Human Rights Committee

List of issues prior to submission of the fourth periodic report of India*

A. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

1. Please provide information on measures taken to implement the recommendations contained in the Committee’s previous concluding observations (CCPR/C/79/Add.81) and Please report on any other significant developments in the legal and institutional framework within which human rights are promoted and protected that have taken place since the adoption of the previous concluding observations and that are not otherwise addressed in the following questions.

B. Specific information on the implementation of articles 1–27 of the Covenant, including with regard to the previous recommendations of the Committee

Constitutional and legal framework within which the Covenant is implemented (art. 2)

2. With reference to the previous concluding observations (para. 13), please clarify the extent to and the manner in which the Covenant has been incorporated into domestic law and is fully applicable across all state and union territories jurisdictions and directly applicable before domestic courts, and report on any progress in acceding to the Optional Protocol to the Covenant. Please provide information on measures taken to raise awareness among judges, prosecutors, senior officials and lawyers for the provisions of the Covenant and illustrate ways in which they have been actually invoked in domestic litigation or legislation processes, including in litigation against the State under article 32 or 226 of the Constitution.

3. With reference to the previous concluding observations (para. 14), please report on any process of review of reservations and declarations to articles 1, 9, 13, 12, 19(3), 21 and 22 of the Covenant, with a view to withdrawing them.

4. Please report on measures taken to further strengthen the National Human Rights Commission so as to render it compatible with the Paris Principles, including as regards a transparent and participatory selection and appointment process, pluralism and representation of religious and ethnic minorities in its composition. Please report on the status of the Protection of Human Rights (Amendment) Bill 2018 or any revised amendment bill and on the extent to which it addresses inter alia the Committee’s concerns that the Commission is

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* Adopted by the Committee at its 126th session (1-26 July 2019).
** Unless otherwise indicated, paragraph numbers in parentheses refer to the Committee’s previous concluding observations (CCPR/C/79/Add.81).
not authorized to investigate into human rights violations by the armed forces and about the one-year temporal limitation applicable to complaints (see CCPR/C/79/Add.81, para. 22).

Anti-corruption measures (arts. 2 and 25)

5. Please respond to reports that corruption, including bribery of public officials, remains common and judicial corruption is widespread, and report on the implementation of the Prevention of Corruption (Amendment) Act 2018 and on the progress achieved in combating corruption at all levels of government and within the judiciary.

Non-discrimination (arts. 2 and 26)

6. Please report on the anti-discrimination legal framework and clarify whether: (a) it prohibits discrimination, including direct, indirect and intersecting forms of discrimination, on all the grounds set forth in the Covenant, including colour, language, political or other opinion, national or social origin (including caste), property, sexual orientation, gender identity and other status; (b) it provides for effective judicial and administrative remedies.

7. With reference to the previous concluding observations (para. 15), please respond to the following allegations, and report on the measures taken to address them effectively: (a) persistent discrimination and violent attacks against Dalits and lower castes, and Adivasis, including mob violence and lynching, and alarming rise in crimes against Scheduled Castes and Scheduled Tribes; (b) delays in investigating such cases, backlog of cases pending trial and low conviction rates; (c) continued employment of Dalits as manual scavengers, including by local government officials, despite the legal prohibition of such practice, and ensuing deaths. Please report on any progress made in revising paragraph 3 of the Constitution (Scheduled Caste) Presidential Order of 1950 that denies the Scheduled Caste status to Dalit Muslims and Dalit Christians and deprive them of preferential benefits and of the protection against violence afforded to Hindu and other Dalits under hate crime laws and the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989.

8. Please report on measure taken to: (a) combat societal discrimination and violence, including police abuses, against LGBT persons; (b) fully implement the 2014 Supreme Court judgment in National Legal Services Authority v Union of India and others that recognized the rights of transgender persons. Please clarify whether revisions are considered for the Transgender Persons (Protection of Rights) Bill that was passed by the Lok Sabha (Lower House of Parliament) on 17 December 2018 with a view to bringing it into compliance with the Covenant, including as regards the mandatory sex reassignment surgery for transgender people and the light sentence imposed for serious offences against transgender people.

Equality between men and women (arts. 2, 3 and 25)

9. Please report on measures taken to: (a) eradicate the persistent patriarchal attitudes and deep-rooted stereotypes that perpetuate discrimination against women; (b) address the low representation of women in political and public life, particularly in parliament and state legislatures and in the judiciary, including in decision-making positions; (c) ensure substantive equality between women and men in matters related to marriage and family relations, including marital property, under the laws governing different religious groups; (d) abolish all customary and traditional practices that prevent rural women, especially women from scheduled castes and scheduled tribes, from inheriting or acquiring land and other property.

Violence against women and harmful practices (arts. 2, 3, 6, 7, 8 and 26)

10. With reference to the previous concluding observations (paras. 16 and 32), please respond to the reported persistence of harmful practices against women and girls, such as child marriage, honour killings, the dowry system, sex-selective abortion, devadasi, sati, witchcraft accusations, and FGM within the Bohra and certain other communities, and report on measures taken to eliminate them effectively, to bring perpetrators to justice (including relevant statistics) and to provide full reparation to victims. Please also report on measures taken, and progress achieved, in relation to tackling effectively violence against women, including domestic violence, rape (including marital rape) and other forms of sexual violence, and acid attacks. Please clarify the current legal status of the requirement that complaints
of violence be initially assessed by civil society “family welfare committees”, as introduced by the Supreme Court in July 2018.

**Termination of pregnancy, maternal mortality and reproductive rights (arts. 2, 3, 6 and 7)**

11. In view of reported maternal deaths caused by unsafe abortion, please clarify whether the State party intends to revise the legal and practical barriers to effective access to safe and legal abortion by women and girls, including obstacles to access to contraceptives, mandatory reporting to the authorities of teen pregnancies, the required authorization from a registered medical provider for abortion on request at any stage of pregnancy; criminalization of self-managed abortion; restrictions on access to legal abortion after 20 weeks of pregnancy, the related ambiguity as to permissibility on health grounds and the de facto judicial and medical authorization requirement for such abortions; the non-applicability of contraceptive failure as a ground for abortion to unmarried women and girls; the requirement of parental or guardian consent for girls under the age of 18; the limited availability of abortion services in public health facilities and the lack of sufficient health professionals who can legally perform abortions; and the denial of abortions by medical professionals due to fear of prosecution under the Pre-Conception and Pre-Natal Diagnostic Techniques Act and the Protection of Children from Sexual Offenses Act. Please also respond to reports that unsafe and coerced sterilization as part of family planning programs continue to be performed, affecting in particular marginalized women, and indicate the measures taken to end coerced sterilization, bring those responsible to justice and provide full reparation to victims.

**Trafficking in persons (art. 7, 8 and 9)**

12. Please describe measure taken to combat trafficking in persons, especially in women and children, including trafficking for sex, bonded labor, child labor and begging. Please provide information on the process of amending the Immoral Traffic (Prevention Act) 1956 and on the actual cases of investigation, prosecution and punishment of traffickers. Please respond to concerns about the targeting of victims of trafficking in persons through criminal investigations and reports about complicity of certain government officials in trafficking in persons.

**Counter-terrorism and security measures and accountability for serious human rights violations (arts. 2, 6, 7, 9, 14 and 26)**

13. With reference to the previous concluding observations (para. 25), please report on the fate of individuals that remained in detention after the Terrorist and Disruptive Activities Act had lapsed, and respond to reports that the State party continued to try individuals arrested and charged under the repealed Prevention of Terrorism Act and Terrorist and Disruptive Activities Act.

14. With reference to the previous concluding observations (paras. 18, 19, 21 and 24), please explain the compatibility with the Covenant, including with the legal certainty, necessity and proportionality principles, of special broad powers relating to the use of lethal force, arrest and detention, including ‘encounter killings’, preventive detention and prolonged detention without charge or trial, provided for under special security laws applicable in areas declared as ‘disturbed’, such as the Armed Forces (Special Powers) Act 1958, the Armed Forces (Jammu and Kashmir) Special Powers Act 1990, the National Security Act, the Unlawful Activities (Prevention) Act 1967, and the Jammu and Kashmir Public Safety Act 1978.

15. Please clarify whether the mandatory prior sanctioning for the prosecution of members of security forces (The Armed Forces (Special Powers) Acts of 1958 and 1990) and police (section 197 of the Code of Criminal Procedure) is still required, and whether, in light of article 300(1) of the Constitution, there are any avenues to bring civil suits against the state for damage caused by security forces members. Please also provide information on measures taken to ensure accountability for the alleged serious human rights violations committed primarily in ‘disturbed’ areas by security forces and police personnel, such as excessive use of force and extrajudicial killings, including in response to the large-scale protests that started in July 2016 throughout the Kashmir Valley and in the district of Jammu, extrajudicial
killings by police in other states such as in the state of Uttar Pradesh; enforced disappearances (including cases reported in 2017 such as the case of Manzoor Ahmad Khan); arbitrary arrests and detentions, including of children under the Jammu and Kashmir Public Safety Act; and acts of torture, rape and sexual violence allegedly committed by members of the security forces. Please also report on measures taken to ensure accountability for human rights abuses perpetrated by armed groups in the Indian State of Jammu and Kashmir, including abductions and disappearances, killings and sexual violence.

**Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment, liberty and security of person (arts. 6, 7, 9, and 14)**

16. With reference to the previous concluding observations (para. 20), please clarify whether an official moratorium on executions is in effect or is being planned and report on the progress made towards abolishing the death penalty. Pending the abolition of the death penalty, and in view of its application to non-lethal offences and its further expansion, please: (a) elaborate on any comprehensive review of relevant legislation to ensure that the death penalty may be imposed only for the most serious crimes, as prescribed in article 6 (2) of the Covenant, that is, only for crimes of extreme gravity involving intentional killing; (b) indicate whether the imposition of the death penalty is mandatory for certain crimes; (c) respond to the reported racial bias in death penalty convictions resulting in disproportionate representation of backward classes and religious minorities, particularly Muslim, among prisoners sentenced to death.

17. With reference to the previous concluding observations (para. 23), please respond to reports of deaths in custody with impunity, biased autopsy and forensic conclusions, and incidents of intimidation and threats of families of victims for pursuing such cases, and to reports of widespread torture and other forms of ill-treatment of persons deprived of liberty, also leading to deaths, including allegations of rape of female and male detainees by the police and physical and sexual abuse, torture and humiliation allegedly perpetrated with frequency against minorities in custody such as Dalits and Adivasis. Please report on measures taken to prevent deaths in custody and torture or ill-treatment, to investigate all such allegations promptly and thoroughly, to prosecute perpetrators and punish them accordingly, and to provide full reparation to victims or their families (please provide relevant statistics). Please report on the progress made in defining and criminalizing the offence of torture in line with the Covenant and other relevant international standards, and in ratifying the UN Convention against Torture.

**Liberty and security of person, administration of justice and fair trial (arts. 2, 7, 9 and 14)**

18. Please report on measures taken to prevent arbitrary arrests and arbitrary and unlawful detention, and clarify whether victims of unlawful arrest or detention are afforded an enforceable right to compensation both in law and practice, as required by article 9(5) of the Covenant. Please respond to reports alleging: (a) limited access to legal aid upon arrest and appearance before a magistrate owing inter alia to the insufficient number of legal aid lawyers; (b) limited consular access for foreigners deprived of liberty and arbitrary detention of foreigners in prison after completion of their sentence, pending their repatriation; (c) lack of presumption of innocence in criminal proceedings under certain laws, including the Unlawful Activities (Prevention) Act 1967; (d) the use of coerced confessions in criminal cases notwithstanding the legal prohibition against doing so; and (e) the treatment of juvenile defendants as adults pursuant to the Juvenile Justice (Care and Protection) Act 2015.

19. Please report on measures taken to address effectively prolonged pretrial detention, often exceeding the duration of any sentence a suspect might receive if convicted, and the very high proportion of ‘undertrial’ prisoners in prisons (prisoners awaiting trial or sentencing), including the disproportionate representation of Muslims, Dalits and Adivasis among such prisoners. Please provide information inter alia on the follow-up to the recommendation made by the Law Commission in May 2017 regarding amending provisions on bail; on the alternatives to detention and their application in practice; on the implementation of the periodic monitoring mechanism to identify undertrials eligible for release under section 436A of the Criminal Procedure Code; and on the number of undertrial prisoners since 2014 compared to the number of convicts. Please report on any reforms of
the judicial system aimed at resolving the lengthy delays in the delivery of justice resulting in severe backlogs of criminal cases and overrepresentation of undertrial prisoners in prisons, and on their practical impact.

Treatment of persons deprived of their liberty (art. 10)

20. In connection with the previous concluding observations (para. 26), please report on measures taken to address overcrowding in most prisons, including severe overcrowding in a number of states such as Chhattisgarh, and improve prison conditions reported to be often life-threatening, particularly due to inadequate sanitation and medical care. Please also clarify whether any independent mechanism is mandated to inspect all places of deprivation of liberty, including military detention centers.

Treatment of aliens, including refugees and asylum seekers (arts. 7, 9, 13 and 24(3))

21. Please clarify whether the State party intends to adopt comprehensive national refugee legislation, to introduce alternatives to detention for asylum-seekers and refugees, and to prohibit the detention of children for immigration purposes. Please report on measures taken: (a) to ensure access to the territory and to asylum procedures to all asylum seekers; (b) to provide adequate safeguards against refoulement, and respond in this respect to concerns that the return of 17 Rohingya detainees to Myanmar between October 2018 and March 2019 put them at risk of refoulement; (c) to ensure that refugees and asylum-seekers are not penalized for irregular entry and stay; (d) to provide for safeguards against arbitrary and indefinite detention of asylum seekers and ensure that the detention of asylum seekers is a measure of last resort, is applied for the shortest possible period and is reasonable, necessary and proportionate in the light of the circumstances; (e) to register at birth all newborns to asylum seekers and refugees, including all Rohingya children, and to prevent child statelessness.

Right to privacy (art. 17)

22. Please comment on the reported data and privacy breaches to the Aadhaar biometric identification project, including accidental revelation of Aadhaar numbers and public sharing of Aadhaar records, outline the measures taken to ensure adequate safeguards against arbitrary interference with the privacy of individuals, including with regard to protection of personal data, and report on the progress in adopting comprehensive regulations on data protection compliant with the Covenant, and on measures taken to give effect to the Supreme Court’s judgment of 24 August 2017. Please also respond to reports that the Central Monitoring System allows the monitoring and interception of electronic communications in real time without judicial authorization.

Freedom of conscience and religious belief, non-discrimination, and prohibition of advocacy of national, racial or religious hatred (arts. 2, 18, 20 and 26)

23. Please respond to the reported rise in, and impunity for, hate speech, public incitement to violence against religious minorities, including online and by politicians, government officials and religious leaders, and persecution, violence and hate crimes taking the form of communal/sectarian violence, mob violence and lynching, and vigilante cow protection mobs perpetrated against religious minorities, particularly Christians and Muslims, by inter alia various Hindu nationalist groups and their supporters, and reports of disruption of religious activities. Please report on the measures taken to prevent and curb such acts of religious intolerance and to ensure the effective protection of religious minorities. Please provide information on measures taken to thoroughly investigate such cases, prosecute suspected perpetrators where appropriate and, if they are convicted, punish them and provide victims with adequate remedies (in this regard, please provide relevant statistics).

24. Please explain how the vaguely-defined state level anti-conversion laws are compatible with the Covenant and respond to concerns that such legislation is frequently misused to persecute Christians and Muslims engaged in proselytism on false accusations of forced or induced religious conversion. Please also respond to reports of conversion of individuals back to Hinduism through “homecoming” conversion ceremonies (ghar wapsi), reportedly by force or coercion in some cases, performed by Hindu nationalist groups.

 Freedoms of expression and peaceful assembly (arts. 19 and 21)
25. Please respond to consistent reports of undue restrictions on freedom of expression in law and in practice, including banning of certain books or films on broad or vague grounds, frequent suspension of mobile and internet services on multiple occasions in Jammu and Kashmir; broad rules regulating internet shutdown, authority to issue orders to block online content on vaguely defined grounds and without court authorization, and detentions and prosecutions for online expression, including for spreading false rumours on social media. Please report on the status of the draft Information Technology (Intermediary Guidelines) Rules 2018 and on its compatibility with the Covenant, and respond to concerns that the proposed rules on intermediary liability would undermine freedom of expression and digital security, as well as users’ privacy.

26. Please respond to the following allegations and report on measures taken to address them effectively, including with regard to accountability:

(a) Harassment, intimidation, smear campaigns and violent attacks against human rights defenders, activists and journalists and their family members; killings, such as in the cases of writers and activists Govind Pansare, Narendra Dabholkar, and M.M. Kalburgi, and journalist Gauri Lankesh; and travel bans to prevent engagement with the UN and other international bodies and retaliation for such engagement;

(b) Abuse and misuse of broadly-formulated sedition laws (section 124 A of the Indian Penal Code and of Jammu and Kashmir Ranbir Penal Code), criminal defamation (sections 499 and 500 of the Indian Penal Code and section 119 of the Criminal Procedure Code) and other laws such as the National Security Act, the Unlawful Activities (Prevention) Act, and the Jammu and Kashmir Public Safety Act to arbitrarily arrest, detain, and often ill-treat, and prosecute members of minority groups, journalists and other individuals for expressing minority or dissenting views and exercising their right to peaceful assembly;

(c) Arbitrary application of section 144 of the Indian Criminal Procedure Code to prevent peaceful assemblies or debates and conferences critical of the State, and prohibition of assemblies of five or more people under section 144 of Jammu and Kashmir Criminal Procedure Code;

(d) Frequent disruption of demonstrations and excessive use of force against protesters, including the opening of fire on protesters in Toothukudi district of Tamil Nadu on 24 March 2018 resulting in 13 deaths, as well as the alleged use of pellet-firing shotguns (12 gauge shotguns) for crowd control purposes in the Indian State of Jammu and Kashmir resulting in scores of injuries, including serious eye injuries, and cases of loss of life.

Freedom of association (art. 22)

27. Please comment on the reported misuse of the Foreign Contribution (Regulation) Act (FRCA) to impede the legitimate activities of civil society organizations working on politically-sensitive matters, such as human rights, by cancelling, suspending, refusing to grant or to renew foreign funding licences, freezing NGOs assets or shutting them down on alleged violations of foreign funding regulations, as in the case of human rights organizations Lawyers Collective, Sabrang Trust, Navsarjan Trust, People’s Watch, Amnesty International India. Please respond to reports of initiation of criminal proceedings for alleged misuse of foreign funding under the FRCA against Ms. Jaising and Mr. Grover of the Lawyers Collective, reportedly in retaliation for their human rights work.

Citizenship and prevention of statelessness (arts. 2, 18, 24, 26 and 27)

28. Please report on measures taken to ensure that the revision of the National Register of Citizens in the State of Assam does not lead to discrimination against minorities, particularly Muslims and persons of Bengali descent, and that robust safeguards, including judicial review, are in place to prevent arbitrary exclusion from the Register, arbitrary deprivation of citizenship or denial of rights, including electoral rights, statelessness, arbitrary detention, and expulsions. Please also clarify the status of the Citizenship (Amendment) Bill 2016 that was passed by the lower house of Parliament in January 2019 or report on any similar draft legislation.

Participation in public affairs (art. 25 and 26)

29. Please respond to concerns that the current system of electoral bonds does not ensure transparency in funding of political parties, inter alia owing to anonymous financial donations
to political parties without public scrutiny. Please report on measures taken to review article 16(b) of the Representation of the People Act (1951) that deprive persons with intellectual or psychosocial disabilities of their right to vote. Please comment on the compatibility with the Covenant of the Panchayati Raj Act which bars candidates with more than two children from standing for election for posts in local government.

**Rights of indigenous peoples (art. 27)**

30. Please respond to reports that Scheduled Tribes (STs) remain amongst the most disadvantaged socio-economic groups; that extractive and other industrial activities, often approved without effective consultation, undermine the land and forest rights of tribal communities and result in displacement; that some 40,000 families, including many Adivasi families, have not received adequate reparation following displacement as a result of the construction of the Sardar Sarovar dam in Gujarat; that Adivasis in Raigarh, Chhattisgarh sold their land to private companies under coercion; and that land for coal mining was acquired by the government without seeking the free, prior and informed consent of Adivasis.