

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL IND 7/2018

23 April 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on violence against women, its causes and consequences and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 35/15, 32/19 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 **alleged unreasonable delay by the Central Bureau of Investigation to conduct prompt, effective and thorough investigations into extrajudicial killings that occurred in Manipur, despite being ordered by the Supreme Court to do so. In this connection, we are also writing about the alleged harassment by state security forces against Mr. Sagolsem Menjor Singh, Ms. Ranjeeta Sadokpam and Ms. Salima Memcha and the alleged failure to investigate an attack on Mr. Okram Nutankumar who are all human rights defenders working on these cases.**

Allegations of excessive use of force and killings of civilians by the Indian armed forces and the Armed Forces (Special Powers) Act have been the subject of multiple previous communications by special procedures mandate holders including IND 10/2017, IND 5/2016, IND 13/2015 IND 12/2009, IND 20/2008, IND 21/2007, IND 30/2006 and IND 16/2005. Allegations of the arbitrary detention, intimidation and harassment of Manipur-based human rights defenders by law enforcement authorities were also the subject of communication IND 10/2015. We regret that no replies have yet been received to communications IND 10/2017, IND 13/2015, IND 20/2008 and IND 30/2006.

According to the information received:

1. Investigation of cases of extrajudicial killings

In 2012, the Extrajudicial Execution Victims Families Association (EEVFAM) and Human Rights Alert (HRA) submitted 1528 cases of alleged extrajudicial killings, which occurred between 1979 and 2012 in the state of Manipur, to the Supreme Court of India. The writ petition is named W.P.(CrI.) No. 129 of 2012 (Extra judicial Execution Victim Families Association (EEVFAM) & Anr Versus Union of India & Ors.). Many of the cases had been recorded in first investigation

reports (FIRs) which were filed at the time, as deaths that had occurred during “encounters” between the security forces and armed groups or individuals. The plaintiffs, however, alleged the victims were in reality intentionally killed in “fake encounters” by the Manipur Police and security forces (particularly the Assam Rifles and the Army).

On 4 January 2013, the Supreme Court appointed a commission to look at six incidents involving seven victims which occurred in 2009 and 2010, which were selected at random from the cases submitted. The court also ordered the commission to report on the functioning of the State Police and Security Forces in the State of Manipur and to make recommendations as relevant. In its report, the commission found in all six incidents that the “encounter” (if any) was not genuine or that the use of force by security forces had been excessive. None of the victims were found to have established criminal records. The commission further noted “it would appear that the security forces believed a priori that the suspects involved in the encounters had to be eliminated and the forces acted accordingly.” It further categorically stated that the security forces “have been transgressing the legal bounds for their counter-insurgency operations in the State of Manipur.” In part V of its report the commission set out a number of recommendations to address this.

On 8 July 2016, the Supreme Court ruled that even in areas which are considered under the Armed Forces Special Powers Act of 1958 as “disturbed”, the security forces must still act within the bounds of the law. The judges held that excessive use of force or use of retaliatory force by the Manipur Police or the armed forces cannot be tolerated and that alleged cases must be thoroughly investigated. Of the case submitted, 62 incidents involving the killing of 83 persons had all necessary information. The Court asked EEVFAM to review the remaining cases submitted to provide an accurate list with complete information for those where the families of the victims were willing to proceed. A data collection center was opened and over 900 families responded and recorded their intention to proceed, 655 of which were part of the original 1528 submitted.

On 14 July 2017, the Supreme Court ordered the Central Bureau of Investigation (CBI), to set up a Special Investigation Team (SIT) to investigate a total of 42 incidents with 82 victims where the Commission of Inquiry, Judicial Inquiry, the High Court or National Human Rights Commission had already found the killing to be prima facie a “fake-encounter or use of excessive or retaliatory force” as well as the six incidents with 7 victims already examined by the Supreme Court appointed commission, giving a total of 89 cases. The SIT was requested by the Supreme Court to go through each case and lodge a FIR and to prepare charge-sheets wherever necessary. They directed that the investigation be completed by 31 December 2017.

During a Supreme Court hearing on 8 January 2018, the counsel for the CBI reported that a FIR had been registered in only 11 cases by the 31 December 2017 deadline and no charge sheets.

On 16 January 2018, the Supreme Court ordered the SIT to complete the investigation of cases where FIRs were registered by 28 February 2018 and to register all other cases.

On 12 February 2018, the CBI informed the court it had registered 42 FIRs. However the FIRs did not contain any new information based on the findings of the Commission of Inquiry, Judicial Inquiry, the High Court or National Human Rights Commission. Instead the FIRs were the FIRs that were originally registered but renamed - they continued to report the deaths as due to encounters. The Supreme Court expressed strong displeasure with the way the investigation was proceeding. The Court asked officers from the NHRC to assist the CBI to investigate 17 incidents where the NHRI had already found to be prima facie a fake encounter.

On 12 March 2018, the CBI informed the Court that 13 FIRs had been registered for murder and common intention under sections 302 and 34 of the Indian Penal Code against unknown police and army personnel. The council for EEVFAM and HRA requested the accused be named in the FIR on the basis that many of them had already been identified in the official records but the court indicated the CBI could proceed as it was.

On 16 April 2018, EEVFAM and HRA informed the Supreme Court that in the cases of 11 new FIRS filed by the CBI since the hearing on 12 March 2018, 10 of them did not contain the names of the security personnel involved despite this information being included in the FIRs originally submitted after the incident. Instead the FIRs are vague, for example referring to “unknown personnel.” In its order, the Supreme Court indicated it was open to the CBI to file supplementary FIRs for these cases and the NHRC could assist in this process. The CBI and NHRC raised the issue of a lack of sufficient interpreters and the Court indicated the CBI could approach Manipur University for assistance if required. Delays in forensic reports were also discussed.

To date the website of the CBI indicates that 25 FIRs have been registered and no chargesheets.

The next hearing will be on 11 May 2018.

The Central government and the CBI are being represented by the same council – the additional Solicitor General. The CBI operates under the Prime Minister’s Office.

The Armed Forces (Special Powers) Act, remains in force including in all areas of Manipur except in the Imphal Municipal Areas. Its most recent extension was in December 2017 for a period of one year.

2. Threats and harassment of human rights defenders

At least three members of the EEVFAM have recently been subject to threats or harassed by the security forces and a fourth person was subject to an attack by unknown individuals.

On 14 October 2017, shots were fired at the home of Mr. Okram Nutankumar, a human rights defender and supporter of EEVFAM, by unknown individuals. On 15 October he filed a police complaint. The police officers initially did not register a FIR but later did so.

On 8 January 2018, members of police officers went to the house of Mr. Sagolsem Menjor Singh. He was not home. The police officers told persons associated with him that they wanted to arrest him but they did not produce an arrest warrant. It was later confirmed by a public official that no arrest warrant had been issued. Mr. Sagolsem Menjor Singh is a member of EEVFAM. The case of his son who was killed in an alleged extrajudicial execution in 2009 is one of those submitted to the Supreme Court.

On 26 February 2018, members of the Police and the Army accompanied by masked men entered the house of Ms. Ranjeeta Sadokpam, who works for Human Rights Alert, claiming to be searching for someone called “Somendro” despite being repeatedly told that no one by that name lived in the house. They interrogated male members of the household and forced all the family members sign a document, the contents of which they could not see. A complaint was submitted about the incident to the Director General of the Police in Manipur.

At 5 a.m. on 7 April 2018, a team of police personnel and commandos knocked on the gate of Ms. Salima Memcha’s house. She answered and requested the reasons for their visit. They gave no explanation and instead forced themselves inside her house, searched it and destroyed personal property. During the search one police officer told her that “she was the one they have been looking for months.” They questioned her about her children and other family members. When they were leaving they took a picture of her and threatened her with “dire consequences.” Ms. Memcha requested protection and urgent intervention through registration of a FIR against the police team from the Director General of Manipur Police. Ms. Memcha is a District Coordinator of EEVFAM. Her husband was killed in an alleged “encounter” with the Assem Rifles – his case is one of those submitted to the Supreme Court.

We express serious concern at what appears to be a deliberate, undue and unreasonbale delay by the CBI’s in conducting what should be a prompt effective and

thorough investigation into cases of alleged extrajudicial killings in Manipur, despite having been repeatedly ordered to do so by the Supreme Court. In particular the delays in filing FIRs and chargesheets, the re-filing of the original FIRs, the apparent reluctance to include the names of members of the security forces involved and the slow pace of the effort, appear to indicate a lack of good faith on the part of the CBI to carry out the necessary investigations. We are also seriously concerned by the allegations of harassment by the security forces of human rights defenders involved in or supporting this case and of the apparent failure or unwillingness to investigate an attack by unknown individuals using a firearm against one of them.

Under international human rights law, States have a positive duty of due diligence to investigate **all allegations of potentially unlawful killings, and to do so in an independent, impartial, prompt, effective, thorough and transparent manner.** This duty continues to apply in situations of internal disturbances and tensions, as well as armed conflict, and irrespective of the time elapsed

We call on your Excellency's Government to ensure that the CBI investigations into the 89 cases are carried out promptly, effectively and thoroughly and that efforts are made to identify and prosecute perpetrators. We also highlight the need to ensure that all other cases, including the more than 600 registered with the court, are also fully investigated in line with international legal human rights obligations. We also call for steps to be taken to ensure that **all human rights defenders, including those involved in this case, can undertake their activities freely**, are not subjected to harassment or threats by the security forces, that all threats or attacks against them are fully investigated and that they are provided with protection where it is required. We also respectfully encourage your Excellency's Government to repeal or at least radically amend the Armed Forces (Special Powers) Act to bring it into line with international standards as well as to address other underlying policy and systemic failures that may have contributed to the killings.

Several international bodies including special procedures mandate holders have previously expressed concern about a number of aspects of the Armed Forces (Special Powers) Act and called for it be repealed, or at least radically amended, including the Special Rapporteur on extrajudicial, summary or arbitrary executions in his report on his visit to India (A/HRC/23/47/Add.1 paras 21- 28 and 100 and A/HRC/29/37/Add.3 paras 15- 18) amongst others. This issue has also been raised in multiple communications such as IND 21/2007 which urges *"either repealing the AFSPA ... or ensuring that the Act and any other such future legislative measures comply fully with international human rights and humanitarian law treaties to which India is a state party, especially the ICCPR and the four Geneva Conventions."* We regret that the Act continues to remain in force.

In connection with the above allegations and concerns, we refer the Government of India to the **Annex on Reference to international human rights law** attached to this letter, which enumerates the main international human rights norms and standards that appear to be contravened by these allegations.

In view of the urgency of the matter, we would appreciate an initial response on the steps taken by your Excellency's Government guarantee that the investigations proceed promptly, effectively and thoroughly in line with international standards and to ensure human rights defenders including the aforementioned individuals are not subjected to threats or harassment and are provided with protection as required.

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 also be grateful for your observations on the following matters:

1. Please provide any information and/or comment you may have on the above-mentioned allegations.
2. Please provide information on the current status of the CBI investigations into the cases of 89 victims into which the Supreme Court ordered a complete investigation and the steps taken or planned to ensure the CBI conducts investigations promptly, effectively and thoroughly as required by its international legal obligations
3. Please provide information on the steps taken or underway to investigate:
 - a. the other more than 600 cases listed by the Supreme Court which had not been subject to prima facie findings.
 - b. the other cases which were not part of the 1528 originally submitted to the court in 2012 but for which the families have indicated a willingness to proceed.
4. Please provide information on the status of efforts to address underlying policy and systemic failures that may have contributed to the killings in question, and their recurrence over time. In particular, please provide information on the implementation of the recommendations made by the Supreme Court Appointed Commission in section V of its report.
5. Please provide information on the steps taken to repeal or to radically amend revise the Armed Forces (Special Powers) Act.
6. Please provide information on any investigations conducted into the alleged threats and harassment against Mr. Sagolsem Menjor Singh, Ms. Ranjeeta Sadokpam a and Ms. Salima Memcha by security forces and the attack on Mr. Okram Nutankumar. Please include the full details of any prosecutions which have been undertaken. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is compatible with India's domestic legal and international human rights obligations. Please also provide information on the steps take to protect these persons, as well as any other individuals involved in seeking justice for the killings in question, and to prevent the recurrence of any threat, intimidation, harassment or act of direct violence by law-enforcement personnel or others.

7. Please provide information on the measures taken to ensure human rights defenders in Manipur – and elsewhere in India - are able to operate freely without harassment, threats or intimidation of any kind.

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.

We are considering the possibility of publicly expressing our concerns about the situation in Manipur in the near future as, in our view, the information available to us is sufficiently reliable and serious to indicate a matter warranting urgent attention. We also believe that the wider public should be alerted to the human rights implications of the allegations. Any public statement on our part would indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Dubravka Šimonović

Special Rapporteur on violence against women, its causes and consequences

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with the alleged contained in this letter and the concerns expressed we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that appear to be contravened, in violation of India's international human rights obligations under the treaties it has ratified.

Article 6(1) of the International Convention on Civil and Political Rights (ICCPR), which India acceded to on 10 April 1979, provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. In General Comment No. 6, the Human Rights Committee reiterates that the right to life is the supreme right from which no derogation is permitted even in time of public emergency that threatens the life of the nation. Moreover, in General Comment No. 31 the Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces.

The use of force by law enforcement personnel is governed by several international bodies of principles and norms adopted by the General Assembly. These include the Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979 ('the code') and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials ('the basic principles') which provide that Law enforcement officials may only use force when it is strictly necessary and only to the extent required, for the performance of their duties (article 3 of the code). The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means (principle 4). Force used must be proportionate to the legitimate objective to be achieved (principle 5). 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 (principles 5 and 10). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (principle 9). Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles (principle 8).

With regards to **investigations**, principle 9 also establishes the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. The Human Rights Committee has observed that failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13).

The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) provides detail on the duty to investigate potential unlawful deaths "promptly, effectively and thoroughly, with independence, impartiality and transparency." This duty continues to apply in situations of internal disturbances and tensions, and armed conflict

(para 20). In particular we note the authorities must “**conduct an investigation as soon as possible and proceed without unreasonable delays...** The failure of the State promptly to investigate does not relieve it of its duty to investigate at a later time: the duty does not cease even with the passing of significant time” (para 32). The duty of promptness does not justify a rushed or unduly hurried investigation. We remind that amongst other things, investigations into alleged unlawful killings should seek to determine who was involved in the death and their individual responsibility for the death and seek to identify any failure to take reasonable measures which could have had a real prospect of preventing the death. It should also seek to identify policies and systemic failures that may have contributed to a death, and identify patterns where they exist (para 25.).

With regards to the **allegations of harassment, threats and attacks against human rights defenders**, paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65 according to which it is incumbent upon States to provide “effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions.

We would also like to highlight Human Rights Committee General Comment no. 35 which states that the right to personal security obliges States to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. It further notes that States must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury.

Further reference is made to the fundamental principles set forth in 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. In particular, we would like to refer to 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. Additionally, article 12, paragraphs 2 and 3, provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

In this context, we refer to Article 1 of the Declaration on the Elimination of Violence against Women which defines "violence against women" as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Article 7 (c) of the

Convention on the Elimination of All forms of Discrimination against Women further requires that States Parties “take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, [...] ensure to women, on equal terms with men, the right [...] to participate in non-Governmental organizations and associations concerned with the public and political life of the country”.