the tapes and the allegations made therein. Little is known, however, of subsequent developments.

Emerging concerns: Economic rights violations

Amnesty International has a number of concerns about suppression of protests organized by those demonstrating against industrial projects, including dams, in India.

As India emerges onto the international economy, Amnesty International is increasingly concerned at a pattern of human rights violations which is emerging across the mineral rich belt in central and eastern India. The lack of transparency, inclusiveness and consultation with those who own the land in the acquisition modalities of land for industrial projects has sparked protests from local socially and economically marginalized communities fearing displacement from their land and homes. In the majority of cases the displacement is also a threat to their livelihood, which for most is entirely based on production from their land. Amnesty International is concerned that instead of consulting local communities about the use of their land for industrial projects and providing them with adequately compensation for the loss of their land and security of tenure, the authorities continue to use a variety of repressive tactics against the affected communities and human rights defenders working with these communities to expedite such projects. Over the last two years Amnesty International has found an increase in the number of human rights violations against marginalized

³ For further information see: AI Index: ASA 20/007/2007 (8 March 2007) India Five Years on – the bitter and uphill struggle for justice in Gujarat.

<http://web.amnesty.org/library/Index/ENGASA200072007?open&of=ENG-IND>

AI Index: ASA 20/002/2005 (27 January 2005) India; Justice, the victim – Gujarat state fails to protect women from violence <http://web.amnesty.org/library/Index/ENGASA200022005?open&of=ENG-IND>

groups including forced evictions, involuntary resettlement, sexual harassment and gendered assaults on women protestors, the use of force against protestors demonstrating against the industrial development as the approach by which to expedite economic growth, as well as levelling false allegations against human rights defenders working with local communities.⁴

D. Achievements, best practice, challenges and constraints

- Amnesty international calls on the government to fully implement the legal protections in the constitution and policy plans, without discrimination especially towards socially and economically marginalised groups;
- The government must investigate all reports of misconduct by police authorities and take effective measures to reform the policing structure to guarantee easy access to justice for all;
- The government must ensure that all reports of human rights violations, in particular of deaths in custody, are investigated promptly, impartially and effectively, that those responsible are brought to justice in trials that meet international standards of fairness, and that victims and survivors are given full redress;
- The government must commit to fight impunity for human rights violations committed by the police and security forces and remove all legislative provisions which might prevent accountability for human rights violations;
- The government should uphold its commitment to put in place a National Human Rights institution in line with the Paris Principles including by providing the National Human Rights Commission with stronger authority, a broader mandate and adequate resources for the effective protection of human rights in the country;
- The government should uphold the highest standards in the promotion and protection of human rights as a member of the UN Human Rights Council including by increasing its cooperation with international human rights mechanisms. In particular, the government should ratify the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to cooperate fully with the UN Special Procedures and Treaty Bodies and to take concrete measure to implement their recommendations;
- Effective action must be taken by the government to effectively and promptly investigate incidents of violence against Muslim communities in Gujarat state, where more that 2,000 people were killed, to prosecute perpetrators, including government and police officials, and to provide reparations for victims and survivors;
- The government must take concrete measures to prevent human rights violations occurring during the appropriation of land for industrial projects. In particular the practice of forced evictions and involuntary resettlement must be stopped and reports of reports of violations must be promptly investigated, and compensation given to those losing their land and security of tenure.

⁴ For further information please see Amnesty International's public statements issued over the last two years regarding violations in the context of economic growth in the country. In particular please read public statements: *India: Avoid forced evictions in Jagatsinghpur, Orissa*, ASA 20/022/2007, 30 November 2007 <http://web.amnesty.org/library/Index/ENGASA200222007?open&of=ENG-IND>
India: Orissa should avoid forced evictions in Jagatsinghpur, instead consult farmers protesting against displacement AI Index: ASA 20/009/2007 (11 April 2007) <http://web.amnesty.org/library/Index/ENGASA200092007?open&of=ENG-IND>
India: Need for effective investigations and prosecutions as political violence continues in West Bengal, AI Index: ASA 20/020/2007, 9 November 2007
India: Kalinga Nagar police firing one year on – Orissa must ensure speedy justice for adivasi victims and address their concerns over displacement, AI Index: ASA 20/001/2007, 2 January 2007 <http://web.amnesty.org/library/Index/ENGASA200012007?open&of=ENG-IND>

Appendix: Amnesty International documents for further reference

- *India The battle against fear and discrimination – the impact of violence against women in Uttar Pradesh and Rajasthan, (AI Index: ASA 20/16/2001)*
- *India Five Years on – the bitter and uphill struggle for justice in Gujarat, (AI Index: ASA 20/007/2007)*
- *India: Words into Action – Recommendations for the Prevention of Torture, (AI Index: ASA 20/003/2001)*
- *India; Justice, the victim – Gujarat state fails to protect women from violence, (AI Index: ASA 20/002/2005)*
- *India: Avoid forced evictions in Jagatsinghpur, Orissa, (AI Index: ASA 20/022/2007)*
- *India: Orissa should avoid forced evictions in Jagatsinghpur, instead consult farmers protesting against displacement, (AI Index: ASA 20/009/2007)*
- *India: Need for effective investigations and prosecutions as political violence continues in West Bengal, (AI Index: ASA 20/020/2007)*
- *India: Kalinga Nagar police firing one year on – Orissa must ensure speedy justice for adivasi victims and address their concerns over displacement, (AI Index: ASA 20/001/2007)*