

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the rights of indigenous peoples

Ref.: AL IND 3/2022
(Please use this reference in your reply)

4 May 2022

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 rights of indigenous peoples, pursuant to Human Rights Council resolutions 44/5 and 42/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **killing of 14 indigenous members of the Konyak Nagatribe by the military on 4 December 2021 and on 5 December 2021**. We have also received information on the delays in investigating extrajudicial executions that occurred between 1979 and 2012 in the state of Manipur and the continued application of the Armed Forces Special Powers Act including in Nagaland and Manipur.

The alleged unreasonable delay by the Central Bureau of Investigation to conduct prompt, effective and thorough investigations into extrajudicial killings that occurred in Manipur, was previously raised in [IND 7/2018](#). We regret that we have yet to receive a reply to the communication.

According to information received:

Killings in Nagaland

On 4 December 2021, 13 indigenous members of the Konyak Nagatribe, were killed in Tiru Valley of Mon District, Nagaland, India by the Indian military, members of the 21 Special Para Commando stationed at Jorhat and the 27 Assam Rifles stationed at Sonari (in the state of Assam). The individuals killed were coal miners. Illegal coal miners operating in the area are alleged to be closely associated with the Assam Rifles, a paramilitary force under the joint control of the Ministry of Home Affairs and the Indian Army.

At 4.05 pm, an open truck from Oting village picked up eight coal miners from the mining site in Tiru valley, to return to the village in order to attend Sunday church services the following day. A few minutes after their departure, gun shots were heard. Another group of miners who left shortly afterwards were met on the same route to the village by military personnel and told to take a longer route back.

At 4.20 pm, the first open truck was attacked by members of the military who staged an ambush. The military allegedly opened fire without signaling the vehicle to stop. The individuals in the open truck were unarmed. Six villagers, Mr. C. Shomwang Konyak, Mr. Langwang Konyak, Mr. Thapwang Konyak, Mr. Thakwang Konyak, Mr. Khawang Konyak, and Mr. Yinjong Konyak were killed and two injured.

At around 8 pm further gunshots were heard. Villagers then found an empty pick up. The windscreen had multiple bullet marks which appear to have been aimed at the driver's position. There were blood stains covered with dust and mud on the floor of the vehicle. Four military vehicles were present at the site, which began to leave once the villagers arrived. Villagers prevented the vehicles from leaving and the military indicated they were reinforcements and had no information. The villagers checked the military vehicles. Underneath a tarpaulin, which two soldiers had been sitting on, they found six bodies. It appeared that an attempt had been made to remove their clothes and dress them in combat uniforms. Video footage was taken of the discovery.

Following the discovery of the bodies, a heated argument and tussle followed between the villagers and the military. The villagers set fire to the army vehicles. The military opened fire. Villagers then tried to attack the military with machetes, before retreating. The military continued to fire on retreating villagers. At around 9 pm, seven individuals had been killed and 12 additional individuals injured. Two of those killed, Mr. Bipul Konwer and Mr. Ngampho Konyak attempted to hide under an excavator, but were intentionally shot despite their attempts to hide. They were later taken to hospital by paramilitary forces who told the hospital staff they were NSCN fighters. Another individual, Mr. [REDACTED], unrelated to the incident was killed in his field hut. The other four individuals killed were Mr. Langtun Konyak, Mr. W Hokup Konyak, Mr. Phaokam Konyak, and Mr. Manpeih Konyak. The Army has also indicated that one of its soldiers was killed.

On 5 December, the army opened fire on individuals protesting against the incident after they attacked an army camp, killing another individual and injuring 18 others.

On 6 December, the Union Home Minister said in a statement at the 2nd chamber of the national Indian Parliament, that the vehicle “was signaled to stop” and was fired upon after it “tried to flee” and that it was a case of “mistaken identity.” He continued that after the incident villagers attacked security personnel which had to open fire to “disperse the crowd and defend themselves.”

A Special Investigation Team was constituted to investigate the issue, under the supervision of the Assistant Director General of Police (ADGP), ordered by the State Government of Nagaland.

On 20 December, the Nagaland Legislative Assembly condemned the killings and passed a resolution urging for the repeal of the Armed Forces Special Powers Act (AFSPA) adopted in 1958, from the North East Region. The Act provides wide-ranging powers to the Indian armed forces in respect of using lethal force in various instances, and fails to provide sufficient safeguards in case of excessive use of such powers. It also stipulates that prosecution of members of the armed forces is prohibited unless sanction to prosecute is granted by the central Government.

On 30 December, the application of the AFSPA in Nagaland was extended by six months.

Killings in Manipur

In 2012, 1528 cases of alleged extrajudicial killings, which occurred between 1979 and 2012 in the state of Manipur, were submitted to the Supreme Court of India.

On 8 July 2016, the Supreme Court ruled that even in areas which are considered under the AFSPA as “disturbed”, the security forces must still act within the bounds of the law. The judges held that excessive use of force or use of retaliatory force by the Manipur Police or the armed forces could not be tolerated and that alleged cases must be thoroughly investigated.

To date, 38 First Information Reports have been filed. Of these, 14 charges sheets and 7 closure reports have been filed in the Courts of Manipur. Six of the closure reports have been challenged by the families of the victims. The court has ordered further investigation in two cases and 4 four cases are still pending. 88 personnel of Manipur Police are indicted but no members of the military have been listed in any charge sheets, reportedly despite their involvement in the killings being documented in the case records, or in some cases in the charge sheets themselves.

To date, we understand that the AFSPA remains in force in Manipur.

While we do not wish to prejudge the accuracy of the information received, we wish to express serious concern at the alleged killing of 14 indigenous members of the Konyak Nagatribe by the military in Nagaland, which appear to be part of a pattern of killings of members of that population by the military and the police at least in the past decade, and which appear to be covered by impunity. We are concerned by the alleged lack of progress in the investigations of 1528 alleged extrajudicial killings in Manipur State as well as the continued application of the 1958-Armed Forces Special Powers Act.

Should the facts alleged above be confirmed, they would amount to a violation of the right to life, as set forth in article 3 of the Universal Declaration of Human Rights (UDHR), and in article 6 of the International Covenant on Civil and Political Rights (ICCPR), which India acceded to on 10 April 1979.

We would like to highlight the importance of conducting independent, impartial, prompt, effective, thorough and transparent investigations into all potentially unlawful killings in accordance with international standards, particularly the *United Nations Minnesota Protocol on the Investigation of Potentially Unlawful Death*¹. In particular, we note investigators and investigative mechanisms must be, and must be seen to be, independent of undue influence (para 28). Furthermore, the authorities must “conduct an investigation as soon as possible and proceed without unreasonable delays... The failure of the State promptly to investigate does not relieve it of its duty to investigate at a later time: the duty does not cease even with the passing of significant time” (para 32).

We remind that amongst other things, investigations into alleged unlawful killings should seek to determine who was involved in the death and their individual responsibility for the death and seek to identify any failure to take reasonable

¹ Available at <https://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>

measures which could have had a real prospect of preventing the death. It should also seek to identify policies and systemic failures that may have contributed to a death, and identify patterns where they exist (para. 25). All those responsible for unlawful killings, including those who commanded extra-judicial, summary or arbitrary executions should be brought to justice and victims should be granted full reparations, including guarantees of non-repetition.

Several international bodies including special procedures mandate holders have previously expressed concern about a number of aspects of the Armed Forces (Special Powers) Act and called for it be repealed, or at least radically amended, 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. This issue has also been raised in multiple communications such as [IND 21/2007](#) which urges “*either repealing the AFSPA ... or ensuring that the Act and any other such future legislative measures comply fully with international human rights and humanitarian law treaties to which India is a state party, especially the ICCPR and the four Geneva Conventions.*” We regret that the Act continues to remain in force.

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 on the legal grounds, motive and circumstances for 21 Special Para Commando and the 27 Assam Rifles stationed at Sonari to ambush and open fire on the first group of minors returning to their village, killing 6 and injuring 2;
3. Please provide detailed information on the legal grounds, motive and circumstances for the same army units to open fire and kill 8 more villagers, and injuring 30 others on 4 and 5 December, when villagers protested against the killings;
4. Please provide detailed information on the steps taken by the judiciary and other related competent authorities to investigate the killing of the 14 individuals in Nagaland. Please include information on their current status, the specific investigative steps taken and on compliance with existing Indian law and international standards including the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016).
5. Please provide information on the status of investigations into 1,528 alleged cases of extrajudicial executions in Manipur.

6. Please provide information on the steps taken to repeal or to radically amend revise the Armed Forces (Special Powers) Act.

We would appreciate receiving a response within 60 days. Past 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.

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

José Francisco Cali Tzay
Special Rapporteur on the rights of indigenous peoples

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 article 3 of the Universal Declaration of Human Rights which states that "Everyone has the right to life, liberty and security of person"; and article 6 (1) of the International Covenant on Civil and Political Rights which provides that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

We wish to refer to Human Rights Committee, General Comment 36. In particular, we wish to stress that the right to life is the supreme right from which no derogation is permitted even in situations of armed conflict and other public emergencies that threaten the life of the nation. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right, whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed and infused by other human rights.

Paragraph 1 of article 6 of the Covenant provides that no one shall be arbitrarily deprived of life and that this right shall be protected by law. Accordingly, States parties have a duty to refrain from engaging in conduct resulting in arbitrary deprivation of life; and must also exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State.

In particular, States parties are expected to take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials including soldiers charged with law enforcement missions. This includes putting in place appropriate legislation controlling the use of lethal force by law enforcement officials, procedures to ensure that law enforcement actions are adequately planned to minimise risks to human life, mandatory reporting, review and investigation of lethal incidents, and supplying forces responsible for crowd control with effective, less-lethal means and adequate protective equipment in order to obviate their need to resort to lethal force.

All operations of law enforcement officials should comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and law enforcement officials should undergo appropriate training designed to inculcate these standards so as to ensure, in all circumstances, the fullest respect for the right to life. These standards provide that Law enforcement officials may only use force when it is strictly necessary and only to the extent required, for the performance of their duties (article 3 of the code). The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means (principle 4). Force used must be proportionate to the legitimate objective to be achieved (principle 5). 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 (principles 5 and 10). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (principle 9). Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles (principle 8).

An important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents, including incidents involving allegations of excessive use of force with lethal consequences.

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. Investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates. They must always be independent, impartial, prompt, thorough, effective, credible and transparent. In the event that a violation is found, full reparation must be provided, including adequate measures of compensation, rehabilitation and satisfaction. States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future.

We furthermore wish to refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007 with the affirmative vote of India. We would like to emphasize that this instrument provides an authoritative statement of international human rights standards related to indigenous peoples. The UNDRIP elaborates upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. In particular, we would like to recall article 7 of the UNDRIP which provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.