

India: Briefing on the Prevention of Torture Bill

“We were all so excited around the world about the huge success of 'Slumdog Millionaire' but, yet... There was no public uproar about the fact that this film opens with a scene of astonishing police brutality where the Indian policeman is busy torturing the hero including with electric shocks to get him to confess the cheating in a quiz show. What was startling with that, it seems to me, was that the mindset of our public has become such that we are immune to it. We took these scenes for granted. No one said how outrageous it is that our country should be shown in this way because, in fact, the assumption appears to be, well, this happens all the time.

... the next time if somebody wants to make an Oscar-winning movie showing an Indian policeman behaving in that way, we can surely hope that they will also show him being punished and sentenced for his actions. That is indeed what India should stand for and be seen as standing for around the world.”

Dr. Shashi Tharoor, MP for Thiruvananthapuram, during the debate on the Prevention of Torture Bill, 2010, on 6 May 2010¹

I Introduction

This briefing analyses the Prevention of Torture Bill, 2010,² passed by the Lower House (Lok Sabha) of India's Parliament on 6 May 2010, and currently before the Upper House (Rajya Sabha), in view of state party obligations under the UN Convention against Torture and Other Cruel, Inhuman Or Degrading Treatment Or Punishment (UN Convention against Torture).³ India signed this Convention in 1997, but has as yet to ratify it. However, the Bill explicitly cites the need to comply with the Convention as the reason for its drafting,⁴ hence the reliance of this briefing on the Convention as a guide and litmus test for the analysis. This briefing also, therefore, has a wider focus, to cover other obligations of state parties to the Convention in law, policy and practice.

Amnesty International welcomes the efforts that the Indian Government and Parliament have made to ensure that domestic legislation is compatible with the Convention. However, Amnesty International is concerned that the Prevention of Torture Bill falls short of the requirement of the Convention in several aspects.

This briefing provides an overview of torture in India (in Part II). Part III contains an analysis of the Bill's shortcomings and recommendations on how to redress them. Amnesty International uses this opportunity to further remind the Indian authorities that the UN Convention against Torture obliges states parties to take a variety of

¹ The official transcript of the debate is available on the website of the Indian Parliament at <http://164.100.47.132/debatetext/15/IV/0605.pdf> (last accessed 5 October 2010).

² Bill No. 58 of 2010.

³ Adopted by UN General Assembly resolution 39/46, 10 December 1984, entered into force on 26 June 1987.

⁴ See the Bill's Preamble, as well as the “Statement of Objects and Reasons” attached to it.

other steps, beyond the criminalization of torture. These include both legislative and other measures, and are outlined in Part IV.

Based on its decades of experience in combating torture, Amnesty International has developed a 12-point Programme for the Prevention of Torture and Other Cruel, Inhuman Or Degrading Treatment Or Punishment by Agents of the State, which is provided in an Annex.

II Background: torture in India

Research conducted by Amnesty International, as well as by national and international, official, NGO and academic bodies and individuals have all painted a worrying picture of the prevalence of torture and other ill-treatment throughout India. The disadvantaged and marginalized, including the poor, Dalits and Adivasis, women, and suspected members of armed opposition groups in “disturbed areas” tend to bear the brunt of torture and other ill-treatment committed by both official and non-state-actors.⁵

Torture in police custody is endemic in India and involves a range of practices including position abuse; shackling; beating with canes, batons, iron rods and rubber pipes; the pouring of water to disrupt sleep; the administration of electric shocks to the body including the genitals.

In 1996 the Supreme Court gave specific guidelines to the authorities safeguarding detainees’ rights in all cases of arrest or detention;⁶ the safeguards listed in this judgement stipulate that a person taken into custody should have his/her detention recorded, have prompt access to a lawyer or impartial medical examination upon arrival at the place of detention or at the time of release, and should be produced before a court of law within 24 hours of his/her arrest or detention. Although some of the guidelines were subsequently incorporated in the Code of Criminal Procedure, 1973 (CrPC), they are seldom implemented in practice. Also, the lack of effective systems to independently monitor places of arrests and detention facilitates torture.

In general, the possibility of torture of persons during the first 24 hours of their arrest or detention or while detained illegally and secretly continues to be high. A large number of incidents of torture and custodial deaths are a direct result of police interrogation which often involves attempts to forcibly extract a confession relating to theft, cheating or other offences from arrested or detained persons. Suspects belonging to marginalized communities are particularly vulnerable to this kind of torture as they often lack immediate access to legal assistance.

⁵ See Amnesty International, *Authorities should investigate torture, sexual assault and illegal detention of Adivasis in Chhattisgarh*, AI Index: ASA 20/026/2010, 14 September 2010; Amnesty International, *Authorities must stop torture and arbitrary arrests of peace activists and human rights defenders in Chhattisgarh*, AI index: ASA 20/023/2009, 23 December 2009; Amnesty International, *Four Indigenous rights campaigners in Orissa fear torture and other ill-treatment*, AI Index: ASA 20/016/2008, 18 July 2008. Also, Asian Centre for Human Rights, *Torture in India*, New Delhi, April 2010, available at <http://www.achrweb.org/reports/india/torture2010.pdf> (last accessed 5 October 2010).

⁶ *D.K. Basu v State of West Bengal* (AIR 1997 SC 610), available at http://www.alrc.net/doc/mainfile.php/cl_india/143/ (last accessed 5 October 2010).

According to official reports, a total of 127 persons died in police custody in India during 2008-2009, 188 during 2007-2008⁷ and 119 during 2006-2007.⁸ The actual number of deaths in police custody during these years could be higher since several states failed to report such deaths. Although police routinely cite “suicide” as a cause of deaths in custody, they are widely believed to be a result of torture. Also, under guidelines issued by the National Human Rights Commission, only those cases where death occurs in police custody need to be reported (to India’s National or State-level human rights commissions); there is no mandatory need to record or report instances of torture which do not result in death.

In addition to torture in police custody, instances of torture are commonly reported from Jammu and Kashmir and parts of north-eastern India where suspects are often illegally detained and interrogated at ‘Joint Interrogation Centres’ and other similar secret detention facilities.

The practice of torture is also believed to be widespread in prisons. The National Human Rights Commission registered 1,596 complaints of torture of prisoners in 2008-2009, 2,481 in 2007-2008 and 1,996 in 2006-2007.⁹ The numbers of deaths due to torture in judicial custody is not available although prison authorities often record deaths due to “unnatural” causes.¹⁰

Caste-based discrimination, which is widely prevalent in Indian society, is the basis on which Dalits, in particular peasants, farm labourers and urban workers, often suffer torturous violence at the hands of non-Dalit upper castes.¹¹ Adivasis (Indigenous communities), in particular members of communities whose traditional lands and habitats fall in protected forests, undergo violence at the hands of forest department and police personnel. Women – particularly poor, Dalit or Adivasi – are frequently targeted for rape and other forms of sexual assault.

Torture and impunity

Law enforcement personnel continue to enjoy virtual immunity from prosecution for human rights violations including custodial torture as Section 197 of the CrPC requires approval of the State or Central Government before prosecution of any public servant “accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty”. Such approval is rarely granted by the Government.

⁷ Minister of State for Home Affairs Ajay Maken’s reply to a question in the Indian Parliament on 1 December 2009.

⁸ Annual Reports of India’s National Human Rights Commission (2001-02 to 2006-07), available at <http://www.nhrc.nic.in/> (last accessed 4 October 2010).

⁹ Minister of State for Home Affairs Shakeel Ahmad’s reply to a question in the Indian Parliament on 16 December 2008.

¹⁰ Of the 1,424 prisoners who died in prison in 2006, 80 were listed as death due to “unnatural” causes, National Crime Records Bureau, “Prison Statistics India 2006”, Chapter 9, available at <http://ncrb.nic.in/PSI2006/prison2006.htm> (last accessed 5 October 2010).

¹¹ The torture and massacre of four members of a Dalit family, including the sexual assault and rape of two women, at Khairlanji in Maharashtra in September 2006, which was later investigated by the Central Bureau of Investigation, resulted in a debate over the extent of such violations. See Anand Teltumbde, “Khairlanji and its aftermath: Exploding some myths”, *Economic and Political Weekly*, 24 March 2007.

Various judgments by Indian courts have clarified that human rights violations deliberately committed by public officials cannot be construed as coming under the definition of “official duty” and thus no prior sanction is needed to prosecute them.¹² However prosecutions for torture and other human rights violations remain sporadic and rare.

In “disturbed areas” in Jammu and Kashmir and the north-eastern states where the Armed Forces Special Powers Act is in operation, Armed Forces personnel enjoy further immunity under Section 6 which prohibits prosecutions of members of the security forces unless approved by the Union Government. There is virtually no accountability for violations in such areas as the National and State-level Human Rights Commissions have a limited mandate with respect to complaints against members of the Armed Forces¹³ and State authorities are reported to not take complaints of torture seriously.¹⁴

III The Prevention of Torture Bill – problems and recommended solutions

In this section the text of the Prevention of Torture Bill (the Bill) is analysed, its failures to meet the standards set by the UN Convention against Torture pointed out and recommendations on ways to correct these failures are made.

This section is confined to the contents of the current Bill; it does not address the wider requirements of the UN Convention against Torture, which are the subject of Section IV.

1. Definition of torture

The offence of torture is essentially defined in sections 3 and 4 of the Bill. Amnesty International is concerned of the following discrepancies between this definition and that given in Article 1(1) of the UN Convention against Torture:

- i. **Severity of pain or suffering:** the Bill provides that torture occurs when a person causes “(i) grievous hurt to any person; or (ii) danger to life, limb or health (whether mental or physical) of any person” (Sec. 3). Sub-section (i) in

¹² For instance *Choudhury Parveen Sultana v. State of West Bengal* (2009 (1) SCALE 374). In this judgment, Justice A. Kabir and M. Katju of the Supreme Court set aside the Kolkata High Court order denying permission to prosecute a Deputy Police Superintendent on charges of threatening a resident of Berhampore town to withdraw his complaint against five police who had attacked him. The police official was supposed to investigate the attack. The Supreme Court held that no prior permission is required to prosecute accused public servants stating that “All acts done by a public servant in purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 CrPC [Criminal Procedure Code].”

¹³ The commissions, which otherwise have the powers of a civil court and can issue directions to Governments or direct payment of compensation, can on receipt of a complaint against members of the Armed Forces, only seek a report from the Central Government. After the receipt of the Government report “it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.” It is up to the Central Government whether or not to accept the recommendations (Sec. 19 of the Human Rights Protection Act, 1993).

¹⁴ E.g. documentation by Association of Parents of Disappeared Persons (APDP) in Jammu and Kashmir.

effect it relies on a provision in India's Penal Code (IPC) to determine the severity required. "Grievous hurt" is defined in Article 320 of the IPC, which contains an exhaustive list, including emasculation, severing or impairment of limbs, breaking bones or teeth.¹⁵

- **Amnesty International's concern:** the severity level required by Article 320 of the IPC and Section 3(ii) of the proposed law is much higher than that required in Article 1(1) of the Convention, a fact clearly established by the jurisprudence of the UN Committee against Torture and other international human rights monitoring bodies.¹⁶
 - **Amnesty International's recommendation:** retain the language of Article 1(1), namely "severe pain or suffering, whether physical or mental" and instruct the courts to interpret this phrase in line with international jurisprudence.
- ii. **Suffering confined to the physical:** Section 3(i), which as noted follows Article 320 of the IPC, refers to physical "hurt" only, while Section 3(ii) refers only obliquely to "danger to health (whether *mental* or physical)"; [emphasis added]
- **Amnesty International's concern:** since mental forms of pain and suffering are as frequently inflicted by torturers – including in India - as are physical forms, and the two are often inseparable, Amnesty International is concerned that allocating a secondary, almost invisible place to mental pain or suffering would make it difficult for torture victims and survivors of this type of torture to attain justice;
 - **Amnesty International's recommendation:** retain parity between physical and mental types of torture, for instance by incorporating the Article 1(1) language, as above.
- iii. **Purposes:** the Bill provides for the following purposes: "to obtain from him or a third person such information or a confession" (Sec. 3) and "extorting from him or from any other person interested in him, any confession or any information which may lead to the detection of an offence or misconduct" (Sec. 4(a)).
- **Amnesty International's concern:** other purposes listed (by way of illustration) in the Article 1(1) definition are missing, namely "punishing

¹⁵ This is the full list: "Emasculation... Permanent privation of the sight of either eye... Permanent privation of the hearing of either ear... Privation of any member or joint... Destruction or permanent impairing of the powers of any member or joint... Permanent disfiguration of the head or face... Fracture or dislocation of a bone or tooth," and "Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits." See The Indian Penal Code, 1860, Article 320.

¹⁶ For a discussion and illustrations of this point see for instance Yuval Ginbar, *Why Not Torture Terrorists?* (Oxford: OUP, 2010), pp. 287-303.

him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person”.

- **Amnesty International’s recommendation:** add the missing purposes, with due regard to gender equality (that is, replacing “him” and “he” in the Article 1(1) text by “him or her” and “he or she”, respectively).
- iv. **Discrimination:** the Bill provides, in addition to the purposes above, that torture is inflicted “on the ground of his [the victim’s] religion, race, place of birth, residence, language, caste or community or any other ground whatsoever” (Sec. 4(b));
- **Amnesty International’s concerns:** (a) the requirements of purpose and discrimination are conjunctive (cumulative, “and”) in the Bill, unlike in Article 1(1), where they are disjunctive (alternate, “or”); (b) while the language in effect covers all types of discrimination, Amnesty International believes the omission of gender as explicit grounds for inflicting torture may send the wrong message, where as noted women and girls are often targeted for torture for being who they are;
 - **Amnesty International’s recommendation:** (a) replace the current conjunctive relation between the purpose and discrimination requirements with a disjunctive one (“or”); (b) explicitly refer to gender discrimination as additional grounds for inflicting torture. Alternatively replace the provision with the general phrase of Article 1(1): “...for any reason based on discrimination of any kind.”

2. Statute of Limitations:

The Bill provides that courts may only take cognizance of a complaint which is made “within six months from the date on which the offence is alleged to have been committed.” (Sec. 5);

- **Amnesty International’s concern:** as the Committee against Torture has stated unequivocally, “No statute of limitations should apply to torture or any other international crime”;¹⁷
- **Amnesty International’s recommendation:** remove any provisions for statute of limitations, and replace them by an explicit provision that crimes under the Bill would not be subject to any such limitations.

3. Conditioning prosecution of officials on State’s assent:

Under the Bill, officials may only be prosecuted for torture and related offences if the State or Central Government employing him or her “sanctions” such prosecution (Sec. 6);

¹⁷ UN Committee against Torture, Summary account of the results of the proceedings concerning the inquiry on Serbia and Montenegro, in Report of the Committee against Torture, UN Doc. A/59/44 (2003-4), para. 213(h). See similarly the Committee’s conclusions and recommendations on numerous occasions, for instance on Chile, *ibid.*, para. 57(f); Tajikistan, UN Doc. A/62/44 (2006-7), para. 38(18)(b), Denmark, *ibid.*, para. 39(11), Italy, *ibid.*, para. 40(19); Latvia, UN Doc. A/63/44 (2007-8), 34(17), Algeria, *ibid.*, para. 38(11).

- **Amnesty International’s concern:** as already shown, similar provisions in India’s Criminal Procedure Code and the Armed Forces Special Powers Act have provided almost blanket impunity for perpetrators of torture and other ill-treatment who are members of the police and Armed Forces, respectively.¹⁸ There cannot be effective anti-torture legislation when it contains huge loopholes for perpetrators to enjoy impunity.
- **Amnesty International’s recommendation:** remove all provisions for impunity, and all provisions making prosecution of suspected perpetrators of torture or other ill-treatment conditional on anything other than the outcome of a “prompt and impartial investigation”, as provided in Article 12 of the UN Convention against Torture, both in the Bill and in other legislation. Ensure that all persons against whom there is *prima facie* evidence of involvement in torture are prosecuted – invariably, and without exception.

IV Obligations under the Convention beyond the criminalization of torture

In what follows, Amnesty International sets out states parties’ obligations under the UN Convention against Torture, to take measures beyond the scope of the Prevention or Torture Bill, both in terms of legislation and non-legislative measures. Amnesty International urges the Indian authorities to ensure that these obligations, which are no less important or binding under the Convention, are met. Where appropriate, the relevant provisions of the Convention are cited (in brackets).

1. Legislation

Legislative measures which states parties to the UN Convention against Torture must enact are not confined to the criminalization of acts of torture in the narrow sense, which is the subject of the Prevention of Torture Bill. While India would be obliged under the Convention to enact additional legislation, Amnesty International takes no position on whether such legislation should be introduced by amending the Bill, by the introduction of other new legislation or by amending existing legal provisions.

Additional legislation must provide for:

- **Inadmissibility of torture statements:** Inadmissibility of confessions or any other statements obtained by torture, whether directly or indirectly, as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made (Art. 15);
- **Criminalization of torture by non-state actors:** Prohibition and punishment of all acts, whether or not committed by or with the involvement of officials, where severe pain and suffering is inflicted, as per the Article 1(1) definition, such as rape (including marital rape) and other sexual attacks, mutilation, corporal punishment (including by parents, employers, carers, schools and within the armed forces) and the infliction of violence or mental torment within the household. As the UN Committee against Torture has explained,

¹⁸ See above, Part II.

“Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission”¹⁹;

- **Criminalization of ancillary acts:** Prohibition and punishment of offences ancillary to acts of torture, including attempt, complicity, participation (elements such as ‘conspiracy’ and ‘common purpose’) and concealment after the fact (Art. 4(1));
- **Ruling out justifications and justificatory defences:** ensuring the inapplicability of the defences of justification, ‘necessity’ and ‘superior orders’ (lawful authority) and enforcing the duty to disobey orders to inflict torture (Art. 2);
- **Ensuring that all those responsible for torture are brought to justice:** establish in law the criminal responsibility (in the words of the UN Committee against Torture) “of both the direct perpetrators and officials in the chain of command, whether by acts of instigation, consent or acquiescence”²⁰ (Art. 2);
- **Ensuring appropriate punishment:** punishment for torture and, where appropriate, other ill-treatment, must reflect the grave nature of the crimes. However, punishments must not themselves amount to torture or other ill-treatment - such as the death penalty or corporal punishment (Art. 4(2));
- **Ensuring proper investigation:** establishing and facilitating the work of “competent authorities” capable of conducting “a prompt and impartial investigation” into any reports or complaints of torture and other ill-treatment (Articles 12, 13);
- **Establishing national jurisdiction:** establishing India’s jurisdiction over torture and related offences committed under its jurisdiction (including on board its ships and planes), when the alleged offender is an Indian national or when the victim is an Indian national if the State considers it appropriate (Art. 5);
- **Exercising universal jurisdiction:** empowering Indian prosecutors to investigate or prosecute, and for Indian courts to try persons for torture committed outside Indian territory which is not linked to India by the nationality of the suspect or of the victim or by harm to India’s own national interests; making similar provisions for suspected torturers to be extradited from India (following fair proceedings) for prosecution abroad (Articles 5-8);
- **Non-refoulement:** prohibiting the return or transfer of any a person out of India to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture, and ensuring fair procedures for determining whether such grounds exist (Art. 3);

¹⁹ See Committee against Torture, General Comment No. 2: Implementation of article 2 by States parties, UN Doc. CAT/C/GC/2, 24 January 2008, para. 18.

²⁰ *Ibid.*, para. 7. See also para. 9.

- **Enforcing on officials a duty to report torture by others:** such legislation, which would also ensure protection for “whistle blowers”, would prohibit and punish any culture of “closing ranks” and cover-up which is often prevalent among police, armed forces and other security forces units involved in torture and other ill-treatment, including in India;
- **Criminalization of offences constituting cruel, inhuman or degrading treatment or punishment:** Prohibition of at least those acts of ill-treatment which in the relevant context constitute - or in other contexts would have constituted - crimes under international law,²¹ whether committed by officials or by non-state actors (Art. 16);
- **Reparations for victims and survivors:** Provisions for ensuring effective remedial reparations for victims and survivors in accordance with existing and emerging international standards, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (Art. 14).

2. Non-legislative measures

A state setting out to implement the UN Convention against Torture must do more than legislate – the Convention also provides for a variety of other measures, including:

- **Education:** states parties must include education and information regarding the prohibition against torture in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, and include the prohibition in the rules and regulations of every institution involved in custody (Art. 10);
- **Review of interrogations:** in order to prevent torture and other ill-treatment, rules, instructions, methods and practices of interrogation must be kept under systematic review, as should all arrangements relating to holding people in custody (Art. 11);
- **Investigation:** wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction, the state party must ensure that its competent authorities proceed to conduct a prompt and impartial investigation (Art. 12);
- **Right to complain:** all detainees and prisoners have the right to complain about torture or other ill-treatment. The complaint must be promptly,

²¹ For instance acts which would have constituted “cruel treatment” and “outrages upon personal dignity, in particular humiliating and degrading treatment” prohibited in Common Article 3 of the four Geneva Conventions of 1949 and criminalized under the statutes subsequent International criminal tribunals and the Rome Statute of the International Criminal Court.

Amnesty International is aware that certain practices constituting cruel, inhuman or degrading treatment or punishment, such as poor prison conditions, may be better addressed outside the criminal justice system, for instance through administrative or disciplinary measures.

impartially and competently investigated. Complainants and witnesses must be protected against ill-treatment and intimidation (Art. 13);

- **Gender aspect:** The UN Committee against Torture has emphasised that “gender is a key factor” in state parties’ measures against torture and other ill-treatment, and has accordingly recommended that all measures taken to prevent and punish these violations be geared to address this aspect, not least in educating and sensitizing officials dealing with women and girls who fall victim to torture and other ill-treatment, whether by officials or by non-state actors.²²
- **Measures against other forms of discrimination:** Alongside the purposes illustrated in the definition of torture in Article 1(1) of the UN Convention against Torture, “any reason based on discrimination” is provided as an alternative ground for inflicting severe pain or suffering that constitutes torture. As noted, in India torture and other ill-treatment is often the result of discriminatory attitudes, in particular towards the poor, Dalits and Adivasis, women and girls and suspected insurgents. The Committee against Torture has emphasised that “The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment” and that “States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured”.²³

Conclusions

Amnesty International believes that the final stages of the drafting of the Prevention of Torture Bill are extremely important, and urges the Select Parliamentary Committee and the Rajya Sabha to consider its concerns and apply its recommendations as set out in this briefing. At the same time, Amnesty International is well aware that laws, however well-framed, are not enough. The vast majority of cases of torture and other cruel, inhuman or degrading treatment or punishment, inflicted on individuals in India by officials and by non-state actors are unlawful and punishable acts even under India’s existing laws. While Amnesty International urges the Indian authorities to ratify international treaties, including the UN Convention against Torture and its Optional Protocol, and enact implementing legislation which accords with these treaties, the Indian authorities would only be complying fully with their obligations under both international and national law once these obligations are translated into firm action on the ground, and torture and other ill-treatment are prevented, and failing that stopped, punished and redressed in actual practice.

²² Committee against Torture, General Comment No. 2 (see note 19 above), para. 22.

²³ *Ibid.*, para. 21.

Annex:

Amnesty International's 12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State²⁴

Torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) are violations of human rights, condemned by the international community as an offence to human dignity and prohibited in all circumstances under international law. Yet they happen daily and across the globe. Immediate steps are needed to confront these abuses wherever they occur and to eradicate them. Amnesty International calls on all governments to implement the following 12-point programme and invites concerned individuals and organizations to ensure that they do so. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to end torture and other ill-treatment and to work for their eradication worldwide.

1. Condemn torture and other ill-treatment

The highest authorities of every country should demonstrate their total opposition to torture and other ill-treatment. They should condemn these practices unreservedly whenever they occur. They should make clear to all members of the police, military and other security forces that torture and other ill-treatment will never be tolerated.

2. Ensure access to prisoners

Torture and other ill-treatment often take place while prisoners are held incommunicado – unable to contact people outside who could help them or find out what is happening to them. The practice of incommunicado detention should be ended. Governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Prisoners should have access to relatives, lawyers and doctors without delay and regularly thereafter.

3. No secret detention

In some countries torture and other ill-treatment take place in secret locations, often after the victims are made to “disappear”. Governments should ensure that prisoners are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made available immediately to relatives, lawyers, the courts, and others with a legitimate interest, such as the International Committee of the Red Cross (ICRC). Effective judicial remedies should be available at all times to enable relatives and lawyers to find out immediately

²⁴ AI Index: ACT 40/001/2005, 22 April 2005.

where a prisoner is held and under what authority, and to ensure the prisoner's safety.

4. Provide safeguards during detention and interrogation

All prisoners should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention. Judges should investigate any evidence of torture or other ill-treatment and order release if the detention is unlawful. A lawyer should be present during interrogations. Governments should ensure that conditions of detention conform to international standards for the treatment of prisoners and take into account the needs of members of particularly vulnerable groups. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

5. Prohibit torture and other ill-treatment in law

Governments should adopt laws for the prohibition and prevention of torture and other ill-treatment incorporating the main elements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and other relevant international standards. All judicial and administrative corporal punishments should be abolished. The prohibition of torture and other ill-treatment and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

6. Investigate

All complaints and reports of torture or other ill-treatment should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The scope, methods and findings of such investigations should be made public. Officials suspected of committing torture or other ill-treatment should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals.

7. Prosecute

Those responsible for torture or other ill-treatment should be brought to justice. This principle applies wherever those suspected of these crimes happen to be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victims, and no matter how much time has elapsed since the commission of the crime. Governments should exercise universal jurisdiction over those suspected of these crimes, extradite them, or surrender them to an international criminal court, and cooperate in such criminal proceedings. Trials should be fair. An order from a superior officer should never be accepted as a justification for torture or ill-treatment.

8. No use of statements extracted under torture or other ill-treatment

Governments should ensure that statements and other evidence obtained through torture or other ill-treatment may not be invoked in any proceedings, except against a person accused of torture or other ill-treatment.

9. Provide effective training

It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture and other ill-treatment are criminal acts. Officials should be instructed that they have the right and duty to refuse to obey any order to torture or carry out other ill-treatment.

10. Provide reparation

Victims of torture or other ill-treatment and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

11. Ratify international treaties

All governments should ratify without reservations international treaties containing safeguards against torture and other ill-treatment, including the International Covenant on Civil and Political Rights and its first Optional Protocol; and the UN Convention against Torture, with declarations providing for individual and inter-state complaints, and its Optional Protocol. Governments should comply with the recommendations of international bodies and experts on the prevention of torture and other ill-treatment.

12. Exercise international responsibility

Governments should use all available channels to intercede with the governments of countries where torture or other ill-treatment are reported. They should ensure that transfers of training and equipment for military, security or police use do not facilitate torture or other ill-treatment. Governments must not forcibly return or transfer a person to a country where he or she would be at risk of torture or other ill-treatment.

This 12-point programme sets out measures to prevent the torture and other ill-treatment of people who are in governmental custody or otherwise in the hands of agents of the state. It was first adopted by Amnesty International in 1984, revised in October 2000 and again in April 2005. Amnesty International holds governments to their international obligations to prevent and punish torture and other ill-treatment, whether committed by agents of the state or by other individuals. Amnesty International equally opposes torture and other ill-treatment by armed political groups.