

Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE:
AL IND 9/2018

7 May 2018

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolution 35/15.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning allegations of **violations of the right to life of eleven civilians in Kashmir, ten of whom were allegedly killed either intentionally or following excessive or indiscriminate use of fire arms by law enforcement officials or the army and an eleventh individual who was reportedly killed during an exchange of fire between police and militants, and that thus far, the authorities have reportedly failed to conduct thorough, prompt and impartial investigations into all eleven cases, leading to the prosecution of perpetrators.**

Allegations of excessive use of force and killings of civilians by the Indian armed forces under, *inter alia*, the Armed Forces (Special Powers) Act have been the subject of multiple, repeated communications by special procedures mandate holders including IND 7/2018, IND 10/2017, IND 5/2016, IND 13/2015, IND 12/2009, IND 20/2008, IND 21/2007 and IND 30/2006. I take note of the lengthy response received to IND 5/2016, and responses to IND 12/2009 and IND 21/2007 but remain concerned by the issues raised in the communications and continued allegations related to excessive use of force by the armed forces as well as the continuing application of the Armed Forces (Special Powers) Act. I regret that no replies have yet been received to communications IND 7/2018, IND 10/2017, IND 13/2015, IND 20/2008 and IND 30/2006.

According to the information received,

Eleven individuals, all men and unarmed civilians have been killed by gun fire, by Indian security personnel, either intentionally, caught in cross-fire or hit by stray bullets in the past twelve months, in what appears to be intentional killings or excessive and careless use of firearms in the context of either demonstrations, social events or other circumstances. In one case, the victim was first injured by bullet, and then deliberately killed by security personnel. Whereas a number of First Information Reports (FIR) were reportedly filed with the local police, in many cases they have not been shared with the next-of-kin of the victim. Furthermore, in other cases it is not clear that FIRs have been filed or that magisterial inquiries have been undertaken, both of which the Supreme Court has ruled are mandatory for deaths involving the security forces. Moreover it would appear that no serious steps have thus far been taken to effectively investigate these killings, to prosecute the

perpetrators, and to take measures to hold the forces operating in Kashmir accountable for alleged intentional killings and misuse of firearms.

The victims include:

Three individuals, Mr. **Khalid Ahmad Dar**, Mr. **Mohammad Ayoub Mir** and Mr. **Haji Mohammad Abdullah Ganai** killed after Army or State Forces used excessive use of force during demonstrations;

One individual, Mr. **Niyaz Ahmad Mir**, killed by cross fire between militants and army or police;

Seven individuals, Mr. **Tanveer Ahmad Wani**, Mr. **Owais Shafi Dar**, Mr. **Javaid Ahmad Bhat**, Mr. **Rayees Ahmad Ganai**, Mr. [REDACTED], Mr. **Habibullah Shah Syed**, and Mr. **Gowhar Ahmad Rather**, killed intentionally by army or police.

Further information on these allegations is appended to this communication.

Without making a judgment as to the accuracy of the information made available to me, I express my most serious concern about the alleged violation the right to life of these eleven individuals contrary to article 6(1) of the International Covenant for Civil and Political Rights, ratified by India on 10 April 1979. I am particularly concerned by allegations of intentional use of lethal and excessive force leading to deaths.

I respectfully remind your Excellency's government that state agents may only use lethal force if it is "strictly unavoidable in order to protect life" and that any loss of life that results from the excessive use of force by law enforcement officials without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal.

I am also concerned by the apparent lack of investigations conducted in several cases and lack of transparency regarding the progress of investigations in others, including that information has not been made available to the next-of-kin of the victims. 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. Any suspected arbitrary killings must give rise to immediate and effective investigations and, where there is sufficient evidence, prosecution of the perpetrators.

Special procedures mandate holders have previously expressed concern about a number of aspects of the Armed Forces (Special Powers) Act 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 and reiterate the call for and it to be repealed, or at least radically amended.

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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to these cases. Have any penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
3. Please provide information on the procedures adopted to ensure FIRs are filed and magisterial inquiries are conducted in all cases of alleged killings involving the security forces and that any investigations conducted transparently. Please explain why the next-of-kin have not received copies of FIRs filed or information on the existence of progress of investigations in the aforementioned cases.
4. Please indicate whether reparations have been or will be made to the victims' next-of-kin.
5. Please provide information about the directives issued by the Government to law-enforcement personnel and army concerning the precise circumstances in which the use of lethal force is authorized in the area of Indian Administered Kashmir, and indicate how these directives comply with the international human rights obligations of India under the ICCPR, as well as the requirement of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

I would appreciate receiving a response within 60 days. Passed this date, Your Excellency's Government's response will be made public, together with the present communication, and compiled in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, I 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.

I may publicly express my concerns in the near future as, in my view, the information at hand indicates a matter warranting the most serious attention. I also believe

that the wider public should be alerted to the implications of the above-mentioned allegations. Any public expression of concern on my part would indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Annex II

The following table summarises the allegations concerning the 11 cases.

N°	Location	Name and age of the individual	Date	Alleged Facts	Alleged Perpetrator	Responses from authorities, complaints filed and investigations
1	Kangan, District Ganderbal, Jammu and Kashmir (Indian Held Kashmir), India	Mr. Gowhar Ahmad Rather (23)	2 April 2018	Mr. Rather was sitting at a parapet on the side of national highway road when a Police officer ran towards him with his gun in his hand, shouting that he would kill him. Mr. Rather ran away and the Police officer fired at him hitting him in the head. Injured, Mr. Rather fell to the ground. The Police officer dragged him by the collar for about 100 feet until a crowd formed and the Police officer ran away. Mr. Rather was taken to the hospital, but later succumbed to his injuries.	A Police officer from the Police Station Kangan, a Grade Constable serving in Jammu Kashmir Police with belt number 422/GBL	A FIR was registered for attempted murder, later converted into murder. The Deputy Commissioner of District Ganderbal initiated a magisterial enquiry into the case. The accused has been arrested and is suspended pending the outcome of the inquiry.
2	Nooru area of Budgam district	Mr. Habibullah Shah Syed (58)	19 February 2018	Mr. Syed Shah, left home on 19 February and did not return. Persons associated with Mr. Shah Syed saw a Facebook post indicating that he had been killed in the air force camp at Nooru, Budgam, 15km from his residence. Relatives were called to the Police station at Budgam to identify his body. Police reportedly claimed he was believed to have psychosocial	Sentry posted in Air force station Budgam	A FIR no. 38/2014 was filed in Budgam police station and the family has filed an application for ex-gratia relief in the District Magistrates Office in Budgam. The District magistrate of Budgam assured the family that investigations will be undertaken and compensation paid and. The family has no information on the status of investigations in the case, thus far.

				disabilities and had crossed the security fence of the station despite warning shots being fired and was killed by the sentry. His family indicated he did not have psychosocial disabilities.		
3	Gratwalipora	Mr. Javaid Ahmad Bhat (20)	27 January 2018	There was a three day protest in Shopian district after a militant was killed. On the third day, there was stone throwing between the villagers and the army, which provoked indiscriminate gun fire by the army in the village of Ganawpora. The army then moved past the village and were 100 meters away when they fired two more rounds which killed Mr. [REDACTED], Mr. Javid Ahmed Bhat and Mr. Rayees Ahmad Ganai.	Members of the army from 44 Rashtriya Rifles	The Police have registered the case under FIR No. 26/2018 in Shopian police station. The families have not received a copy of the FIR. The father of the army member allegedly identified by Police as the perpetrator has petitioned the Supreme Court to quash all proceedings against his son. On 12 February the Supreme Court passed an interim order directing the Police not to take any "coercive action" against the individual. The government has also appointed the District Magistrate to carry out a magisterial enquiry. Thus far, there is no information on progress.
4	Ganawpora	Mr. Rayees Ahmad Ganai (20)				
5	Ganawpora	Mr. [REDACTED] (16)				
6	Khodweni, Main market, Kulgam District	Mr. Khalid Ahmad Dar (22)	9 January 2018	There was a protest in the marketplace which Mr. Dar was passing through. Security forces fired tear gas and protestors threw stones. Security forces also fired some gunshots and Mr. Dar was shot in the chest and died in hospital.	Jammu and Kashmir Police, members of the Special operations Group from the Qaimoh Police post and the Central Reserved Police Force.	Police forces from Qaimoh summoned the family but the family has indicated the Police can visit their location for any enquiries.

7	Batmaran Village, Wanpora, Shopian District	Mr. Mohammad Ayoub Mir (46)	19 December 2017	<p>Mr. Mohammad Ayoub Mir was attending a funeral and people started chanting slogans.</p> <p>The Indian army fired bullets to disperse the crowd and Mr. Mir received three bullets in his stomach. He was taken to hospital but later succumbed to his injuries.</p>	Indian Army	The family has been informed that a FIR had been filed by the Zainapora Police Station, but have not received a copy and they are not aware of the status of the case.
8	At Kakapora, Main market, Pulwama District	Mr. Owais Shafi Dar (18)	13 August 2017	<p>An individual from the Central Reserve Police Force (CRPF) who were travelling in vehicles near Kakapora bridge, fired a pellet cartridge at Mr. Dar, who was walking alone. The cartridge hit the right side of his chest and burst inside his body. He was taken to hospital but later succumbed to his injuries.</p> <p>During his funeral a Police vehicle entered the graveyard and fired pellets cartridges at mourners leading to injuries.</p>	Central Reserved Police Force (CRPF) police	A family member tried to file a FIR after the killing but was told to return a few days later. Following this, members of the Police took statements from the family and witnesses and told them a FIR would be filed. The family have tried numerous times to get a copy of the FIR but have not been provided with it.
9	Main Market Beerwah, Budgam	Mr. Tanveer Ahmad Wani (22)	21 July 2017	Members of the army from the 53 Rashtriya Rifles (RR) battalion camped at Beerwah were passing through the market and intentionally targeted Mr. Wani shooting him in the thigh and again in the mouth after he fell. He	Army of 55 Rashtriya Rifles camped at Beerwah.	A complaint was made to State Human Rights Commission, and is still pending. Police lodged a FIR 74/2017 at Beerwah Police Station for "attempted murder" but no further information is available on the status of the case.

				was taken to a Hospital by the army but later succumbed to his injuries.		
10	Goriwan Market, Bijbehara, Anantnag District	Mr. Haji Mohammad Abdullah Ganai (57)	17 July 2017	An altercation occurred after a traffic accident between an individual on a scooter and an army vehicle. A crowd formed and one of the individuals from the army opened fire to disperse them. Mr. Ganai, who was standing outside his shop nearby was hit on the left thigh. He was taken to hospital and later succumbed to his injuries.	A members of the Army	<p>The family applied for monetary relief and compassionate employment. They have received Rs. 1 lakh ex-gratia relief and the request for a compassionate appointment appears to be being considered.</p> <p>The police filed a FIR No. 101/2017 at Bijbehara Police Station under the charge of “attempt to murder”. The status of investigations is unknown.</p>
11	Alstop, Srinagar – Jammu highway, Malpora area of Anantnag district	Mr. Niyaz Ahmad Mir (51)	6 May 2017	Mr. Niyaz stopped at the site of a traffic accident. Whilst waiting for the road to be cleared by Police from the Mir Bazar post, the Police was attacked by militants. Mr. Mir was shot along with three Police officers. Mr. Mir was taken to hospital but later succumbed to his injuries.	Police or militants	<p>Police filed a FIR (No. 100/2017) at Qazigund police station.</p> <p>In the month of June, 2017, the family filed application for ex-gratia relief before the office of Deputy Commissioner, Anantna.</p> <p>The family has no information on either the status of the investigations or the application for relief.</p>