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The Permanent Mission of India to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights has the honour to refer to Joint Communication No. OL IND 3/2026 dated 31 March 2026 from Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders concerning the Armed Forces Special Powers Act (AFSPA), 1958.

The Permanent Mission of India would like to refer to the last paragraph of the joint communication that sets out the intent and purpose of such communications:

"This communication, as a comment on ending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website after 48 hours."

As may be seen, such joint communications are to be sent on pending or recently adopted legislation, regulations or policies, while the extant communication under reference is about "the Armed Forces Special Powers Act 1958" (AFSPA), thus contradicting the intent and purpose that the communications itself sets out in the content of its message.

The Permanent Mission of India would also like to note that a 48 hours timeline for response to such communications is unrealistic and seems to present a *fait accompli* to the country concerned.

The Permanent Mission of India further notes that the contents of the communications reflects a mindset of strong pre-conceived hostility towards India's sovereignty, her proud legacy of an independent judiciary, and towards genuine security needs of a country which has been a victim of cross-border terrorism. India has made its position clear on the AFSPA during the recently held 4th review with the Human Rights Committee in July 2024, records of discussion of which are available at the Treaty Body's database.

A background note on AFSPA is also being enclosed at Annexure I.

A copy of the communication is also being endorsed to the Chair of the Coordination Committee of the Special Procedure Mandate Holders.

The Permanent Mission of India to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

The Office of the High Commissioner for Human Rights
(Kind Attn: Special Procedures Branch)
Palais des Nations, Geneva, Switzerland

To
Mr. George Katrougalos, Chair of the Coordination Committee of the Special Procedure Mandate Holders

Annexure I

1. The Act was introduced in 1958 to deal with internal disturbances in the North-east region of India, particularly in the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. Similar legislations like the Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983, and the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 were enacted to address the issue of internal disturbances in other regions. These Acts grant special powers to the armed forces to maintain public order in "disturbed areas". In all such cases the armed forces of the Union are being used **in aid of the civil powers** in the States. This is in line with the discharge of the obligation imposed on the Union under Article 355 of the Constitution to protect the States against internal disturbances.

2. Under the Acts, for an area to be declared as a "disturbed area" there must exist a grave situation of law and order on the basis of which the Governor of that State or the Administrator of the Union Territory or the Central Government shall form an opinion that the area is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, and accordingly, it shall be declare so by a notification in the Official Gazette. The Supreme Court in *Naga People's Movement of Human Rights v. Union of India (1998),* while upholding the Constitutional validity of the Act, observed that given the procedural safeguards it cannot be said that an arbitrary and unguided power has been conferred in the matter of declaring an area as disturbed area under the Act.

3. Further, the Court identified additional conditions for the exercise of powers under the Act, some of which include: (i) declaration of an area as disturbed only if a grave situation of law and order exists; (ii) this declaration to be for a limited duration; (iii) the use of force under the AFSPA must be of minimal nature that is required for effective sanction against the person/s acting in contravention of the prohibitory order; and (iv) the search and seizure under the Act must be conducted as per the provisions under the Bharatiya Nagarik Suraksha Sanhita.

4. Government of India remains committed to dealing with law and order and security situations with minimum use of force, in accordance with

principles of legal certainty, necessity and proportionality, and after due consideration of various factors including ground realities. It is expected that the Security Forces act in good faith, however, when allegations are made against the Forces, the law takes its course. In *Extra Judicial Execution Victim Families Association & Anr. v. Union of India* (2017), the Supreme Court of India observed that "if an offence is committed even by Army personnel, there is no concept of absolute immunity from trial by the criminal court constituted under the Bharatiya Nagarik Suraksha Sanhita [and] no one can act with impunity." If in the name of fulfilment of public duty, the State uses excessive or retaliatory force and it leads to an extra-judicial killing, the same is not acceptable since it is destructive of the rule of law. If there is no reasonable connection between an official act and the use of excessive force, the same shall not be supported and therefore an enquiry should ensue. This flows from the democratic requirements of the State.

5. Operation of Armed Forces (Special Powers) Act is periodically reviewed by the Government of India after consultation with the State Government and the Central Agencies, based upon the ground situation. It is primarily a legislation based on necessity. Due to the improved security situation, the said Act was withdrawn completely from the State of Tripura in May 2015; and from the State of Meghalaya in April 2018. Further, the Act has been completely withdrawn from several districts from Assam, Manipur, Nagaland and Arunachal Pradesh in recent years. These decisions are taken based upon the prevailing circumstances in each of the disturbed areas, in order to protect the rights of the citizens.

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