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India: Serious concerns over fair trial of Human Rights Defender Dr. Binayak Sen

Delay in the trial process of jailed and award-winning human rights defender Dr. Binayak Sen followed by arrest of T.G. Ajay, also a human rights defender who attended his trial heightens serious doubts about Dr. Sen getting a fair trial at a Raipur district court in India, Amnesty International said today.

Detained since 14 May 2007 Dr. Sen is facing numerous charges including under the Chhattisgarh State Public Security Act, 2005 (CSPSA), which criminalises “unlawful activities” and being a member of banned “terrorist organizations”. If convicted, he could be sentenced to life imprisonment.

Dr. Sen is a pioneer in providing accessible health care for *adivasis* (indigenous communities) and mine workers in remote villages of Chhattisgarh. He is recipient of several awards in recognition of his work for more than two decades. As vice-president of India’s leading human rights organization, the People’s Union for Civil Liberties (PUCL), Dr. Sen had highlighted unlawful killings and other human rights abuses in the armed confrontations in Chhattisgarh between the security forces and the *Salwa Judum*, a private militia widely held to be supported by the state authorities, on the one hand, and armed guerrillas of the banned Communist Party of India (Maoist) on the other.

Amnesty International called for Dr. Sen’s release soon after his arrest unless he was charged with a recognizably criminal offence.¹ There are sufficient reasons to believe that the charges against him appear to be politically motivated. There has been no investigation so far into the allegations of unlawful killings of *adivasis* by *Salwa Judum* and the state police in Santoshpur which he had highlighted prior to his arrest. The authorities held him for seven months without proper filing of charges; in the meantime, he was denied bail; and was kept in solitary confinement for three weeks in March-April 2008; many of the charges against him stem from laws that contravene international standards. His trial, which commenced on 30 April, is now adjourned to 1 July.

¹ India: Chattisgarh government detains human rights defender, refuses to arrest police officials suspected of involvement in unlawful killings of *adivasis*, Public Statement, AI Index: ASA 20/013/2007, 24 May 2007

Dr. Sen's wife Dr. Ilina Sen, who met him last week in the jail, informed Amnesty International that he appeared weak and continued to suffer from severe gout which posed difficulties for him to take care of his daily needs. He also suffered from frequent micturation indicative of a prostrate problem. Despite appeals to organize proper medical treatment as per jail rules, no concrete action has been forthcoming from the trial court.

Dr. Sen has been charged under Sections 8(1), 8(2) and 8(5) of the CSPA, sections 10(a)(i), 20, 21, 38 and 39 of the Unlawful activities (Prevention) Act (UAPA), 1967 and sections 120(b), 121(a) and 124(a) of the Indian Penal Code. Both the CSPA and the UAPA contain vague and sweeping definitions of "unlawful activities" for which organizations may be rendered "unlawful", such as "uttering words... which propounds the disobedience" of "established law and its institutions". This enables the government to do arbitrarily arrest and detain individuals, as well as seek their punishment, on grounds that may not be clear to them, in violation of the principle of certainty in criminal law, reflected in Article 15 of the International Covenant on Civil and Political Rights, to which India is a state party. This has resulted in restricting peaceful activities by civil society and individuals in violation of human rights such as freedom of expression and assembly, enshrined in India's Constitution and international human rights law.

Dr. Sen has been charged with acting as a "courier" for Narayan Sanyal CPI (Maoist) leader, carrying his letters out of jail in order to aid Maoist activities and that he helped raise funds for the Maoists and set up bank accounts for them. The primary evidence furnished in the case so far against Dr. Sen appears to be rather thin. His visits to the prison appear to have been limited to his professional interventions as a doctor visiting Sanyal for medical care facilitated by the jail authorities. Key prosecution evidence meant to contradict this is in the form of Sanyal's letters found in the person of an arrested Maoist, Piyush Guha. However, Guha now maintains that the police had tortured him and that these letters have nothing to do with Dr. Sen. International law strictly prohibits the admission as evidence, in any proceedings, of statements obtained by torture. The police so far have not produced any evidence from the material including a computer hard disk they had seized from Dr. Sen's residence and clinic, seriously affecting the latter's functioning. The police had yet to return the computer disk ten months after getting it examined by the Hyderabad-based Forensic Science Laboratory, giving rise to doubts that it was being tampered to manufacture evidence.

Before and during the trial proceedings, the prosecution and the police were attempting to intimidate Dr. Ilina Sen who is not an accused in the case. The prosecution had attempted to portray her as a "Maoist sympathiser". The investigating officials had addressed the media alleging that she too was involved in helping the Maoists. On every occasion when Dr. Sen was brought to the court,

there was massive police presence leading to an atmosphere of fear and intimidation.

Before the trial commenced on 30 April, the presiding judge announced that only one human rights activist could attend the hearing at a time, but he later relented, making the trial public. On 6 May, the state police detained T. G. Ajay, a human rights defender who attended Dr. Sen's trial, also under the CSPA. Ajay had made a film on Dr. Sen's work and arrest. Following this, Amnesty International demanded Ajay's release unless he was charged with a recognizably criminal offence.² PUCL Chhattisgarh's president Rajendra Sail informed Amnesty International that the police continue to harass and intimidate human rights activists in the state. The activists are now on a fast in Raipur in protest against the continued incarceration of Dr. Sen and Ajay.

Amnesty International calls upon the authorities of India and the state of Chhattisgarh to ensure that

- Dr. Sen and Ajay receive prompt and fair trial in accordance with international standards of fairness
- Dr. Sen has access to appropriate medical care
- human rights defenders in Chhattisgarh are not subject to harassment or intimidation and enjoy all the rights enshrined in international law and
- take steps towards either repealing emergency legislation, including the CSPA and UAPA, or else reform it so as to bring them into line with the requirements of international human rights law and standards.

In April India was among the first group of countries to undergo the Universal Periodic Review of the UN Human Rights Council of which India is a member. In the course of the three-hour dialogue with other UN Member States, India assured the UPR Working Group that its judiciary was "the watchdog of human rights". Amnesty International urges the Government of India to put action behind those words and ensure the full and effective protection of Dr. Sen's and Ajay's human rights including to a trial that meets the highest standards of fairness.

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² *India: Concern over the arrest of filmmaker and human rights defender T.G. Ajay in Chhattisgarh*, Public Statement, AI Index: ASA 20/013/2007, 24 May 2007