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India must deliver on its repeated commitments to the Human Rights Council

On 24 May 2012, India's human rights record came under renewed international scrutiny during its second Universal Periodic Review (UPR) at the UN Human Rights Council.¹ Amnesty International welcomes the recommendations made to India by the reviewing states, many of which reflect concerns raised previously by the organization.²

Amnesty International is disappointed, however, that despite India's assertion that it sees the UPR mechanism as one of "constructive engagement," the government did not immediately accept any of the recommendations made, some of which were put forward in 2008 during India's first UPR. Amnesty International urges India to demonstrate by September 2012, a genuine resolve to deliver on its outstanding human rights commitments and the UPR recommendations, when the report on India's second UPR is formally adopted at the 21st session of the Human Rights Council.

India must strengthen national safeguards against torture. During the review, India received no less than 17 recommendations to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).³ Having signed the CAT 15 years ago, India should now ratify without further delay both the CAT and its Optional Protocol. India stated, as it did during its first review in 2008, that it is in the process of ratifying the CAT, and attributed the delay to the drafting of the domestic Prevention of Torture Bill, which has been pending before Parliament since May 2010.

The Prevention of Torture Bill falls short of the requirements of the CAT in several respects, as previously detailed by Amnesty International, for example with regard to the definition of torture and the inclusion of a statute of limitations.⁴ During the review, India asserted that its existing laws provide adequate protection against torture. Amnesty International strongly contests this assertion.

Amnesty International urges India to act on recommendations to ratify the International Convention for the Protection of All Persons from Enforced Disappearance,⁵ which it signed five years ago.

India should also accept the recommendations⁶ that it sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, establish an official moratorium on the use of the death penalty, or abolish the death penalty. No executions have been carried out in India since 2004, but recent rejections of several mercy petitions of prisoners currently on death row have increased fears that executions may resume. This would constitute a major setback to the country's alignment with the global trend away from the use of the death penalty.⁷

Amnesty International welcomes the recommendations made that India repeal or review the Armed Forces Special Powers Act 1958 (AFSPA),⁸ as also recommended by a government-appointed panel six years ago following widespread demands in north-eastern states and Jammu and Kashmir. During the UPR, the Indian delegation failed to adequately address impunity under the AFSPA, 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. The Indian Supreme Court recently ruled that security personnel could not invoke the AFSPA to avoid prosecutions for alleged human rights violations.⁹ However, under the AFSPA, prosecutions cannot take place without approval by India's federal government.

The Indian delegation did not respond to an advance question from Norway on whether India would consider repeal of the Jammu and Kashmir Public Safety Act, 1978 (PSA),¹⁰ under which hundreds of persons suspected of involvement in protests, political leaders and activists remain in detention without charge or trial in Jammu and Kashmir. Amendments made to the PSA in 2012 have still not brought detention practices in Jammu and Kashmir fully into line with India's human rights obligations under international law.¹¹

Amnesty International therefore reiterates its call on the Government of India to ensure that the Jammu and Kashmir authorities repeal the PSA, end the practice of administrative detention in the state, and free all detainees unless they are charged with a recognizable offence under the state's ordinary criminal law.

In September 2011, India issued a standing invitation to the UN Special Procedures, and its facilitation of recent visits by the Special Rapporteurs on human rights defenders, and extrajudicial, summary or arbitrary executions, is welcome. As recommended during the UPR,¹² Amnesty International urges India without further delay, to address the backlog of outstanding mission requests from other Special Procedures, and in particular to facilitate visits by the Special Rapporteur on torture, whose request to visit has been pending since 1993, and the Working Group on Arbitrary Detention. Several states called on India to implement the recommendations of the Special Rapporteur on human rights defenders following her visit in January 2011 and to ensure that human rights defenders are able to carry out their legitimate and peaceful activities without fear of harassment and intimidation.¹³

Amnesty International calls on India to demonstrate its "constructive engagement" to the UPR at the Human Rights Council's 21st Session in September, and act swiftly to give effect to these recommendations.

¹ Further information on the second UPR of India can be found at:

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/INSession13.aspx>

² Amnesty International, *India: Accountability, impunity and obstacles to access to justice*, Submission to the UN Universal Periodic Review, (Index ASA/20/048/2011), November 2011: <http://www.amnesty.org/en/library/info/ASA20/048/2011/en>

³ Draft report of the Working Group on the Universal Periodic Review, United Nations, A/HRC/WG.6/13/L.8. Recommendations 138.1 (Spain), 138.3 (United Kingdom), 138.4 (United States of America), 138.5 (Iraq), 138.7 (Italy), 138.8 (Maldives), 138.10 (Uruguay), 138.12 (Australia), 138.13 (Austria), 138.15 (Botswana), 138.16 (Brazil), 138.17 (Czech Republic), 138.12 (France), 138.28 (Sweden), 138.29 (Indonesia), 138.32 (Switzerland), 138.36 (Timor-Leste).

⁴ Amnesty International, *India: Briefing on the Prevention of Torture Bill* (Index: ASA 20/030/2010), October 2000, <http://www.amnesty.org/en/library/info/ASA20/030/2010/en>

⁵ Draft report of the Working Group on the Universal Periodic Review, United Nations, A/HRC/WG.6/13/L.8. Recommendations 138.1 (Spain), 138.9 (Uruguay), 138.11 (Argentina), 138.13 (Austria), 138.18 (Portugal), 138.20 (Chile), 138.24 (France).

⁶ Draft report of the Working Group on the Universal Periodic Review, United Nations, A/HRC/WG.6/13/L.8. Recommendations 138.91 (Ireland), 138.93 (Spain), 138.94 (Chile)

138.95, (France), 138.96 (Belgium), 138.97 (Italy), 138.101 (Portugal), 138.98 (Switzerland), 138.99 (Argentina), 138.100 (Norway).

⁷ Amnesty International, *India: Balwant Singh reprieve not enough* (Index: PRE01/163/2012), March 2012: <https://www.amnesty.org/en/for-media/press-releases/india-balwant-singh-reprieve-not-enough-2012-03-28>

⁸ Draft report of the Working Group on the Universal Periodic Review, United Nations, A/HRC/WG.6/13/L.8. Recommendations 138.35 (Switzerland), 138.44 (Slovakia), 138.45 (France); and Advance question submitted by Norway, *Advance Questions to India – Add.1*, United Nations, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/INSession13.aspx>

⁹ Amnesty International, *India: Security forces cannot claim immunity under AFSPA, must face trial for violations*, February 2012, <https://www.amnesty.org/en/for-media/press-releases/india-security-forces-cannot-claim-immunity-under-afspa-must-face-trial-vio>

¹⁰ *Advance Questions to India – Add.1*, United Nations, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/INSession13.aspx>

¹¹ Amnesty International, *India: Amendments not enough - Repeal the Jammu and Kashmir Public Safety Act*, (Index: ASA 20/019/2012), 2 May 2012. <http://www.amnesty.org/en/library/info/ASA20/019/2012/en>

¹² Draft report of the Working Group on the Universal Periodic Review, United Nations, A/HRC/WG.6/13/L.8. Recommendations 138.32 (Switzerland), 138.66 (Belgium), 138.69 (Hungary), 138.109 (Belarus).

¹³ Draft report of the Working Group on the Universal Periodic Review, United Nations, A/HRC/WG.6/13/L.8. Recommendations 138.43 (Czech Republic), 138.67 (Spain), 138.121 (Iraq), 138.68 (Norway).