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India: Chattisgarh government detains human rights defender, refuses to arrest police officials suspected of involvement in unlawful killings of adivasis

Amnesty International is concerned over the apparently arbitrary arrest and detention of Dr. Binayak Sen, a human rights defender and the police harassment of two other human rights defenders at Raipur in the central Indian state of Chhattisgarh. This follows the alleged involvement of police in unlawful killings of 12 *adivasis* (indigenous communities) in Santoshpur on March 31. The allegations have been substantiated by a police inquiry but the state government refuses to approve the prosecutions of those suspected to be involved in the killings.

Dr. Sen is the general secretary of the Chhattisgarh unit of the People's Union for Civil Liberties (PUCL), one of India's foremost human rights organizations, and has been instrumental in working on access to health for *adivasis*. On 14 May 2007, he was detained at the Tarbahar Police Station, Bilaspur district, when he was returning from Kolkotta to Raipur. Since May 15, he is held at Raipur prison. Police officials later sealed his residence and searched his clinic. His organic farm in a nearby village was also searched.

Dr. Sen has been detained under provisions of the Chhattisgarh Special Public Security Act, 2006 (CSPSA), and the Unlawful Activities (Prevention) Act, 1967), which was amended in 2004 to include key sections of the Prevention of Terrorist Activities Act (POTA), 2002. The POTA itself was repealed in 2004 following widespread criticism of abuse and human rights violations. The CSPSA allows for arbitrary detention of persons suspected of belonging to an unlawful organization or participating in its activities or giving protection to any member of such an organization and human rights organizations have demanded its repeal. Dr. Sen is the fifth person to be arrested under the CSPSA in the state.

The PUCL has stated that police allege Dr. Sen had passed letters from Narayan Sanyal, a detained leader of the banned CPI (Maoist) who he had met in the Raipur jail last month, to Piyush Guha, an alleged member of CPI (Maoist) under detention since 1 May. Dr. Sen, at the time of his arrest, told the media that this charge had no basis since the prison authorities were present throughout his meeting with Narayan Sanyal.

The PUCL has stated that, apart from Dr. Sen, two other PUCL members, Rashmi

Dwivedi and Gautam Bandopadhyay, have been facing harassment and threats of arrest from the police. The three have been actively protecting the rights of *adivasis* in the face of escalating violence in Chattisgarh between armed Maoists and *Salwa Judum*, an armed anti-Maoist campaign widely regarded as sponsored by the state government. They have been instrumental in bringing to light unlawful killings of *adivasis*, sexual assault of *adivasi* women and disappearances of *adivasi* youth. The latest instance was the unlawful killing of a group of *adivasis* at Santoshpur village in the forests of Bastar-Dantewada area on 31 March.

The state police had initially claimed that those killed at Santoshpur were Maoists during an armed confrontation, but following a sustained campaign by human rights organizations, the state government ordered a police inquiry into the killings. Following this, the bodies of five *adivasis* were exhumed in the first week of May and sent for post-mortem which confirmed that three of them were shot dead at close range while the other two were hacked to death. Seven others are still reported missing. Also, reports say that at least 600 *adivasi* residents of Santoshpur and neighbouring Ponjer village had fled the area fearing police reprisals following the findings of the inquiry.

However, Chattisgarh home minister Ram Vihar Netam has ruled out arresting the police officials suspected of being involved in the unlawful killings as, according to him, the police was fighting a battle against Maoists "in extremely difficult conditions" in the forests of Bastar-Dantewada district. Under India's Code of Criminal Procedure, 1973, the Union or state government needs to sanction the arrest or criminal prosecution of public servants, including police officers and members of the civil or armed forces. Human rights organisations in India have repeatedly called for this law to be amended to ensure that public officers who violate human rights are no longer protected from prosecution.

The minister also said the state government did not want to create in Chattisgarh a "Gujarat-like situation where police officials fighting terrorists are arrested." (It may be recalled that six officials who had worked as part of the Anti-Terror Squad of the Gujarat police were recently arrested on the charge of killing Sheikh Sohrabuddin, who was later branded as a terrorist, and his wife, Kausar Bi, in November 2005).

Amnesty International is gravely concerned that the Chattisgarh government is not following up on the police enquiry and pursuing prosecution of police officials suspected of involvement in the unlawful killings of *adivasis*. Investigations and follow-up action are critical factors in the prevention of further unlawful killings. An atmosphere of impunity is bound to flourish if suspected perpetrators of such crimes among the police force are not prosecuted and convicted.

Amnesty International also wishes to remind the state of India (the Union government) and the government of Chattisgarh that they have an obligation to protect the right to life as guaranteed by Article 21 of the Indian Constitution and in international human rights law.

Article 3 of the Universal Declaration of Human Rights states: "Everyone has the right to life, liberty and security of person". Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), to which India is a party, states: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". Article 4 of the ICCPR states that this right cannot be waived "even in times of public emergency threatening the life of the nation". Unlawful and extrajudicial killings clearly contravene the right to life. The Indian government ratified the ICCPR in 1979. By ratifying an international treaty which enshrines the right to life, India is obliged not only to respect that right in principle, but also to ensure it is not violated in practice. The ICCPR imposes a clear duty on states to investigate alleged violations of the right to life "promptly, thoroughly and effectively through independent and impartial bodies".

Recommendations

Amnesty International calls on the Union and Chhattisgarh government to:

- immediately release Dr. Sen unless he is charged with a recognizably criminal offence and take urgent steps to end the harassment of the other human rights defenders in the state;
- pursue the inquiry into the unlawful killings at Santoshpur and sanction the arrest and criminal prosecution of the police officials suspected of involvement in the same;
- ensure that the inquiry complies fully with the requirements of Principle 18 of the UN Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions

and

- adequately compensate the family and dependents of all the victims in accordance with Principle 20 of the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions and the guidelines of India's National Human Rights Commission issued in 1997 and 2003.

Background

Since 2005, Chhattisgarh, especially the Bastar-Dantewada forest area, has witnessed escalation of violence between the Maoists and the *Salwa Judum*. Civilians were routinely targeted on both sides, resulting in at least 300 deaths. Also, 45,000 *adivasis* displaced from their homes have been forced to live in special camps putting them at increased risk of violence.

The Chhattisgarh state government claimed that it enacted the CSPA to take action against the Maoists. Human rights organizations in India have demanded the repeal of CSPA as it contains several provisions similar to those in POTA. These include:

- violation of the principle of certainty in criminal law (including vague definition of membership and support to terrorist or unlawful organisations);
- absence of pre-trial safeguards (including insufficient safeguards on arrest, the risk of torture, obstacles to confidential communications with counsel);
- virtual impossibility of obtaining bail as there is no provision for remedy of appeal or review of detention;
- threats to freedom of expression and
- threats to freedom of association.