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India: Government should respond to concerns expressed by Human Rights Committee

The Government of India should act now on the concerns expressed by the Human Rights Committee about its implementation of the International Covenant on Civil and Political Rights (ICCPR), Amnesty International said today.

During hearings held on 24 and 25 July members of the Committee questioned the Indian delegation -- led by Mr Ashok Desai, Attorney General of India -- on implementing the ICCPR in India.

“The hearing demonstrated the extent to which the ICCPR is still to become a reality for the people of India,” Amnesty International said. “We are calling on the government to implement the minimum protections afforded by the Covenant as a matter of priority -- as recommended by the Committee, all the provisions of the ICCPR should be incorporated into domestic law.”

While praising the role which the National Human Rights Commission (NHRC) has been playing in India since its establishment in 1993 the Committee recommended the removal of restrictions on the NHRC which prevent it from investigating directly complaints of human rights violations against the security forces, and from only hearing complaints brought to its attention within a one-year time limit.

“The NHRC will be working with one hand tied behind its back unless its powers are extended,” Amnesty International said.

Questions were raised by the Committee about the need for the sanction of the central government for prosecution of security forces. The Committee noted that “*this contributes to a climate of impunity and deprives people of remedies to which they may be entitled*”, and recommended the requirement of governmental sanction be abolished, and that judicial enquiries or Commissions of Enquiry be empowered to direct prosecution of security and armed forces personnel

“The Committee highlighted the climate of impunity created by the disregard of court orders, in particular for *habeas corpus*, by the police and security forces. This points to the extent to which protection of human rights remains an illusion for many within India.”

Amnesty International welcomed the government’s commitment to ratify the Convention Against Torture. “But as the Committee hearing shows, ratification is one thing and implementation another. Treaty commitments require an ongoing overhaul of law and practice,” the organization said.

Background

Many members of the Committee focused on the continuing use of the Armed Forces (Special Powers) Act in states in the northeast of India and in Jammu and Kashmir. In response, the Government of India argued that the powers given to the armed forces under this act were equivalent to the powers granted to the police under the general criminal law. However, the delegation stated that judicial review of this Act, pending in the Supreme Court of India since 1980, would be heard in August 1997. The Committee expressed its hope that provisions of the Act would be examined for compatibility with the Covenant.

The Committee expressed its concern at the incidence of custodial violence and recommended:

- the early enactment of legislation for mandatory judicial inquiry into cases of disappearance and death, ill-treatment or rape in police custody;
- the adoption of special measures to prevent the occurrence of rape of women in custody;
- the mandatory notification of relatives of detainees without delay;
- the guarantee of the right of detainees to legal advice and assistance and to have a medical examination

It also expressed its concern at the failure of the Indian Government to receive the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In its concluding observations, the Committee also expressed concern at the widespread use of preventive detention throughout India, notably the National Security Act and the Jammu and Kashmir Public Safety Act. Article 22 of the Constitution of India, which allows for preventive detention was closely examined in the light of rights set out in the Covenant -- not to be subjected to arbitrary arrest or detention and equality before the law.

During the hearing, the Committee had welcomed India's commitment to international human rights. Members asked the government to strengthen this commitment by widely disseminating its Concluding Observations, and by ratifying the First Optional Protocol to the Covenant which would allow individual complaints of violations of the Covenant to be heard by the Human Rights Committee.

Also under scrutiny by the Committee were attacks on human rights defenders; inequalities faced by women; protections for children against prostitution and child labour. The Committee noted that members of the Scheduled Castes and Scheduled Tribes, the "*so-called backward classes*" and ethnic and national minorities "*continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the Covenant*".

Responding to questions by the Committee about the Government of India's recent announcement that it would sign the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment (CAT), during the hearing, the Indian delegation stated that enabling legislation would have to be passed before CAT could be ratified and brought into force.

Prior to the proceedings, Amnesty International submitted a detailed 83-page analysis of the implementation of the Covenant in India; other international and many national non-governmental organisations also made submission to the Committee.

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To arrange an interview or to receive further details of the proceedings of the Human Rights Committee hearing on India, please call the South Asia Team at the International Secretariat on +44 171 413 5648/5651