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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

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

[13 February 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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India: To contain torture and ill-treatment the country should undertake criminal justice reforms

"The persons who commit such crimes must be hung upside down in front of the victims and must be thrashed till their skin comes off. Salt and chilly must be rubbed on their wounds to make them suffer till they beg for their lives..."

"In my tenure as chief minister [of Madhya Pradesh State 2003-04], when a rape like this had happened, I got this done. Police officials told me that doing this was a violation of human rights. I replied that these '*danavs*' (demons) do not have human rights. I also told the woman to watch the rapist being tortured through a lock-up window so that she could get some peace after listening to his screams and cries for help ..." Ms. Uma Bharati, Union Minister, Government of India.

The above statement, by an incumbent minister in the Union Government, made on 8 February 2017, to a large gathering and the media reflects the true policy of the Indian state when it comes to the question of torture and ill-treatment, and the government's understanding about crime investigation. The statement also reflects the Indian state's idea of justice.

Torture is a norm, rather than an exception in India. In fact the government does not deny that the practice is widespread, and on the contrary promotes it. The very notion of crime investigation is based on the capacity of the investigating officer to make the suspect confess at the earliest possible occasion. That such confession is not admissible in trial is irrelevant.

Whether the person tortured to confess a crime is in fact the real criminal is irrelevant, both in international and domestic law, and for the Indian officer, though for two distinct reasons. For the law, it does not permit torture; and for the officer who tortures, she/he is least bothered that he is engaged in a crime, since all that the officer is required is to produce a suspect who has admitted the crime, so that the investigation is formally 'completed'.

The so-called largest democracy of the world, that has promised to its people, justice, liberty, equality and fraternity, since 1947, has not invested a cent in reforming its criminal justice process. So today, Indian criminal justice process, particularly crime investigation, uses the same set of skills and principle that was instilled by a colonial government, when the infrastructure was laid to administer the colony by an extortionist administration that preyed upon half of the world and its people and dared to refer to itself as the 'true gentlemen.'

India is perhaps the only state in Asia that does not have at least a namesake national police commission. So much so, the country does not have any policing policy that fits its claim as a democracy.

The crude nature of Indian policing, and how justice is administered to the people by the Indian state, is reflected in the minister's statement quoted above. In countries that have a functioning criminal justice machinery, no one would dare make a public statement like what is cited above, neither would the person be holding public office once the statement is made, nor be walking free without a criminal charge to be answered of. Unfortunately, the reality in India is different. Yet, Indian state claims itself to be a democracy.

The practices in India, particularly concerning crime investigation and the entire process that is passed off as criminal justice administration, are non-compatible with the principles of fair trial. The worst affected are the poor and minority communities in India, since the Indian justice system, applies two distinctly different set of norms for the poor and for the rich and influential.

India does not have a law that criminalises torture. The country does not have any set of principles or procedures that are to be followed, should anyone wants to complain about torture and for the complaint to be investigated and adjudicated. There is no guarantee that the Indian courts would, on every single case of torture would render justice,

since a large number of Indian judges, and an equally large number of lawyers, including prosecutors believe that torturing a suspect is acceptable. The only objection, if at all, is when the degree of torture exceeds the crime alleged. So, for an accusation of rape, it is alright, even if the suspect is skinned alive, as the minister did, when she had absolute executive and administrative control of the police in one of India's largest states.

There is no single remedy to deal with the question of widespread practice of torture in India. What is lacking is holding India to account for its horrendous human rights records, particularly concerning the question of custodial torture. Officers of the state, like the minister, walks away free after committing such horrendous crimes. At their whims, torture or the threat of it is also used in plenty by the police for extortion, and by the government for social control.

If there be any attempt to contain endemic torture and ill-treatment in India, it should begin with a thorough reengineering of its entire criminal justice architecture. However, the understanding that torture, irrespective of which part of the world it is reported from cannot be addressed effectively without first taking initiatives to build a good criminal justice infrastructure is lacking even at the UN. The emphasis, even after at least 65 years of global human rights movement, is merely on norms preaching, without having the courage to understand and analyse what justice institutions exist in countries where crude forms of human rights abuses are practiced.

Little international expertise and global knowledge exists about the nature of criminal justice institutions in countries like India and the entire developing nations. It is this lack of knowledge and expertise that agencies like the UN should fill, if the universal norms of human rights are to be realised by 80% of the global population, that lives in developing nations, of which 60% calls Asia home. The Indian state is only one of the beneficiaries, and its people the victims, of the global neglect in developing this knowledge.
