

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL IND 15/2021

1 October 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/16, 43/4 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **unnecessary and excessive use of force employed by police against journalists and human rights defenders traveling on public roads, and raids by police of the homes of a journalist and his family.**

Mr. **Chandrabhushan Tiwari** is a journalist and human rights defender working for daily Hindi newspaper Gyan Shikha Times, in the Kaimur district of the State of Bihar. He reports on a broad spectrum of issues for the paper, including alleged human rights violations.

Mr. **Aakash Hassan** is an independent journalist and human rights defender in the city of Srinagar in Kashmir. In recent years, he has covered the increasing military presence in Kashmir and the military's alleged surveillance of citizens there.

Mr. **Qazi Shibli** is a journalist and editor of the news website *The Kashmiriyat* in Anantnag city in central Jammu and Kashmir. *The Kashmiriyat* covers general news about Kashmir, including politics and current affairs. He was the subject of a previous communication, IND 9/2021, sent on 3 June 2021 to your government. To this date, no response has been received to the communication.

According to the information received:

The case of Mr. Chandrabhushan Tiwari

On 11 July 2021, Mr. Chandrabhushan Tiwari came across congested traffic between Usauli and Kudra on National Highway 2, while travelling on a motorcycle with another individual. Mr. Tiwari began filming on his phone as he approached the traffic.

Mr. Tiwari observed that the traffic had built up because police officers of the Kudra Police Station were collecting what appeared to be bribes from truck

drivers. Three police officers, who saw Mr. Tiwari filming, reportedly confiscated his mobile phone. When Mr. Tiwari informed them that he was a journalist, the police officers reportedly physically assaulted him and the person with whom he was traveling with their batons.

A more senior officer reportedly recognised the journalist and ordered the younger officers to stop the assault, explaining that the policemen were new and did not realise who Mr. Tiwari was. When Mr. Tiwari asked if the beating would have continued if it were against a lesser known individual, the senior officer reportedly threatened that they could land themselves in trouble if they took the matter further. Mr. Tiwari's mobile phone was returned and he left the scene.

On 12 July 2021, Mr. Tiwari asked the Superintendent of Police of Kaimur about the incident via WhatsApp, but he did not receive a reply. On 14 July 2021, Mr. Tiwari detailed the events in a letter sent to the Superintendent of Police of Kaimur with copies to the State Secretariat and the Director General of Police of Bihar. At the time of writing, no response has been received to the letters and reportedly no disciplinary action has been taken against the officers accused of the allegations.

The case of Mr. Aakash Hassan

On 17 July 2021, as he travelled home at around 9 pm, Mr. Aakash Hassan was stopped at a routine traffic operation by the police in the Anantnag District in Jammu and Kashmir. Reportedly upon identifying the press sticker on his vehicle, the police officer directing traffic shouted "press, press". Mr. Hassan was allegedly grabbed by the collar, beaten in the face and the body, at times with batons. One officer attempted to drag Mr. Hassan out of the vehicle. With the beating ongoing, Mr. Hassan managed to drive away from the scene and seek medical attention.

Mr. Hassan reportedly shared details of the attack and images of his injuries on social media. Shortly after the incident, a superintendent of the Anantnag District Police contacted Mr. Hassan to inform him that the incident would be investigated. At the time of writing, Mr. Hassan has allegedly received no information on any investigation carried out into the attack.

The case of Mr. Qazi Shibli

On 6 August 2021 at approximately 1:00 am, police searched the home of Mr. Qazi Shibli, while he was not there, for approximately two hours in Anantnag City in central Jammu and Kashmir. The police forcibly entered Mr. Shibli's home by breaking the lock and reportedly did not provide a warrant or justification for the search. Reportedly, the police also broke several items such as glasses, window panes, and a security camera outside Mr. Shibli's home. The police also allegedly confiscated electronics belonging to members of Mr. Shibli's family, who were present during the search, and a CCTV intercom monitor in the home.

At approximately 1:30 am on 6 August 2021, the police also searched the homes of Mr. Shibli's cousin and grandmother for 20 and 30 minutes respectively.

Hours before these searches, *The Kashmiriyat* had reposted an article from 2017 on social media, regarding a Kashmiri militant, who had allegedly been killed by Indian forces.

Without prejudging the accuracy of the above-mentioned allegations, we wish to express our deep concern regarding the apparent unnecessary and excessive use of force against journalists and human rights defenders. The lack of investigation or response from police following complaints about the instances is deeply concerning, particularly in the case of Mr. Chandrabhushan Tiwari, who was exposing alleged police corruption. We fear that the lack of investigation and follow up with the human rights defenders may be a sign that corruption within the Indian police forces may extend beyond the officers reported to have taken bribes. We are deeply concerned that the unwarranted attacks against the journalists may be an attempt to clamp down on freedom of expression and silence reporting on human rights issues in India. It is of utmost concern that both Mr. Tiwari and Mr. Hassan appear to have been beaten by police officers allegedly merely for carrying out their journalistic profession, or being identified as members of the press. If confirmed, these attacks would raise serious concerns regarding the environment in India for the lawful exercise of the journalistic profession. We also wish to express our deep concern regarding the alleged raids on the home of journalist Mr. Qazi Shibli and his family members. We fear that these raids are a worrying illustration of a pattern of targeted harassment of journalists in Jammu and Kashmir, raising further serious concerns regarding the ability for journalists to exercise their profession free from threats or intimidation.

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 any comment you may have on the above-mentioned allegations.

2. Please provide information on any investigation, and results if available, that has been opened following the complaint made by Mr. Tiwari regarding bribe-taking and the physical assault against him. If no investigation has been opened, please explain how this is consistent with your obligations under international law.
3. Please provide information on any investigation, and results if available, into the attack on Mr. Hassan. If no investigation has been initiated, please explain how this is consistent with your obligations under international law.
4. Please provide information on any investigation, and results if available, into the searches into the homes of Mr. Shibli and his family. If no investigation has been initiated, please explain how this is consistent with your obligations under international law.
5. Please provide detailed information on the measures in place in India to deal with complaints about corruption, including in the police forces.
6. Please provide information about the measures taken to ensure favorable conditions for the legitimate exercise of the right to freedom of opinion and expression, and in particular the protection of journalists.

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 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.

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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 refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), acceded by India on 10 April 1979. In particular, we would like to refer to article 3 (a) which affirms that States must undertake measures to provide effective remedies to any person, whose rights or freedoms are violated by others, including by perpetrators acting in an official capacity, and article 3 (b) and (c) which state that the person seeking such remedy has the right for it to be determined by competent authorities and that the State must enforce such remedies when granted. We would also like to refer to article 6 (1) of the ICCPR, which recognises that every individual has the inherent right to life, and this right shall be protected by law.

We further recall that Article 19 (2) of the ICCPR enshrines the right to freedom of expression, which include "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), such information and ideas include, inter alia, political discourse, commentary on one's own and on public affairs, cultural and artistic expression, and discussion of human rights (Paragraph 11) as well as expression of criticism or dissent. We recall that, as noted in a previous report of the Special Rapporteur on the right to freedom of opinion and expression, the right to information is "a right in and of itself and one of the rights upon which free and democratic societies depend" (E/CN.4/2000/63, para. 42). We note with concern the apparent retaliatory measures taken against journalists and human rights defenders, including Mr. Tiwari and Mr. Hassan, for exercising their right to freedom of expression.

We would also like to draw your Excellency's attention 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, which state that everyone has the right to promote and to strive for the protection and realization of human rights and that each State has a prime responsibility and duty to protect, promote and implement all human rights. We would further like to refer to article 6 (a) which declares that everyone has the right to seek, obtain, receive and hold information about all human rights and fundamental freedoms, and have access to how those rights and freedoms are given effect in domestic, legislative, judicial and administrative systems; article 6 (b), which states that everyone has the right, individually or in association with others, to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and article 6(c), which states that everyone has the right, individually or in association with others, to study, discuss, form and hold opinions on the observance in law and in practice of all human rights and fundamental freedoms and to draw public attention to these matters.

We would also like to refer to article 9.3 (a) of the abovementioned Declaration on Human Rights Defenders, which states that everyone has the right to complain about the policies and actions of individual officials, government bodies and authorities with regard to human rights violations, and to do so by appropriate judicial, administrative or legislative channels provided for by the legal system of the State, and article 12, paragraphs 2 and 3, which 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.