

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 the situation of human rights defenders

REFERENCE:
AL IND 5/2016

28 July 2016

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 26/12, 25/2, 24/5, 24/6 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged death of over 30 persons and injuries to hundreds in the state of Kashmir between 8 and 14 July 2016**.

The excessive use of force by security forces was the subject of communications by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights defenders in 2008 and 2010 (IND 21/2008 and IND 18/2010, respectively).

According to the information received:

On 8 July 2016, three young members of the militant group Hizbul Mujahideen died in an encounter with Government forces in the Indian administered Kashmir. One of the three men had a large base of followers among Muslim Kashmiris who shared his demands for secession and an end to abuses by government security forces. Thousands of persons attended his funeral and protests started soon after. Besides protesting against the killing, demonstrators demanded self-determination for the region and criticized the Government's failure to address unemployment and lack of educational opportunities for the youth. Demonstrators gathered in several locations, including Islamabad, Kulgam, Shopian and Pulwama districts. The government ordered a curfew in response to the protests, which imposed strict restrictions on the freedom of movement and of peaceful assembly, and on the right to freedom of expression through a ban on media and communications, including news and entertainment channels, as well as a ban on access to the

internet. It has been reported that the official justification for these bans was to stop “the dissemination of information” that could provoke violence.

In several locations, protesters tried to break the siege and reportedly threw rocks at security forces. Government forces responded with teargas, pellet guns and live ammunition. Indian security forces in charge of quelling the protests were comprised of armed forces, paramilitary bodies and border police, many of whom allegedly lacked appropriate training and equipment for the management of assemblies. Over 36 protesters and bystanders were reportedly killed and several hundreds injured in the clashes between protesters and security forces between 9 and 14 July 2016, many as the result of live ammunition and pellets fired indiscriminately at street protestors. Over 100 individuals reportedly received pellets in their eyes which have caused serious injuries and permanent disabilities. Medical professionals have indicated that over 40 of them, still hospitalized, suffer severe eye trauma and will not regain eyesight.

There have been 110 security personnel reportedly injured in the protests and one police official drowned when protesters pushed his vehicle into a river.

At least one person was reportedly killed by security forces in a residential area outside the protests zone during these operations. It is unclear whether the victim was connected to the protests.

In several instances, security forces reportedly prevented the evacuation and treatment of injured protesters; raided hospitals, and assaulted and intimidated injured protesters in ambulances and medical centers, including Islamabad District Hospital, PHC Lalpora and SMHS Hospital. In addition, serious shortages of food and essential life-saving drugs have been reported in areas affected by the curfew such as Srinagar.

Despite the gravity of previous incidents in the Indian administered Kashmir in 2008 and 2010, the Government has not equipped or trained police forces in the management of assemblies. Indian security forces have been reportedly using pellet guns as a nonlethal option for crowd control since protests in 2010 took the lives of nearly 120 people. However the use of pellet guns has reportedly resulted in 300 hospitalizations and 16 individuals losing their sight since 2010.

Concern is expressed about the alleged death of over 36 individuals and injury of over 1,400 as a result of excessive use of force against protesters by security forces and the indiscriminate shooting of live ammunition and pellets into the crowd, in response to protests, some of which may have not been entirely peaceful. We express further concern at the health impact of the crowd control weapons used, and at allegations that security forces restricted access to healthcare to protesters injured during the events. We are also concerned about the restrictions placed to the rights to freedom of movement, peaceful assembly and expression, including through the imposition of a curfew, which appear to be overbroad and therefore in violation of the proportionality principle under

international human rights law. We moreover express concern at the allegations of shortage of food and medicine.

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.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any investigation carried out in relation to the allegations of excessive use of force and indiscriminate shelling at crowds by security forces which resulted in 36 dead and over 1,400 injured. If no inquiries have taken place, or if they have been inconclusive, please explain why. Please provide the full details of any prosecutions which have been undertaken in this case.
3. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons found to be responsible, as perpetrators or as responsible commanders, for the alleged violations.
4. Please state whether any compensation was, or is intended to be, provided to the families of persons killed or injured by the security forces in the course of the incidents alleged here.
5. Please indicate what measures have been adopted by your Excellency's Government to regulate the use of force by law enforcement officials and to provide them with adequate training and equipment for the management of assemblies. How did the security forces ensure compliance with the requirements of necessity and proportionality?
6. Please provide information regarding allegations that security forces restricted access to healthcare to protesters injured during the events and how this is compatible with international human rights standards.
7. Please provide information about the legal basis for the restrictions on the rights to freedom of expression and of peaceful assembly through the blanket bans placed on media channels and access to internet and the imposition of a curfew. Please explain how these measures comply with international human rights standards, such as articles 19 and 21 of the ICCPR.

We would appreciate receiving a response within 60 days.

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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Christof Heyns

Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye

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

Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Dainius Pūras

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

The above mentioned allegations appear to be in contravention of article 3 of the Universal Declaration of Human Rights (UDHR) and 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), accessed by India on 10 April 1979, which provides for the right to life, security and not to be arbitrarily deprived of life.

In this connection, we wish to draw your Excellency's Government's attention to relevant international principles and norms governing the use of force by law enforcement authorities. Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal.

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. 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.

Regarding allegations that security forces restricted access to healthcare to protesters injured during the events, we would like to refer your Excellency's Government to the International Covenant on Economic, Social and Cultural Rights, ratified by India on 10 April 1979, which establishes that States Parties should guarantee that the rights enunciated in the present Covenant without discrimination of any kind (art.2.2). Access to healthcare in the context of demonstrations, in particular emergency healthcare, should be ensured as part of the duty of authorities to guarantee the protection of the various rights of those engaged in assemblies.

We, moreover, appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR. Regarding the ban on media channels and access to internet we would like to remind your Excellency's Government that any restriction on expression or information on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest. A government must demonstrate that (a) the expression or information at issue poses a serious threat to a legitimate national security interest; (b) the restriction imposed is the least restrictive means possible for protecting that interest; and (c) the restriction is compatible with democratic principles.

We would also like to underline the principle enunciated by the Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions that are not consistent with paragraph 3 of article 19, including on (ii) the free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship, and (iii) access to or use of information and communication technologies, including radio, television and the Internet. These violations must not be facilitated or aggravated by abuse of states of emergency. We also would like to highlight the principle enunciated in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39 which states that everyone has the right to obtain information from public authorities, including information relating to national security.

We would also like to refer to 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 articles 1, 2, 5 and 6.