



# General Assembly

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## Human Rights Council

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Agenda item 3

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

## **Written statement\* submitted by World Muslim Congress, 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.

[30 January 2024]

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\* Issued as received, in the language of submission only.



## **Prevention of Torture and Other Inhuman Degrading Treatment**

Torture as an institutional expression of power and social control, is an instrument for states to intimidate or even eliminate the enemies and non-enemies. Torture whenever routinely employed by the state is a reflection of its unauthorized use of violence and otherwise, impermissible use of coercion backed by the notions of self-defense and national security. Torture is both manifest and latent as it affects the physical as well as the psychological integrity of a person, hence it is prohibited under International Law, and domestic legal frameworks. Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which is representative of Customary International Law defines torture as an act by which 'severe pain or suffering' is intentionally inflicted upon a person or a third person to obtain 'information or a confession' or as a 'punishment for an act committed or suspected of committing' or on any reason based on discrimination of any kind.

The Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, Alice Jill Edwards in her report A/HRC/52/30 to the Human Rights Council examines the obligations of states to criminalize, investigate and persecute acts of torture and other ill-treatment, identifies major challenges standing in the way of impartial, proper, transparent and effective investigation and presents a range of state practices.

World Muslim Congress acknowledges the Special Rapporteur for recommending states prioritize legislative reform establishing a coherent framework for complaints and investigations into torture and other ill-treatment, starting by criminalizing torture in line with Article 1 of the Convention against Torture; repealing all laws that constitute torture or other forms of cruel, inhuman or degrading treatment or punishment; amend laws that permit amnesties, immunities, and statutes of limitations for the crime of torture; and review penalties and sentencing guidelines.

India is the most populated country in South Asia, a claimant of the largest democracy, and a firm advocate of the rule of law, torture is widespread and routinely practiced. Unchallenged and unopposed, it has become a 'normal' and 'legitimate' practice all over which often leads to custodial deaths, disappearances, and deaths in 'encounters'.

Torture is not criminalized in India as a separate or special offense. Provisions in the Indian Penal Code 1860 (sections 330 & 348) penalize acts that can also be considered torture, with seven and three years of imprisonment if proven guilty. But the offence attracts no particular relevance if the crime is committed by a police officer and at the same time there is no specific law concerning witness protection.

Indian Administered Jammu and Kashmir is the longest conflict and the most militarized zone in South Asia where people are struggling for the right to self-determination, torture, and other cruel, inhuman, or degrading treatment or punishment are the order of the day. The torture being seen as the Indian state's response to popular resistance, it has first to be seen within a context whereby the state itself is the instigator of human rights abuses, including torture, because it sees them as essential to maintaining its legitimacy using coercion.

The authorities consider torture as an essential investigative tool that is widely practiced. Policymakers believe that there is nothing wrong in punishing a Kashmiri captive in custody, not realizing the fact that a person under investigation is only an accused, not a convict.

Torture in Indian Administered Jammu and Kashmir is widespread and the torture survivors, due to the fear of reprisals, ignorance, or lack of hope in the judicial processes, are unable to initiate any legal action against the perpetrators. The greatest factor is the impunity granted to the army and para-military.

In Indian Administered Jammu & Kashmir the forces under the Armed Forces (Special Powers) Act 1990 (AFSPA), have impunity as Section 6 reads that no suit or proceedings could be initiated against the army personnel without the sanction of the central government. The impunity granted to the Army under AFSPA has deprived the torture survivors from initiating any action against the perpetrators or claiming compensation.

In the last 33 years, the Home Secretary or Defense Secretary has not granted sanction to a single case for persecuting human rights violators. Even for prosecution against police officials sanctioned under section 197 of the Cr.PC is required, which is also impossible to obtain. The torture survivors in Indian Administered Jammu and Kashmir have virtually no remedy, and the judiciary has failed to provide any relief to the victims.

India signed the Convention against Torture in the year 1997, however, it has not ratified it to date. In the 2022 Universal Periodic Review (UPR), several countries, including the United States of America, the United Kingdom of Great Britain and Northern Ireland, Japan, South Africa, and Sudan (the) urged India to ratify the UN Convention against Torture. In the first, second, and as well as third UPR cycles (2008, 2012, and 2017, respectively), India had been urged to expedite the process for the ratification of the Convention. These recommendations were duly “noted” in the fourth cycle, and the Solicitor General of India, Tushar Mehta heading the Indian delegation told the council that India condemns any form of torture and maintains an inviolable stand against arbitrary detention, torture, rape, and sexual violence by anyone but did not take any concrete measure to criminalize torture till filing of this statement.

World Muslim Congress strongly supports the recommendations of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, and in light of these recommendations, calls upon the UN Human Rights Council to urge the Government of India to:

1. Repeal the Armed Forces (Special Power) Act in the Indian-administered Jammu and Kashmir.
2. Remove immunity under the Criminal Procedure Code in case of violations of fundamental rights including torture and extrajudicial killings.
3. Ratify the Convention against Torture and its Optional Protocol and Convention for the Protection of All Persons from Enforced Disappearance.
4. Ratify the Rome Statute of the International Criminal Court (ICC) and implement the statute in national legislation, including by incorporating provisions to cooperate promptly and fully with the ICC and to investigate and prosecute genocide, crimes against humanity, and war crimes before its national courts following international law.
5. Ensure that people remaining in prisons are granted fair and speedy trials, and are held by the Nelson Mandela Rules on the treatment of prisoners.