

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of
physical and mental health**

REFERENCE:
AL IND 25/2018

7 December 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 35/15 and 33/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of violations of the right to life of eight civilians including four children in Jammu and Kashmir. They were allegedly killed either intentionally or following indiscriminate use of fire arms by law enforcement officials or the army between March and July 2018. Thus far, the authorities have reportedly failed to conduct thorough, prompt and impartial investigations into all eight cases, so as to ensure that the rule of law prevails, and justice is done.**

Allegations of excessive use of force and killings of civilians by the Indian armed forces have been the subject of multiple, repeated communications by special procedures mandate holders including IND 9/2018, 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. We 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. We regret that no replies have yet been received to communications IND 9/2018, IND 7/2018, IND 10/2017, IND 13/2015, IND 20/2008 and IND 30/2006.

According to the information received,

Eight individuals, all unarmed civilians, have been killed by Indian security personnel, either intentionally, caught in cross-fire or hit by stray bullets in the

past six months, in what appears to be deliberate killings or excessive and careless use of firearms in the context of either demonstrations or social events.

Whereas a number of First Information Reports (FIR) were filed with the local police, in many cases they have not been shared with the victims' next-of-kin. 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 effective measures to ensure the forces operating in Kashmir are held accountable for what credibly appear to be intentional killings and misuse of firearms.

The victims include Ms. [REDACTED], Mr. Irshad Ahmad Lone, Mr. [REDACTED], Mr. Shahid Afridi Dar, Mr. Sharjeel Hameed Sheikh, Mr. [REDACTED], and Mr. [REDACTED], **deliberately killed by the security forces** and Mr. Suhail Khalil Wagay, killed by cross-fire between militants and army or police

In the cases of Ms. [REDACTED], Mr. Irshad Ahmad Lone and Mr. Sharjeel Hameed Sheikh, for a period after they were shot, the army continued firing bullets and did not allow them to be taken to hospital. In two cases, individuals trying to reach the injured were themselves hit with bullets. The three individuals were ultimately taken to hospital and were declared dead on arrival.

In the cases of Ms. [REDACTED], Mr. [REDACTED], Mr. Shahid Afridi Dar, Mr. Sharjeel Hameed Sheikh, Mr. [REDACTED], Mr. [REDACTED] it is not clear if a First Information Report (FIR) has been filed or investigations undertaken. In the case of Mr. Suhail Khalil Wagay, a FIR was filed based on information provided by the army itself - his family has not received a copy of the FIR and no investigation has been conducted. In the case of Mr. Irshad Ahmed Lone his family tried to file a FIR but were incorrectly told a FIR could not be filed because of the Armed Forces (Jammu and Kashmir) Special Powers Act.

Further information on these allegations is appended to this communication.

Without prejudging the accuracy of these allegations, we express our most serious concern that these allegations, if confirmed, would violate the right to life of these eight individuals, contrary to articles 3 of the Universal Declaration of Human Rights (UDHR) and 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by India on 10 April 1979. Article 6 of the ICCPR provides for the right to life, security and not to be arbitrarily deprived of life. We are particularly concerned by continuing allegations of intentional or careless use of lethal and excessive force leading to the death of many individuals. We are also concerned that in some cases injured protestors were prevented from accessing health care in contradiction the most basic principle of assistance to persons in danger, including article 12 of the International Covenant on

Economic, Social and Cultural Rights, ratified by India on 10 April 1979 which provides the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

In this latter regard, the information received indicates that security forces have restricted access to healthcare to protesters injured during the events, contrary to principle 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which requires enforcement officials to ensure assistance and medical aid are rendered to injured persons at the earliest possible moment.

We are 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. 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.

Finally, we underline that families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time, pursuant to principle 20 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

Special procedures mandate holders have previously and repeatedly expressed concern about a number of aspects of the Armed Forces (Special Powers) Act which are inconsistent with India's human rights obligations under the conventions it has ratified (including A/HRC/23/47/Add.1 paras 21- 28 and 100 and A/HRC/29/37/Add.3 paras 15- 18). We reiterate the call for this act 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 some international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to my attention. We would therefore 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? If no proper investigation has been carried out, how is this consistent with India's human rights obligations under the conventions it has ratified?

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.
6. Please explain in detail the measures taken by your Government to ensure access to health care to everyone, including those participating in demonstrations, without discrimination, especially when they are injured in the context of the use of firearms, and their life is in danger.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential human rights implications of these allegations. Any public expression of concern on our part would indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Annex I

The following table summarizes the allegations concerning the 8 cases

Nº	Location	Name and age of Individual	Date	Alleged Facts	Alleged Perpetrator
1	Hawoora, Kulgam	Ms. [REDACTED] (12)	7 July 2018	<p>At around 9:00 am, after alleged stone throwing between villagers and the army, members of the Frisal army camp entered the local high school and physically assaulted teachers and students. Villagers gathered around the high school and threw stones at the army. The army indiscriminately fired bullets at the villagers. Ms. [REDACTED] and Mr. Irshad Ahmad Lone, and one other individual were hit by bullets. For over 20 minutes, the army did not allow any of the injured to be taken the hospital, as they had cordoned the whole village and were firing bullets continuously. Individual trying to reach the injured were themselves hit with bullets. After the army left Mr. Irshad Ahmad Lone and Ms. [REDACTED] were taken to hospital but declared dead on arrival.</p> <p>Relatives of Mr. Irshad Ahmed Lone attempted to file a FIR at Kulgam police station but were told a FIR could not be filed because of the Armed Forces (Jammu and Kashmir) Special Powers Act. Relatives of Ms. [REDACTED] were summoned to a police post at Wanpoo and gave a statement but it is not clear whether a FIR was filed.</p>	Indian Army of Frisal Camp
2		Mr. Irshad Ahmad Lone (25)			
3	Beadigam, Shopian	Mr. [REDACTED] (17)	6 May 2018	<p>At 4:30 am, an encounter took place between militants and the Indian army at Beadigam village of Shopian. When the news of the encounter broke out, a crowd of villagers rushed towards the encounter site. Mr. [REDACTED] also went there at 7:00 am without informing his family. The army used tear gas to disperse the villagers some of whom were throwing stones. Then, an army officer apparently belonging to the Rashtriya Rifles fired bullets at the</p>	Indian Army (Rashtriya

				<p>protestors, injuring many people and killing Mr. [REDACTED].</p> <p>His family have not received any information on whether an FIR has been filed or investigations conducted.</p>	Rifles)
4	Drabgam, Shopian District	Mr. Shahid Afridi Dar (18)	30 April 2018	<p>At around 11:00 am, an encounter took place between Indian security forces and militants at Drabgam, resulting in two militants being trapped in a house. As news of the encounter spread, villagers began to gather around the site and some threw stones. Clashes erupted between army forces and the villagers, during which Mr. Shahid Afridi Dar received two bullets both on the back of his body and died.</p> <p>His family received a copy of the death certificate. However, police ensured that in the death certificate, the place of death is listed as his home and the cause of death is not mentioned. The family have not received any information on whether an FIR has been filed or investigations conducted.</p>	Indian Army
5	Kulgam	Mr. Sharjeel Hameed Sheikh (28)	11 April 2018	<p>At around 9:30 pm on April 10th, due to the reported presence of militants, the Indian army cordoned off Kulgam village. The next morning, as Mr. Sharjeel Hameed Sheikh was going to the bathroom in the compound of his friend's home, he was shot twice by an army officer deployed on the second floor of a neighboring house. Thereafter, the army officer continued firing towards the same direction and prevented his friends and family from retrieving him. He was ultimately taken to the district Hospital in Kulgam, where he was declared dead.</p> <p>His family have not received any information on whether an FIR has been filed or investigations conducted.</p>	Indian Army
				At around 4:00 pm, an encounter took place between militants and Indian	

6	Daraspura, Shopian District	Mr. [REDACTED] [REDACTED] [REDACTED] (15)	2 May 2018	<p>armed forces in the village of Turkwangam village, district of Shopian. The army set up a cordon around 2.5 kilometers away from the encounter site. Thereafter, a group of neighboring villagers, including Mr. [REDACTED] gathered at the cordon. As soon as Mr. [REDACTED] arrived at the cordon, he was shot with four rounds of bullets to his heart, shoulder, thigh and belly. After that, the army continuously fired at the public gathered there for around 30 minutes.</p> <p>His family have not received any information on whether an FIR has been filed or investigations conducted.</p>	Indian Army
7	Beadigam, Shopian District	Mr. [REDACTED] [REDACTED] [REDACTED] (16)	6 May 2018	<p>At around 2:30 am, an encounter took place between militants and Indian armed forces in the village of Beadigam, Shopian district. At dawn, neighboring villagers, including Mr. [REDACTED], gathered at the site. After the encounter ended, individuals threw stones at the army. The Army responded with live fire. Mr. [REDACTED] was shot and killed.</p> <p>His family have not received any information on whether an FIR has been filed or investigations conducted.</p>	Indian Army or the Special Operations Group of the Jammu and Kashmir Police
8	Pahnoo, Shopian District	Mr. Suhail Khalil Wagay (23)	4 March 2018	<p>At around 7:00 pm, Mr. Suhail Khalil Wagay was in route towards his sister's home in Pahlipora, Shopian. On his way, he was stopped at an army checkpoint that was searching every passing vehicle. At the exact same time, a group of militants attacked the checkpoint. In retaliation, the Indian armed forces returned fire at the militants. Mr. Suhail Khalil Wagay was hit by a bullet in the cross-fire. Two other civilians were also killed.</p> <p>The local police station in Shopian filed FIR no. 54/2018 based on information</p>	Indian Army or militants

				provided by the army itself indicating that the three civilians were working for the militants. His family have not received a copy of the FIR and no investigations have been conducted.	
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Annex II

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.

Article 6(1) of the International Convention on Civil and Political Rights (ICCPR), ratified by India 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 reiterated 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. Permitting or 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 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. the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) further highlights the right to know the truth extends to family members and society, particularly given the public interest in preventing international law violations. Therefore, absent a compelling need to protect the public interest or the legal rights of the victims and their families, the State party must disclose relevant details about the investigation to the victim's next of kin and make its findings public. States should adopt explicit policies regarding the transparency of investigations. In addition, persons whose rights have been violated have the right to a full and effective remedy included to adequate, effective and prompt reparation.

We would like to further bring to your attention, article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by India on 10 April 1979, which establishes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. States Parties to this Covenant shall guarantee that the rights enunciated there-in, including the right to health, will be exercised without discrimination of any kind (art.2.2). In addition, pursuant to principle 5(c) of the Basic Principles of the Use of Force and Firearms by Law Enforcement Officials, law enforcement officials should ensure the provision of timely medical assistance to anyone injured as a result of the use of force or firearms.