

Open Letter from human rights NGOs to EP-SAARC India Delegation: A Vital Opportunity to Call for India to Ratify UN Torture Convention

ATTENTION: Members of the European Parliament's SAARC Delegation India Visit, April 2006

13th April, 2006

Honourable Delegates

On the eve of your visit to India, scheduled to take place on 15-21 April 2006, the undersigned organisations call on you to adequately represent the European Union's objectives with regard to the persistent problem of torture in India.

According to the EU's Guidelines on Torture, the Union is committed to eradicating the practice of torture. The Guidelines state that the EU will, *inter alia*, "express the imperative need for all countries to adhere to and comply with the relevant international norms and standards and will consequently emphasise that torture and ill-treatment are forbidden under international law."¹ India signed the United Nations *Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment* (CAT) in 1997, but has failed to ratify the Convention, meaning it has no effect. This Convention is a very important mechanism for combating torture, a practice that is forbidden by international law under any circumstance.

This is not a hypothetical or purely legal problem; it is a frighteningly common practice in the world's largest democracy. Here are some recent reports from several leading monitors of human rights:

Amnesty International

Security legislation was used to facilitate arbitrary arrests, torture and other grave human rights violations, often against political opponents and marginalized groups... Though the 1958 Armed Forces Special Powers Act (AFSPA), which grants special powers to the security forces, is under review, there is concern over its continued enforcement in "disturbed areas", including large parts of the northeast. In Punjab, in response to 2,097 reported cases of human rights violations, the National Human Rights Commission had ordered the state of Punjab to provide compensation in 109 cases concerning people who were in police custody prior to their death. The culture of impunity developed during that period continued to prevail and reports of abuses including torture and ill-treatment persisted.²

Asian Human Rights Commission

The corruption and inefficiency embedded in India's policing system is a constant source of torture, particularly for India's poorer and marginalised sections of society, such as the country's minorities. The discriminatory psychology of caste is inbuilt into the policing system of India as well. Those who are considered to be Dalits and lower castes are among the people who are most brutalised by torture and are denied all of their rights... Torture is not only practiced as a crude form of investigation, but is also used to impart fear upon citizens so as to cater the rich and the influential. Torture in India is widespread, unaccounted for and rarely prosecuted.³

Human Rights Watch

The government continued to use legislation that shields security forces from accountability—Indian military, paramilitary, and police forces have engaged in serious human rights abuses in conflict zones and yet there have been no attempts at transparent

¹ *Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment*, page 4. The guidelines go on to specifically say that the EU will urge third countries to accede to the CAT.
<http://ue.eu.int/uedocs/cmsUpload/TortureGuidelines.pdf>

² *Amnesty International Annual Report 2005* (India section) <http://web.amnesty.org/report2005/ind-summary-eng> While the Commission has pursued further compensation for the families of victims since this report, it is criticised by Amnesty International for steadfastly refusing to probe liability issues, confining itself solely to compensation claims.

³ *Human Rights Day Message, 2005* and accompanying *Open Letter to UN High Commission for Human Rights* (India section) <http://www.ahrchk.net/hrday2005/05message.htm> and <http://www.ahrchk.net/statements/mainfile.php/2005statements/387/>

investigations or prosecutions of those responsible. Police reform was discussed, but torture during interrogation remained the norm.⁴

Observatory for the protection of Human Rights defenders (FIDH-OMCT):

In India the government promulgated amendments to the Unlawful Activities (Prevention) Act 1967, which adopted (...) a definition of terrorist acts [which] remains vague; immunity is maintained for those involved in any operations directed towards combating terrorism, which is all the more alarming [considering] that security laws are often misused by the authorities, notably in the conflict regions of Jammu, Kashmir, Manipur and Assam.⁵

The current Indian government has recently submitted a report to the UN *Committee on the Elimination of Racial Discrimination*, ending an 8-year drought in this regard. This can be seen as a positive sign that the current administration is more willing than previous governments to engage with the UN's mechanisms for the protection and promotion of human rights in general. Yet, the continued refusal of India to allow the visit requested by the UN Special Rapporteur on Torture (pending since 1997) prevents the full consideration of such evolution.

India has announced its candidature to the new UN Human Rights Council, of which the first elections will take place on May 9th. In doing so, the Indian government, like any other candidate country, must abide by paragraphs 8 and 9 of the Resolution 60/251 creating the Human Rights Council, which calls upon candidates to make pledges and commitments to improve their Human rights record and abide by the highest international standards while sitting on the body. This should be seen as an opportunity to ratify the CAT and extend a standing invitation to all UN Special Procedures on Human Rights.

As human rights organisations, we urge you to push for the CAT's ratification and the invitation of UN Special Rapporteurs at every possible occasion with the Indian authorities during the course of your visit. In order to make real progress towards the eradication of the practice, we further request you to call for independent complaints, investigations and prosecution mechanisms to be made available *de facto* to all victims of torture. Special measures should be introduced to enable the most vulnerable communities such as Dalits, Adivasis, women, people below the poverty line and others with limited effective access to criminal justice mechanisms to protect their right to be free from torture. Criminal justice reform is clearly necessary, but there are concerns that the legal reforms underway do not seriously address the issues of custodial torture and impunity.

We expect also that you would naturally enquire with the European Commission's Delegation in New Delhi regarding measures they are taking to pursue India's ratification of this important instrument, since the Guidelines on Torture require that "the human rights component of the political dialogue between the EU and third countries and regional organisations shall, where relevant, include the issue of torture and ill-treatment."⁶ In the light of the serious reports cited above, such an inclusion is certainly 'relevant'.

We wish you a useful and interesting visit to India, and look forward to hearing about your engagements in this regard upon your return to Europe.

Sincerely,

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representative to the EU, International Federation for Human Rights (FIDH)

⁴ *Human Rights Watch World Report 2006* (India section) <http://hrw.org/english/docs/2006/01/18/india12272.htm>

⁵ *Observatory for the protection of Human Rights Defenders (FIDH-OMCT), Annual report 2005*, <http://www.fidh.org/IMG/pdf/fullobs2005a.pdf>

⁶ *Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment*, page 4, <http://ue.eu.int/uedocs/cmsUpload/TortureGuidelines.pdf>

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