

**Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls**

REFERENCE:  
AL IND 19/2020

10 December 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 43/20, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the failure to address complaints of repeated domestic violence committed by Mr. [REDACTED], a police officer, against his wife and two children.**

According to the information received:

Mr. [REDACTED] is a police officer, enrolled as Sub-Inspector and later on promoted to Inspector in 2006 and to Additional Commissioner of Police in 2018.

Mr. [REDACTED] married Ms. Raj Bala in May 1994. A month after the wedding, Mr. [REDACTED] began physically assaulting her regularly. The physical violence continued throughout the years, including during her two pregnancies. Mr. [REDACTED] also was psychologically abusive towards his wife, using demeaning language and regularly threatening her with physical violence, including death. Mr. [REDACTED] controlled Ms. Bala's bank accounts and earnings from her job, allowing her minimal access to money to cover her daily needs.

On 10 July 1995, Ms. Bala's first son was born, Mr. Yatin Dahiya. Against her will, Mr. [REDACTED] forcibly moved her with her new born to his village, Sardarpura, Rajasthan, while he continued to live in Delhi and went to the village occasionally, where he continued to physically assault her. Isolated and living in precarious circumstances, Ms. Bala told her parents of her situation. Her father reached out to Mr. [REDACTED], a police officer senior to Mr. [REDACTED] at the time, informing him of the situation of abuse. Mr. [REDACTED] reportedly convinced Mr. [REDACTED] to allow Ms. Bala to move back to Delhi to be closer to her family, but took no measures to investigate the allegations of violence against Ms. Bala.

Over the following years, the physical violence against Ms. Bala continued. In 1998, during her second pregnancy, Mr. [REDACTED] physically assaulted Ms. Bala so severely that she decided to call the police. Mr. [REDACTED] prevented her from completing the call and threatened to kill her if she tried to call the police again or told anyone about the ongoing abuse. In 2001, after being publicly harassed

and humiliated by her husband, Ms. Bala attempted suicide by trying to drink cleaning products. Mr. [REDACTED] prevented her from doing so, and afterwards severely beat her.

Mr. [REDACTED] was physically violent towards his two children when they were young. Mr. Yatin Dahiya was routinely beaten when he tried to defend his mother from physical violence. In 2007, Mr. [REDACTED] grabbed his daughter, Ms. Sheetal Dahiya, by the neck and lifted her. In 2013, Mr. [REDACTED] hit his daughter on the left side of her face, causing a rupture to her left eardrum. Mr. [REDACTED] would inflict physical punishments on his two children if they misbehaved or performed poorly in school. On several occasions, Mr. [REDACTED] humiliated and insulted Ms. Bala and their children in front of friends and acquaintances, leading to an erosion of their social connections and support networks. Throughout the many episodes of violence, Mr. [REDACTED] used to say to his wife and children that, if they sought the police, nobody would believe them given his position as Additional Commissioner of Police. He threatened that he would have them arrested instead if they sought protection from the police. Ms. Bala and her children were too scared to ask for help due to Mr. [REDACTED] position and contacts in the police force.

In August 2019, Ms. Bala and her son reached out to Mr. [REDACTED] [REDACTED] senior police officer of her husband, about the situation of domestic violence and to seek help in obtaining a divorce. Mr. [REDACTED] blamed Ms. Bala for the situation of abuse and told her to improve herself, arguing that Ms. Bala did not have sufficiently frequent sexual relations with her husband, which would have led him to engage in an extramarital relationship.

During the COVID-19 confinements, the physical and verbal abuse intensified. On 31 October 2020, he again physically assaulted his wife, and responded to his children's efforts to contain him with physical violence and threats of rape of his daughter. Ms. Bala called 181, the Women Helpline for domestic abuse, and as Mr. [REDACTED] waited for the arrival of a patrol, he changed into his police uniform. A police officer (H.N. [REDACTED]) arrived, and Mr. [REDACTED] repeated that nothing could be done to him as he was a police officer himself. Mr. [REDACTED] contacted his senior officer, ASI [REDACTED] [REDACTED] who arrived shortly after Mr. [REDACTED] left the residence. Ms. Bala and her children informed senior officer Mr. [REDACTED] [REDACTED] of the history of violence and abuse. Mr. [REDACTED] [REDACTED] told Ms. Bala and her children that nothing could be done about past abuse, and urged them to reconcile with Mr. [REDACTED] saying that a court case would take years and could damage the children's avenues for employment and educational achievement. Mr. [REDACTED] [REDACTED] told Ms. Bala that the senior officer of Mr. [REDACTED] would be informed and would speak to him to address the situation of domestic violence.

After police left, an official of the Crime Against Women Cell (CAW Cell) arrived at the residence and spoke to Ms. Bala. The official said that CAW could not act on her case as its focus was on counselling survivors, and advised Ms. Bala to file for divorce as she believed the violence and death threats made against her were too dangerous for mediation. After the visit by the CAW official, Mr. [REDACTED] called his supervisor at the police and said he had been

attacked by his wife and children, and that he wanted to file a complaint against them. The following day Mr. [REDACTED] received visits from police officers, apparently concerning his complaint. Ms. Bala has not been informed by the police of any measures being taken to investigate and address her claims of domestic violence.

Without prejudging the accuracy of these allegations, we express our concern at the reported acts of domestic violence against women and children, that have taken place over several years, and the lack of investigation or any type of response to the complaints by local police. We are particularly concerned by the allegations that the perpetrator was protected from investigations because of his role as a police officer, despite the authorities being aware of the situation for many years, preventing the victims' access to justice.

In addition, we are concerned that during exceptional circumstances such as the COVID-19 pandemic, where many families are forced to stay at home despite the alleged increased violence against women in the household in many countries, no further actions were taken by the police in relation to the above-mentioned allegations of domestic violence.

In connection with the alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the measures taken, if any, to investigate the complaints of domestic violence made by Ms. Bala and her children, as well as information about any protective measures put in place and measures to ensure Ms. Bala's access to services.
3. Please provide information on measures taken to ensure that victims can file complaints of domestic violence involving police officers, with no risk of retaliation from the alleged perpetrators.
4. Please specify whether internal procedures are in place to ensure the proper and timely investigations of allegations of domestic violence committed by police officers, particularly when they are presented to the same teams or units where the alleged perpetrator serves. Please provide details of any escalation procedures to ensure proper access to justice.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also

subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations of domestic violence and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of the alleged perpetrator and provide remedies to the victims.

Please accept, Excellency, the assurances of our highest consideration.

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Dubravka Šimonovic

Special Rapporteur on violence against women, its causes and consequences

Elizabeth Broderick

Chair-Rapporteur of the Working Group on discrimination against women and girls

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your Excellency's attention to the Declaration on the Elimination of Violence against Women, which was adopted by the United Nations General Assembly and states that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia, (a) the right to life; (b) the right to equality; (c) the right to liberty and security of person; and (d) the right to equal protection under the law (Art.3). In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its General Recommendation No. 19 (1992), updated by General Recommendation No. 35 (2017) defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government on 9 July 1993), whether perpetrated by a State official or a private citizen, in public or private life.

The CEDAW Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In General Recommendation No. 35, the Committee clarifies that the due diligence obligation underpins the Convention as a whole and that States parties will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women. Under the obligation of due diligence, States parties must adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors, including having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and are supported by all State agents and bodies who diligently enforce the laws. The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations.

The CEDAW Committee recommended in its General Recommendation No. 35 that States parties to adopt and implement effective measures to protect and assist women complainants of and witnesses to gender-based violence before, during and after legal proceedings. Finally, it recommended States parties to ensure effective access for victims to courts and tribunals and that the authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and, as appropriate, ex officio prosecution to bring alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties. In its General Recommendation No. 33 (2015), the CEDAW Committee stated that States must promote women's access to justice and highlighted that accessibility requires that all justice systems, both formal and quasi-judicial, be secure, affordable and physically

accessible to women, and be adapted and appropriate to the needs of women, including those who face intersecting or compounded forms of discrimination.

Moreover, we would like to bring to Your Excellency's attention Article 4 (g) of the United Nations Declaration on the Elimination of Violence against Women which notes the responsibility of States to work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation.

In 2014, in its Concluding Observations (CEDAW/C/IND/CO/4-5), the CEDAW Committee expressed its concern about the stark increase in violent crimes against women, and urged the State party to "allocate sufficient resources for the immediate enforcement of legislation on violence against women and for the establishment of special courts, complaints procedures and support services envisaged under that legislation in a time-bound manner".

Article 19(1) of the Convention on the Rights of the Child, to which your Excellency's Government adhered on 11 December 1992, provides applicable standards. It requires states parties to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." Article 19(2) elaborates on such protective measures, noting that they should "include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

Moreover, we would like to remind your Excellency's Government that the freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right under international law that must be respected and protected under all circumstances. Article 7 of the ICCPR provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." In reference to this the Human Rights Committee has repeatedly condemned the failure of States to prevent and redress domestic violence (e.g. CCPR/C/JAM/CO/4, para. 23; and CCPR/C/LKA/CO/5, para. 9). In his report on strengthening the protection of women from torture (A/HRC/7/3), the Special Rapporteur on torture highlighted States' due diligence obligations to protect persons within its jurisdiction from torture and ill-treatment committed by private individuals, including by enacting legislation to provide protection to women from domestic violence and any form of torture and ill-treatment in the home.

In its thematic report on family and cultural life (A/HRC/29/40), the Working Group on Discrimination Against Women and Girls has noted that in many cultures and religions, wives have a duty of obedience, and husbands have the right to punish their

wives, including physically. The provision of sexual services by wives is deemed part of their duty to obey their husbands, and marital rape is not prohibited. The Working Group welcomes the introduction of laws criminalizing domestic violence around 130 countries but finds regrettable that only 52 countries explicitly criminalize marital rape. Domestic violence has a considerable impact on women, causing more deaths than civil wars and entailing much higher economic costs than those linked to homicides or civil wars.

In some countries, legislative provisions strengthen patriarchal family structures, as well as the concomitant discrimination and violence against women. This is particularly true of provisions allowing rapists to marry their victims in order to escape legal proceedings and laws that exclude marital rape from the prohibition of rape under criminal law. In addition, the Working Group stressed that the obligation of the State to protect women and girl's right to equality in the family compels the authorities to prevent discrimination by private actors. Due diligence as a principle of State action should result in a global model of prevention, protection, prosecution, punishment and redress for acts of discrimination and violence against women in cultural and family life.

In the particular context of the COVID-19 pandemic, the Working Group on Discrimination Against Women and Girls stated that women and girls are at greater risk of domestic violence including sexual abuse without any recourse during the pandemic. Home isolation makes them more vulnerable to abuse by partners and family members, while their access to counseling and other emergency services, including alternative housing and legal assistance as well as access to courts has been drastically reduced. In some countries, domestic violence reports have almost tripled, while there are no shelters or shelters are no longer accessible due to lockdowns. Femicides by intimate partners are being reported with alarming frequency. Women with disabilities in institutions, nursing homes and psychiatric and other facilities as well as older in residential care homes are also at heightened risk of violence due to lack of external oversight. In relation to this concern, the Working Group has called on States to ensure continued and safe access to support services, emergency measures including legal assistance and access to judicial remedies for women and girls at risk of or who are subjected to domestic and sexual violence, harassment and abuse.

In her report to the General Assembly (A/75/144), the Special Rapporteur on violence against women addressed the interaction between the COVID-19 pandemic and the pre-existing pandemic of violence against women. The Special Rapporteur highlighted that gender-blind restrictive measures to curb the spread of the disease have had a negative impact on the availability of essential services to prevent violence against women, and stressed the need for protection measures to be adapted to the COVID-19 context. According to the Special Rapporteur, the COVID -19 pandemic has exposed pre-existing shortcomings and gaps in preventing gender-based violence against women, including regarding the provision of services for victims and the prosecution of perpetrators in line with human rights obligations. The Special Rapporteur called on States to implement measures to respond to the increased risk and exposure of women to violence, and to address structural inequalities and gaps during the pandemic and beyond.

Furthermore, we remind your Excellency's Government that the Special Rapporteur on Torture confirmed that, "in terms of the intentionality, purposefulness and severity of the inflicted pain and suffering, domestic violence often falls nothing short of torture and other cruel, inhuman or degrading treatment or punishment violence against women cannot be regarded as a private matter... it gives rise to a wide range of human rights obligations including of the State to prevent acts of torture and ill-treatment within their jurisdictions, and including at the hands of private actors" (A/74/148, para 2 and 11). The Special Rapporteur on Torture also underlined that failure to exercise due diligence to prevent, investigate, prosecute and redress torture and ill-treatment by private perpetrators, including in the context of domestic violence, amounts to consent or acquiescence in torture or ill-treatment (Committee against Torture, general comment No. 2, para. 18).