### **Asian Forum for Human Rights and Development**



#### **An Open Letter**

#### To the Prime Minister of India Dr. Manmohan Singh

#### **Subject**

India's Voluntary Pledges and Commitments in relation to its candidature for re-election to the UN Human Rights Council for the term 2007-2010

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We note with appreciation the voluntary pledges and commitments made by the government of India on 1 December 2006 for seeking re-election to the UN Human Rights Council for the term 2007-2010, but at the same time, the Asian Forum for Human Rights and Development (FORUM-ASIA), Asian Centre for Human Rights (ACHR), Centre for Organization Research and Education (CORE), National Campaign on Dalit Human Rights (NCDHR), People's Watch, and South Asia Forum for Human Rights (SAFHR) and others would like to bring to your kind attention the following concerns:

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- 7. Strengthening of national human rights institutions
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- 9. Establishment of a national and state level mechanism to engage civil society through dialogue/consultation. Enhancement of opportunities for NGOs to contribute more effectively in the Human Rights Council (HRC)
- 10. Other pressing issues

But before we present our case we would also like to mention that the government of India made 21 voluntary pledges and commitments in 2006 at the time of its first election to HRC. All pledges have been repeated word for word and only two new commitments have been added in 2007. One is concerning the proposed establishment of the National Commission for Protection of Child Rights and the other is about efforts to adopt the Declaration on the Rights of Indigenous Peoples. It is also interesting to note that most of the pledges made by the government have so far not been met, except regarding the setting up of a National Commission for Protection of Child Rights.

## 1. Ratification of international human rights treaties and accompanying optional protocols

We are concerned that government of India has not ratified a number of international treaties on human rights and the accompanying optional protocols which adversely affects the functioning of several treaty bodies of the UN. In particular, we urge the government of India to:

#### 1. Ratify the 1951 Convention on the Status of Refugees and its 1967 Protocol

- India has been receiving refugees since 1951 and it is essential that India ratifies this convention and its protocol to ensure that the refugees in India are protected.
- At present, India has only recognised Tibetans, Sri Lankan Tamils and Chakamas from Bangladesh as refugees, and has not recognised Afghans, Burmese, Bhutanese and several other groups of refugees from Africa and Middle Eastern countries.
- Hence, ratifying the Convention and its 1967 Protocol will ensure that the rights of all refugees in India are protected.

### 2. Ratify the International Convention on the Rights of Migrant Workers and their Families

 As a labour sending country, India must ratify the Convention on the Rights of Migrant Workers to protect the rights of four million migrant workers in the Middle East and South East Asian countries.

#### 3. Ratify the Convention Against Torture (CAT)

- India signed the Convention in 1998 and even after requests from the NHRC it is yet to ratify the CAT. We urge the government of India to take this opportunity as an interested member of the Human Rights Council to take this next step, given the systematic practice of torture in India.
- Third and fourth degree methods of torture are used in India to get confessions from accused people, in many instances leading to custodial deaths, and the perpetrators within the police and armed forces must be made accountable.

#### 4. Pending Ratification Status

- First Optional Protocol to the ICCPR(Individual Communication)
- Second Optional Protocol to ICCPR(Abolishing the Death Penalty)
- Declaration under Article 14 of ICERD(Individual Communication)
- Optional Protocol to CEDAW(Individual Communication)
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Declaration under Article 22 of CAT(Individual Communication)
- Optional Protocol to Convention on the Rights of Child (CRC) on the involvement of children in armed conflict
- Migrant Workers Convention
- Article 77 of the Migrant Workers Convention (Individual Communication)

- 1951 Convention on the Status of Refugees and its 1967 Protocol
- Rome Statute of the International Criminal Court

# 2. Ratification of all eight core ILO Conventions on fundamental human rights. In addition, ratification of the ILO Convention on Migrant Workers (Convention 97 and 143)

India should ratify all eight core ILO Conventions on fundamental human rights. In addition, India should also ratify the ILO Convention on Migrant Workers (Convention 97 and 143).

#### **Pending Ratification Status**

- ILO Convention 87 and ILO Convention 98(Freedom of Association and Collective Bargaining)
- ILO Convention 138 and 182( Abolition of Child Labour)

#### 3. Removal of all reservations from international treaties on human rights

We strongly urge the government of India to demonstrate its commitment to the promotion and protection of human rights by removing the following reservations that hamper the effective implementation of provisions in the treaties:

#### **Article 1 of ICCPR (Right to Self Determination)**

It has been in place for the last 28 years or so. The India government maintains that the term "right to self determination" that appears in this article applies only to the peoples under foreign domination and these words do not apply to sovereign independent states or to a section of people or nation, which is the essence of national integrity.

#### Article 9 of ICCPR (Right to Liberty and Security of a Person)

This too has been in place for the last 28 years or so. The Indian government takes the position that the provisions of the article shall be applied to be in consonance with the provisions of clauses 3 to 7 of Article 22 of the constitution of India. Further under the Indian legal system, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the state.

### Article 13 of ICCPR (An alien lawfully in the state party may be expelled only in pursuance of a decision reached in accordance with law)

This article has been in place for the last 28 years too. The Indian government maintains that it reserves the right to apply its law relating to foreigners.

#### **Article 29 of CEDAW**

It has been in place for the last 14 years or so. The Indian government declares that it is not bound by Paragraph 1 of this article.

#### **4.** Support for Special Procedures

The government of India should improve cooperation with the Special Procedures of the Human Rights Council by:

- Responding quickly and in full to their communications
- Acting upon their recommendations
- Issuing a standing invitation and facilitating visits as requested
- Accepting outstanding requests for country visits, as identified below:

There are about eight outstanding requests for country visits, they are:

- Special Rapporteur on Torture since 1993
- Special Rapporteur on Summary Executions since 2000 which was renewed in 2005
- SRSG on the Situation of Human Rights Defenders
- Special Rapporteur on Toxic Waste since 2005
- Working Group on Arbitrary Detention
- Special Rapporteur on the Sale of Children since 2004
- Working Group on Enforced Disappearances since 2005
- Special Rapporteur on Contemporary Forms of Racism since 1997 which has been renewed in 2006

### 5. Implementation of Concluding Observations and Recommendations of UN Treaty Bodies and facilitation of any Follow up Procedures

The government of India should implement the concluding observations and recommendations of the UN Treaty Bodies and demonstrate its full sincerity in setting standards for others to follow. The concluding observations and recommendations of the recently held CEDAW and CERD (in January and March 2007 respectively) assume significance in more ways than one for the issues related to caste based discrimination, Dalit women and women from minority communities were discussed at great length. The Indian official delegation has been found wanting in responding to questions raised in this regard. It is also important that India recognises CERD's General Recommendation No. XXIX passed in 2002 and starts addressing the issues related to caste based discrimination within the globally accepted standards of human rights. It should also adhere to the follow up procedures in this regard.

### 6. Implementation of Guiding Principles on Internal Displacement through the adoption of national legislation in this regard

It has been noticed that a significantly large number of people are internally displaced due to several factors be it natural or human-made. It is really a sad reflection on India's part that there is no rehabilitation policy that takes care of these unfortunates. It is therefore expected that the government of India will implement the UN Guiding Principles on Internal Displacements and adopt national legislation in this regard which

should also be implemented with full sincerity to mitigate the suffering of helpless millions.

#### 7. Strengthening of National Human Rights Institutions (NHRIs)

National Human Rights Institutions (NHRIs) should have the mandate to play an important role in the promotion and protection of human rights. The Paris Principles should not only be guiding principles for NHRC but should be made applicable to the National Commission for Women, the National Commission for Scheduled Castes, the National Commission for Safai Karamchari, the National Commission for Scheduled Tribes, the National Commission for Minorities, and the National Commission for De-Notified Tribes. There is also a need to further strengthen these NHRIs by vesting them with more powers. The constitutional mandate of NHRIs should be expanded to ensure that their annual reports are placed along with the action taken report by the central government in the parliament on a timely basis within three months of submission of their reports; their recommendations should also become binding on the union and state governments, public sector units, etc.

It is also important that the National Human Rights Commission (NHRC) of India is strengthened to carry out its mandate to ensure its effective functioning. The following points must be given prominence:

- The Human Rights Education Programme undertaken by the NHRC remains very weak and it needs to be further strengthened.
- The NHRC must be allowed unhindered access to places of detention and enforce prison reforms.
- The State Human Rights Commission (SHRC) must be established and strengthened throughout the country to ensure the effectiveness of the NHRC, as there are currently only seven states in India with the presence of the SHRC. The existing SHRCs are too weak, as well.

#### 8. Establishment of a fully-functional regional human rights mechanism

As an important member of the South Asian Association for Regional Cooperation (SAARC), India should take this opportunity to demonstrate its commitment to the promotion and protection of human rights not only through its own national mechanisms and through the mechanisms of the UN but also for initiating the process to set up a fully functional regional human rights mechanism in South Asia. The SAARC charter should also duly recognise and give a prominent place to Dalit rights as caste based discrimination affects nearly 260 million in South Asia alone.

More specifically India should commit through its national plan of action to implement SAARC member's affirmation in the SAARC Social Charter to "promote universal respect for and observance and protection of human rights and fundamental freedoms of all.... And strengthen civil society" (Para XII).

9. Establishment of a national and state level mechanism to engage civil society through dialogues/consultation. Enhancement of opportunities for NGOs to contribute more effectively in the Human Rights Council

India, as the largest functional democracy, should establish national and state level mechanisms to engage civil society through dialogues/consultation on various pressing issues and concerns. We would also like to recall the acknowledgement by all state parties who voted in favour of the General Assembly Resolution A/60/251 that "NGOs play an important role at the national, regional and international levels, in the promotion and protection of human rights".

#### 10. Other pressing issues

- There have been attempts in recent times to curtail the right to information by denying access to file noting by the officials. It should ensure timely action to prevent such misuse by the officials. The government of India should amend the Official Secrets Act to facilitate more items to be covered under the Right to Information Act.
- Massive irregularities have been found and are being reported from different states in their implementation of the National Rural Employment Guarantee Scheme. Corrective measures must be ensured at the earliest in this regard.
- There is a lack of required political will to address women's rights issues in the country. More than a decade has passed and the Women Reservation Bill has not seen the light of the day and is still not in the law book despite commitments made in the Common Minimum Programme of UPA government in this regard. Though some important measures have been taken in recent times like the Special Legislation against Domestic Violence, but the human rights situation of women cutting across caste, creed and religion leaves much to be desired. There are no visible changes as far as policy implementations are concerned.
- A National Commission for Protection of Child Rights has been set up recently but it is too early to comment on its effectiveness in curbing child rights abuses of different kinds which are still rampant despite some protective legislation in the country.
- The government of India should make real commitments rather than making tall claims by displaying its real intent to implement its own legislation to ensure the human rights of vulnerable groups like Dalits, Adivasis, de-notified tribes, women and others. The civil, political, economic, social and cultural rights, including the right to development of the marginalised communities have remained unrealised to a greater extent. The commitments made for the realisation of the MDGs to a great extent have not been implemented and chronic poverty due to social, cultural and economic exclusions still persists in the country, affecting a huge population.
- While appreciating India's secular credentials and acknowledging the fact that the Indian constitution guarantees the freedom of religion and the right to practice and propagate all religions, we are saddened by the fact that in many states of the Indian union, people that belong to religious minorities, especially the followers of Islam and Christianity have come under serious attack. Hindu religious fundamentalists groups

like the Vishwa Hindu Parishad (VHP), the Bajrang Dal and the Rashtriya Swyamsevak Sangh (RSS) have been carrying out malicious propaganda and violent attacks on the Muslim community for a long time in several states. During the past fifteen years these attacks have become a regular feature in the states where the Hindu right wing political parties like the Bharatiya Janata Party and the Shiv Sena are powerful. The Muslim community in the states of Gujarat, Rajasthan, and Madhya Pradesh and in parts of the state of Maharashtra and Karnataka are most insecure today. In these states the police and other security agencies routinely victimise the members of Muslim community. Most young Muslim men are seen as 'terrorists'. Of late there have been violent attacks on Christians reported from different parts of India. Even Congress ruled states like Himachal Pradesh apart from some others have passed anti-conversion laws. The police and local authorities seem to have allegedly shown their complicity by sheer inaction in most of such attacks on the minority community.

- Hundreds of cases of custodial killings, illegal arrests, custodial rape and torture in custody have been brought to light by several human rights organisations in the country. And it is unfortunate that despite such exposure by Indian human rights organisations, an overwhelming majority of the members of the police and other security forces who allegedly were involved in perpetrating acts of such brutal violence against ordinary civilians have escaped judicial scrutiny. The Indian government routinely withdraws permission for prosecution of members of its security forces in civil courts. The provisions in Indian laws that grant virtual immunity to all members of the security forces, especially in areas where the Armed Forces Special Powers Act empowers an ordinary soldier to "shoot to kill on suspicion" need to be repealed immediately.
- The reported incidents of extra-judicial killings (fake encounters cases like those recently reported from J & K, Sohrabuddin by Gujarat police, etc.), enforced disappearances, prevalence and use of draconian legislations like Armed Forces Special Powers Act etc., a large number of people living below poverty and privilege lines, existence of the largest number of malnourished children in the world, practice of manual scavenging by approximately close to one million people, untouchability and atrocities on Dalits and Adivasis, the Salwa Judum cases of killings, atrocities and displacement on Adivasis in Chhattisgarh, internal displacement, practice of discrimination in relief and rehabilitation in any post-disaster situation based on caste, and religious grounds (tsunami, Gujarat earthquake etc.), long and often discriminatory Criminal Justice Administration System etc. are some of the serious cases of human rights violations wherein the accountability of the state and impunity enjoyed by the perpetrators puts a question mark on India's commitment to uphold human rights and fundamental freedoms for all by its adherence/non-adherence to globally accepted norms and standards on the promotion and protection of human rights for all.
- The Criminal Justice Administration System in the country presents a sorry state of affairs. On the one hand, there is allegedly a general sense of reluctance and apathy on the part of most of the Indian states in implementing the Special Legislations or even for that matter any law (Acts and Rules) related to basic human rights. Most of the provisions of Special Legislations remain non-functional. On the other hand, the role of the police and even the judiciary leaves much to be desired. Under-reporting of the human rights abuses suffered by groups like Dalits, Adivasis, De-Notified Tribes,

Women and Minorities are a common phenomenon across the country and does not provide a true picture of several abhorrent practices in Indian society. The non-registration of cases, apart from reflecting biases (caste, religion, gender etc.) and corruption have also been attributed to the pressure on the police to keep the reported crimes low in their jurisdiction.

• The judiciary on its part cannot escape from taking blame. The due process of law is so lengthy and at many times so uncomfortable and even hostile to vulnerable groups that it takes many, many years before it dispenses justice. Justice delayed is always justice denied. Internationally accepted norms of "fair trials" are hardly adhered to by the courts at different levels in the country as far as cases pertaining to vulnerable groups like Dalits, Adivasis, De-Notified Tribes, Women and Minorities. It is high time we start talking about "judicial accountability" apart from political, administrative and police accountability. The much needed administrative and police reforms have not taken place so far to make them more humane and more accountable. In fact there have been attempts to vest more draconian powers to the police as if the creation of a police state is a goal. If India wants to remain a democratic state that guarantees equal human rights and fundamental freedoms to all, then we certainly need to re-look at the system of governance. The accountability of the Indian state, be it legislative, executive and judiciary, must be honoured in true letter and spirit.

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