

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders**

REFERENCE:  
UA IND 7/2017

16 August 2017

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the deteriorating human rights situation in the state of Jammu and Kashmir, including violations of the right to life, and the continued restrictions to freedom of expression and freedom of assembly during the months of May, June and July 2017**. The information concerns in particular the use of alleged excessive force against demonstrators and unlawful killings in this context, as well as the escalation in the number of instances of internet services banning and the prohibition of public gatherings and protests.

The issue of restrictions on access to internet and suppression of public demonstrations in the state of Jammu and Kashmir was the object of previous communications sent to your Excellency's Government on 28 July 2016 (case no. IND 5/2016) and on 9 May 2017 (case no. IND 3/2017). AL IND 5/2016 addressed an internet service ban imposed by the authorities in July 2016, in the context of mass demonstrations and civil unrest following the killing of Mr. Burhan Wani. UA IND 3/2017 referred to the use of disproportionate force by security forces against student demonstrations in April 2017, to the large-scale shutdown of social media websites and apps, and to the suspension of the networks providing 3G and 4G services in the State of Jammu and Kashmir. Concerning the former, we thank your Excellency's Government for the reply of 26 September 2016, which provided details on the legal framework of management of assemblies in India, but nonetheless did not provide sufficient information on the motives for adopting restrictions on access to internet. With regard to the latter communication, we regret that to date no response has been received.

According to the information received:

On 27 May 2017, 3G and 4G services were suspended in Kashmir Valley by the authorities following the killing of a Hizbul Mujahideen commander by security forces in the village of Tral. Internet services were restored on 2 June 2017.

On 6 June 2017, a first-year student of the Degree College of Shopian was shot dead by State security forces during a demonstration at Ganowpora village, allegedly when a large number of protesters began hurling stones at Government troops who had besieged the village in search of militants.

On 12 June 2017, police officers fired teargas against students demonstrating in Shopian town against the killing of their peer on 6 June 2017. Tear gas was allegedly also used against students demonstrating on 14 June 2017 in Pulwama town when they started pelting stones against the local police station.

On 16 June 2017, authorities suspended 3G and 4G internet services in the Kashmir Valley. The suspension was ordered following military operations in the District of Kulgam, and was lifted on 19 June 2017.

On 20 June 2017, Indian authorities instructed companies providing telephone and internet services to suspend their services in the area of Sopore, in the north of the Kashmir Valley, during the conduction of military operations. That same day, at least eight people were reportedly injured after Government forces used tear gas and pellets against demonstrators in the Seer area of Anantnag.

On 22 June 2017, a civilian was allegedly killed by pellet gun impacts during clashes between protesters and government forces in the Kakapora area of Pulwama district.

On 24 June 2017, mobile internet services (3G/4G) were suspended in the Kashmir Valley, and the speed of landline broadband connections was similarly brought down. This measure was allegedly ordered after a long gunfight that took place on 23 June 2017 between Hizbul Mujahideen militants and security forces, which resulted in the death of two militants. The date of the lifting of the ban is unknown.

On 26 June 2017, around 10 people were reportedly injured after security forces used teargas shelling and pellet guns against demonstrators in the town of Sopore, in the District of Baramulla. Some of the demonstrators are said to have thrown stones at the forces deployed in the area.

On 27 June 2017, military authorities allegedly resorted to aerial firing in the Khrew area of Pulwama district to disperse protesters. No injuries of protesters were reported.

On 1 July 2017, 3G and 4G internet services were suspended in the District of Anantnag. This measure was adopted following a gunfight between militants and government forces in Brenthi Dialgam village, which allegedly resulted in the

death of four civilians, and triggered large demonstrations that were countered by the authorities with tear gas and stun guns.

On 2 July 2017, the state authorities imposed restrictions to demonstrate in parts of Srinagar, including Rainawari, Khanyar, Nowhatta, Gunj, Safa Kadal, Kralkhud and Maisuma. These restrictions were allegedly adopted with the intention of preventing protests in the city. Similar restrictions were reportedly imposed in several points of Srinagar downtown on 5 July 2017.

On 6 July 2017 at 22:00, on the occasion of the anniversary of the death of Hizbul Mujahideen commander Burhan Wani, local authorities ordered internet service providers to block all social media sites or shut down all mobile internet services in Kashmir until further notice. On 9 July 2017, authorities restored 2G mobile internet services. However, it remains unclear when, if so, high-speed internet services were restored.

On 10 July 2017, both 3G and 4G and broadband internet services were suspended by local authorities in the Jammu region following an attack to religious pilgrims in Anantnag, in which allegedly seven persons were killed and 19 more were injured. On the same day, internet services were briefly suspended from 10 to 12 p.m. in the Valley of Kashmir, reportedly to impede the spreading through social media of the “Kashmir Awareness Campaign”, which sought to raise awareness of the human rights situation in Jammu and Kashmir.

On 12 July 2017, internet services were suspended in Srinagar and Budgam, following the death of three Hizbul Mujahideen militants in a gunfight with governmental authorities in Radbug village. It remains unclear when the services were restored. On the same day, demonstrations were banned in the old quarter of Srinagar, as well as in the neighbourhoods of Rainawari, Khanyar, Nowhatta, M.R. Gunj and Safa Kadal.

On 13 July 2017, mobile internet services were suspended in the Kashmir Valley during the commemoration of Youm-e-Shuhada-e-Kashmir, the Kashmir Martyrs’ day.

On 17 July 2017, mobile internet services were allegedly suspended in Anantnag district following the killing of three militants in an ambush. On 18 July 2017, broadband services were suspended in Anantnag as well.

On 20 July 2017, 25 civilians and 12 security officers were injured after the police resorted to tear gas shelling and pellet firing to disperse protesters demanding investigations against the army for an incident earlier that day where a minor was killed after being hit by an army vehicle in Aglar village of Shopian.

On 21 July 2017, mobile internet services were reportedly shut down in Budgam district after protests erupted among the population after the killing of a young man by army fire in Beerwah town. The services were restored on 25 July 2017. On the same day, Srinagar authorities banned demonstrations in the neighborhoods of Rainawari, Khanyar, Nowhatta, M.R.Gunj, Safa Kadal, Maisuma, Kralkhud and Ram Munshibagh.

On 26 July 2017, mobile internet services were suspended in Anantnag district after Government forces cordoned off Lonepora village in search of militants.

On 30 July 2017, all internet services were allegedly suspended in Pulwama district after demonstrations started taking place to protest for the killing of two militants in a shootout in Tahab village.

On 1 August 2017, a civilian was killed after government forces opened fire to disperse protesters in Hakripora village of Pulwama District, following the death of two Hizbul Mujahideen militants in an encounter with military forces. In other places of the Kashmir, at least 26 demonstrators were reportedly injured by indiscriminate use of pellet guns by security forces. On the same day, state authorities ordered the suspension of mobile internet services all along the Kashmir Valley. The internet ban was lifted on 2 August 2017.

On 3 August 2017, all mobile internet services were suspended in southern Kashmir after the killing of two Hizbul Mujahideen militants in a shootout with military forces in Kulgam district. The duration of the suspension is unknown.

Serious concern is expressed at the reported use of excessive force against demonstrators, and unlawful deaths that have resulted from such force, as well as at the rising use of internet bans and prohibition of peaceful assemblies by the authorities of the State of Jammu and Kashmir in the last months. These measures appear to be particularly concerning in view of their intention to demobilize protests disregarding respect for human life and limit the free exchange of information in the region. While we acknowledge the aggravated security situation, we express concern at the disproportionality of these measures, which in turn may lead to further deterioration of the situation.

While we do not want to prejudge the accuracy of these allegations, they would appear, if true, to be in contravention of the rights of every individual to life, liberty and security, to freedom of opinion and expression, and to freedom of peaceful assembly, as established respectively by articles 6, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded by India on 10 April 1979.

We would also like to draw the attention of your Excellency's Government to the Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In particular, principle 12 of the Basic Principles provides that "everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the ICCPR. Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14." These provisions restrict the use of firearms to situations of violent assemblies and provide that force and firearms may only be used as a last resort when unavoidable and require exercising the utmost restraint. In addition, pursuant to principle 5(c), law enforcement officials should ensure the provision of timely medical assistance to anyone injured as a result of the use of force or firearms.

Moreover, the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular principle 9, recall the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. As also confirmed by the Human Rights Committee in its General Comment No. 31, a failure to investigate and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR.

Regarding the right to freedom of opinion and expression, we would like to remind your Excellency's Government of Human Rights Council Resolution 32/13, paragraph 10, which "condemn[ed] unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law, and call[ed] upon all States to refrain from and cease such measures." It is also pertinent to recall that any restriction on expression or information on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest. In particular, a government must demonstrate that (a) the expression or information at issue poses a serious threat to a legitimate national security interest; (b) the restriction imposed is the least restrictive means possible for protecting that interest; and (c) the restriction is compatible with democratic principles.

We would also like to underline the principle enunciated by the Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions that are not consistent with paragraph 3 of article 19, including on (ii) the free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship, and (iii) access to or use of information and communication technologies, including radio, television and the Internet. These violations must not be facilitated or aggravated by abuse of states of emergency.

With regard to freedom of assembly, we would also like to refer to Human Rights Council resolution 24/5 (operative paragraph 2), in which the Council "reminds States of

their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

We would finally like to highlight the fundamental principles set forth in articles 1 and 2 of the UN Declaration on Human Rights Defenders, which provide for the right to promote and to strive for the protection and realization of human rights and fundamental freedoms.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

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 any comment you may have on the above-mentioned allegations.
2. Please provide information on the use of internet service bans in Jammu and Kashmir, including their legal basis, the criteria used for assessing the necessity and proportionality of the measures, and their compatibility with articles 19 and 21 of the ICCPR.
3. Please provide information on the allegations concerning the imposition of temporary bans of protests. In particular, please provide information on the use of protocols by the police and on the criteria for assessing the necessity and proportionality of the limits to the right to freedom of assembly, and its compatibility with articles 19 and 21 of the ICCPR.
4. Please provide details, and where available, the results of any investigation and judicial or other inquiry undertaken in relation to the allegations of excessive use of force and unlawful killings in the context of the above-mentioned demonstrations. If no inquiries have taken place, or if they have been inconclusive, please explain why.

While awaiting a reply, we urge your Excellency’s Government to take all necessary measures to ensure that the rights to freedom of expression and assembly are fully respected in the State of Jammu and Kashmir. Moreover, we request that your

Excellency's Government adopt effective measures to prevent future crackdowns on protesters and restriction on internet services.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Michel Forst  
Special Rapporteur on the situation of human rights defenders