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£INDIA
@The Terrorist and Disruptive Activities (Prevention) Act:

The lack of `scrupulous care'

1.INTRODUCTION

At the 50th Session of the United Nations Commission on Human Rights in Geneva in February 1994, India reaffirmed its respect for the rule of law. The Government explained that due to a large number of violent acts committed in the states of Punjab and Jammu and Kashmir, ascribed to terrorist violence, it had been forced to resort to extraordinary measures. It said:

"Government of India, in order to protect the human rights of its citizens, had, therefore, to enact special legislation. Of these, TADA (Terrorist and Disruptive Activities (Prevention) Act) is a temporary legislation.... in all such special legislation in India, scrupulous care has been taken to protect the rights of the individual under the process of law."

Amnesty International believes that this is not the case. Provisions of the Act clearly contravene international human rights standards which India is bound to uphold and, arguably, fall short of fundamental rights guaranteed in India's own Constitution. The wide powers to arrest and detain without trial under the vague and imprecise provisions of the Act have been grossly abused throughout India. They facilitate arbitrary arrests of political opponents and members of vulnerable groups, as well as torture and other grave human rights violations. Minimum legal safeguards for fair trial provided in international human rights instruments do not apply to persons tried under TADA.

India's Minister of State for Internal Security admitted in August in Bombay that TADA "had been misused extensively against Muslims" adding that the government was prepared to repeal the Act "if overzealous arrests and misuse of TADA continues by the states."[1] Official admission of gross abuse is also evident from the 27 July 1994 letter which India's Home Minister, S.B. Chavan, felt reportedly compelled to send to all Chief Ministers of states where the Act is in force. In it, he reportedly stressed that the Act should not be invoked against political dissenters, trade union leaders, journalists, former judges and civil servants, as it clearly had been in the past. In September 1994 the Home Minister said that there was no government proposal to repeal TADA, but himself admitted that the Act "meant for terrorists" had been used on a wide scale to detain thousands of people, including common criminals. Despite his earlier letters and instructions to the Chief Ministers, the law continued to be misused, he reportedly conceded[2].

India's Supreme Court in a controversial judgment of March this year upheld the constitutional validity of

1 The Times of India, 23 August 1994 and Reuters of the same date.

2 The Times of India, 20 August 1994, and The Pioneer, 6 September 1994.

TADA but confirmed wide-scale police abuse of the Act in order to circumvent ordinary legal provisions. In its majority opinion, the Supreme Court held:

"It is true that on many occasions, we have come across cases wherein the prosecution unjustifiably invokes the provisions of the TADA with an oblique motive of depriving the accused persons from getting bail and in some occasions when the Courts are inclined to grant bail in cases registered under ordinary criminal law, the investigating officers in order to circumvent the authority of the Courts invoke the provisions of the TADA. This kind of invocation of the provisions of TADA in cases, the facts of which do not warrant [it], is nothing but sheer misuse and abuse of the act by the police.[3]"

The Chairman of India's National Human Rights Commission (NHRC) - India's newly established independent statutory human rights body - recently reviewed the application of the Act with senior officials in the Home Ministry as well as their counterparts in nine Indian states. In late August he concluded that the Act should be scrapped in toto because, as he told the Indian Express, it was being grossly misused even in states not being touched by terrorism at all[4]. He reiterated the Commission's resolve to challenge the Act before the Supreme Court of India. The NHRC application to the Supreme Court reportedly stated that the misuse of clauses of the Act violated human rights provided in India's Constitution as well as international human rights treaties to which India is a party. The Secretary General of the NHRC explained to The Pioneer that "the case will be a landmark because of the rampant misuse of the TADA by the States and the police. Serious flaws exist in the law as well as in its application. In my opinion, the entire Act should go."

Another statutory body, the National Commission for Minorities, called in June this year for the repeal of TADA, saying it had been "misused and abused to a large extent", including against women and children belonging to India's minorities. These views were echoed the following month by the ruling party's All India Congress Committee's minorities cell expressing concern at what it called discriminatory application of the Act against minorities and calling for an effective review machinery at the state and central government level.

On 24 August the opposition in the Lok Sabha (lower house of parliament) demanded that the Act should be withdrawn, rejecting the Parliamentary Affairs Minister's assurances that TADA would not be used to settle political scores. The President of India's largest opposition party, the Bharatiya Janata Party (BJP), said the Act granted powers to the executive that were bound to be misused: "Political parties have been targeted by the states which have tended to misuse the law. TADA should be reviewed drastically, if not completely withdrawn." [5]

2.SCOPE

The Terrorist and Disruptive Activities (Prevention) Act, 1987, permits arrest and detention on vaguely defined grounds of "terrorist" and "disruptive activities". The latter are so broadly phrased that they encompass peaceful expression of political or other conscientiously held views. Abetment of such activities as well as possession of unauthorised arms in areas specified by State Governments are made

3*Kartar Singh v. State of Punjab*, JT 1994 (2) SC 423, paragraph 380.

4Indian Express, 24 August 1994.

5The Telegraph, Calcutta, 25 August 1994.

punishable offences in such vague, imprecise and broad terms that innocent persons can easily be arrested under its provisions: unfortunately, many reports suggest, this has often been the case. People can be arrested on mere suspicion and can be remanded for exceptionally and dangerously long periods of up to 60 days in police custody, where torture is often practised. Normally a Judicial Magistrate - an independent judicial official - authorizes police remand, but the Act permits Executive Magistrates to do so. These officials are appointed by and responsible to the District Magistrate who is an administrative official responsible to the executive branch of the State Government. Thus Executive Magistrates fall under Executive control.

Following a March 1993 amendment to TADA, those arrested under the Act can be remanded in custody for up to 180 days, a period that can be extended to one year if the Public Prosecutor gives specific reasons. There is no need to inform the person of any charges until 180 days or, in the circumstances described above, one year after his or her arrest. With bail being hard to obtain, the Act thus effectively provides for six months' or one year's detention without charge or trial. However, none of the few legal safeguards available to detainees held under preventive detention laws, such as the National Security Act, apply during this period[6].

Trials take place before special courts, called Designated Courts, which may try an accused for any connected offence punishable under the Indian Penal Code, provided the accused is charged under TADA. Confessions made to a police officer, at least of the rank of Superintendent of Police, can be admitted in evidence although these are normally excluded in India apparently for fear that they could encourage police abuse. In several listed circumstances, the burden of proof is changed and put on the person accused of committing a "terrorist act" so that the person has to prove his innocence (although Amnesty International welcomes changes in the March 1993 TADA Amendment Act which reduced the number of instances in which the burden of proof has been changed from five to three). The court can choose where the trial will be held, and trials can and do take place in jail. Accused persons can be tried *in camera* and the identity of witnesses can be kept secret. Persons convicted following such trials, which fail to meet international standards, are liable to receive considerably higher penalties than if they had been convicted under the Indian Penal Code, the Arms Act, or other laws. They can even be sentenced to death. Appeals to the High Court are excluded: any appeals must be made within 30 days of judgment, and that only to the Supreme Court, a legal remedy only very few, well-to-do, Indians can afford.

3.APPLICATION: IS TADA `STRICTLY REQUIRED'?

The Terrorist and Disruptive Activities (Prevention) Act was first introduced in 1985[7] as a temporary measure for a two year period to deal with violence by armed secessionist groups in Punjab. According to the Statement of Objects and Reasons, India faced "a new and overt phase of terrorism which requires to be... dealt with effectively and expeditiously." The government claimed this need arose from a series of bomb attacks in Delhi in May 1985 for which Sikh secessionists were held responsible. The 1985 Act was replaced and strengthened by the Terrorist and Disruptive Activities (Prevention) Act, 1987, which has

6The National Security Act, 1980, requires that the grounds for detention have to be provided to persons detained under the Act within five days of their arrest, and an Advisory Board is obliged to report to the government on the legality of the detention within seven weeks.

7TADA was preceded by the Terrorist Areas (Special Courts) Act, 1984, which provided for the speedy trial of certain offences in areas declared to be "terrorist affected" and applied to Punjab. The Act had several objectionable features similar to those found in TADA, such as prolonged police custody and trials *in camera*, where the names of witnesses could be withheld.

since been renewed every two years, the latest Amendment Act 43 of 1993 extending the life of the September 1987 Act to eight years. TADA is due to lapse or be renewed by the end of 1995. State Governments have to invoke the Act by official notification before it can be applied.

However, far from remaining restricted to those limited areas where armed political groups have resorted to what the government describes as terror tactics to intimidate the local population, TADA now virtually applies to the whole of India: to 22 out of India's 25 states and two of its Union Territories[8]. It is being applied regardless of the political persuasion of the central or state governments in power. Only very few of these states could make a credible claim that they face a problem of organised political violence aimed at creating terror in society as envisaged under the Act.

For example, one of the latest states to apply the Act's provisions (in fact since January this year) is one of India's politically most peaceful states, Kerala, where the Act was first used - amidst strong protest from the opposition - to detain political party workers in February this year. The Chief Minister of Madhya Pradesh, another Indian state not known for its opposition resorting to organised political violence, on 27 August 1994 reportedly described the Act as "unreasonable", adding that his government would withdraw all cases registered under its provisions. (On 14 September only eight of 52 persons officially reported to be held under TADA had the cases against them withdrawn).

A key concern of the National Human Rights Commission and civil liberties groups in India is the gross abuse of TADA in Gujarat, another state widely agreed not to have a "terrorist problem". Nevertheless, the state has, surprisingly, the highest number of TADA cases, according to the NHRC reportedly more than 19,000, the majority bootleggers booked as "terrorists", many of whom, according to the police, have now been released. Amnesty International has reported on the abuse of the Act in the state for many years: it knows of students who have been arrested under the Act for protesting against a rise in milk prices, of workers opposing the contract labour system and of farmers campaigning for electricity charges to be reduced. In August 1994 the Acting Chief Minister of Gujarat told The Times of India that TADA was necessary to curb smuggling and other anti-social and anti-national activities. On 20 September 1994, however, India's Minister of State for Internal Security announced, according to the same newspaper, that the Congress Party would establish a two-member committee in the state to review all cases of detention under TADA to recommend "suitable measures" to remove "widespread complaints" of misuse of the Act against innocent people.

The Andhra Pradesh state government decided in August to withdraw 145 cases out of 153 registered under TADA in Hyderabad, saying these cases would be tried instead under the ordinary provisions of law. All related to violence between the Hindu and Muslim communities between 1990 and 1992. The state government also decided to drop cases brought under the Act against 57 members of the Progressive Organisation of Women for staging an anti-government demonstration during the Prime Minister's visit to Nandyal.

The state government of Bihar is not known to have given official notification of implementation of TADA. According to a report of 3 September 1994, the state's Home Commissioner told the NHRC that, nevertheless, the Superintendents of Police concerned had implemented the Act in five districts in their "over-enthusiasm". Having reviewed the application of the Act with the NHRC, the Bihar government reportedly decided to revoke the Act, on the understanding that there were no people in the state that

8As of August 1994, the only states where TADA was reportedly not in force were: Haryana, Meghalaya and Mizoram.

could be described as "terrorists". Amnesty International had received complaints that the state, presently ruled by a Janata Dal government, had used TADA provisions to detain political workers.

In Punjab itself, the Act remains in force despite the state's Chief Minister and its Director General of Police, K.P.S. Gill, claiming repeatedly, for example in January this year, that the problems created by terrorist violence had now been adequately dealt with. The latter furthermore observed that the Act had been of "little advantage" to policemen engaged in combating terrorism[9].

If that is so, one must seriously question whether the extensive application of TADA in this and many other Indian states can be justified as "strictly required by the exigencies of the situation", a standard stipulated under international human rights instruments to which India is a party.

The International Covenant on Civil and Political Rights (ICCPR), signed and ratified by India in 1979, permits states to derogate from certain provisions of the Covenant but at the same time requires that strict conditions for such derogation should in all cases be met. Thus, Article 4 ICCPR requires that there must be a "public emergency that threatens the life of the nation" and that derogating measures can only be taken "to the extent strictly required by the exigencies of the situation".

Although India has made no formal derogation from any of the rights guaranteed under the Covenant, many members of the Human Rights Committee, examining India's observance of the rights guaranteed under the Covenant in March 1991, found that TADA and other special laws in India in effect established a continuing state of emergency and that certain rights guaranteed in the Covenant - including Article 9 protecting liberty and security of the person - were in fact suspended under special legislation, notably TADA. They found that there appeared to be a real problem with these rights being ignored in practice. One Committee member observed: "I do have doubts whether those acts meet the 'strictly required' test in several important areas". In respect of TADA, she added:

"This Act (TADA) I understand is being applied in fact in certain other Indian states where the government does not face armed opposition. State governments have recently announced that it will be used against criminal groups. So in Gujarat I understand that over 2,000 people have been detained under its provisions between the entry into force of the Act in 1986 and January 1990. This seems to be disturbing that the Act can have not only the content it has but such a broad geographic scope of application[10]."

Moreover, international human rights standards stress the principle of temporariness whenever states take any measures derogating from their treaty obligations to respect and observe human rights. In its General Comment on Article 4 ICCPR (which deals with the measures which states are permitted to take when faced with an emergency) the Human Rights Committee observed:

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9 The Pioneer, 17 January 1994, in which the Director General of Police also reportedly claimed that there was not a single terrorist related incident in Punjab during the past three months. He reportedly told the Indian Express, 25 January 1994, that there were no active terrorist groups in Punjab, adding that the number of civilians killed in the state per month had drastically fallen from at least 200 per month in 1991 to 669 for 1993 and was expected in January to be 50 this year. Punjab's Chief Minister, Beant Singh, told Sunday (13 - 19 March 1994): "I have fulfilled my election promise to the people who have experienced peace and normalcy, which seemed elusive and impossible. Don't you yourself realise how improved the law and order situation is?"

10 See: India: Examination of the second periodic report by the Human Rights Committee, (AI Index: ASA 20/05/93), March 1993, pages 7 and 11.

"The Committee holds the view that measures taken under Article 4 are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened..."

However, in India, TADA shows signs of becoming in effect a permanent piece of legislation. Although proclaimed as temporary, the Act has now been in force for nine years. The recent statement from India's Home Minister shows that the government has no intention of repealing the Act. Nor does the government, apparently, wish to establish an independent mechanism to review whether the continued application of the Act in many parts of India can possibly be justified in terms of the need "to cope with the menace of terrorism", as the Statement of Objects and Reasons of TADA specifies to be its purpose. The statements made earlier this year by the Chief Minister and the Director General of Police of Punjab, that the situation in the state - which prompted the promulgation of the Act in the first place - has virtually returned to normal, while simultaneously saying they wished to retain TADA, are a case in point.

4.SPECIFIC TADA PROVISIONS: AN ASSESSMENT OF THEIR COMPATIBILITY WITH INTERNATIONAL HUMAN RIGHTS STANDARDS

Amnesty International has described its concerns about specific provisions of TADA and their abuse by the authorities in a number of reports[11]. This paper highlights the organizations's main concerns about those provisions of the law that fail to meet international and, in some cases arguably, national human rights standards.

The right to freedom of expression

TADA prohibits not only "terrorist acts" (Section 3) but also "disruptive activities" (Section 4). "Disruptive activities" are extremely broadly defined as:

"any action taken, whether by act or speech or through any other media or in any manner whatsoever,-

(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union."

This means that anyone can be detained for peacefully expressing their views on matters which are the subject of ordinary political debate and, if found guilty, will have to be sentenced to a term of five years imprisonment as a minimum. There is no need to show that the person advocated violence. This provision means that anyone can be tried under TADA who says that a plebiscite should be held to determine the future status of Kashmir - as the Indian government once promised - or that the Indian and Pakistan

11 See for example: Human Rights Violations in Punjab: Use and Abuse of the law pp 50 - 55 (AI Index: ASA 20/11/91), A Review of Human Rights Violations, pp. 4 - 6 (AI Index: ASA 20/02/88), 'An Unnatural Fate' - 'Disappearances' and impunity in the Indian States of Jammu and Kashmir and Punjab pp.37 - 39 (AI Index: ASA 20/42/93) and, most recently: Memorandum to the Government of India arising from an Amnesty International visit to India 5 - 15 January 1994, pp. 9 - 10 and 21 - 23 (AI Index: ASA 20/20/94).

governments should settle for a permanent solution on Kashmir based on the *de facto* partition of the state in two parts held by the two countries as at present, or that some Indian territory may have to be ceded to settle India's border dispute with China.

Article 19 ICCPR provides for the right to freedom of expression. States are allowed, in paragraph 3, to restrict the application of that right "for the protection of national security or of public order...", but can only do so provided such measures "are necessary". The wide provisions of Section 4 of TADA under which acts such as the peaceful expression of political views can be prohibited cannot, in Amnesty International's view, be justified as "necessary" in terms of India's obligations to protect the right to freedom of expression guaranteed in Article 19 ICCPR, a right also provided in Article 19(1)(a) of the Constitution of India.

The right to liberty and security of the person

International human rights standards require, in Article 9 ICCPR, that no one shall be subjected to arbitrary arrest or detention (paragraph 1), that all arrested persons shall be promptly informed of the charges against them (paragraph 2), and that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer legally authorised to exercise judicial power, and shall be entitled either to trial within a reasonable time or release (paragraph 3).

Amnesty International does not believe that any of these legal safeguards are met in procedures under TADA.

The prohibition of arbitrary arrest and detention
First, the powers to arrest and detain under Section 4 of the Act are so broadly defined that, as explained above, they permit people to be detained for peacefully expressing their political or other conscientiously held views: such powers are arbitrary. The United Nations Working Group on Arbitrary Detention has, in its latest reports, expressed concern about offences which are described in vague terms. According to the Working Group:

"Criminal law requires precision, so that the conduct which is wrongful can be clearly understood by the persons held to be liable. Vague descriptions... are sources of abuse and encourage arbitrariness."

The Working Group said that, in its view, such vaguely defined offences violated article 15 ICCPR (which prohibits retroactive punishment for an act that did not constitute a criminal offence at the time it was committed) and "seriously affects something that is essential to the right to justice"[12].

Furthermore, the definition of "abetting" "terrorists acts" or "disruptive activities" in Section 2 of the Act is so broad and vague that it invites innocent people to be arbitrarily arrested under its provisions. The Supreme Court, in its majority judgment reviewing the constitutionality of TADA, indeed found:

"It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values... Vague laws may trap the innocent by not providing fair warning. Such a law impermissibly delegates basic policy matters to policemen and also Judges for resolution on an ad-hoc and subjective basis, with the attendant dangers of arbitrary and

12Report of the Working Group on Arbitrary Detention, December 1993, E/CN.4/1994/27, paragraphs 63 and 73.

discriminatory application... Let us examine clause (i) of Section 2(1)(a)[13] [which defines the term "abet" as to be read in the Act]. This Section is shown to be blissfully and impermissibly vague and imprecise... even an innocent person who ingenuously and undefiledly communicates or associates without any knowledge or having no reason to believe or suspect that the person or class of persons with whom he has communicated or associated is engaged in assisting in any manner terrorists or disruptionists, can be arrested and prosecuted by abusing or misusing or misapplying this definition."[14]

Despite these strong reservations, the Supreme Court upheld the validity of this and other sections of TADA. However, in order to prevent the abuse it described above, the court ruled that "abet" in Section 2(1)(a)(i) should be read as including a "guilty mind", i.e. actual knowledge or reason to believe that the person with whom one communicates was involved in those activities as prohibited by TADA. One Supreme Court judge, in a dissenting opinion, felt that the definition of "abet" in TADA should be amended "to avoid the ambiguity and make it immune from arbitrariness". Furthermore, lawyers have pointed out that the word "communication" in Section 2 is so loosely phrased that giving professional legal advice to a detainee held under TADA can be enough to invite prosecution[15].

That the broad provisions of the Act have indeed been misused in this and other ways is clear from a recent report about the application of TADA in the state of Uttar Pradesh. In August 1994 a review committee in the state ordered the release of 240 out of 1,146 people detained under the Act in the state. The government said that TADA would be revoked in all cases in which the accused were held for giving "shelter to terrorists"[16] as, according to an August 1994 report in the Deccan Herald, experience has shown that most often people are forced to shelter terrorists. In Gujarat three police officers of the Karang police station had a TADA case brought against them simply for letting a detainee, held under the Act, escape from their custody in April 1993. The court had upheld the decision to prosecute them under TADA but in this case the injustice could be corrected by the Supreme Court which, on 17 March 1994, reportedly held that there was no basis on which the three policemen could be charged with "abetting a terrorist act".

The right to be `promptly informed' of charges

Second, there is no provision in TADA which requires detained persons to be promptly informed of the reasons for their arrest or the charges against them: detainees need not be charged until 180 days or one year after arrest.

The right to be brought before a judge `promptly'

Third, as regards the requirement that: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release"in article 9(3) ICCPR [17], TADA permits Executive

13Section 2(a)(i) reads: "(a) 'abet'... includes - (i) the communication or association with any person or class of persons who is engaged in assisting in any manner terrorists or disruptionists"

14Kartar Singh v. State of Punjab, paragraphs 143 - 144.

15Frontline, 23 September 1994. Furthermore, the wide definition of "terrorist act" in Section 3 TADA includes similar loose wording, the Act reading in subsection (3): "whoever conspires or attempts to commit, or advocates, abets, advises... the commission of a terrorist act...".

16The definition of "abet" also includes, in Section 2 (1) (a) (iii): "the rendering of any assistance, whether financial or otherwise, to terrorists or disruptionists".

17Recently, at its fiftieth session, the Human Rights Committee communicated to the UN Sub-Commission its view that the

Magistrates who, as shown above, are under control of the Executive, to authorize detention, instead of Judicial Magistrates, who are independent judicial officers, and are normally required in Section 167 of the Code of Criminal Procedure to authorize remand. Executive Magistrates need not have judicial training. Although the Indian Government has argued that the exercise of such powers by Executive Magistrates falls within the terms permitted by Article 9(3) ICCPR described above, the authorization of detention under TADA by such Executive officials fails to meet the safeguards for impartiality and independence embodied in the concept that judicial power should supervise detention if it is not to be found arbitrary detention as prohibited in Article 9(1).

International human rights standards and mechanisms require supervision of detention by an independent, preferably judicial body. The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment [The Body of Principles] requires that "Any form of detention or imprisonment.... shall be ordered by, or be subject to the effective control of, a judicial or other authority" (Article 4). The Body of Principles defines "other authority" as a body "whose status and tenure shall afford the strongest possible guarantees of competence, impartiality and independence". Furthermore, the judicial character of officials authorised to supervise detention was also stressed by the UN Special Rapporteur on Torture. In his 1988 report, he concluded: "Each arrested persons should be handed over without delay to the competent judge, who should decide on the legality of his arrest immediately and allow him to see a lawyer". No such provisions, however, exist under TADA.

The Indian Government has also pointed out that ordinary criminal law requires that all arrested persons should be brought before a magistrate within 24 hours of arrest and that this provision also applies to persons arrested under TADA. However, in Amnesty International's experience, this safeguard is often not applied in practice in respect of detainees held under the Act. None of the former detainees released from detention under the Act whom Amnesty International interviewed during its January 1994 visit to Bombay had been brought before a magistrate or been told the legal grounds for their arrest despite the fact that they had spent several days in custody under the Act.

The right to be released if not tried within a reasonable time

Fourth, Article 9(3) ICCPR requires that all arrested persons are entitled to "trial within reasonable time or release". However, TADA makes release on bail considerably more difficult to obtain. Under TADA the normal rule is that bail is refused simply if the Public Prosecutor opposes it and in order to obtain bail an accused person has effectively to provide evidence that he is not guilty. Prisoners held under the Act are rarely tried (according to the Home Ministry in November 1993 as reported in the Indian press the conviction rate under the Act is 0.81%). Consequently, many persons held under the Act spend long periods awaiting trial. Some are known to have awaited trial for many years (see below).

A former Police Commissioner of Bombay confirmed to Amnesty International in January that he had authorised detention of criminal suspects in a gang rape case under TADA because otherwise, he said, even in cases of a serious criminal nature like gang rape, the courts would normally grant bail. The misuse of the Act by the police to keep any person whom the police wished to detain in custody was recently also highlighted by the Chairman of the NHRC, describing the police attitude in a September 1994 interview with The Pioneer thus: "if he gets out on bail, keep him in under TADA."

rights provided in article 9(3) and (4) ICCPR read with article 2 (the right to an effective remedy) are inherent in the ICCPR as a whole. Citing those views, the Sub-Commission subsequently reaffirmed that these rights should accordingly be considered to be non-derogable (Sub-Commission on Prevention of Discrimination and Protection of Minorities, forty-sixth session resolution of 19 August 1994 entitled:`The Administration of Justice and the Human Rights of Detainees').

The right to fair trial

Article 14 ICCPR lays down important safeguards for fair trial. These include the presumption of innocence until proved guilty (paragraph 2), the right of the accused to be promptly informed of the charges against them and to be tried without undue delay (paragraph 3(a) and (c)) as well as the accused's right to examine witnesses and to examine witnesses on their behalf under the same conditions as witnesses against them (the principle of "equality of arms") (Paragraph 3(e)). These important safeguards also include the right to a fair and public hearing by an impartial tribunal (paragraph 1), and the right to appeal to a higher tribunal (paragraph 5). Furthermore, the Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, in Article 12, requires that evidence obtained under torture or other cruel, inhuman or degrading treatment may not be invoked as evidence against the person on trial.

TADA provisions contravene these essential legal safeguards for a fair trial.

There is a growing recognition that the right to a fair trial, which is closely connected to the enjoyment of the non-derogable rights to life and the right not to be subjected to torture, should itself not be affected by emergency or *de facto* emergency legislation. At its most recent, forty-sixth, session, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities reaffirmed that the rights provided in article 14 ICCPR were among those that are "inherent in the Covenant as a whole and should accordingly be considered to be non-derogable, particularly because they are necessary to protect other non-derogable rights"[18]. The UN Special Rapporteur on human rights and states of emergency has, in 1991, prepared Guidelines for the Development of Legislation on States of Emergency[19]. Among the "rights and liberties which may not be affected by emergency measures", the UN Special Rapporteur lists:

(d) the right of persons accused of an offence... to a fair trial before a competent, independent and impartial court, including:
(i) the right to be presumed innocent and the right not to be obliged to testify or give evidence against oneself or to confess guilt;
(ii) the right to be informed of the charges promptly and in detail, in a language which he or she understands;
(v) the right to be present at trial, to examine or have examined prosecution witnesses, to give evidence and to present witnesses for the defence;
(vi) the right to appeal, if convicted...
(vii) in no case shall a sentence of death be carried out during a state of emergency with regard to any person convicted of an offence on the basis of charges related to the emergency, or whose sentence has been imposed or reviewed by proceedings in which constitutional or legal safeguards have not been fully applied due to the exigencies of the emergency."

Earlier, the "Siracusa Principles" had acknowledged that the right to fair trial guaranteed in Article 14 ICCPR is not included among the rights from which State Parties to that Covenant may not derogate

18Sub-Commission on Prevention of Discrimination and Protection of Minorities, forty-sixth session, resolution of 19 August 1994 entitled:`The Administration of Justice and the Human Rights of Detainees'
19Fourth annual report presented by Mr Leandro Despouy, Special Rapporteur appointed pursuant to Economic and Social Council resolution 1985/37, E/CN.4/Sub.2/1991/28 pages 30 - 59.

under any circumstances[20]. However, like the above Guidelines developed by the UN Special Rapporteur, the Siracusa Principles also stress that the observance of several other rights provided in the ICCPR, notably the important guarantees for fair trial in Article 14, is essential under any circumstances, including situations of emergency, pointing out that, if States fail to observe them, those rights from which the Covenant stipulates in Article 4 that no state may ever derogate cannot effectively be enjoyed[21].

We now consider the position of these guarantees under TADA.

The presumption of innocence

Rather than presuming innocence, TADA in fact presumes guilt in several instances. In determining whether a "terrorist act" has been committed, Section 21 TADA obliges Designated Courts trying TADA offences to presume that such an offence has been committed:

- if arms or explosives are recovered from the accused and there is reason to believe that they were used in the commission of an offence
- if an expert finds fingerprints of the accused on the site of the offence or on anything used in connection with the offence[22]
- in cases of abetment of a "terrorist act", if it is proved that the accused rendered any financial assistance to a person accused or reasonably suspected of committing a "terrorist act".

Apart from contravening the presumption of innocence in Article 14(2) ICCPR, some of these exceptions to the normal rules of evidence are so broadly defined that innocent persons can easily be convicted under these provisions. For example, a man forced at gunpoint to hand over money to a group of armed men whom the police merely suspect of committing "terrorist acts" can be convicted for abetting a "terrorist act" and is liable to be sentenced to at least five years in prison.

20Article 4(2) ICCPR specifies that no derogation is ever allowed from the right to life, the right not to be tortured, freedom from slavery, the right not to be imprisoned for failing to meet a contractual obligation, the right not to be subjected to retroactive punishment, the right to recognition of a person before the law and the right to freedom of thought, conscience and religion.

21The "Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights" were adopted by an authoritative body of 31 experts in international law from various countries, among them India (see Human Rights Quarterly 7 (1985) pages 1 -14). The Symposium recalled that the General Assembly of the United Nations emphasized the importance of a uniform interpretation of limitations of rights guaranteed in the ICCPR and adopted the Siracusa Principles to that effect. Principle 70 states:

"... the denial of certain rights fundamental to human dignity can never be strictly necessary in any conceivable emergency. Respect for these fundamental rights is essential in order to ensure enjoyment of non-derogable rights and to provide an effective remedy against their violation. In particular:...
(g) any person charged with a criminal offence shall be entitled to the presumption of innocence and to at least the following rights to ensure a fair trial:
- the right to be informed of the charges promptly, in detail and in a language he understands,.....
- the right not to be compelled to testify against himself or to make a confession,...
- the right to obtain the attendance and examination of defense witnesses,
- the right to be tried in public save where the court orders otherwise on grounds of security with adequate safeguards to prevent abuse
- the right to appeal to a higher court..."

22Sub Sections (a) and (b) of Section 21. Subsections (c) and (d), which had presumed guilt of the accused simply on the basis of a confession made by a co-accused or if the accused had made a confession to any person other than a police officer, were fortunately deleted by the TADA Amendment Act No.43 of 1993.

The presumption of a `terrorist' motive

Furthermore, Section 5 of TADA raises an irrebuttable presumption that if a person is found in unauthorised possession of arms in a "notified area"[23] under TADA, than such possession is automatically connected with "terrorist" or "disruptive" activities. Consequently the offence, which is normally punishable under the Arms Act, becomes triable under TADA's special provisions, where few legal safeguards and heavier sentences apply: Section 5 carries a minimum sentence of five years imprisonment. Section 5 is important because it is often invoked by the police. Although the Act is used on a wide scale, as pointed out above there have been very few convictions under its provisions - according to Home Ministry statistics made public in October 1993 less than 1% of those arrested under the Act since its introduction - but of those few convictions the largest number are reported to have been for offences under Section 5.

One Supreme Court judge, in his dissenting opinion in the *Kartar Singh* case, described the arbitrary effect that inherently results from the departure from the ordinary rules of evidence which is made under Section 5:

"Mere possession of [unauthorised] arms and ammunition specified in the Section has been made substantive offence. It is much serious in nature and graver in impact as it results in prosecution of a man irrespective of his association or connection with terrorist activity... The harshness of the provisions is apparent as all those provisions of the Act for prosecuting a person including forfeiture of property, denial of bail, etc., are applicable to a person accused of possessing any arms and ammunition as one who is charged for an offence under Sections 3 and 4 of the Act [describing the Act's main offences: "terrorist" and "disruptive" activities"]. It is no doubt true that no one has justification to have such arms and ammunitions... but unjustifiable possession does not make a person a terrorist or disruptionist... it is necessary, in my opinion, that this Section, if it has to be immune from attack of arbitrariness, may be invoked only if there is some material to show that the person who was possessed of the arms intended it to be used for terrorist or disruptionist activities..."

However, the Supreme Court did not wish to go quite that far, ruling in September it was not necessary for the prosecution to produce such evidence of intended use, once conscious possession of unauthorised arms in a notified area had been established[24].

Indian lawyers have given examples that the loose wording of the Act and the change in the burden of proof has indeed given ample scope for misuse in the way envisaged by the dissenting Supreme Court

23An area so specified by the State Government by official notification.

24Judgment of 9 September 1994, (Sanjay Dutt v State, 1994 (3) SC 1994). The Supreme Court held that the accused, despite the wording of Section 5 of the Act which raises an irrebuttable presumption, has a right to prove his innocence by providing evidence that, although he possessed unauthorised arms, these were in fact not used or meant to be used for "terrorist" or "disruptive" activities. The Supreme Court reportedly rejected the State's argument that mere conscious possession of unauthorised arms in a notified area was sufficient for conviction under TADA and that no further defence by the accused was allowed. However, the Supreme Court did not question that it was the accused who had the burden to prove his innocence of intended use under Section 5, contrary to what ordinary legal procedures require. Once "conscious possession unauthorisedly in a notified area" of any arms and ammunition had been established by the prosecution, in view of the statutory presumption, "No further nexus of his [the accused's] unauthorised possession of the same with any specific terrorist or disruptive activity is required to be proved by the prosecution for proving the offence under Section 5 of the TADA Act", the Supreme Court held (paragraph 41).

Judge. For example, Justice Suresh told The Sunday Observer in August: "Adivasis [members of India's tribal population] be they in Andhra Pradesh, Maharashtra, Madhya Pradesh or the North-east, by their very nature carry weapons. But that has been enough reason for TADA to be applied to them. True, carrying unlicensed arms is illegal. But the way of dealing with that is through the Arms Act, not TADA."

The Human Rights Committee, in its General Comment on Article 14, has stated in unambiguous terms that the presumption of innocence:

"is fundamental to the protection of human rights. By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of the doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt."

The provisions in Sections 5 and 21 of TADA clearly fall short of these fundamental rules to provide a fair trial as internationally understood.

The right to be informed promptly of charges and to be tried `without undue delay'
As stated above, TADA allows up to 180 days detention in police custody for purposes of investigation, a period which can be extended to one year on application by the Public Prosecutor. It is not until the end of this period of investigation that the police is obliged to identify, in its report to the magistrate, the offences that appear to have been committed. In July, the Supreme Court ruled that, if this did not happen, the accused had an "indefeasible and absolute right" to be released on bail. Formal charges have to be subsequently framed by the court; TADA is silent on the period within which this has to be done.

These periods of 180 days and one year are considerably longer than envisaged in international human rights standards, the ICCPR requiring that charges should be communicated to an accused "promptly".

Amnesty International has been told by lawyers that some detainees held under TADA had to wait four or five years before charges were formally brought against them. Legal proceedings are exceptionally slow. In October 1993 the Supreme Court was reportedly hearing a petition brought by Mohminder Singh and Lavleen Singh (who has since reportedly been released on parole) from Ajmer, Punjab, whose cases under TADA had reportedly been going on for the preceding nine years. Shabir Shah, a prisoner of conscience from Jammu and Kashmir, was released from five years detention without trial on 14 October 1994, the last three years, since 28 September 1991, he had been held under TADA. A Home Ministry official is said to have admitted that more than 30,000 out of 53,000 TADA cases had been proceeding for more than five years[25], although official figures on the time necessary to conclude TADA proceedings are not known to be available.

The right to examine witnesses on the same terms as the prosecution
Section 16(2) of TADA provides that the identity and address of any witnesses can be kept secret. This provision prevents effective cross-examination of witnesses testifying against an accused in a trial held under TADA. The Supreme Court, in the *Kartar Singh* case, recognized this would put an accused person at a "disadvantage":

"Whatever may be the reasons for the non-disclosure of the witnesses, the fact remains that the accused persons to be put up for trial under this Act which provides severe punishments, will be put to

25 Indian Express, 16 July 1994.

disadvantage to effective cross-examining and exposing the previous conduct and character of the witnesses."

The Supreme Court felt that the identity and address of witnesses might be disclosed before the start of the trial, but that the court should not do so "for weighty reasons in its wisdom". Section 16(2) of TADA is the subject of particular concern to the NHRC whose Chairman reportedly told the press in August that the entire provision should be scrapped because it contravenes the requirements of fair trial[26].

The right to examine witnesses against one and to do so under the same conditions as apply to the prosecution, is an essential safeguard of fair trial, protected in Article 14(3)(e) ICCPR. The Human Rights Committee, in its General Comment on this Article explained that: "This provision is designed to guarantee to the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution". The provisions of Section 16(2) clearly violate this guarantee.

The right to have evidence extracted by force or compulsion excluded from the trial

Another TADA provision that has come in for particularly strong criticism within India -including from the Chairman of the NHRC - is Section 15(1) of the Act, which makes confessions made to a police officer of the rank of Superintendent of Police and above admissible evidence in court proceedings. Normally, Indian evidence law excludes all confessions made to police officers from being used as evidence (Sections 25 and 26 Evidence Act). The latter provisions were introduced last century when the police was widely regarded to resort to torture or duress to extract confessions, in the knowledge that it would be dangerous to rely upon such "confessions" in view of the suspicion that they might have been obtained by the police resorting to such illegal practices. Such fears remain entirely justified today, especially as regards suspects held under TADA.

During its January 1994 visit to Bombay, Amnesty International found that torture or ill-treatment by the police to extract information or "confessions" was widespread, and that the plight of prisoners arrested under TADA was especially serious. Amnesty International concluded that lawyers appeared to have been denied access to prisoners for long periods after their arrest under TADA and that the latter could be taken back to police custody whenever the police wished to interrogate them again and extract forced confessions from them, even if they had been remanded in judicial custody in prison. Many of the defendants on trial before the Special Court established under TADA in Bombay for their alleged participation in the March 1993 bomb blasts in the city, for example, are reported to have retracted confessions claiming they had been extracted under torture. However, under Section 15 TADA the court will now have to admit unreliable evidence in the form of "confessions" which, in many cases, were allegedly extracted by such illegal methods.

The Supreme Court has recognized these dangers. In its majority judgment in the *Kartar Singh* case, the Supreme Court observed:

"Whatever may be said for or against the submission with regard to the admissibility of a confession before a police officer, we cannot avoid but saying that we... have frequently dealt with cases of atrocity and brutality practised by some over-zealous police officers resorting to inhuman, barbaric, archaic and drastic method of treating the suspects in their anxiety to collect evidence by hook or crook and

26The Times of India, 22 August 1994

wrenching a decision in their favour. We remorsefully like to state on few occasions even custodial deaths caused during interrogation are brought to our notice..."

Nevertheless, the Supreme Court upheld the constitutionality of Section 15 considering "the gravity of terrorism unleashed by the terrorists and disruptionists" and the fact that the Legislature was competent to make a law prescribing different rules of proof, even "though we at first impression thought of sharing the view of the learned counsel that it would be dangerous to make a statement given to a police officer admissible...".

One Supreme Court judge, however, dissented. He found the Section 15(1) procedure to be "unfair, unjust and unconscionable, offending Art. 14 and 21 of the Constitution" (guaranteeing, respectively, the right to equality before the law and the right to life and personal liberty). He found that the constitutional human rights perspective, the history of the working of the provisions in the Evidence Act and the wisdom behind the Code of Criminal Procedure demonstrated the "inherent invalidity" of the Section. He stressed that built in procedural safeguards had to be scrupulously adhered to in recording confessions concluding: "It is, therefore, obnoxious to confer power on [a] police officer to record confessions under s.15(1)".[27]

The Human Rights Committee recalled, in its General Comment on Article 14(3)(g):

"that the accused may not be compelled to testify against himself or to confess guilt. In considering this safeguard the provision of article 7 [the prohibition of torture] and article 10, paragraph 1, should be borne in mind. In order to compel the accused to confess or to testify against himself, frequently methods which violate these provisions are used. The law should require that evidence provided by means of such methods or any other form of compulsion is wholly unacceptable."

Although Section 331 of the Indian Penal Code makes "voluntary causing hurt to extort confession" a criminal offence, TADA does not explicitly prohibit statements made to the police and extracted under torture to be inadmissible in evidence against an accused as international human rights standards, notably the United Nations Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UN Declaration on Torture), require. The prohibition of torture is a right from which, under Article 4 ICCPR, the government is not permitted to derogate, even in situations of emergency. In India, the changes in the normal rules of evidence under TADA, permitting police, during prolonged police custody, to record statements from an accused which can subsequently be used in evidence against him or her, are widely recognised as encouraging the police to resort to torture. A senior Supreme Court lawyer and former High Court judge stated in his submission to the Supreme Court challenging the constitutional validity of TADA provisions:

"It is well known that the Superintendents of Police and even higher officers habitually condone torture being inflicted on persons accused of TADA and other offences for the purpose of extracting confessions from them. A confession recorded by such officers should, therefore, be inadmissible. There is no reason whatever why Sections 25 and 26 of the Evidence Act which apply to other criminal trials should not apply to TADA trials."

The right to a fair and public hearing

TADA previously made trials *in camera* obligatory, a provision which clearly contravened the right to a

27 Kartar Singh v State of Punjab, paragraph 273 (majority judgment) and paragraph 435 (minority judgment).

fair and public hearing provided in Article 14(1) ICCPR. This is no longer so. As a result of the Amendment Act No. 43 of 1993, a decision to hold trials *in camera* is now at the discretion of the court trying the case. Present provisions are a clear improvement on the terms of the 1987 Act. Amnesty International is now assessing how the new provisions are being applied in practice.

The right to appeal

International human rights standards in Article 14(5) ICCPR require that every convicted person shall have the right to appeal to a higher tribunal. TADA excludes customary appeals to the High Court, allowing appeals only to the Supreme Court, and that not later than thirty days of sentence being passed.

Amnesty International does not believe that these provisions provide an effective right of appeal as international human rights standards require since hardly any Indians can exercise it, because they either live too far away from New Delhi where the Supreme Court is situated or because they lack the money to obtain the services of a lawyer to present such an appeal. The Supreme Court, in the *Kartar Singh* case, indeed recognized that

"the indisputable reality is that the Supreme Court is beyond the reach of an average person considering the fact of distance, expense etc."

Furthermore, the knowledge of the lack of an effective appeals machinery facilitates, in Amnesty International's view, police abuse of TADA.

One Supreme Court judge, in his dissenting opinion, held the right of appeal as restricted under TADA very often to be "illusory". This, he felt, could amount to a breach of Constitutional guarantees:

"Today the 1987 Act has been extended even to far off States. The effect of such extension is that for every sentence... one has to approach this Court. In many cases, the remedy of appeal may be illusory... He [the convict] may not be able to approach this Court because of enormous expenditure and exorbitant legal expenses involved in approaching this Court. It should not be forgotten that ours is a vast country with majority on the poor side. The knowledge of economic inability of sizable section of the society to approach this Court by way of appeal may result in arbitrary exercise of power and excesses of the police... Inability to file appeal due to financial reasons in petty matters may amount to breach of guarantee under Articles 14 and 21 of the Constitution. It may in many cases be denial of justice.[28]"

The Human Rights Committee has also held that the right to appeal in Article 14 ICCPR implies the guarantee of an effective access to that right. The Committee furthermore held that, if domestic law provides for more than one instance of appeal, the convicted person must have access to each of them[29]. TADA's appeal provisions clearly do not meet these standards. In Amnesty International's view, the

28*Kartar Singh v State of Punjab*, paragraph 317 (majority judgment) and paragraph 484 (dissenting opinion).

29Views expressed by the Human Rights Committee in Raphael Henry v Jamaica, Communication No. 230/1987, CCPR/C/43/D/230/1987, paragraph 8.4:

"... the Committee has examined the question whether article 14, paragraph 5, guarantees the right to a single appeal to a higher tribunal or whether it guarantees the possibility of further appeals when these are provided for by the law of the State concerned. The Committee observes that the Covenant does not require States parties to provide for several instances of appeal. However, the words "according to law" in article 14, paragraph 5, are to be interpreted to mean that if domestic law provides for further instances of appeal, the convicted person must have effective access to each of them."

limitation of appeals under TADA to one stage only could also violate the right to equality before the courts provided in Article 14 ICCPR.

5.REVIEW PROCEDURES

Although the Supreme Court, in the *Kartar Singh* case, upheld the constitutional validity of TADA, it found that there was a need for measures to be taken to ensure a higher level of scrutiny and applicability of the Act. The court said that Screening or Review Committees should be constituted by the central government and the state governments, consisting of officials of the Home Secretary and other officials of various Departments. They should review all TADA cases as well as the action taken by the enforcing authorities under the Act. The central government was asked to undertake a quarterly administrative review of how the States apply TADA. Since then, the central government has issued instructions for the establishment of review committees and a number of states have done this or are in the process of doing so. The central government itself has also established its own review committee, including the Home Secretary and other officials.
Following the central government's directive, a number of these committees have now been established. According to reports in the press, these have already requested the withdrawal of hundreds of cases wrongly brought under TADA in Maharashtra, Andhra Pradesh and the Union Territory of Delhi. Justice D.N. Mehta, in September appointed to review all TADA cases registered in Maharashtra, told the Indian Express that periodical review of cases brought under TADA was necessary because of the enormous powers given to the investigative agencies under its provisions. The state governments of Uttar Pradesh, Bihar and Madhya Pradesh have also announced that many cases pending under the Act would be withdrawn.

However, little is known about the nature of this review process: the powers of the review committees, the time frame within which they have to report, or whether they are *ad hoc* committees or have a more long term mandate. Nor is it known whether individuals or their representatives are allowed to make representations before these bodies. Nearly all committees established so far appear to consist of officials only, and they lack an independent judicial element such as is incorporated, for example, in the review mechanism of detentions under the National Security Act (Advisory Board under that Act have to consist of three persons who are or are qualified to be appointed as High Court judges). Unlike that review mechanism, the review committees established under TADA are not provided in law.

The nature of the mandate of the review committees is not known, nor whether they have powers to review whether the application of the Act is justified in terms of the objectives for its promulgation (reflected in the Statement of Objects and Reasons of the Act). Indeed, as described above in section 3, there are grave doubts whether TADA's application in many Indian States meets the standard of "strict necessity" required for emergency measures under international human rights standards. It is not known whether the committees that have been established are authorized to review whether such a necessity actually exists.

International human rights mechanisms have furthermore emphasized the need to subject the continuation of emergency powers, such as those provided under TADA, themselves to periodic review:

"In situations where it is necessary to maintain a state of emergency in force over a lengthy period, it is therefore important that Governments ... should remember to incorporate relevant provisions into their

legislation so that the reasons justifying the extension should be reviewed at regular intervals..."[30]

6.CONCLUSIONS AND RECOMMENDATIONS

Many provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987, contravene important international human rights standards, especially, as this report shows, the right to liberty and security, to a fair trial, and to freedom of expression; they also facilitate violations of the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment. These rights are provided in the International Covenant on Civil and Political Rights, as well as other standards provided in the UN Declaration on Torture. India is a party to the Covenant and is therefore bound to respect and ensure these rights. Many thousands of Indians have been arbitrarily held under the Act's provisions without the basic legal safeguards to which they are entitled under these international human rights standards.

When India's second periodic report was examined by the 18 independent experts constituting the Human Rights Committee, which supervises the implementation of the Covenant, its members recommended that India undertake a thorough review to bring Indian law and practices in line with the international human rights standards to which India is a party. This has not happened. Amnesty International believes that the lack of such a thorough review of both the broadly defined law as well as its wide-scale practice including for purposes unrelated to its promulgation has contributed to the continuing gross abuse of TADA which has been the subject of mounting concern in recent months on the part of numerous Indians, which has been acknowledged by the Home Minister himself as well as by India's National Human Rights Commission, which advocates the Act's abolition. These abuses are also the subject of this report. Therefore:

♦ Amnesty International recommends that the government take immediate steps to ensure a prompt, comprehensive and thorough review of the Terrorist and Disruptive Activities (Prevention) Act, to bring the law in conformity with the international standards specified in this report, notably the right to life and security, the right to a fair trial, the right to freedom of expression and the right not to be subjected to torture provided in Articles 4, 7, 9, 14 and 19 of the International Covenant on Civil and Political Rights.

Amnesty International welcomes the steps the government has taken in recent months to establish committees to review the application of TADA at central government level and in some states.

♦ Amnesty International recommends that the government make publicly available information about the mandate of these committees, the time frame within which they have to report, and whether individuals or their representatives are allowed access to them. The government should do so in a manner that those concerned have easy access to that information. The government should take steps to ensure that such committees are established in all Indian States where the Act is currently in force. It should consider introducing an independent judicial element in any such reviews of cases now being carried out. The central government should also ensure that an independent machinery is established to periodically review the need to enforce TADA in every state where it is in force. These review mechanisms should be provided in law.

♦ Those against whom no evidence is found to exist that they committed offences of a violent nature

30First Report of the United Nations Special Rapporteur on States of Emergency, E/CN.4/Sub.2/1987/19, paragraph 39.

as specified under the Act, should be immediately released. Those against whom substantial evidence exists that they committed such offences, should be promptly tried under legal procedures providing all legal safeguards for fair trial laid down in Article 14 ICCPR, as described in this report. If those cannot be provided under TADA, the accused should be tried under ordinary criminal procedures.