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South Asia: End appalling use of torture and other ill-treatment

On International Day in Support of Victims of Torture, Amnesty International calls on South Asian governments to put an end to their use of torture as a tool of law enforcement and ensure reparations for victims.

Afghanistan, Bangladesh, Maldives, Nepal, Pakistan, and Sri Lanka have all acceded or ratified the UNCAT¹ and the International Covenant on Civil and Political Rights (ICCPR)². India is a signatory to UNCAT and has acceded to the ICCPR. By that these governments have undertaken international legal obligations to absolutely prohibit the use of torture and other ill-treatment. Despite these obligations, a culture of impunity has been allowed to develop with accounts of torture by state agencies being reported in every one of these countries.

On 1 March 2017, the Government of Afghanistan enacted the Law on Prohibition of Torture, which is however only limited to “individuals involved in the judicial process”. Shortly afterwards, the UN published a report³, which detailed an increase in reports of torture while in the custody of defence and security forces, up from 35% of interviewees in 2015 to 39% in 2017. Some of the detainees who reported being tortured were children, under the age of 18. Despite the enactment of legislation, there is yet to be a reduction in the cases of torture⁴ as the practice has become synonymous with detention by security forces. In this context, Amnesty International welcomes Afghanistan’s ratification of the Optional Protocol to the Convention on Torture (OPCAT) on 17 April 2018⁵.

In Bangladesh, Amnesty International has previously reported that torture and other ill-treatment in custody “remained widespread and complaints were rarely investigated”.⁶ The Rapid Action Battalion and several branches of the security forces have also been accused of torture and other ill treatment by human rights groups.⁷ In 2014, Amnesty documented the case of Ahmed Johnny

¹ United Nations Treaty Collection; https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=en

² United Nations Treaty Collection; https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=en&mtdsg_no=IV-4&src=IND

³ Treatment of Conflict-Related Detainees: Implementation of Afghanistan’s National Plan on the Elimination of Torture [April 2017]; <https://www.ohchr.org/Documents/Countries/AF/AfghanReportApril2017.pdf>

⁴ The Afghanistan Independent Human Rights Commission; http://www.aihrc.org.af/home/research_report/7398

⁵ United Nations Treaty Collection; https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9-b&chapter=4&lang=en

⁶ <https://www.amnesty.org/en/countries/asia-and-the-pacific/bangladesh/report-bangladesh/>

⁷ <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>

who was tortured in police custody along with his brother and died due to injuries sustained. Amnesty has also documented other cases of torture and other ill-treatment where prisoners have been shot in the leg by police, leading to amputation of the limb⁸. Although the Torture and Custodial Death (Prevention) Act was passed in 2013, Amnesty has reported in 2018 the lack of political will and awareness among officers, to enforce the law.⁹ More recently, in January 2018, at the inauguration of Bangladesh Police Week by Prime Minister Sheikh Hasina, police officials demanded the amendment of this Act, claiming it posed an “obstruction”¹⁰ to carrying out their duties.

In India, torture and other ill-treatment in police custody is rampant. Yet torture is not specifically recognized as a crime under the law. India is a signatory to the UNCAT; however the Convention is yet to be ratified by the Government of India, notwithstanding the acceptance of recommendations to do so at multiple UPR hearings, including in September 2017. The Law Commission of India, in a report released in October 2017, recommended that the Government ratify the UNCAT and enact laws to criminalize torture. Between January and August 2017, 894 deaths in judicial custody and 74 deaths in police custody were reported in India.¹¹ After Manjula Shetye, a woman prisoner who complained about the food in a Mumbai prison died in July 2017, after being beaten and sexually assaulted by prison officials, a team of Parliamentarians who visited the jail where she was held found that prisoners were routinely beaten. In November 2017, 18 prisoners who objected to the removal of their pillow covers in a Delhi prison were beaten, as reported by an investigative committee set up by the Delhi High Court. Having ratified the ICCPR, India has an obligation to criminalize torture and end the widespread ill-treatment of prisoners.

The Maldives passed an Anti-Torture Act in 2013 which used international human rights treaties such as the UN Convention against Torture, as its foundation. Despite these legal safeguards, the laws of the Maldives permit flogging and other means of corporal punishment, which constitute torture or other ill-treatment. The Human Rights Commission of Maldives, in their 2017 report on torture noted that 57% of all reported cases of torture were carried out by the Maldives Police Service, with 44% being carried out by the Maldives Correctional Services¹². Detainees, like Lahiru Manikkuadura¹³, have reported inhumane treatment in prisons such as restrictions on access to medical care and proper sanitation and denial of access to lawyers. The UN Special Rapporteur on Torture has stated that conditions including “very limited access to medical treatment” constitute “forms of cruel, inhuman or degrading treatment or punishment.”¹⁴

The proposal of the Torture and Cruel, Inhuman or Degrading Treatment (Control) Bill 2014, was seen as a significant step towards ending these gross human rights violations in Nepal. This Bill has however been pending for 4 years and has been deemed by Amnesty International and other international human rights organizations as falling short of international human rights law and

⁸ *id.*

⁹ <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>

¹⁰ Dhaka Tribune; <https://www.dhakatribune.com/bangladesh/law-rights/2018/01/11/police-want-amendment-custodial-death-prevention-act/>, Ain o Salish Kendra; www.askbd.org/ask/2018/01/10/police-week/

¹¹ Amnesty International; <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>

¹² <https://www.state.gov/documents/organization/277531.pdf> and Human Rights Commission Maldives; <http://www.hrcm.org.mv/publications/annualreports/AnnualReport2017.pdf>

¹³ <https://www.amnesty.org/download/Documents/ASA2986322018ENGLISH.pdf>

¹⁴ UN News Centre, ‘Independent UN expert urges Ghana to re-think criminal justice, mental health practices’, 18 November 2013. See also SPT Fourth Annual Report, UN Doc. CAT/C/46/2 (2011), para. 52.

standards¹⁵. Amnesty International's Annual Report¹⁶ stated that, by the end of the year 2017, two bodies – the Truth and Reconciliation Commission and the Commission of Investigation on Enforced Disappeared Persons – had respectively collected over 60,000 and 3,000 complaints of human rights violations, such as murder, torture and enforced disappearances committed by state security forces and Maoists during the conflict from 1996 to 2006. Amnesty International noted the decision, in the case of Maina Sunuwar, where three army officials were found guilty of the torture and murder of a 15 year old girl during the conflict¹⁷. While this may be a step in the right direction, justice must be served for all victims of torture.

Article 14 (1) of the Constitution of Pakistan prohibits torture; however this prohibition is limited to the sole purpose of “extracting evidence”. While the Torture and Custodial Death (Punishment) Bill 2014, was passed by the Senate in 2015, the Bill is yet to be passed by the National Assembly and therefore does not have any legal force. Torture is widespread in Pakistan, and is used as a tool of interrogation, and intimidation by law enforcement agencies.¹⁸ After the release of four forcibly disappeared human rights defenders¹⁹, three of them, Ahmad Waqas Goraya, Asim Saeed and Salman Haider, confirmed they were tortured while in the custody of people they believed were intelligence officials. Amnesty International has also commented on the torture of two of the released HRDs.²⁰ Ahmad Waqas Goraya spoke at a side event at the United Nations Human Rights Council in 2017 about being tortured while in custody.²¹ Asim Saeed made similar allegations after his release.²² Salman Haider, wrote about getting beaten and electrocuted while being interrogated during his enforced disappearance.²³ The UN Committee Against Torture recommended in 2017 that Pakistan, must ensure impartial investigations of allegations of torture by police, the military, paramilitary forces and the intelligence agencies, and duly prosecute perpetrators.²⁴

Sri Lanka passed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act²⁵ in 1994, but is yet to address the widespread incidences of torture and other ill-treatment. Ben Emmerson QC, the UN Special Rapporteur on Human Rights and Counter Terrorism, when visiting Sri Lanka in 2017, stated that torture was endemic and routine against detainees charged under the Prevention of Terrorism Act²⁶ (PTA). He reports that in 2016,

¹⁵ Amnesty International; <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF> and ICJ; <https://www.icj.org/wp-content/uploads/2016/06/Nepal-Torture-Bill-Advocacy-AnalysisBrief-2016-ENG.pdf>.

¹⁶ <https://www.amnesty.org/en/countries/asia-and-the-pacific/nepal/report-nepal/>

¹⁷ Advocacy Forum-Nepal; http://www.omct.org/files/2017/09/24527/nepal_advocating_against_torture_in_2016.pdf and BBC News; <https://www.bbc.com/news/world-asia-39621496>

¹⁸ Amnesty International; <https://www.amnestyusa.org/files/act400042014en.pdf>

¹⁹ <https://www.amnesty.org/download/Documents/ASA3356032017ENGLISH.pdf>

²⁰ <https://www.amnesty.org/en/countries/asia-and-the-pacific/pakistan/report-pakistan/>

²¹ <https://www.bbc.com/news/world-asia-39219307>

²² <https://www.aljazeera.com/news/2017/11/social-media-crackdown-stifles-dissent-pakistan-171124083629362.html>

²³ Pakistan Today;

<https://www.pakistantoday.com.pk/2018/01/06/beaten-with-pipes-given-electric-shocks-salman-haider-recalls-days-in-captivity/> and BBC; <https://www.bbc.com/urdu/pakistan-42577193>

²⁴ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/PAK/CO/1&Lang=En

²⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994

²⁶ The Prevention of Terrorism (Temporary Provisions) Act, No. 48 Of 1979

80% of all suspects arrested under the PTA reported torture or other ill-treatment²⁷. In their 2016 report to the Committee Against Torture, the Human Rights Commission of Sri Lanka notes that torture is “of routine nature” primarily in police custody²⁸. The report goes on to explain that the impunity enjoyed by the police is both a concern and a contributing factor to torture being used as method of interrogation and investigation. Amnesty International continues to urge the Government of Sri Lanka to end the country’s legacy of torture and other ill-treatment and ensure accountability for perpetrators and reparations to victims²⁹.

In light of the appalling use of torture across South Asia by governments, Amnesty International calls on the governments of Afghanistan, Bangladesh, Maldives, Nepal, Pakistan, India and Sri Lanka to adhere to their international, and national legal obligations and end the use of torture within their respective countries.

²⁷ United Nations, Sri Lanka; <http://lk.one.un.org/news/full-statement-by-ben-emmerson-un-special-rapporteur-on-human-rights-and-counter-terrorism-at-the-conclusion-of-his-official-visit/>

²⁸ Human Rights Commission of Sri Lanka; <http://hrcls.lk/english/wp-content/uploads/2016/11/Report-to-CAT-Committee-.pdf>

²⁹ Amnesty International; <https://www.amnesty.org.au/sri-lanka-much-remains-to-be-done-on-torture/>