



National Conference
on
Prevention of Torture in India



25 June 2007, Conference Room No III, India International
Centre Annex, Max Muller Marg, New Delhi

Declaration
of the National Conference on Prevention of Torture in India

We, the participants of the *National Conference on Prevention of Torture in India* held in New Delhi on 25 June 2007,

Appreciate the presentations made by representatives of National Human Rights Commission of India (Mr P C Sharma, Member of the National Human Rights Commission of India), Delegation of the European Commission to India (Mr Parimal Bardan, Senior Advisor), International Committee of the Red Cross (Mr Larry Maybee, Regional Legal Advisor and Dr Christopher Daniel, Medical Delegate);

Reaffirm that no one should be subjected to torture or other cruel, inhuman or degrading treatment or punishment, as defined in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

Remind the government of India that the prohibition of torture and other cruel or inhuman or degrading treatment or punishment is absolute and no exceptional circumstances including war, internal disturbances or public emergency may be invoked as a justification for torture;

Welcome of the statement of Honourable Home Minister, Mr Shivraj Patil of 30 March 2006 on the government of India's consideration for enactment of "a legislation to provide compensation to victims of custodial violence";

Remind the government of India that enactment of a national law on custodial violence requires incorporation of provisions to make all acts of torture and other cruel, inhuman or degrading treatment or punishment as criminal offences and establishment of mechanisms to investigate and punish the guilty, *inter alia*, by putting the onus on the accused law enforcement personnel;

Recognise that torture is perpetrated by law enforcement personnel, armed opposition groups, vigilante groups and members of the upper castes;

Further recognise that those living in armed conflict situations, Dalits, indigenous/tribal peoples, minorities, refugees and asylum seekers, economically downtrodden and women remain more vulnerable to torture, inhuman and degrading treatment because of their location, caste, ethnic origin, religious belief and gender;

Note that statistics of torture as provided by National Human Rights Commission such as 1,493 custodial deaths including 136 deaths in police custody and 1,357 deaths in judicial custody during 2004-2005 represent only miniscule of the cases of torture in India;

Further note that in a situation where 19 out of 28 States of India¹ are presently afflicted by internal armed conflicts, and violence and torture by the security forces and the armed opposition groups have become more blatant, acute and rampant;

Condemn that torture and other cruel, inhuman or degrading treatment or punishment continues to remain an integral part of law enforcement and administration of justice in India;

¹ . According to the Annual Report 2006 of the Ministry of Home Affairs 19 States - 11 Naxalite affected States, namely, Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Maharashtra, Orissa, Madhya Pradesh, Uttar Pradesh, West Bengal, Kerala and Karnataka; seven North Eastern States of Assam, Manipur, Meghalaya, Tripura, Nagaland, Arunchal Pradesh, and Mizoram, and Jammu and Kashmir were afflicted by insurgency.

*Express serious concerns about the fact that arbitrary powers provided to the armed forces for arrest and detention without the guarantees enunciated by the Supreme Court of India in the *D K Basu judgement*, absolute lack of protection for the victims of torture and witnesses, impunity granted to the security forces, *inter alia*, by making prior permission from the concerned governments for prosecution of the accused law enforcement personnel mandatory, facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment;*

Also condemn the murder, cruel treatment such as torture and mutilation and other forms of corporal punishment perpetrated by the armed opposition groups and that such criminal acts go unpunished;

Further express serious concerns about the violations of the medical ethics including the “United Nations Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”;

Recognise that ratification of the United Nations Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol, development of national law to comply with CAT, and extending invitation to the UN Special Rapporteur on Torture are crucial to prevent torture in the country;

Express serious concern about the failure of the government of India to ratify the CAT despite its affirmation while signing the CAT on 14 October 1997 that “ratification of the Convention is to follow”;

Regret the failure of the Inter-Ministerial Group consisting of the Ministry of External Affairs, Ministry of Home Affairs and the Ministry of Law and Justice on the question of early ratification of the CAT (2005) to make any

recommendation as of today;

Reassert that the government of India's continued reservation to Article 9 of the International Covenant on Civil and Political Rights relating to an enforceable right to compensation to victims of unlawful arrest or detention is antithetical to the judgements of the Supreme Court of India;

Further reaffirm that classification of torture and other cruel or inhuman or degrading treatment or punishment under "Other Police Excesses" by the National Human Rights Commission is not in conformity with its commitment to prevent torture;

In view of the foregoing, we, the participants of the *National Conference on Prevention of Torture in India*,

1. *Urge* the Government of India to bring a comprehensive national law on custodial violence by making all acts of torture and other cruel, inhuman or degrading treatment or punishment as criminal offences and in particular, by putting the onus on the accused law enforcement personnel and by putting in place mechanisms for protection of the victims and witnesses of torture;
2. *Call upon* the government of India to ratify the United Nations Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol and withdraw the reservations to Article 20 (relating to inquiry by the Committee Against Torture), Article 21 (relating to inter-State complaints) and Article 22 (relating to individual complaints) of the CAT and Article 9 of the International Covenant on Civil and Political Rights relating to enforceable right to compensation for unlawful arrest or detention.

3. *Further call upon* the government of India to accede to the request of the United Nations Special Rapporteur on Torture pending since 1993 to extend an invitation to visit India;
4. *Also urge* Government of India and Medical Council of India to ensure respect for the “United Nations Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” and take appropriate actions for violations of the medical ethics, in particular, suppression and concealments of facts;
5. *Further urge* the Government of India to repeal the Armed Forces Special Powers Act of 1958 as recommended by the Justice (retd) Jeevan Committee to Review the Armed Forces Special Powers Act of 1958 (AFSPA);
6. *Recommend* to the government of India to end the regime of impunity by repealing the laws including Section 197 of the Criminal Procedure Code, Section 45 of the CrPC and Section 6 of the AFSPA etc which make it mandatory to seek prior permission of the concerned Central government and State governments for prosecution of the law enforcement personnel accused of human rights of violations;
7. *Also recommend* to the Government of India to ratify the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) and invite the e International Committee of the Red Cross to play its role in armed conflict situations; and
8. *Recommend* to the National Human Rights Commission of India, among others, to implement the recommendations of the Advisory Council of Jurists of the Asia Pacific Forum of National Human Rights

Institutions (APF) on Torture, to conduct all investigations by its investigative department and to record/document complaints of torture in a separate heading in its Annual Reports.