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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 Human Rights Advocates Inc., 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.

[7 February 2022]

* Issued as received, in the language of submission only. The views expressed in the present document do not necessarily reflect the views of the United Nations or its officials.



The Roles and Responsibilities of Police and Law Enforcement at Assemblies and Demonstrations

Introduction:

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was adopted in 1984 and entered into force in 1987. As of 2006, 141 States have ratified CAT. Despite this, it is clear from the report of the Special Rapporteur that States have not taken their obligations under the convention seriously, which is further demonstrated by the small number of countries who ratified the Optional Protocol to the CAT.

Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights (ICCPR) state that no one shall be subjected to torture and other cruel, inhuman or degrading treatment or punishment. The CAT obligates states to prohibit and prevent torture and other cruel, inhuman, or degrading treatment or punishment, however it focuses on treatment of individuals at the time of arrest and detainment. Protests are an example of a situation where police action can rise to the level of cruel or degrading treatment or punishment, where the individuals are not in custody.

Peaceful Assemblies

The right to assembly is outlined in the ICCPR, which provides that “no restrictions may be placed on the exercise of [the right to peaceful assembly] other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

As briefly mentioned in a report by the Special Rapporteur, “individuals cannot lose their protection against torture and other cruel, inhuman or degrading treatment or punishment under any circumstances whatsoever, including in the context of violent riots or unlawful protests.”

Police Brutality at Protests

On August 11, 2021, the UN released a statement written by independent UN human rights experts who called for the end of police brutality. This statement came as a result of the many COVID protests around the world which ended with violent responses from law enforcement.

In the statement, the experts recognized that States must protect themselves and their interests against violence but must react with the utmost restraint and in strict compliance with international human rights standards. Four requirements were outlined for the States to follow, though no enforcement mechanisms were suggested: “1) Legality: any use of force must pursue a lawful purpose and respect equal treatment of all persons before the law in accordance with the principle of non-discrimination; 2) Necessity: force must only be used when, and to the extent, strictly necessary for the achievement of a lawful purpose, noting that lethal force may only be used when unavoidable to protect against grievous bodily harm or an imminent threat to life; 3) Proportionality: the harm likely to be inflicted by the use of force must not be excessive compared to the benefit of the lawful purpose pursued, and 4) Precaution: law enforcement operations must always be planned, prepared and conducted so as to minimize, to the greatest extent possible, the resort to force and, whenever it becomes unavoidable, to minimize the resulting harm.” Even exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

When State action fails to meet these four requirements, the force amounts to cruel, inhuman, or degrading punishment and may violate the right to life. Though only 141 countries have ratified the CAT and only 61 ratifying the Optional Protocol, the prohibition of torture is considered a jus cogens norm and all States are expected to act accordingly. The following

three examples show the failure of the States to adhere to the international human rights requirements for use of force by law enforcement at protests.

India

Late 2020, farmers and their families from around India marched to the Indian capital, Delhi, in order to protest the new agriculture laws which impacted their livelihood. These protests lasted over one year and were largely peaceful, however near the beginning of the demonstration, the protestors were ordered to vacate the site and when they refused, they were met with police in riot gear armed to force the tens of thousands of farmers from the site. When an opposing group took removing the protestors into their own hands, the protest turned violent with the armed police officers using metal batons and teargas against the protestors resulting in great bodily harm to many, and in some cases, death. The Prime Minister of Canada spoke up about protecting the right to peaceful protests after the violence in Delhi, as did Amnesty International, who called for the government of India to stop escalating the crackdown of protests.

United States of America

Mid 2020, the United States of America was the center of controversy as Black Lives Matter (BLM) protests turned violent, with law enforcement participating in the violence. Data collected by Forensic Architecture showed that there were over 1000 instances of police brutality against civilians during protests at various sites. Similar to the Indian protests, the BLM protests were largely peaceful, but there were instances where police showed up armed in riot gear with ammunition. In the instances where the protests did turn violent, police used “less-lethal rounds, pepper spray and teargas” on civilians. Once again, Amnesty International spoke up against the police brutality at the protests, specifying that they violated human rights. There was very little international response from States and nothing from the UN regarding this treatment.

Maldives

Beginning in the beginning of 2021, the Maldives government has cracked down on protests using force, citing COVID-19 health guideline violations for the arrest of protestors. Despite the UN’s review of the Maldives Human Rights Record, the government continues to use force at protests, as demonstrated at the protest on Labor Day. Protestors, who wore masks and socially distanced, gathered to protest sexual harassment at the workplace and were met with increasing aggression from the police force as the protestors questioned the conduct of government officials. As was the case with the United States of America, there was little to no international response regarding the violation of international human rights.

Recommendations:

The Human Rights Advocates (HRA) recognize that a statement was released by the United Nations Office of the High Commissioner, regarding police brutality as prepared by independent experts, but request a thematic report specifically regarding police violence at protests as a more comprehensive supplement for States, as the statement is not a document discussed with the Human Rights Council or the States.

The HRA also urges States to ratify both the treaty and the optional protocol and cooperate with the Special Rapporteur as a mechanism of enforcement and more importantly of gathering information.

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, art. 27, Dec. 10, 1984.

U.N. TREATY COLLECTION, Status of Treaties.

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-9&chapter=4&clang=_en

Nils Melzer (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), U.N. Doc. A/HRC/46/26 (Jan. 22, 2021).

Supra note 1.

Id.

International Covenant on Civil and Political Rights, art. 49, Dec. 16, 1966.

Nils Melzer (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), Extra-Custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/72/178 (Jul. 20, 2017).

Office of the High Commissioner, UN experts call for an end to police brutality worldwide, U.N. Press Release 27376 (Aug. 11, 2021).

Id.

Id.

Id.

Principle 8, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).

Supra note 8.

Id.

Hannah-Ellis Peterson, THE GUARDIAN (Jan. 29, 2021).

<https://www.theguardian.com/world/2021/jan/29/riot-police-attempt-to-clear-farmers-from-delhi-protest-camp>.

Id.

AMNESTY INTERNATIONAL (Feb. 9, 2021)

<https://www.amnesty.org/en/latest/news/2021/02/india-government-must-stop-crushing-farmers-protests-and-demonizing-dissenters/>.

Tobi Thomas, et al., THE GUARDIAN (Oct. 29, 2020).

Id.

Id.

AMNESTY INTERNATIONAL (AUG. 4, 2020).

<https://www.amnesty.org/en/latest/news/2020/08/usa-law-enforcement-violated-black-lives-matter-protesters-human-rights/>

CIVICUS (Feb. 7, 2021). <https://monitor.civicus.org/updates/2021/07/02/concerns-about-crackdown-protests-press-freedom-and-lack-accountability-maldives/>

Id.

Id.