

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
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12 July 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5, 45/3, 42/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **allegations of arrest followed by torture and death in custody of Mr. Muhammad Ashraf Khan Sehrai. He suffered from hypertension and Chronic Kidney Disease (CKD), and reportedly had no access to adequate medication since his arrest. Two of his sons, Mujahid Ashraf Khan and Rashed Ashraf Khan, were arrested at his home after the funeral.**

The case of **Mr. Muhammad Ashraf Khan Sehrai** was transmitted to your Excellency's Government by the Working Group on Enforced or Involuntary Disappearances, under its urgent procedure on 19 October 2020. It was clarified on 21 May 2021, based on information received from the source, confirming Mr. Sehrai's death. The cases of **Mr. Mujahid Ashraf Khan** and **Mr. Rashed Ashraf Khan**, were also transmitted to your Excellency's Government by the Working Group on Enforced or Involuntary Disappearances, under its urgent procedure, on 19 May 2021. According to the latest information received, the two men are no longer disappeared. Regrettably, to date there has not been any reply from your Excellency's Government to the Working Group, concerning these cases.

According to the information received :

On 12 July 2020, at around 5:30 a.m., Mr. Muhammad Ashraf Khan Sehrai, a 77 years-old-Kashmiri, chairman of the Tehreek-e-Hurriyat, which is a constituent of All Parties Hurriyat Conference, was arrested at his home in Jehangir Colony, Bhaagat, Barzala, Srinagar, by several Indian Army personnel and armed gunmen in plain clothes, without an arrest warrant. These individuals did not speak Kashmiri. Several persons witnessed the arrest. Once arrested long ago, in March 1965, Mr. Sehrai has spent over 16 years of his life in various jails across India.

Persons associated with Mr. Sehrai searched for him including at the Jammu and Kashmir Main Srinagar police station. It is believed he was originally taken

to Sadder Police station. Mr. Sehrai was reportedly arrested under the Public Safety Act (PSA).

His family was later informed that he was at Udhampur District Jail, in Jammu, more than 200 kilometers away from Srinagar. In October 2020, the family travelled to Udhampur District Jail to inquire about his whereabouts. However, they did not get any information about his whereabouts, were threatened by security officers at the jail and by an Indian Army officer, and told to not return.

Despite filing a Habeas Corpus case in the Jammu Kashmir High Court, that should decide on the case within 15 days, Mr. Sehrai was not released. Likewise, his family filed three requests before the said Court for ensuring his vital medical treatment. The Court delayed the hearing of the petitions – which in turn delayed essential medical care and exacerbated the health condition of Mr. Sehrai while in detention. The family had also sought for his transfer from the Udhampur jail to Central Jail Srinagar, considering his ailing condition, to no avail. In effect, the isolation suffered by Mr. Sehrai, was exacerbated by his transfer to a place of detention far away from his place of residence and family. This was an aggravating factor for the life-threatening conditions of detention he was subjected to.

In late January 2021, Mr. Sehrai was reportedly allowed a phone call to his family members every other week. His last phone call was in early April 2021, three weeks before his death. During those phone calls, he complained about his deteriorating health, of being placed in solitary confinement and for lack of access to adequate medical care. Mr. Sehrai suffered from hypertension and Chronic Kidney Disease (CKD), and reportedly had no access to his life-saving medication while in detention.

On 3 May 2021, an employee from Udhampur District Jail informed a relative of Mr. Sehrai that he had been admitted into Government Medical College, Jammu. When the relatives arrived there on 4 May 2021, they were not allowed to see or visit Mr. Sehrai. After almost 10 hours of waiting, they were told that he had died.

Personnel at the Medical College informed family members that they would not be given his body. The family protested against this decision at the hospital. His remains were finally handed over to the family on 5 May 2021, without any official explanation about the reasons for his death.

Family members then obtained permission from Indian army representatives that he be buried in their village in Lolab, Kupwara, and not in Srinagar. This was accepted also on the condition that no more than 20 people could attend the funeral, otherwise they would all be arrested. The family had to pay the ambulance service to take the body from Jammu to Kupwara. After the funeral, Mr. Sehrai's sons, Mr. Mujahid Ashraf Khan and Mr. Rashed Ashraf Khan, were arrested at his home and are still in detention. They are charged under Unlawful Activities (Prevention) Act (UAPA) and are being shifted to different prisons.

The cause of Mr. Sehrai's death was said to be bilateral pneumonia and low levels of oxygen saturation and thus attributed to COVID-19. However, he reportedly died due to the lack of access to his medicine and adequate medical care while in prison. Sleep deprivation and being placed in solitary confinement might have also had a negative impact on his health.

Reportedly, Indian authorities have so far not opened an investigation into the allegations of torture suffered by Mr. Sehrai and the causes of his death in custody.

Without prejudging the accuracy of these allegations, we express grave concern at the re-arrest, followed by torture and his death in custody of Mr. Sehrai, an elderly man aged 77. We are also concerned by the reported lack of access to adequate medical care while he was in prison, given his fragility and known physical conditions. If confirmed, these allegations would amount to multiple violation of the right of every individual to life and security, the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, of the right not to be arbitrarily deprived of one's life or liberty, as well as the right to health, as set forth in articles 6, 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR), which India acceded to on 10 April 1979.

Given the gravity of the case, we urge your Excellency's Government and the local authorities in Jammu and Kashmir to undertake a prompt, thorough, independent and impartial investigation into the death in custody of Mr. Sehrai so as to determine and document the reason for his arrest, its factual and legal basis, his treatment in detention, including any indication that he may have been tortured or otherwise mistreated, and the cause of his death.

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 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 detailed information concerning the legal grounds for the arrest and detention of Muhammad Ashraf Khan Sehrai; and for his alleged subjection to solitary confinement and secret (incommunicado) detention;
3. Please provide detailed explanation why he was transferred to Srinagar, some 200 kilometers from his village of residence, instead of being detained in its vicinity;
4. Please provide detailed information about the conditions of his detention, his treatment, and the measures taken to take care of his health

while in detention, given his old age and his declared ailments he was suffering from, including medical treatment and medication.

5. Please provide detailed information on the reasons why he needed to be admitted into Government Medical College and why he died there, while in detention.
6. Please provide the details and, where available, the results of any investigation and judicial or other inquiries which may have been carried out, or which are foreseen, into what seems to have been the enforced disappearance and the death in custody of Mr. Sehrai.
7. Please provide any document such medical diagnosis, death certificate as well as post-mortem report undertaken after the death to determine its cause(s); and whether such documents were shared with the family.
8. Please indicate what measures have been taken to ensure that his family members are provided with reparations.
9. Please indicate the current status of his two sons, Mujahid Ashraf Khan and Rashed Ashraf Khan, as well as detailed information on the factual and legal grounds for their arrest, their continued detention, and the measures taken to ensure that they are treated humanely while detained, have access to their family and their lawyers, and are ensured due process of law in the respect of the international human rights norms for fair trial that are binding on India by virtue of the treaties it has ratified.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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 measures, provided by law and the human rights obligations of India, be taken to review the cause of the arrest, detention and death of Mr. Sehrai; to ensure that the human rights of his two detained sons are respected; and in the event that the investigations support or suggest that they are correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that 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.

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

Morris Tidball-Binz  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Tae-Ung Baik  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

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

## **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.

We refer to Articles 6, 7 and 9 of the International Convention on Civil and Political Rights (ICCPR), which India acceded to on 10 April 1979, which provides that every individual has the right to life, not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and that no one shall be subjected to arbitrary arrest or detention.

According to article 6 of the Code of Conduct for Law Enforcement Officials, law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required. In addition, Principle 9 of the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, indicates that all prisoners should have access to the health services available in the country without discrimination on the grounds of their legal situation. The denial or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services can amount to torture or ill-treatment in violation of article 7 of the ICCPR and prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

General Comment 36 of the Human Rights Committee underscores that States Parties also have a duty to take all necessary measures to protect the lives of individuals deprived of their liberty by the State as it arrests, detains, imprisons or otherwise deprives them of their liberty. The duty to protect the lives of all detained individuals includes providing them with necessary medical care and adequately regular monitoring of their health.

In its General Comment No. 36, the Committee also stated that investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. Investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates and should be independent, impartial, prompt, thorough, effective, credible and transparent.

The Minnesota Protocol (2016) also indicates that States are under the obligation to provide all relevant documentation to the family of the deceased, including the death certificate, medical report and reports on the investigation held into the circumstances surrounding the death (para. 17).

Moreover, we wish to refer your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by India on 10 April 1979, which asserts that States recognize the rights of everyone – including prisoners – to the enjoyment of the highest attainable standard of physical and mental health. We also recall that States have a duty to protect the health of prisoners and detainees, in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners, also known as the Mandela Rules. In particular rule 27 which states that all prisons shall ensure prompt access to medical attention in urgent cases and that prisoners who require specialised treatment will be transferred to the appropriate institutions and/or hospitals. Rule 24 provides that the provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status. Rule 30(d) establishes that in cases where prisoners are suspected of having contagious diseases, authorities should provide for the clinical isolation and adequate treatment of those prisoners during the infectious period.

We are further drawing your Excellency's Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances which establishes that no State shall practice, permit or tolerate enforced disappearances. The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. In particular, the Working Group recalls that the Declaration sets out the necessary protection by the State, in particular articles 9, 10, 11 and 12, which relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons.

In this respect, we also bring your Excellency's Government's attention to the [Key Guidelines on COVID-19 and Enforced Disappearances](#), issued by the Working Group jointly with the Committee on Enforced Disappearances in September 2020.