

**Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

REFERENCE:  
UA IND 4/2021

31 March 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/20, 42/22, 45/3, 44/5 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. **Waheed Para**, Mr. **Irfan Ahmad Dar**, Mr. **Naseer Ahmad Wani**, including allegations of arbitrary detention, extrajudicial killing, enforced disappearance and torture and ill-treatment committed against them. The allegations also include an act of reprisals against Mr. Para following his engagement with UN Security Council members and denunciation of human rights violations in the state of Jammu and Kashmir.

The case of Mr. **Naseer Ahmad Wani** is under consideration of the Working Group on Enforced or Involuntary Disappearances, and remains outstanding under its humanitarian individual case procedure. The case was transmitted to your Excellency's Government on 8 June 2020.

Concerns regarding the repressive measures and broader pattern of systematic infringements of fundamental rights used against the local population, as well as of intimidations, searches and confiscations committed by national security agents in Jammu and Kashmir, were raised by Special Procedures mandate holders in previous communications dated 21 December 2020 (AL IND 20/2020) 4 May 2020 (AL IND 6/2020) and 1 July 2020 (AL IND 11/2020). We thank you for the replies to the former communications, dated 18 January 2021 and 31 July 2020. We regret to have not received a response to the latter communication.

According to the information received:

***Case of Mr. Waheed Para***

Mr. Waheed Para, is a grass-roots political and social activist advocating the cause of youth in the former State of Jammu and Kashmir. He is also a member of the Women's Alliance for Security Leadership, a peace-builder, and serves as the youth President of the People Democratic Party. Mr. Para has raised the alarm about the Government of India's actions towards Kashmiris in the Muslim dominated former state of Jammu and Kashmir. He is from Naira in South Kashmir's Pulwama District and previously worked as a journalist,

who produced a number of human-interest news stories and anchored television shows broadcasted in the Jammu and Kashmir. Mr. Para was on house arrest until September 2020.

On 25 November 2020, Mr. Para was arrested by the National Investigation Agency (NIA) on alleged terrorism charges and held in their custody for one month at their headquarters in New Delhi, where he was allegedly subjected to ill-treatment. Mr. Para was permitted to meet with his attorney and a family member separately approximately ten days after his arrest and again in the third week of his detention. All visits were conducted under surveillance.

His arrest has raised concern as it came three days after he filed his nomination to run for the District Development Council elections. Furthermore, on 30 July 2020, Mr. Para engaged with current and future members of the UN Security Council as a participant in a closed virtual meeting where he raised the alarm about the Government of India's actions in Jammu and Kashmir, its treatment of Muslim minorities, and the recent border tensions with China. Following this engagement, Mr. Para received threats from officials with the NIA indicating that he was inviting trouble by engaging in such events. They gave him an ultimatum that if he did not cease speaking out about the Government, action would be taken against him.

He was subject to abusive interrogations after his arrest, which lasted from 10 to 12 hours at a time and questioned about his participation at the above-mentioned event where he interacted with UN Security Council members. He was held in a dark underground cell at subzero temperature, was deprived of sleep, kicked, slapped, beaten with rods, stripped naked and hung upside down. His ill-treatment was recorded. Mr. Para was examined by a government doctor three times since his arrest last November and three times by a psychiatrist. He requested medication for insomnia and anxiety.

On 9 January 2021, following a hearing by a NIA Court, the judge ruled that the Unlawful Activities Prevention Act (UAPA) did not apply in this case. The NIA appealed the court's ruling in a higher court. On 29 January, his legal team was granted two weeks to file their objections to the NIA challenge.

A few hours after his release, he was arrested and detained by the Counter-Intelligence in Kashmir (CIK) under a different charge related to providing financial support to terrorist groups. On 11 January 2021, he was formally charged and transferred to Srinagar under the custody of CIK. He appeared before court with a lawyer for a bail hearing. Bail was denied and he remains in remand.

### ***Case of Irfan Ahmad Dar***

Mr. Ahmad Dar, a 23 year old shopkeeper was arrested on 15 September 2020, near his residence in Sopore area of northern Kashmir by Jammu and Kashmir Police Special Operations Group (SOG). The SOG personnel arrived in a civilian vehicle and in plain clothes. Mr. Ahmad Dar was detained at the Sopore Police Station without a warrant.

A few hours later, the SOG officers raided his house without a search warrant and detained his elder brother. During the raid, his family members were beaten and their house was vandalized.

On 16 September, the next morning, the family received news of the death of Mr. Ahmad Dar. The police claimed that Mr. Ahmad Dar was killed while he was trying to escape from their custody. However, while performing their last rites on his body, it was found that his facial bones had been fractured, his front teeth were broken and his head appeared to have bruises of blunt force trauma. His family was allowed to see his body for about 10 minutes before burial.

In response to the protests against the killing, the district administration ordered a probe. During the probe, two policemen were suspended from their duties for “negligence of duty” for allowing him to escape, however nobody was held accountable for his killing.

### *Case of Naseer Ahmad Wani*

Mr. Naseer Ahmad Wani resides in the Doompura village of Shopian district in southern Kashmir. On 29 November 2019, a 44 Rashtriya Rifles (44 RR) team raided his home, where he lives with his family, allegedly claiming that his phone was used by militants.

About 15 Army personnel entered the house, where they searched every corner and vandalized the property. While searching the house, the army personnel kept two children alongside them using them as human shields. Both of them were also beaten. The army personnel assembled all the women in a single room and asked their names, took their photographs and requested everyone to handover their mobile phones. They were threatened that if they did not comply, they would be stripped naked.

Five soldiers entered Mr. Wani’s room, and locked the door from inside. For more than half-an-hour, the family members, locked in the adjacent room, heard his cries while he was being beaten. The soldiers then took him out with them.

The next morning, on 30 November, when the family visited the Police post Keegam, they were directed to visit the 44 RR camp in Shadimarg. Upon reaching the army camp, they were turned away and forced to leave at the entrance by army officers.

Late that evening, the same army officers visited Mr. Wani’s house. The Army Major told his family that there was no need to return to the police station or to initiate any legal proceeding as they had released Mr. Wani. However, he had not returned home and his whereabouts were unknown. The family made further inquiries with the Deputy Commissioner (DC) Shopian office who directed them to Sr. Superintendent of Police (SSP) Shopian office.

On the following evening, on 1 December, the Major along with some personnel returned to Mr. Wani’s home. He assembled all the family members in a single room and pointed his gun at a family member’s neck and threatened

them not to make any further enquiries or take legal action.

In response to the application filed by Mr. Wani's family, the DC directed the SSP to take up the matter and file a missing person report. On the DC's direction a missing person report, was filed on 2 December 2019. However, Mr. Wani's fate and whereabouts are still not known.

While we do not wish to prejudge the accuracy of these allegations, we are expressing our grave concern that, should they be confirmed, they would constitute arbitrary arrests and detention, torture and ill-treatment, enforced disappearance and, in the case of Mr. Dar, extra-judicial killing, and would amount to violations of article 6 (right to life and not to be arbitrarily deprived of life), article 7 (freedom from torture and other cruel, inhuman or degrading treatment or punishment) and article 9 (right to liberty and security) and 14 (right to equality before the courts and tribunals) of the International Covenant on Civil and Political Rights (ICCPR), which India acceded to on 10 April 1979.

The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, is also codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). We recall that conditions of detention can amount to inhuman and degrading treatment and refer to paragraph 28 of the General Assembly resolution 68/156 (2014) which emphasizes that conditions of detention must respect the dignity and human rights of persons deprived of their liberty.

We further highlight that States have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their lives and bodily integrity. Loss of life occurring in custody creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation that establishes the State's compliance with its obligations under article 6 (Human Rights Committee, General Comment 36).

The above allegations would also further contravene the protections provided for by the Declaration on the Protection of all Persons from Enforced Disappearance adopted by the General Assembly Resolution 47/133 of 18 December 1992, particularly articles 1, 2, 3, 7, 9, 10, 13, 17 and 19. Enforced disappearances not only violate numerous substantive and procedural provisions of the Covenant, they also constitute a particularly aggravated form of arbitrary detention.

With regard to the alleged violations of due process guarantees, we would like to recall article 14 of the ICCPR, which provides *inter alia* for the principle of equality before competent, independent and impartial courts and tribunals, the presumption of innocence, provision of adequate time and facilities for the preparation of the defense, and the right of accused persons to communicate with counsel of their own choosing. We also refer to General Comment No. 32 (2007) by the Human Rights Committee (CCPR/C/GC/32) and the UN Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), which provide for the right to legal assistance, and for the prompt access and consultation with counsel from the moment of detention and throughout the proceedings without intimidation,

hindrance, harassment or improper interference.

It is of particular concern that no investigation into the allegations of enforced disappearances and extrajudicial killings have yet to be conducted in an independent, impartial, prompt, effective, thorough and transparent manner in accordance with the human rights obligations of India. We would like to draw the attention of your Excellency's Government to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. Thus, in order to overcome the presumption of State responsibility for a death in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions).

Our concern in the case of Mr. Waheed Para is heightened by the fact that his arrest and detention appear to be linked to his interaction with UN Security Council members, which would amount to acts of reprisals for such cooperation. In the same vein, we are concerned about the armed threats made against the relatives of these persons to stop filing complaints about these violations.

Without expressing at this stage an opinion on the facts of the case and on whether the reported detentions were arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of the detained person in this case not to be deprived arbitrarily of his liberty, in accordance with article 9 of the ICCPR. Furthermore, arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is also in principle arbitrary.

Regarding allegations of reprisals for cooperation with the UN, we refer to your Excellency's Government to Human Rights Council Resolutions 12/2, 24/24, 36/21, and 45/28 reaffirming the right of everyone, individually or in association with others, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. The Human Rights Council calls on States to prevent and refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies in order to effectively protect those who seek to cooperate, or have cooperated with the United Nations. The Council also urges States to ensure accountability for any act of intimidation or reprisal by ensuring impartial, prompt and thorough investigations of any alleged act of intimidation or reprisal in order to bring the perpetrators to justice; to provide access to effective remedies for victims in accordance with their international human rights obligations and commitments; and to prevent any recurrence.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the

above-mentioned person(s) in compliance with international instruments.

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 on the following matters:

1. Please provide any additional information and any comment(s) you may have on the above-mentioned allegations.
2. Please urgently provide information on the fate and current whereabouts of Mr. Naseer Ahmad Wani.
3. Please provide the details, and where available the results, of any investigation, judicial or otherwise, into the allegations of enforced disappearance, extra-judicial killing and torture or other cruel, inhuman or degrading treatment or punishment of Mr. Waheed Para, Mr. Irfan Ahmad Dar, Mr. Naseer Ahmad Wani. If no investigation has been initiated, please explain why and how this is compatible with the international human rights obligations of India.
4. Please provide detailed information about the factual and legal grounds for the arrests and continued detention of Mr. Waheed Para and Mr. Dar, and explain how these measures are consistent with the international human rights obligations of India.
5. Please provide information about the factual basis justifying the recourse to terrorism related charges levied against Mr. Waheed Para, and how this is compatible with the obligation to pursue counter-terrorism obligations consistent with international law as set out *inter alia* the United Nations Security Resolution 1373. How is this compatible with a reasonable understanding of the definition of terrorism in international law norms including the United Nations Security Council Resolution 1566 (2004) and the model definition of terrorism provided by the mandate of the Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism.
6. Please provide information on measures adopted by your Excellency's Government to ensure the right of persons to effective remedy for human rights violations, including arbitrary arrest and detention, torture and ill-treatment. If no such measures have been taken, please explain how this is compatible with the international human rights obligations of India.
7. Please indicate what measures are being taken to ensure that individuals and groups can exercise their right, to cooperate with United Nations, its representatives and mechanisms in the field of human rights, without fear of reprisals of any sort.
8. What measures (legislation, procedures and implementation control mechanisms) have been put in place by the authorities to protect any individual in the Jammu and Kashmir region against the risk of being

arbitrarily arrested, detained, tortured, unfairly tried, and disappeared as required by the international human rights law conventions ratified by India, notably the ICCPR and CAT.

In light of the above allegations of reprisals for cooperation with the United Nations on human rights, we may consider sharing this communication – and any response received from your Excellency’s Government - with other UN bodies or representatives addressing intimidation and reprisals for cooperation with the UN in the field of human rights, in particular the senior United Nations official designated by the Secretary General to lead the efforts within the United Nations system to address this issue.

After having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the urgent appeal and the regular procedure.

These allegations are part of what appears to be an ongoing pattern of serious violations of human rights by police, army, security agencies and the judiciary in the Jammu and Kashmir region, warrants in our view the most serious attention on the part of the highest authorities. In this regard, we may publicly express our concerns in the near future, as we believe that the wider public should be informed about the implications of these allegations on the exercise and enjoyment of their human rights. Any public expression of our concerns will indicate that we have been in contact with your Excellency’s Government to clarify the issues in question.

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 responsible of the alleged violations.

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.

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

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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