

## **Eighth session of the UN Human Rights Council, 2-20 June 2008**

### **Review of India under the Universal Periodic Review: Amnesty International's reflections on the outcome**

In the interactive dialogue on 14 April 2008, the Indian delegation highlighted the array of legislative and executive measures that exist in India for the effective implementation of safeguards to protect human rights. However, in practice, the Indian government has failed to adequately implement many of these safeguards.

Amnesty International questions the statement by the government that the National Human Rights Commission (NHRC) of India is as powerful and independent as India's Supreme Court. Amnesty International has had concerns about the NHRC's independence and authority since its establishment in 1993. These concerns were compounded by the August 2006 amendments to the Protection of Human Rights Act (PHRA), which authorize the Chairperson of the NHRC to delegate powers and functions to the Secretary General of the NHRC, a government appointee.

The NHRC has indicated that in many cases the government has failed to act on its recommendations to address serious human rights violations and that its own powers to enforce its recommendations are inadequate. The NHRC's annual report is regularly submitted to Parliament without discussion of its findings and recommendations. Annual reports are often not published for months or years because Parliament has not considered them. According to the official NHRC website, as of 23 May 2008 the last Annual Report to have been tabled and published is from 2005.

Amnesty International calls on the Indian government to ensure that the NHRC is granted more authority, a broader mandate and adequate resources for the effective protection of human rights in the country.

During the interactive dialogue India stated that it would deal expeditiously with any violations by the armed forces. This, however, is not borne out by Amnesty International's experience. The Armed Forces Special Powers Act (AFSPA) continues to grant de facto impunity to members of the armed forces. Section 7 of the AFSPA specifies that "no prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act". This is compounded by provisions in Sections 45 and 197 in the Code of Criminal Procedure, 1973 which stipulate that no member of the armed forces or the police can be prosecuted without the prior sanction of the central and state government.

Despite the government's claim that "the Government has always granted permission for prosecution of members of the security forces if it appeared that the rights of individuals had been infringed", such permission has not always been forthcoming.

In December 2006, the government announced that it would not repeal the Act, as had been recommended by the Parliamentary Committee reviewing it, but instead would amend it to limit the army's powers to shoot on suspicion. Amnesty International is not aware that the AFSPA has been amended; however, the organization believes that even with these amendments the Act falls far short of international standards.

Justice for victims of violations facilitated by the AFSPA is further undermined by the inability of the National Human Rights Commission to conduct its own investigations into violations committed by the armed forces. Section 19 of the Act allows the NHRC only to seek a report from the government on allegations of human rights violations by the armed forces rather than conduct its own investigation. This confines the NHRC to the government's version of events or that given by the alleged perpetrators themselves.

Amnesty International recommends the government commit to ending impunity for human rights violations by the police and the security forces and to remove all legislative provisions which might prevent accountability for such human rights violations.