

India: New anti-terror laws must meet international human rights standards

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New anti-terror laws introduced two days ago in India after the November 2008 multiple attacks on Mumbai city, which took a toll of more than 170 lives, fail to meet international human rights standards, Amnesty International said today.

Amnesty International calls upon the President of India to reject the new amendments to the antiterror laws as they contain several provisions which violate international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR) which bind India legally.

The organization calls upon the President of India, Indian authorities and lawmakers to review the new amendments to the Unlawful Activities (Prevention) Act, (UAPA), 1967, and provisions of the new legislation aiming to set up a National Investigating Agency (NIA) exclusively meant to probe acts of terrorism in the country.

The organization acknowledges that the Indian authorities have a right and duty to take effective measures to ensure the security of the population. However, security concerns should never be used to jeopardize people's human rights as established in international law and standards. In its statement on the recent multiple attacks in Mumbai and elsewhere in India, Amnesty International has called for those responsible to be brought to justice in proceedings that meet international standards of fairness.

In recent years, other countries have responded to similar attacks and rushed to pass sweeping anti-terror legislation and implement "gloves off" practices violating human rights. Their experience has shown that such measures undermine the rule of law and respect for human rights internationally, and do not enhance security. In fact, the UN General Assembly emphasised in 2006 that "measures to ensure the respect for human rights for all and the rule of law [are] the fundamental basis for the fight against terrorism". [1]

Amnesty International points out the following provisions in the latest amendments, which are incompatible with international human rights law and standards, and must be repealed or extensively revised:

1. The amendments use sweeping and overbroad definitions of "acts of terrorism" [2] The definitions

are so broad that they cover what may be minor offences, such as actions likely to cause “loss of, or damage to, or destruction of, property” when it even required that the act is necessarily intended, only “*likely to... strike terror in the people of India...*” [emphasis added]

2. The amendments continue to use sweeping definitions of “membership” of a “terrorist gang or organization” without clear and strict definition of what constitutes such membership. [3]

These provisions may amount to excessive restrictions on the rights to freedom of association and freedom of assembly. These rights are protected under Articles 21 and 22 of the ICCPR. [4]

3. The amendments seek to extend the minimum period of detention of persons suspected to be involved in acts of terrorism to 30 days from 15 days and the maximum period of detention of such persons to 180 days from 90 days - which is already far beyond international standards. [5] The amendments also contain no provisions for adequate pre-trial safeguards against torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) of detainees.

These new amendments clearly contravene Articles 9(2) and 9(3) of the ICCPR which provide, among other things, that all arrested people be promptly informed of the charges against them and that they be entitled to trial within a reasonable time or release. The organization also fears that the possibility of long periods of detention without charge or trial might lead to torture and other ill-treatment bearing in mind such violations have in the past taken place during similar detention.

4. The amendments offer a lone pre-trial safeguard - that the court should satisfy itself, from the prosecution, about the progress made in the investigation and the specific reasons for the detention beyond 90 days. [6] They also expand the longest period detention to cover a much wider range of offences. [7]

5. The absence of a mandatory provision for remedy of appeal or review of detention is likely to place restrictions on the availability of bail to detainees. Another section expressly stipulates denial of bail to foreign nationals who may have entered the country in an unauthorised or illegal manner except in very exceptional circumstances. [8] As there is enough evidence that in the past such provisions have been misused by some states, these may adversely affect asylum-seekers and other vulnerable groups.

6. The amendments seek to reverse certain evidential burdens of grave crimes and require, in certain circumstances, the accused persons to prove their innocence. In these cases, the amendments provide that “the court shall presume, unless the contrary is shown, that the accused has committed such offence” offences including possession of arms or explosives with a belief that these or such substances were used in the commission of terror acts. [9] This amendment is incompatible with Article 14(2) of the ICCPR, which provides that “everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”

7. The amendments seek to compel the provision of information relating to the offence sought by investigating officials without requirement of warrant, and criminalise failure to provide such information. [10] These sweeping provisions may undermine freedom of expression provided under Article 19 of the ICCPR, for instance, journalists may be powerless to respect their sources’ legitimate wish to remain anonymous, as well as freedom from self-incrimination, provided in Article 14(3)(g) of the ICCPR.

8. The new legislation for setting up the National investigating Agency allows the Indian executive authorities to set up special courts, in consultation with the judiciary, to try terrorist offences. [11]

While international human rights law and standards do not prohibit per se the establishment of special courts, they require that all courts are competent, independent and impartial, and that they afford applicable judicial guarantees so as to ensure fair trials. The Human Rights Committee has clarified that while the ICCPR does not prohibit trials of civilians in special courts, the trying of civilians by such courts should be very exceptional and take place in proceedings which afford the full guarantees stipulated in Article 14 of the ICCPR.

9. The new legislation on National Investigating Agency authorises special courts to close hearings to the public without defining or limiting the grounds under which they may do so. [12] Amnesty International points out that under Article 14(1) of the ICCPR, court proceedings may be closed to be public only under limited circumstances.

10. Amnesty International reminds the Indian authorities and lawmakers that, during the last two decades, two key anti-terror laws, which violated international human rights law and standards, were grossly abused to suppress political dissent, especially in Tamil Nadu, and to target members of marginalized communities in some states, including Gujarat and Jharkhand. Following this, the authorities were forced to repeal one of the laws, the Prevention of Terrorist Activities Act (POTA), 2002, while allowing the other, the Terrorist and Disruptive Activities (Prevention) Act, (TADA), 1987, to lapse. [13]

Amnesty International, therefore, urges the Indian authorities and lawmakers to repeal or extensively review the above provisions which are incompatible with international human rights law and standards.

Notes

1 UN General Assembly resolution A/60/288, Annex, Plan of Action, part IV.

2 Section 15 of the UAPA Amendment Act, 2004 and sec. 4 of the Amendment Bill, 2008.

3 Section 2(o) of the UAPA as amended in 2004.

4 Authorities in the state Chhattisgarh invoked these provisions of the UAPA against a key human rights defender Dr. Binayak Sen, who was instrumental in bringing to light human rights abuses committed by the police and a private militia widely believed to be sponsored by the state government in fighting the Communist Party of India (Maoist), an armed organization banned under the UAPA. Dr. Sen has been charged, under the UAPA, as a member of this organization. See Amnesty International, India: Chhattisgarh government detains human rights defender, refuses to arrest police officials suspected of involvement in unlawful killings of adivasis, AI Index: 24 May 2007, ASA 20/013/2007; Amnesty International, India: Serious concerns over fair trial of human rights defender Dr. Binayak Sen, 25 June 2008, AI Index: ASA 20/013/2008.

5 Section 43D(2)(a) under sec. 12 of the UAPA Amendment Bill, 2008.

6 Section 43D(2)(b) under sec. 12 of the UAPA Amendment Bill, 2008.

7 Section 43(1) and (2) under sec. 12 of the UAPA Amendment Bill, 2008.

8 Section 43(D)(8) of the UAPA, under sec. 12 of the Amendment Bill, 2008.

9 Section 43E of the UAPA, under sec. 12 of the Amendment Bill, 2008.

10 Section 43(F) of the UAPA, under sec. 12 of the Amendment Bill, 2008.

11 Sections 11-16 of the NIA bill, 2008.

12 Section 17 of the NIA bill, 2008.

13 In 2001, when the Indian authorities promulgated POTA in the form of an ordinance, the organization issued a report. See Amnesty International, India - Briefing on the Prevention of Terrorism Ordinance, December 2001, AI Index: ASA 20/049/2001. Also, on TADA, see Amnesty International, India: The Terrorist and Disruptive Activities (Prevention) Act: The lack of 'scrupulous care', 1994, AI Index: ASA 20/39/94.
