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Human rights situations that require the Council's attention

Written statement* submitted by Commonwealth Human Rights Initiative, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Custodial violence and torture in India: Underlining the urgency of UNCAT ratification and enactment of an effective anti-torture legislation

Overview

At the 45th Session of the United Nations Human Rights Council (UNHRC), the Commonwealth Human Rights Initiative (CHRI) would like to reiterate that the prohibition against torture and ill-treatment is absolute and universal under international human rights law.¹ It is a peremptory norm of international law from which no derogation is permissible.² This specific obligation is fleshed out by the UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT), which mandates the State Parties not only to respect and protect the prohibition of torture, but also to take all measures to prevent its incidence.

We note that India remains among a handful of countries that have not ratified the UNCAT, despite repeatedly committing to it. Similarly, India presently does not have a standalone anti-torture legislation or provision exclusively prohibiting and criminalising ‘torture’ as a separate offence.

In this light, we would like to draw the Council’s attention to the numerous documented incidents of torture, ill-treatment as well as excessive use of force by the law enforcement authorities in India, which recently manifested itself while enforcing the COVID-19 lockdown measures. We urge the Council to call on the Government of India to take urgent, effective and progressive measures, to eradicate and prevent torture in compliance with its international human rights obligations and commitments made to the international community.

The prevalence of torture in India

In India, despite consistent judgments by the Indian judiciary ruling ‘torture’ as unconstitutional and “an affront to human dignity”,³ the torture and ill-treatment in custody are widely prevalent.

The National Crime Records Bureau of India indicated that a total of 1845 prisoners died in prisons in 2018, out of which 1639 were attributed to natural deaths, 149 to unnatural deaths and 57 were reported as unknown causes.⁴ According to the latest report of the National Human Rights Commission (NHRC), “custodial violence and torture are so rampant in India that it has become almost routine”.⁵ From April 2017 to March 2018, NHRC received 1636 intimations concerning death in judicial custody/rape, 148 intimations of death in police custody/rape and one intimation of death/rape in para-military/defence forces custody. Its Investigation Division dealt with 2,896 cases of deaths in judicial custody, 250 cases of deaths in police custody and 277 cases of deaths in police encounters.⁶

¹ Universal Declaration of Human Rights (Article 5); International Covenant on Civil and Political Rights, (Article 7); Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

² Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, International Court of Justice Reports 2012, pp. 422 et seq., at p. 457, para. 99.

³ Francis Coralie Mullin v. Administrator - Union Territory of Delhi, AIR 1981 SC 746, para 6; DK Basu v. State of West Bengal [1997] 1 SCC 416; Nandini Satpathy v. P.L. Dani & Anr., AIR 1978 SC 1025; S. Nambi Narayanan v. Siby Mathews and Ors. etc. (2018) 10 SCC 804; State of Madhya Pradesh v. Shyam Sunder Trivedi and Ors. 1995 (4) SCC 262.

⁴ Prison Statistics India 2018. National Crime Records Bureau, Ministry of Home Affairs. Available at: <https://ncrb.gov.in/sites/default/files/PSI-2018.pdf>.

⁵ National Human Rights Commission, India. Annual Report (2017-2018), page 44. Available at: https://nhrc.nic.in/sites/default/files/NHRC_AR_EN_2017-2018.pdf.

⁶ Ibid.

A recent report published by the National Campaign Against Torture found that a total of 1731 people died in custody in India only in 2019.⁷ In January 2019, four UN Special Rapporteurs — including those on torture and on freedom of religion or belief — expressed “alarm about allegations of at least 59 extrajudicial killings by police in the state of Uttar Pradesh since March 2017” and noted that most of those cases were concerning individuals from Muslim communities living in poverty.⁸

Accounts of police brutality, torture and ill-treatment have been reported in India since the imposition of a nationwide lockdown in March 2020. Videos showing the police beating people with batons and forcing lockdown violators to assume stress positions such as prolonged squatting have surfaced on social media.⁹ In June 2020, a harrowing case of custodial torture and killing gained worldwide attention: two traders, a father and son, were detained by the police for allegedly keeping their mobile phone shop open past the lockdown curfew in the Thoothukudi district in the state of Tamil Nadu. They were brutally tortured in police custody and were allegedly denied timely access to medical care. Both of them died three days later.¹⁰ After tremendous pressure from the civil society, the investigation was transferred to the Central Bureau of Investigation (CBI), which then arrested 10 policemen and filed First Information Reports against them, including the charges of murder.¹¹

Status of UNCAT ratification and legislative developments

India signed the UNCAT in 1997. However, it has neither ratified it so far, nor has it enacted a domestic anti-torture legislation. Since its first Universal Periodic Review cycle in 2008,¹² India has repeatedly expressed its commitment to ratify the UNCAT, by accepting such recommendations in the second¹³ and third¹⁴ cycles. India also pledged to ratify it while presenting its candidature for the United Nations Human Rights Council (UNHRC) elections in 2011,¹⁵ 2014,¹⁶ and 2018.¹⁷ However, concurrent interpretations on whether a dualist

⁷ The Hindu, ‘Five custodial deaths in India daily, says report’, 27 June 2020. Available at: <https://www.thehindu.com/news/national/five-custodial-deaths-in-india-daily-says-report/article31928611.ece>.

⁸ India: UN experts alarmed by alleged police killings in Uttar Pradesh. Available at: <https://bit.ly/32ojOUB>.

⁹ Joint Statement of the Coalition Against Torture, 23 April 2020. Available at: <https://amnesty.org.in/news-update/coalition-against-torture-government-officials-should-be-accountable-for-excessive-use-of-force-ill-treatment-during-covid-19-lockdown/>.

¹⁰ More information available at: https://www.washingtonpost.com/world/asia_pacific/lockdown-deaths-in-india-ignite-debate-on-police-brutality/2020/08/17/200df316-e0f1-11ea-82d8-5e55d47e90ca_story.html.

¹¹ NDTV, ‘CBI starts investigation in the Tamil Nadu custodial deaths case’, 11 July 2020. Available at: <https://www.ndtv.com/tamil-nadu-news/tuticorin-cbi-starts-investigation-in-tamil-nadu-custodial-deaths-case-2261162>.

¹² A/HRC/8/26/Add.1, 25 August 2008. Response of the Government of India to the recommendations made by delegations during the Universal Periodic Review of India. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/161/58/PDF/G0816158.pdf?OpenElement>.

¹³ A/HRC/21/10/Add.1, 17 September 2012. Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/167/57/PDF/G1216757.pdf?OpenElement>.

¹⁴ A/HRC/36/10/Add.1, 6 September 2017. Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/260/43/PDF/G1726043.pdf?OpenElement>.

¹⁵ A/65/758, 25 February 2011. Note verbale dated 16 February 2011 from the Permanent Mission of India to the United Nations addressed to the President of the General Assembly. Available at: <https://undocs.org/en/A/65/758>.

¹⁶ A/69/538, 20 October 2014. Note verbale dated 16 October 2014 from the Permanent Mission of India to the United Nations addressed to the President of the General Assembly. Available at: <https://undocs.org/en/A/69/538>.

¹⁷ A/73/394. Note verbale dated 29 August 2018 from the Permanent Mission of India to the United Nations addressed to the President of the General Assembly. Available at: <https://undocs.org/en/A/73/394>.

country would first need to enact or amend its domestic legislation before ratifying UNCAT, is a factor impeding the process of ratification.¹⁸

Currently, India does not have a separate anti-torture legislation or a separate offence of ‘torture’ in its criminal code. Prior legislative attempts made at enacting a domestic anti-torture law could not succeed: In 2010, a Prevention of Torture Bill was introduced and passed in the Lower House of the Parliament (Lok Sabha). In the Upper House (Rajya Sabha), it was referred to a Select Committee, which recommended amendments to the Bill, including making the definition of ‘torture’ consistent with the UNCAT.¹⁹ However, the 2010 Bill consequently lapsed in 2014. Another such attempt was made in 2017, when the Law Commission of India (LCI) submitted a draft Prevention of Torture Bill 2017²⁰ in its report to the Ministry of Law and Justice on the recommendation by the Supreme Court. The bill was, however, inconsistent with the UNCAT and other international standards such as definition of torture, absence of the principle non-refoulement and command responsibility, exclusion of evidence obtained by torture, etc. In 2017, a Private Member’s Bill on the prevention of torture, drawing from the LCI draft bill, was introduced in the Rajya Sabha and has since been pending.²¹

Addressing intersectionalities

In India, incidents of custodial torture have been often linked to identity markers of victims – gender, religion, caste and socio-economic status. The report of the National Campaign Against Torture released in 2019 revealed that vulnerable sections of the society, especially women, Dalits, religious minorities and the poor, are disproportionately subject to custodial torture and ill-treatment. Out of 125 deaths in police custody, about 60 per cent belong to the poor and marginalised communities.²²

Additionally, existence of extraordinary legal regimes in some parts of the country, which often lack transparency and accountability mechanisms, also contributes to both reported and unreported cases of torture in the country.²³

Recommendations

In light of the above, we urge the Council to call on India to:

- Ratify the UNCAT consistent with its successive commitments made at the international level in fulfilment of its existing obligations under the International Covenant on Civil and Political Rights (ICCPR) and give effect to the prohibition of torture recognised as a peremptory norm of international law, and to provide a constructive and cooperative framework to lawmakers, law enforcement officials and the security apparatus.
- Enact a comprehensive, standalone anti-torture legislation that:
 - (a) embodies the substantive, procedural and evidentiary requirements of an effective anti-torture law;

¹⁸ Ministry of External Affairs – Government of India, Standard Operating Procedures (SOP) with respect to MoUs/Agreements with foreign countries. Available at: <https://mea.gov.in/images/Revised-SOPs-with-forwarding-letter-02042018.pdf>.

¹⁹ Report of the Select Committee on the Prevention of Torture Bill, 2010. Available at: https://www.prindia.org/sites/default/files/bill_files/Select_Committee_Report_Prevention_of_Torture_Bill_2010.pdf.

²⁰ Law Commission of India Report No.273. Available at: <http://lawcommissionofindia.nic.in/reports/Report273.pdf>.

²¹ Bill no. XXIX of 2017 as introduced in the Rajya Sabha on the 15 December 2017. Available at: <http://164.100.47.4/BillsTexts/RSBillsTexts/Asintroduced/torture-E-151217.pdf>.

²² National Campaign Against Torture, ‘India: Annual Report on Torture 2019’, 26 June 2020, 108-118. Available at: <http://www.uncat.org/wp-content/uploads/2020/06/INDIATORTURE2019.pdf>.

²³ Amnesty International, ‘A Lawless Law: Detentions under the Jammu and Kashmir Public Safety Act’. Available at: <https://www.refworld.org/pdfid/4d86f6292.pdf>.

- (b) is in line with the UNCAT and international standards;
 - (c) takes into account a gendered perspective; and
 - (d) acknowledges and addresses the intersectionality of custodial torture and the socio-economic marginalisations underpinning the Indian milieu.
- Establish and strengthen effective preventive, monitoring and accountability mechanisms and conduct timely, independent and effective investigations to bring perpetrators of custodial torture and ill-treatment to justice with the view to addressing and rooting out systemic impunity for custodial violence and police brutality.
 - Undertake and effectively implement policy measures such as sensitisation and human rights trainings for law enforcement officers at all levels, public awareness campaigns, etc. to reinforce the notion of absolute prohibition of torture under all circumstances in the effort of bringing about a change in the societal outlook towards torture and ill-treatment.
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