



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE:
AL IND 10/2017

18 September 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 35/15, 34/18 and 32/32.

In this connection, we would like to bring to your Excellency's Government's attention information concerning **the arbitrary killings of 20 civilians by the security forces in the context of the ongoing protests in Jammu and Kashmir.**

Concerns about the deteriorating human rights situation, including the violent dispersal of protests by excessive use of force by security forces and the disproportionate restrictions on freedom of expression, in Jammu and Kashmir have been the subject of previous communications sent by Special Procedures: Cases IND 5/2016, IND 3/2017 and IND 7/2017. We appreciate the response received regarding the case IND 5/2016, but regret that the other communications remain unanswered.

According to the information received:

In Jammu and Kashmir, a series of protests took place in 2016 after three young members of the Hizbul Mujahideen group died in an encounter with Government forces in the Indian administered Kashmir. After this event, a number of demonstrations started protesting the killings, and in defiance of the curfew imposed in all ten districts of the valley. The security forces responded with teargas, pellet guns and live ammunition. During the period between 2016 and 2017 over 20 people were killed in this context and several were injured. Many of these casualties resulted from live ammunitions and pellets fired indiscriminately at street protestors. It was further reported that out of the 20 people killed, eight were minors. The attached Annex includes the names of the victims, along with some details regarding the circumstances of their killing.

The following examples are illustrative of the violence described above and alleged excessive use of force, including lethal force, by Indian security officials.

- On 9 April 2017, in Dalwan village, Budgam District, Mr. **Abbas Ahmad Rather** was in the vicinity of a protest when the Border Security Forces opened fired at the protesters. One of the bullets hit Mr. Abbas Ahmad Rather, killing him.
- On 9 April 2017, in Dada Ompura, Budgam District, Mr. **Amir Manzoor Rasray** was entering a mosque gate when the Border Security Forces (BSF) fatally shot him in the head.
- On 21 October 2016, in NasrullahPora, Village, Mr. **Javaid Ahmad Mir** was killed by the police during a protest. The police fired indiscriminately at the protesters and one of the bullets hit Mr. Javaid Ahmad Mir.

It has been alleged that police forces are not trained in the management of assemblies and have not applied the maximum restraint possible to apply non-violent means before resorting to the use of force and lethal weapons, in order to minimize injury, and respect and preserve human life. Furthermore and despite the severity of these incidents, it is reported that in the majority of these cases no measures were taken to ensure that the use of force by police is credibly and impartially investigated and that the perpetrators are brought to justice.

We are expressing serious concern over these allegations, which, if confirmed, would constitute severe and multiple violations of Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which guarantee the right of every individual to life and security and not to be arbitrarily deprived of life. The ICCPR was acceded by India on 10 April 1979. These acts would also constitute disproportionate, indiscriminate and unlawful restrictions on the rights to freedom of expression and to freedom of peaceful assembly.

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

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 and clarifications. In particular:

1. Please provide any additional information and any comments you may have on the above-mentioned cases and allegations.
2. Please provide the details, and where available the results, of any investigation and/or judicial or other inquiries which may have been carried out in relation to these allegations. If no inquiries have taken place, please explain why.
3. In case these allegations are found to be true, please indicate what measures have been taken by the Indian authorities to bring the perpetrators to justice

and to provide adequate remedy to the their families. If no one has been brought to justice, explain why.

4. Please indicate what measures have been adopted by your Excellency's Government to regulate the use of force by law enforcement officials and to provide them with adequate training and equipment for the management of assemblies. How did the security forces ensure compliance with the requirements of necessity and proportionality?
5. Please provide information about the measures to prevent the excessive use of force by security forces.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations 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 any person(s) responsible for the alleged violations.

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.

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye

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

Annalisa Ciampi

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

The above mentioned allegations appear to be in contravention of article 3 of the Universal Declaration of Human Rights (UDHR) and 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), accessed by India on 10 April 1979, which provides for the right to life, security and not to be arbitrarily deprived of life.

In this connection, we wish to draw your Excellency's Government's attention to relevant international principles and norms governing the use of force by law enforcement authorities. Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal.

The Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not binding, provide an authoritative interpretation of the limits on the conduct of law enforcement forces. Principle 9 provides that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. Principles 12, 13 and 14 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. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated, including giving a clear warning of the intent to use force and to provide sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary.

The compilation of practical recommendations for the proper management of assemblies (A/HRC/31/66) recalls that the use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality (para. 57). These principles apply to the use of all force, including potentially lethal force. Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary) (para. 59). Furthermore, firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (para 60).

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. 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.

We also want to recall that the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Principle 4) establish the obligation of States to ensure effective protection to those who receive death threats and are in danger of extra-legal, arbitrary or summary executions.

Annex II

The following table analyses some key elements of 20 of the cases.

N°	Location	Name and age of the individual	Occupation	Facts	Alleged Violations	Alleged Perpetrator
1	Dalwan village, Chrar-e-Shareef, Budgam District, Jammu and Kashmir	Mr. Abbas Ahmad Rather (22)	Student	On 9 April 2017, Mr. Abbas Ahmad Rather was in the vicinity of a protest when the Border Security Forces fired at the protesters. One of the bullets hit Mr. Abbas Ahmad Rather, killing him.	Killing	Border Security Forces
2	Srinagar, Jammu and Kashmir	Mr. Abdul Qayoom Wangnoo (43)	Government Truck Driver	On 9 September 2016, Mr. Abdul Qayoom Wangnoo was allegedly killed in an accident. However, there were no injuries on his body except for what appeared to be a gun butt injury. When his body was found, Mr. Abdul Qayoom Wangnoo was allegedly holding a watch with a HMT label and an Indian flag on it, which is believed to be something he grabbed from the perpetrator.	Killing	Unknown

3	Budgam District, Jammu and Kashmir	Mr. [REDACTED] (17)		On 9 April 2017, after an exchange of stone palters between a group of boys and the armed forces, [REDACTED] was allegedly shot by the Indo Tibetan Border Police force personnel.	Killing	Indo Tibetan Border Police force
4	Budgam District, Jammu and Kashmir	Child (16)	Student	On 28 March 2017, the Special Operation Group of Police reportedly shot [REDACTED] while he was part of a group of gathered people in Chadoora.	Killing	Special Operation Group of police
5	Budgam District, Jammu and Kashmir	Mr. Amir Manzoor Rasray (18)	Student	On 9 April 2017, Mr. Amir Manzoor Rasray was entering a mosque gate when the Border Security Forces allegedly shot him in the head.	Killing	Border Security Forces
6	Budgam District, Jammu and Kashmir	Mr. Ashraf Wani (32)		On 16 August 2016, Mr. Ashraf Wani was reportedly shot by the Central Reserve Police Force during a peaceful protest.	Killing	Police and Central Reserve Police Force
7	Budgam District, Jammu and Kashmir	Child (12)	Student	On 9 April 2017, [REDACTED] was in the vicinity of a protest when the Border Security Forces reportedly fired at the protesters. One of the bullets hit [REDACTED]	Killing	Border Security Forces(BSF)

				<p>killing him. Note: same event as Mr. Abbas Ahmad Rather</p>			
8	Bemina Chowk, Srinagar, Kashmir	Mr. Hilal Ahmad Parray (27)	Shopkeeper	<p>On 10 July 2016, Mr. Hilal Ahmad Parray was intercepted by government forces on Bemina Chowk. His body was found with multiple injuries and bruises, indicating he had been severely beaten.</p>	Killing	Unknown	
9	Nowhatta, Srinagar, Jammu and Kashmir	Child (16)	Driver	<p>On 20 August 2016, [REDACTED] was allegedly shot by the Deputy Superintendent of Police. Ten days before, the DPS went to [REDACTED]'s house looking for him and threatened him.</p>	Death threats and Killing	Deputy Superintendent of Police	
10	Budgam District, Jammu and Kashmir	Mr. Ishfaq Rashid Wani (21)	Mechanic	<p>On 28 March 2017, Mr. Ishfaq Rashid Wani was reportedly shot by the Special Operations Group during a protest.</p>	killing	Special Operations Group	
11	NasrullahPora, Village	Mr. Javaid Ahmad Mir (20)	Student	<p>On 21 October 2016, Mr. Javaid Ahmad Mir was allegedly killed by the police after a protest at NasrullahPora. The police shot indiscriminately and one of the bullets hit Mr.</p>	Killing	Police	

					Javaid Ahmad Mir.			
12	Srinagar District, Jammu and Kashmir	Child (16)	Student	On 27 October 2016, [REDACTED] was taken to the hospital, suffering allegedly from poisoning and showing marks of torture. While in the hospital, he was able to report that he had been tortured and poisoned by police officers, both in uniforms and civilian clothes. Due to the effects of the poison, [REDACTED] died a few days later.	Killing	Harwan police		
13	Nadihal, Baramulla, Kashmir	Mr. Mehraj (19)		On 31 August 2016, Mr. Mehraj was killed after the armed forces allegedly fired in a public place.	Killing	Armed forces		

14	Soura, Srinagar, Jammu and Kashmir	Child (13)		On 2 November, Ms. Munaza Rashid allegedly died due to excessive use of tear smoke shelling and PAVA [Pelargonic acid vanilly lamide] shells by police and armed forces.	Killing	Central Reserve Police Force and JK Police
15	, Srinagar, Jammu and Kashmir	Mr. Mushtaq Ahmad Kandoo (31)		On 26 October 2016, Mr. Mushtaq Ahmad Kandoo was reportedly severely beaten outside his house by Central Reserve Police Force personnel. Mr. Mushtaq Ahmad Kandoo later succumbed to his injuries.	Killing	Central Reserve Police Force
16	Srinagar, Kashmir	Child (11)	Student	On 16 September 2016, ██████████ disappeared. His body was found with marks of beatings and over 400 pellets. The boot marks, injuries, and placement of his body indicate that state forces were involved.	Killing	Security forces

17	Budgam District, Jammu and Kashmir	Mr. Shabir Ahmad Bhat (23)	Caretaker	On 9 April 2017, Mr. Shabir Ahmad Bhat was allegedly shot outside a local mosque by Special Operations Group.	Killing	Special Operations Group
18	Baramulla, Kashmir	Mr. Wasim Lone (18)	Farmer	On 26 September 2016, Mr. Wasim Lone was shot during an encounter between armed forces and a group of boys throwing stones at the army vehicles.	Killing	Armed forces
19	Batamaloo Chowk, Srinagar, Kashmir.	Child (16)	Student	On 15 August 2016, [REDACTED] was at a gathering where people were protesting peacefully when he was shot by Jammu Kashmir Police (under the jurisdiction of Batamaloo police station). It is further reported that the police prevented the ambulance from getting access to him.	Killing	Police Station Batamaloo
20	Budgam District, Jammu and Kashmir	Mr. Zahid Rashid Gania (21)	Student	On 28 March 2017, Mr. Zahid Rashid Gania was on his way home when a vehicle from the Special Operations Group personnel stopped and shot him.	Killing	Special Operations Group

