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P. Chidambaram  
Home Minister  
Ministry of Home Affairs  
Government of India  
104 North Block  
New Delhi 110 001  
India

26 June 2009

Dear Minister

### **TIME TO END TORTURE: OPEN LETTER TO INDIAN AUTHORITIES**

I am writing to express Amnesty International's concern that torture and other cruel, inhuman or degrading treatment or punishment are still inflicted widely throughout India. Twelve years after signing the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention), India has yet to ratify it. Also, despite repeated requests since 1992, India has not extended an invitation to the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment.

Amnesty International continues to receive reports of torture and other ill-treatment of individuals in custody from states where stringent security legislation is currently in force (such as Jammu & Kashmir, Chattisgarh and some north-eastern states), but also from several other states.

In last decade, several orders from India's Supreme Court, guidelines enunciated by the National and State Human Rights Commissions and official sanctions have not deterred police personnel and paramilitary forces from inflicting torture on individuals on the basis of their caste, religion, socio-economic status and sexual identity. Reports of torture for the purpose of extortion of money and torture of those belonging to the minorities and marginalised communities including dalits, adivasis and women are commonplace.

India currently has no legislation in force to criminalise torture specifically. Amnesty International understands that, over the last year, draft legislation to prevent torture is under the consideration of the government and parliament. However, the draft legislation in its current form, falls short of international standards and would need to be thoroughly revised to be in line with the Convention against Torture.

For instance, the current draft deploys a limiting definition of torture with an emphasis on the effects of "grievous hurt" and "danger". The draft states: "[W]hoever, being a public servant or being abetted by a public servant, or with the consent or acquiescence of a public servant, intentionally, does any act which causes (i) grievous hurt to any person; or (ii) danger to life or health (whether mental or physical) of any person is said to inflict torture".

This definition deviates from that presented in the Convention, which defines torture, in Article 1(1) as "any act by which *severe pain or suffering, whether physical or mental*, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing 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, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence

of a public official or other person acting in an official capacity.” [Italics added.]

The current draft legislation seeks to replace the clear international legal concept of “severe pain or suffering, whether mental or physical” with “grievous hurt” which only partly overlaps it and does not, for instance, cover mental pain or suffering.

In addition, the current draft legislation does not establish specific avenues or procedures for victims, relatives or others to complain about torture and other ill treatment; on the other hand, it sets, from the date of occurrence of torture, a six-month deadline for complaints to take effect. The current draft legislation is also silent about the processes of impartial investigation of law enforcement personnel and of their prosecution and has no specific clause to support victims of torture or protect witnesses.

On the occasion of 26 June, the International Day in Support of Victims of Torture, Indian human rights and civil society groups have called on the Government to initiate serious and wide-ranging consultations with them to ensure that it is in conformity with the UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment.

Amnesty International calls on the Government of India to

- take immediate steps to end all torture and other ill-treatment, as outlined by Amnesty International’s 12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State;
- immediately ratify the UN Convention Against Torture and its Optional Protocol;
- initiate wide-ranging consultations with human rights and civil society organizations in India, as well as with international NGOs and experts, in order to bring the draft legislation into line with the UN Convention Against Torture.;
- extend an invitation to the UN Special Rapporteur on Torture without any further delay

We are attaching Amnesty International’s 12-point Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State.

Thank you for your consideration for the above recommendations, and we look forward to your response at the earliest. Please contact me should you have any comments or questions.

Sincerely

Sam Zarifi  
Program Director  
Asia Pacific Program

Cc: Mr. Veerappa Moily  
Minister of Law and Justice  
Room 403, A Wing  
Shastri Bhavan  
New Delhi 110 001  
India  
Fax: 0091 11 23015223, 23384241

Justice Rajendra Babu  
Chairperson  
National Human Rights Commission Faridkot House Copernicus Marg Delhi 110001 India  
Fax: 0091 11 23384863  
E-mail: covdnhrc@nic.in  
ionhrc@nic.in