

# INDIA

**Accountability, impunity and  
obstacles to access to justice**

*Amnesty International  
Submission to the UN Universal  
Periodic Review, May-June 2012*

**AMNESTY  
INTERNATIONAL**



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## INTRODUCTION

In this submission, prepared for the second UN Universal Periodic Review of India taking place in May-June 2012, Amnesty International comments on the government's implementation of recommendations made to India during its first UPR in 2008, including recommendations concerning co-operation with the UN Special Procedures, signature and ratification of international treaties and children's rights.

With regard to India's human rights framework, Amnesty International notes that India retains laws which are not in line with the fundamental rights enshrined in its Constitution and its obligations under international treaties to which India is a party. Significant obstacles exist in the task of ensuring access to justice, particularly for those from marginalized communities. India's national and state-level human rights commissions continue to operate with restricted mandates and limited powers.

Ongoing and proposed corporate-led extractive projects in several states have met with protests from *Adivasis* and other marginalized communities. The companies and Indian authorities have failed to guarantee the *Adivasis'* right to free, prior and informed consent. People defending the rights of marginalized communities continue to be targeted by both state and non-state actors. In Jammu and Kashmir, the state authorities continue to use the Public Safety Act, 1978 to detain individuals for long periods.

## FOLLOW UP TO THE PREVIOUS REVIEW

At the time of India's first review in 2008, several recommendations were made to India by other States, including on co-operation with the UN Special Procedures,<sup>1</sup> signature and ratification of international treaties,<sup>2</sup> children's rights,<sup>3</sup> developing a national action plan for human rights<sup>4</sup> and maintaining data on caste and related discrimination.<sup>5</sup>

India has taken positive steps with respect to co-operation with the Special Procedures. In September 2011, it extended a standing invitation to the UN Special Procedures. In January 2011, the Special Rapporteur on human rights defenders visited India and the authorities ensured that the Special Rapporteur was able to visit parts of India, including Srinagar in Jammu and Kashmir and Guwahati in Assam.<sup>6</sup> The Special Rapporteur on toxic wastes also visited India in January 2010. While Amnesty International welcomes India's co-operation with the Special Procedures, it notes that nine other Special Procedures are awaiting permission to visit India; the request of the Special Rapporteur on torture, for example, has been pending for 18 years.<sup>7</sup>

In its response, dated 25 August 2008, to recommendations made during the 2008 review, India stated that it was processing ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance.<sup>8</sup> India has since attributed the delay in ratifying the CAT to the drafting of domestic legislation needed to give effect to obligations arising under the Convention.<sup>9</sup> Such legislation would help to address torture and other ill-treatment in places of detention, which remain endemic. Amnesty International is concerned to note, however, that the Prevention of Torture Bill, 2010, proposed by the government, does not comply with obligations arising under the CAT.<sup>10</sup> The Bill was passed by the lower house of parliament in May 2010 and in August the upper house of parliament referred the draft Bill to a select committee; the second draft is now awaiting parliamentary debate.<sup>11</sup> Although the second draft contains strengthened provisions against torture, Amnesty International has concerns about its shortcomings. For example, the second draft does not criminalize the instigation of torture or

cruel, inhuman or degrading treatment, and does not prohibit the use of evidence obtained by torture.<sup>12</sup>

Four years after it signed the International Convention for the Protection of All Persons from Enforced Disappearance, India has yet to ratify it and to draft or amend domestic legislation to make enforced disappearance a crime in law. In instances where cases of enforced disappearance are being pursued in courts, the government continues the practice of not granting the required sanction under domestic legislation to prosecute police or security personnel. Despite ongoing protests in the northeast and in Jammu and Kashmir, India has failed to repeal the Armed Forces (Special Powers) Act, 1958 which grants security forces in specified areas of armed insurgency powers to shoot to kill in situations where they are not necessarily at imminent risk.

Despite India's stated commitment to protecting children from exploitation,<sup>13</sup> domestic legislation regulating child labour is poorly implemented,<sup>14</sup> especially in hazardous industries, and undermines the country's legislative commitment to provide free and compulsory education to all children.<sup>15</sup> The National Commission for Protection of Child Rights, set up in 2007 to deal with children's rights, has limited judicial powers to try crimes relating to child labour.

India also supported a recommendation to develop a national action plan for human rights; however, India's national and state-level commissions have yet to produce such a plan.<sup>16</sup>

Although India stated that extensive disaggregated data, including on castes and tribes, is already available in the public domain,<sup>17</sup> the data does not include issues of systemic discrimination against already marginalized communities such as *Dalits*<sup>18</sup> and *Adivasis* (Indigenous communities).<sup>19</sup> Abuses suffered by these communities are often under-reported, under-analyzed and ineffectively surveyed in official registers, and are not recognized as criminal offences under specific legislation.

Finally, Amnesty International is disappointed that India did not support the recommendation to sign and ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Ratification of the Optional Protocol could help deliver justice to female victims of violence who have not been able to obtain full redress through domestic avenues, including female victims of violence in the 2002 Gujarat riots.

## **NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE**

### **INTERNATIONAL HUMAN RIGHTS STANDARDS AND DOMESTIC LEGISLATION**

India retains laws which are not in line with the fundamental rights enshrined in its Constitution and international standards to which India is a party. The Armed Forces (Special Powers) Act is in clear violation of the right to life guaranteed in the Constitution and in Article 6 of the International Covenant on Civil and Political Rights.<sup>20</sup> In 2007, India voted in favour of the UN Declaration on the Rights of the Indigenous Peoples, which stipulates the right of Indigenous Peoples to free, prior and informed consent.<sup>21</sup> However, India has not enshrined the requirement of free, prior and informed consent in law in its most recent proposal to amend existing legislation on the acquisition of land for industrial projects.<sup>22</sup>

### **IMPLEMENTATION OF LEGISLATION TO PROTECT MARGINALIZED COMMUNITIES**

Since its first review in 2008, India has enacted legislation guaranteeing *Adivasis* and other

traditional forest-dwellers rights over their lands and habitats.<sup>23</sup> While Amnesty International welcomes this legislation, it notes that several states have failed to fully implement it. Amnesty International also welcomes draft legislation, currently pending before parliament, aimed at preventing communal and targeted violence and ensuring access to justice and reparations for victims.<sup>24</sup>

## OBSTACLES IN ACCESS TO JUSTICE

India has national and state-level agencies to investigate human rights violations and prosecute perpetrators, and can appoint commissions of inquiry; however, victims from marginalized communities often find it difficult to access these avenues for justice. This situation is exacerbated by long-standing concerns, including political interference in these mechanisms, persistent corruption and a lack of investigative expertise. Commissions of inquiry ordered into human rights violations and abuses often fail to prevent impunity; their findings are recommendatory and not binding on the executive, and in most cases do not lead to prosecution.

In a number of instances, victims of human rights violations have been unable to obtain redress despite the availability of extensive remedies: it took years for investigations to commence into allegations made by victims of the 2002 violence against religious minorities in Gujarat, in which nearly 2,000 people were killed, and into clashes between armed Maoists and the security forces and the *Salwa Judum* civil militia in Chhattisgarh, which has been ongoing since 2005.

India's Supreme Court continues to monitor investigations and trial proceedings in ten key cases relating to the Gujarat violence. India's national and state-level human rights commissions failed to initiate investigations into allegations of human rights violations and abuses made by hundreds of victims in Chhattisgarh - including abductions, unlawful killings, sexual assault, rape and arson and internal displacement. Human rights defenders have been calling for a judicial panel to be established to record and investigate these allegations, but the government has yet to decide whether to act on this recommendation.

In the Punjab Mass Cremations case in which scores of people were allegedly abducted, extra-judicially executed and secretly cremated during the 1984-94 period of unrest in the state of Punjab, the Indian National Human Rights Commission identified the majority of the victims in the cases of illegal cremations pending before it and ensured the distribution of compensation to their families.<sup>25</sup> However, the Commission failed to use the evidence collected to seek an order from the Supreme Court to authorize further investigations to identify and hold the perpetrators of extra-judicial executions to account.

Recent data disclosed by the National Human Rights Commission revealed that, of the 2,560 deaths reported in clashes with state forces across India during 1993-2008, 1,224 occurred in "faked encounters", indicating that they may have been extra-judicial executions. The Commission has only distributed compensation to the families of 16 victims.

## STATUTORY BODIES FOR HUMAN RIGHTS PROTECTION

India's national and state-level human rights commissions continue to operate with restricted mandates, limited powers and sometimes with limited capacity and resources. State-level human rights commissions have been established in 24 of India's 28 states, but six of them currently have no chairperson and a further three are led by retired state officials, raising questions about their independence from executive structures.

India's human rights commissions are governed by the Protection of Human Rights Act, 1993, amended in 2006. In 2006, Amnesty International submitted its concerns to a committee set up to review the Act, including the lack of powers to investigate violations by the armed forces, temporal restrictions on investigations into human rights abuses and the absence of provisions for legislative debate of annual reports produced by national and state-level commissions.<sup>26</sup>

However, these concerns were not addressed by the 2006 amendments.

## PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

### CORPORATE ACCOUNTABILITY

Ongoing and proposed corporate-led extractive projects in several states have met with protests from *Adivasis* and other marginalized communities who complain that they were misinformed about the harmful effects of these projects, including on their rights to lands and habitats as well as to their rights to health, water and a healthy environment. Research by Amnesty International conducted in Orissa shows that state authorities as well as the companies concerned have failed to guarantee the *Adivasis'* right to free, prior and informed consent to these proposals going ahead.<sup>27</sup> Following their protests, the government rejected corporate plans to expand an alumina refinery in Lanjigarh and mine bauxite in nearby Niyamgiri.<sup>28</sup> The government has subsequently proposed reforms to existing legal frameworks for acquiring community lands for corporate-led projects, including mining projects, and has offered the affected communities monitored rehabilitation and profit-sharing arrangements. It has, however, made no commitment to honouring the *Adivasis'* right to free, prior and informed consent in any future projects.

### JAMMU AND KASHMIR

Despite reports of a steady decrease in armed insurgency in Jammu and Kashmir over the past decade, the state authorities continue to use the Public Safety Act, 1978 to detain individuals for long periods. Research by Amnesty International shows that large numbers of people have been detained without charge or trial for long periods; in many cases, individuals have been subjected to repeated cycles of detention.<sup>29</sup> In October 2011, the state government reportedly approved amendments to the Public Safety Act, including raising the age limit for detainees to 18 years in line with national and international law and reducing the maximum detention period permitted under the Act.

In September 2011, the state human rights commission identified over 2,700 unmarked graves in four districts of north Kashmir. Despite claims by local police that these were the dead bodies of "unidentified militants", the commission identified 574 bodies as those of disappeared locals and recommended that the other bodies be identified with DNA profiling and other forensic techniques. The state authorities have so far failed to act on this recommendation.

### HUMAN RIGHTS DEFENDERS

People defending the rights of marginalized communities continue to be targeted by both state and private agencies - a fact highlighted by the Special Rapporteur on human rights defenders at the end of her visit to India in January 2011.<sup>30</sup> Human rights defenders face threats, harassment and intimidation, and demand has arisen for new legislation to protect them. About 30 human rights defenders have been physically targeted since India's review in 2008; at least eight were killed by non-state actors during 2010 and 2011.

# RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

## Amnesty International calls on the government of India to:

### *Follow up to the previous review:*

- Expedite the passing of domestic legislation to give full effect to obligations arising under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Grant sanctions needed to prosecute police or security personnel accused of enforced disappearance; to repeal the Armed Forces (Special Powers) Act, 1958 and to enact legislation to criminalize enforced disappearance in national law, in line with its obligations under the International Convention for the Protection of All Persons from Enforced Disappearance;
- Consider signature and ratification of ILO Conventions 138 and 182 and to withdraw its reservation to Article 32 of the Convention on the Rights of the Child, in line with its commitment to protect children from exploitation;
- Effectively implement existing legislation on child labour, including addressing conflicting domestic legislation, and strengthen the judicial powers of the National Commission for Protection of Child Rights;
- Produce an action plan for human rights, in line with the recommendation supported during the previous UPR;
- Ensure the availability of disaggregated data on the systemic discrimination against *Dalits* and *Adivasis* and to effectively record and analyze abuses and violations suffered by them, ensuring that such abuses and violations are specifically defined as criminal offences in law;
- Sign and ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- Continue co-operation with the UN Special Procedures, and accept without delay outstanding mission requests from the Special Procedures, in particular the Special Rapporteur on torture, the Special Rapporteur on extra-judicial, arbitrary or summary executions and the Working Group on arbitrary detention.

### *International human rights standards and domestic legislation:*

- Ratify the Optional Protocols to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child;
- Sign and ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Withdraw the reservation to Article 5(a) of the Convention on the Elimination of All Forms of Discrimination against Women, and amend the Special Marriage Act in line with Article 16 of the Convention to give equal rights to property accumulated during marriage, as recommended by the Committee on the Elimination of Discrimination against Women,<sup>31</sup> and as recommended to India during its previous UPR;
- Sign and ratify ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries 1989;
- Amend existing domestic legislation to guarantee the right to free, prior and informed consent for *Adivasis* in line with the UN Declaration on the Rights of Indigenous Peoples before

proceeding with corporate-led projects which threaten their human rights, and ensure that proposals in the Land Acquisition, Rehabilitation and Resettlement Bill 2011 explicitly prohibit forced evictions.

*Implementation of legislation to protect marginalized communities:*

- Ensure that federal legislation to protect marginalized communities, such as the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, is effectively implemented at state level.

*Obstacles in access to justice:*

- Prosecute those responsible for human rights violations and abuses against religious minorities in Gujarat and violations and abuses against *Adivasis* in Chhattisgarh, and to provide victims with access to justice and full reparations;
- Address concerns over the political independence of mechanisms for the investigation of human rights violations, and ensure such mechanisms are politically independent;
- Ensure the prompt, independent and impartial investigation of past and current allegations of human rights abuses and violations and to prosecute those suspected of responsibility in proceedings which meet international fair trial standards.

*Statutory bodies for human rights protection:*

- Amend existing legislation to provide national and state-level human rights commissions with full independence, broader mandates, stronger authority and adequate resources to effectively protect human rights, in line with the Paris Principles.

*Corporate accountability:*

- Investigate ongoing abuses suffered by local communities due to corporate-led projects and to take concrete measures to prevent such abuses;
- Ensure that ongoing and proposed corporate-led projects do not undermine the human rights of marginalized communities to health, water and a healthy environment;
- Respect the right of *Adivasi* communities affected by corporate-led development projects to free, prior and informed consent.

*Jammu and Kashmir:*

- Ensure that the Jammu and Kashmir authorities repeal the Public Safety Act, 1978, to end the practice of administrative detention and to free all detainees unless they are charged with a recognizable offence under the state's ordinary criminal law;
- Ensure that the Jammu and Kashmir authorities raise the age limit of detainees under the Public Safety Act to 18, in line with national and international law, and to reduce the maximum detention period permitted under the Act;
- Ensure that the Jammu and Kashmir authorities act on the recommendation of the state human rights commission to identify bodies discovered in unmarked graves in north Kashmir using DNA profiling and other forensic techniques.

*Human rights defenders:*

- Ensure that human rights defenders are able to carry out their legitimate and peaceful activities without fear of harassment and intimidation.



## ENDNOTES

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review of India, 23 May 2008, A/HRC/8/26, recommendation 86.14 (Latvia and Switzerland) and recommendation 86.15 (Switzerland).

<sup>2</sup> A/HRC/8/26, recommendation 86.1 (United Kingdom France, Mexico, Nigeria, Italy, Switzerland and Sweden), recommendation 86.6 (Brazil), recommendation 86.7 (Brazil, the Netherlands and Sweden) and recommendation 86.12 (Nigeria).

<sup>3</sup> A/HRC/8/26, recommendation 86.7 (Brazil, Netherlands and Sweden) and recommendation 86.9 (the Netherlands).

<sup>4</sup> A/HRC/8/26, recommendation 86.11 (Mexico).

<sup>5</sup> A/HRC/8/26, recommendation 86.5 (Canada, Belgium and Luxembourg).

<sup>6</sup> Amnesty International made a submission to the UN Special Rapporteur on the need to protect human rights defenders who were facing threats, harassment and attacks in the country.

<sup>7</sup> The Working Group on Arbitrary Detentions has made five requests, the Special Rapporteur on Sale of Children three requests and the Special Rapporteur on racism two requests.

<sup>8</sup> See India's response in the Addendum to the Report of the Working Group on the Universal Periodic Review of India: Response of the Government of India to the recommendations made by delegations during the Universal Periodic Review of India, 25 August 2008 (A/HRC/8/26/Add.1).

<sup>9</sup> India has been in the process of ratifying the CAT since 1997.

<sup>10</sup> The first draft confines the definition of torture to the experience of severe physical pain and suffering; it does not address the purposes of torture except that of obtaining a confession; and it contains provisions granting impunity to state officials.

<sup>11</sup> Amnesty International and other national and international organizations made critical submissions to this select committee, see *India: Briefing on the Prevention of Torture Bill, 2010* (Index: ASA 20/030/2010) 14 October 2010.

<sup>12</sup> The draft does not prohibit incommunicado detention or detention in secret places. It does not contain measures to prevent or combat torture; measures on torture or other cruel, inhuman or degrading treatment by private individuals or agencies; or measures to guarantee non-repetition of torture or other cruel, inhuman or degrading treatment. The draft also limits probes into allegations of torture to not more than two years after the alleged torture was committed.

<sup>13</sup> Response of the Government of India to the recommendations made by delegations during the Universal Periodic Review of India, A/HRC/8/26/Add.1.

<sup>14</sup> Child Labour (Protection and Regulation) Act, 1986.

<sup>15</sup> Right of Children to Free and Compulsory Education Act, 2009, passed in accordance with Article 21A of the Constitution which guarantees the right to education.

<sup>16</sup> A/HRC/8/26, recommendation 86.11 (Mexico).

<sup>17</sup> Response of the Government of India to the recommendations made by delegations during the Universal Periodic Review of India, A/HRC/8/26/Add.1.

<sup>18</sup> Referred to as Scheduled Castes as listed in India's Constitution.

<sup>19</sup> Scheduled Tribes as listed in India's Constitution.

<sup>20</sup> The Act grants the armed forces authority to use lethal force against any persons contravening laws or orders "prohibiting the assembly of five or more persons", as well as to destroy property and enter and search premises without warrant and arrest in the "maintenance of public order".

<sup>21</sup> Article 32(2) of the 2007 Declaration concerns the requirement of the state to obtain free, prior and informed consent prior to the approval of any development on Indigenous Peoples' lands. For guidance from the United Nations on the content of the right, see: Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples, UN Permanent Forum on Indigenous Issues (UN Doc: E/C.19/2005/3). See also the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, 15 July 2009 (UN Doc: A/HRC/12/34).

<sup>22</sup> Land Acquisition, Rehabilitation and Resettlement Bill, 2011.

<sup>23</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

<sup>24</sup> Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011.

<sup>25</sup> There were 2,097 cases of illegal cremations pending before the Commission in the Amritsar district alone.

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<sup>26</sup> *India: Concerns with Protection of Human Rights Act* (Index: ASA 20/019/2006) 3 August 2006.

<sup>27</sup> *Don't Mine us out of Existence: Bauxite Mine and Refinery Devastate Lives in India* (Index: ASA 20/001/2010) 9 February 2010. The plans for the bauxite mine and the refinery were proposed respectively by the Orissa state-owned mining corporation and Vedanta Aluminium, a subsidiary of UK-based Vedanta Resources.

<sup>28</sup> *Don't Mine us out of Existence: Bauxite Mine and Refinery Devastate Lives in India*.

<sup>29</sup> *India: A 'lawless law': Detentions under the Jammu and Kashmir Public Safety Act* (Index: ASA 20/001/2011) 21 March 2011.

<sup>30</sup> "India's human rights defenders need better protection, says UN expert", UN News Centre, 21 January 2011, available at: <http://www.un.org/apps/news/story.asp?NewsID=37339&Cr=human+rights&Cr1> (accessed 25 November 2011).

<sup>31</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 21 (13th session, 1994) available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21> (accessed 25 November 2011).

# ANNEX

## AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE<sup>1</sup>

Amnesty International's Reflections on the Outcome of the first UPR of India, 1 June 2008, Index: ASA 20/012/2008.

Don't mine us out of existence: Bauxite mine and refinery devastate lives in India, 9 February 2010, Index: ASA 20/001/2010.

Seek free, prior, informed consent of Dongria Kondh on the Niyamgiri bauxite mine project, 9 August 2010, Index: ASA 20/019/2010.

Generalisations, Omissions, Assumptions: The failings of Vedanta's Environmental Impact Assessments for its Bauxite Mine and Alumina Refinery in Orissa, 24 July 2011, Index: ASA 20/037/2011.

Briefing on the Prevention of Torture Bill, 2010, 14 October 2010, Index: ASA 20/030/2010.

A lawless law: Detentions under the Jammu and Kashmir Public Safety Act, 10 March 2011, Index: ASA 20/001/2011.

India: Need for urgent action as police report confirms existence of unmarked graves of disappeared persons in Jammu and Kashmir, 22 August 2011, Index: ASA 20/043/2011.

An open letter from Amnesty International to Members of the Jammu and Kashmir Legislative Assembly, 26 September 2011, Index: ASA 20/046/2011.

India: Authorities must respect the rights to freedom of expression and of peaceful assembly, 18 August 2011, Index: ASA 20/042/2011.

India urged to implement court ban of anti-Maoist militias, 7 July 2011, Index: PRE 01/340/2011.

India: Chhattisgarh authorities must immediately release witness to extrajudicial executions, 5 January 2010, Index: ASA 20/036/2011.

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<sup>1</sup> All of these documents are available on Amnesty International's website:  
<http://www.amnesty.org/en/region/india>.