

**Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence**

REFERENCE:  
AL IND 4/2018

22 March 2018

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 27/1, 34/18, 34/5 and 36/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations that Mr. **Parvez Imroz**, as well as three other lawyers, Messrs. **Kartik Murukutla**, **Ghulam Nabi Khan** and **Qazi Irfan** were prevented from holding an event at the gravesite of Mr. Atta Mohammed Khan, a grave digger who played an instrumental role in revealing the existence of mass graves as well as the continued lack of action to investigate unmarked graves and impunity for the disappearance of 8000 persons in Jammu and Kashmir between 1989 and 2008.

Mr. Parvez Imroz is a lawyer, human rights defender, and Patron of the Association of Parents of Disappeared Persons, as well as President of the Jammu Kashmir Coalition of Civil Society.

On 11 February 2011 and on 29 April 2013, the UN Working Group on Enforced or Involuntary Disappearances sent two general allegations to the Government of India concerning the presence of unmarked graves in Jammu and Kashmir. The Government has not responded to either of the communications.

Mr. Parvez Imroz has been the subject of several previous communications by Special Procedures including:

- IND 12/2015 sent on 9 October 2015 and IND 23/2011 sent on 17 January 2012 regarding the refusal to renew his passport. We thank you for the response received on 5 September 2016 to the former.

- IND 18/2008 sent on 8 July 2008 regarding intimidation and harassment against him and another individual. We thank you for the response received on 26 February 2009.

Mr. Kartik Murukutla was the subject of a previous communication AL IND 4/2017, regarding the 'Look out Circular' issued against him, allegedly linked to the human rights lawyer's cooperation with United Nations human rights mechanisms. We regret that that so far no response has been received.

According to the new information received:

On 4 February 2018, Messrs. Parvez Imroz, Kartik Murukutla, Ghulam Nabi Khan and Qazi Irfan and fifteen other individuals including family members of disappeared individuals, travelled to visit the gravesite of Mr. Atta Mohammed Khan in Bimyar Village of Chehal, in the Baramulla district of Kashmir. They were visiting the gravesite to pay their respects and lay a tombstone on his grave. Mr. Khan was a gravedigger who died on 10 January 2016. He was instrumental in revealing the existence of mass graves and gave testimony that many of the bodies brought to the grave bore torture marks and were mutilated. He ensured the respectful burial of over 230 unidentified bodies from 2003 to 2009.

When they arrived in Bimyar village, police officers from Boniyar Police Station were waiting for Mr. Imroz, Mr. Imroz, and Messrs. Murukutla, Nabi Khan and Irfan who were travelling in the same vehicle, were told by the officers that they had to accompany them to Boniyar Police Station to meet with the Station House Officer. At the Police station the personal details of each individual were recorded and their phones were taken. An hour later, they were told the Station House Officer would not be available to meet them and they could leave. Their phones were also returned to them. However, they were informed they could not under any circumstances return to the gravesite or hold the event. No formal order was produced to this effect. As a result of this the event did not take place.

According to the information received, an estimated 8000 persons in Jammu and Kashmir have been subjected to enforced disappearances between 1989 and 2008. Since 2008, 7000 cases of unmarked graves in five districts of Jammu and Kashmir have been documented and there is prima facie evidence that some of these unidentified bodies belonged to disappeared civilians.

The Jammu and Kashmir State Human Rights Commission has confirmed that in five districts in Jammu and Kashmir there are unmarked graves present. They have made recommendations in separate decisions in 2011 and 2017 for investigations including DNA and other forensic testing. Thus far the government has not taken any action.

While we do not wish to prejudge the accuracy of these allegations, we express our concern about the allegations that Messrs. Imroz, Murukutla, Ghulam Nabi Khan and Qazi Irfan were detained for an hour without authorisation and prevented from holding an event at the gravesite of Mr. Atta Mohammed Khan, in contravention to the peaceful exercise of their right to freedom of assembly and movement, as provided for by the International Convention on Civil and Political Rights, which India acceded on 10 April 1979. We are concerned by the alleged interference with and possible chilling effect on the legitimate activities of the Association of Parents of Disappeared and other organisations concerned with attempting to establish the circumstances of enforced disappearances, the fate of disappeared persons and to assist victims of enforced disappearances. We are also concerned by allegations that the government of India has not taken action to investigate the unmarked graves, and that the above allegations fall into a broader pattern of restrictions of fundamental human rights in Jammu and Kashmir.

In connection with the above 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 therefore be grateful for your observations on the following matters as well as the questions raised in the General allegation letters sent by the UN Working Group on Enforced or Involuntary Disappearances on 11 February 2011 and on 29 April 2013:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal basis for the alleged order given preventing them from returning to the gravesite of Mr. Atta Mohammed Khan.
3. Please provide information on the measures in place to ensure that organisations concerned with attempting to establish the circumstances of enforced disappearances, the fate of disappeared persons and to assist victims of enforced disappearances can carry out their work.
4. What are the measures being taken by your Excellency's Government to determine the fate and whereabouts of the alleged 8000 victims of enforced disappearances in Jammu and Kashmir? If no such measures have taken place, please explain why.
5. What are the measures being undertaken by your Excellency's Government to identify the unmarked graves in five districts of Jammu and Kashmir? If no such measures have taken place, please explain why.

6. Has recourse been made or is planned to international cooperation in the process of identification of remains found in unmarked graves or mass graves?
7. Are there any measures in place or envisaged to bring to justice those responsible for the acts of enforced disappearance

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

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

Bernard Duhaime  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Pablo de Greiff  
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

## **Annex**

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

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above including:

- Articles 12 and 21 of the International Convention on Civil and Political Rights, to which India acceded on 10 April 1979 which establish the right to freedom of movement and peaceful assembly.
- Article 24, paragraph 7 of the International Convention for the Protection of All Persons from Enforced Disappearance states "each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance." India signed the Convention on 6 Feb 2007 but has not ratified it.
- The Declaration on the Protection of all Persons from Enforced Disappearance, in particular article 13, which states in paragraph 3 that "steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal" and in paragraph 5 that "steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished." We would also like to highlight paragraph 1 of article 13 which states that "wherever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to the authority for such an investigations", and to article 2 which states that no State shall practice, permit or tolerate enforced disappearance. In its general comment on the Right to the Truth the Working Group indicates that the right to the truth also ensures that the State has an obligation to provide the necessary protection and assistance to victims, witnesses and other interested persons.
- Human Rights Council resolution 12/11 on Human rights and transitional justice reaffirms the responsibility of States to prosecute those responsible for gross violations of human rights and serious violations of international humanitarian law constituting crimes under international law, with a view to ending impunity (paragraph 7). The resolution also recognizes the important

role played by victims' associations, human rights defenders and other actors of civil society in the realization of transitional justice goals, the reconstruction of the society, and the promotion of the rule of law and accountability (para.14).

- The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. Of particular relevance are articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Equally relevant, article 5 (a), establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: to meet or assemble peacefully. Lastly, article 12 (1) and (3), provides for the right to be protected effectively under national law in reacting against, or opposing, through peaceful means, activities and acts that result in violations of human rights and fundamental freedoms.