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A submission for the 2012 Human Rights UPR:

“Torture common by police officers in India”

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Torture common by police officers in India

Briefing for the 13th session of the Human Rights Council Universal Periodic Review in May 2012, submitted by the Organization for Minorities of India (www.ofmi.org, info@ofmi.org), November 2011

1. Torture common by police officers in India

a. The use of torture is employed as daily tool by Indian police officers. In 2009, Human Rights Watch (HRW) reported: “Law enforcement personnel continue to enjoy virtual impunity from prosecution for human rights violations including custodial torture and extrajudicial killings.” According to a November 2011 report by Organization for Minorities of India, “Torture is so universally accepted and encouraged among the ranks of India’s police forces that it is a virtual certainty that anyone who is a police officer in India knows that torture occurs, has definitely been exposed to it, probably has participated in it and almost certainly has helped cover it up.”¹

1.1 Indian police practice torture from 2008 to 2011

a. In 2008, the Asian Centre for Human Rights (ACHR) reported: “About four people have died or been killed in police custody every day in India between 2002 and last year.” According to Suhas Chakma of the ACHR: “Hundreds are killed, dozens are paid compensation but only three to four persons are convicted each year. India is in a worrying state of denial about torture.”²

b. Although the Indian government has not recently been implicated in the sorts of large-scale, ethnically targeted massacres of detainees by custodial torture as it was in the 1990s, the country’s political environment remains highly tolerant of and receptive to the use of torture. The practice is systemic. In 2010, the *Christian Science Monitor* warned of a sharp increase in reported custodial torture cases (a sliver of the actual number which occur), reporting:

According to human rights groups, data on torture isn’t recorded unless there is a death in custody. Those annual figures have been rising: up to 1,977 cases in 2007-2008 from 1,037 officially reported cases in 2000-2001.³

c. Police officers are regularly ordered to engage in arbitrary, extralegal killings of random victims. In 2009, Human Rights Watch reported the admission of one officer:

“This week, I was told to do an ‘encounter,’” a police officer we will call Officer Singh told Human Rights Watch in January 2009. He was referring to the practice of taking into custody and extrajudicially executing an individual, then claiming that the victim died after initiating a shoot-out with police. “I am looking for my target,” he said. “I will eliminate him.”

¹ Bhinder, Bhajan Singh and Patrick J. Nevers. “Demons Within: The Systematic Practice of Torture by Indian Police.” Organization for Minorities of India. November 2011. 13.

² “India: New Killings, Torture at Bangladeshi Border.” Human Rights Watch. July 24, 2011.

³ Arnoldy, Ben. “In India, beaten US journalist becomes focus of police torture probe.” *Christian Science Monitor*. April 13, 2010.

Working in Uttar Pradesh, Officer Singh is the kind of police officer who should be in prison for misusing his authority. Instead he is protected by his superiors. It is in this way that impunity continues to thrive in India — and the reputation of the police continues to slide.⁴

d. Figures released by India’s National Human Rights Commission (NHRC) covering 2008 to 2011 showed 4,034 registered custodial deaths and 1,836 registered cases of custodial torture. The worst affected state was Uttar Pradesh, with 999 deaths and 1,552 cases of torture.⁵ In August 2011, *Tehelka* magazine reported on the release of NHRC’s figures, saying:

Human rights organisations have blamed the Central government for fudging facts on violations in these states repeatedly. They are not buying even the high figures in some states, terming them doctored, and blaming India for its poor human rights record, highly incompetent administrative system, and failure of the government to pass effective laws at par with international standards to curb such cases and bring the perpetrators to book.⁶

1.2 Climate of impunity for crimes against humanity

a. In 2011, The United States Commission on International Religious Freedom decided to keep India on its “Watch List” of countries which “require close monitoring due to the nature and extent of violations of religious freedom engaged in or tolerated by the governments,” stating:

Despite the 2009 election and the Congress Party’s electoral win, India’s democratic institutions, most notably state and central judiciaries and police, fall short in their capacity to uphold the rule of law. In some regions of India, these entities have proven unwilling or unable to seek redress consistently for victims of religiously-motivated violence or to challenge cultures of impunity in areas with a history of communal tensions, which in some cases has helped foster a climate of impunity.⁷

b. Extralegal killings remain widespread while torture in custody is all pervasive. Most custodial torture cases do not result in victim’s death. In its 2010 report, the ACHR warned:

Since police officials are not mandatorily required to report to the NHRC or any body on custodial torture they enjoy virtual impunity as these cases for the most part escape any official monitoring.

No record[s of] torture that does not result in custodial death are maintained.⁸

⁴ “Broken System: Dysfunction, Abuse and Impunity in the Indian Police.” Human Rights Watch. August 4, 2009. 4.

⁵ Parashar, Arpit. “NHRC figures paint rosy picture of Kashmir and Northeast; UP and Bihar are worst offenders.” *Tehelka*. August 30, 2011.

⁶ Parashar, Arpit.

⁷ USCIRF. “United States Commission on International Religious Freedom Annual Report 2011,” May 2011. 244-245.

⁸ “Torture in India 2010.” Asian Center for Human Rights. April 2010. 23.

c. In its 2009 report “Broken System: Dysfunction, Abuse and Impunity in the Indian Police,” HRW warned that the ongoing and widespread use of arbitrary arrest and torture by officers has engendered within the public a deep-seated fear and distrust of the police. The report stated:

Officers told Human Rights Watch they often cut their caseloads by refusing to register crime complaints. At other times, they use illegal detention, torture and ill-treatment to punish criminals against whom they lack the time or inclination to build cases, or to elicit confessions, even ones they know are false.

Such abuses contribute to a climate of fear. Many Indians avoid any contact with the police, believing not only that they will not receive assistance but that they risk demands for bribes, illegal detention, torture, or even death. Facing a reclusive public, the police are unable to get tips from informants or the cooperation of witnesses, which are both critical to solving cases and preventing crime. This, of course, creates a vicious cycle, as crimes go unreported and unpunished and the pressures on the police to deal with rising criminality increase.⁹

d. One cause of systemic police corruption is that the upper echelon ranks are only staffed by direct recruitment while the bottommost ranks are generally denied promotional opportunities. This prevents seasoned police officers from applying their experiences in the street upon advancing into an administrative role and breeds a police force of obedient officers and excessively empowered superiors. The practice of torture and crimes against humanity are particularly common when performed by low-ranking officers ordered by their superiors to commit atrocities. In 2009, HRW explained how this perpetuates the problem of torture:

The government awarded gallantry medals and promotions to police who “scored” dozens of encounter deaths.... “Encounter specialists” have been suspended on charges of corruption and police across India face prosecution for fabricating shoot-outs. But the practice persists, and has undoubtedly spread beyond major cities and “specialist” police units into smaller cities and surrounding villages.

According to Human Rights Watch’s analysis of dozens of court cases, cases before the NHRC, information from NGOs, and media accounts, fake encounter killings are usually carried out by station officers, sub-inspectors, and constables—that is, low-ranking police. However, considering the scale of this practice in many locales, it is unlikely that local officials and senior police officers are unaware of the involvement of police in such killings. Doubtlessly, senior officers have also been involved in planning or ordering fake encounters. An Uttar Pradesh Sub-Inspector, speaking on condition of anonymity, said he and other sub-inspectors had committed killings in the past few years on the orders of a superintendent of police (the officer in charge of a police district).¹⁰

1.3 Police officers rewarded for torture and extralegal killings

⁹ “Broken System: Dysfunction, Abuse and Impunity in the Indian Police.” Human Rights Watch. August 4, 2009.

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¹⁰ “Broken System.” 92-93.

a. Officers who engage in torture and develop a reputation for using extralegal killings are promoted or otherwise rewarded. The most recent example is former Punjab Police Director General of Police (DGP) Mohammad Izhar Alam. In October 2010, Alam was promised an MLA seat at Malerkotla, Punjab by Punjab Chief Minister Parkash Singh Badal. Regarding the climate of impunity for perpetrators of crimes against humanity such as Alam, Khalra Mission Organisation said: “Today the ruling party is not only giving them party posts but also ticket for the elections.”¹¹

b. On November 13, 2011, Punjab Human Rights Organisation and Khalra Mission Organisation released a list of 34 newly identified bodies of youth previously killed in Alam’s custody. In the 1980s, he led “Alam Sena,” aka the “Black Cats,” a death squad responsible for the deaths of thousands of Indian youth. Alam assembled a personal militia of 150 men, including “cashiered police officers,” said New Delhi-based U.S. Diplomat Robert Blake. He continued: “The group had reach throughout the Punjab and is alleged to have had carte blanche in carrying out possibly thousands of staged ‘encounter killings.’”¹²

2. Obstacles to reform: Indian law permits and protects police torture

a. The commission of torture is not a criminal act under Indian law. Nationally, there is no legal definition of torture or prohibition of its practice. Indian law actually protects police who practice torture, according to a 2010 publication of the South Asian Human Rights Documentation Centre, which stated:

Several provisions within the Indian Criminal Procedure Code (CrPC) and various national security related laws provide immunity to these officials. Section 197 of the CrPC allows for all-encompassing immunity by providing that the Central or state government in question must grant sanction for the prosecution of any government official ... alleged to have committed a criminal offence “while acting or purporting to act within the discharge of his official duty.” The Supreme Court has upheld this provision.¹³

b. A legal loophole protects police officers from prosecution under international law. Although India signed the Convention Against Torture in 1997, its Parliament has failed to ratify the treaty. In 2010, Lok Sabha passed “The Bill for the Prevention of Torture” to harmonize Indian law with the UN treaty. The bill went to Rajya Sabha, where it remains. The government shows no signs of passing the bill. Should it eventually pass, “The Bill for the Prevention of Torture” will lack any real force, as reported in 2010 by the Network for Improved Policing in South Asia:

The definition of torture as provided in the Bill does not conform to the UNCAT. It will include only extremely serious injuries such as permanent loss of eye or ear, emasculation, bone fractures, or hurt which causes severe and debilitating pain for twenty days or more. In other words, it lays down a very high threshold for an act to qualify as “torture.”

¹¹ “Don’t allot ticket to tainted cops: Khalra Mission.” *The Tribune*. November 2, 2011.

¹² Singh, I.P. “Alam Sena staged encounter killings.”

¹³ “Impunity for Torture: More of the Same.” Human Rights Features. June 28, 2010.

The Bill even lays down a limitation period within which requires that a court can entertain a complaint only if it is made within six months of the date of the offence. As a general rule, criminal laws tend to prescribe no time limits whatsoever, let alone one as short as six months.¹⁴

3. The Review of India by the Human Rights Council

a. In light of the Indian state's clear tolerance and encouragement of torture and related crimes against humanity, we hope that the members of the Human Rights Council will make the following recommendations to the Government of India during its Universal Periodic Review:

1. India must ban torture in its domestic law and ratify the UN Convention Against Torture to comply with international law while adopting an internationally acceptable definition of torture.
2. India should ban all police officers charged with torture, extralegal killings or other crimes against humanity from holding any public office (whether elected or selected).
3. India should cooperate with all human rights groups to encourage transparency and permit unrestricted documentation of human rights abuses.
4. India should promptly prosecute all officers, regardless of rank, who are implicated in crimes against humanity by any legitimate eyewitness and material evidence.

¹⁴ Balakrishnan, Sumant and Devyani Srivastava. "Prevention of Torture Bill OR Impunity for Torturers Bill." Network for Improved Policing in South Asia. August 2010.