

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief

REFERENCE:
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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; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on minority issues and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 34/19, 35/15, 34/6 and 40/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **continued deterioration of human rights conditions in the State of Jammu and Kashmir following severe restrictions imposed after 5 August 2019, in particular citing arbitrary detentions, violations to the prohibition of torture and ill-treatment and rights of persons belonging to minorities.**

Concerns regarding the restrictions on freedom of expression and freedom of peaceful assembly and of association imposed following the constitutional order in the state of Jammu and Kashmir has been the subject of a previous communication dated 16 August 2019 (UA IND 16/2019). Furthermore, concern on the reported mass crackdown targeting those expressing dissent against the same decision taken by your Excellency's Government, was also the subject of a communication dated 27 February 2020 (UA IND 4/2020). We regret that no response has been received to either communication, in particular the former. We remain deeply concerned about the ongoing human rights violations.

According to the information received:

Between January and July 2019, a number of Kashmiri Muslims, persons belonging to minorities in India, were reportedly summoned to report to various army camps where they were subjected to corporal punishment by security officials.

Tawseef Ahmad a 27 year old resident of Achagoza Pulwama, on 5 February, was stripped naked and beaten by army personnel after reporting to the 44 Rashtriya Rifles (RR) Camp Shadimarg in Pulwama.

Mufti Sheeraz Ahmad and his father-in-law, **Mohammad Ahsan** were hospitalized after army personnel from Ahagam camp beat them in their house on 16 February in Wathoo, Shopian during a search operation.

Mohammad Ishaq Lone who reported to the 34 Rashtriya Rifles (RR) camp in Nagisharan was stripped naked and beaten. Consequently he had to be hospitalized.

Rizwan Assad Pandit, 29 year old teacher, and resident of Awantipora died on 19 March in the Jammu and Kashmir (J&K) Police Special Operations Group (or SOG) custody in Air Cargo SOG camp Haft Chinar, Srinagar. The preliminary post-mortem report found that Mr. Pandit died due to “extravasation of blood” caused by multiple injuries. He allegedly had torture marks visible on his corpse, however the autopsy report have not been made public.

Fazil Ahmad Malik is a 14-year-old student from Soibugh area of Budgam district. On 26 May 2019, he was allegedly being detained at the RR army camp in Daharmuna and subjected to torture by army personnel, along with four other minor boys. He was seriously injured on the head and was hospitalized in SKIMS, Soura. He had to be put on ventilator for weeks before he recovered. It is reported that he was hit with an iron rod on his head and then beaten with canes and gun butts. An inquiry by district police was initiated at the time but none of the findings have been made public.

After 5 August 2019

Arif Wani is a resident of Shirmal village in Shopian District. On 20 August 2019, his home was raided by a contingent of the Indian Army from Chilpora camp. He was requested to report to the army camp. He went to the camp at 9 a.m. the morning after. Shortly after his arrival he was subjected to acts of torture and other cruel, inhuman or degrading treatment. Allegedly his cries from within the camp while he was being tortured were broadcasted through loudspeakers for the neighbouring villagers to hear. This was not the first and only case where the use of loudspeakers in the same manner at the camp, it is reportedly frequent. After three hours, Mr. Wani was released, he reportedly was not able to stand due to the injuries he sustained and was carried to the hospital. Soldiers returned to his home a few days later and threatened him not to reveal or share his experience.

Riyaz Ahmad Thickrey, a 28 year old Gujjar man was arrested on 2 September 2019 during a night raid in his home located at a hillock at Bandi-Nandpora, 17 km away from Handwara, Kupwara in north Kashmir. The raid was conducted against the backdrop of a protest earlier in the day. Mr. Thickrey was detained at Qalamabad police station for four days.

On 6 September the police informed the family that Mr. Thickery had died and claimed that he had committed suicide. It is reported that the body had a number of injuries to the skull and nose and the family suspects that he was tortured.

The death of Mr. Thickery triggered mass protest in the Haral-Watapora area of Kupwara district. Reportedly the administration on 7 September announced the launch of a magisterial enquiry into the death and appointed a Designated

Tehsildar as Enquiry officer. The findings of the inquiry are yet to be made public.

Yawar Ahmed Bhat, is a 15 year old from Chandigam Village, Pulwama District. On 17 September 2019 he died in detention after consuming poison. It is alleged that he was subjected to beatings by the police and was driven to suicide due to this traumatic experience.

Bashir Ahmad Dar, a 65 year old street fruit vendor from Mansoor Colony, Bemina, Srinagar was arrested at his home on 16 August 2019. The police forcibly entered the house causing damage to the property, beat him and his family before taking him away.

The arrest was reportedly linked to protests earlier that morning which was triggered by the arrest of a group of boys in Mansoor Colony.

While at the police station the police asked Mr. Dar to name individuals involved in pelting-stones at the police during the protest. The police did not file a first information report on the arrest.

Mr. Dar was detained for two days and released on an undertaking given by members of the Mohalla Committee that the local community would not assemble on the streets and that they would cease pelting stones.

Bashir Ahmad Fafoo a 60 year old man, and his son **Irfan Ahmad Fafoo** a 20 year old, both street fruit vendors were arrested on 16 August 2019. The police entered their home, broke the windows and beat Mr. Irfan Fafoo and his family. Mr. Irfan Fafoo was taken away by police and forced to walk barefoot on the broken glass spread on the ground. Both were released two days later on an undertaking by the Mohalla Committee members that there would be no more incidents of stone-pelting or assembly on the streets.

Abdul Rashid Wani, is a 43 year old department store owner in Wanchowa. On 4th September 2019, the police arrived in seven cars to his home, where he and his family were sleeping. The police stormed the house, Mr. Wani was slapped a few times and dragged out of his house. He was detained at Chadoora Police Station for five days. He was released after the Tehsildar executive magistrate court denied his remand.

Umar Farooq Bhat is a 24 year old resident of Rangreth, Srinagar. He was arrested on 19 September 2019 after he was stopped by plain cloth and uniformed officers. He was being beaten by police when his brother **Mr. Musa Farooq Bhat** arrived at the scene. He attempted to intervene to object the arrest, but was also beaten by the officers. They were both transferred to Chadoora Police Station and released later that evening.

Suhail Ahmad Sofi is a 15 year old student, who was arrested by uniformed police on 19 September 2019. During the arrest the police beat, slapped and

kicked him multiple times. Mr. Sofi was detained at Chadoora Police Station, though he was released that same evening he was asked to report back the following day. On 21 September 2019 his father reported to the police to attest that Mr. Sofi would not be involved in incidents of stone pelting or protests anymore.

Adnan Shafi Bhat is a 12 year old student. On 19 September 2019, he was arrested on the roadside and was beaten by the police. When his family arrived at the police station, they were given the option to have one of them be held and Mr. Bhat released, however the police later released him. His father was made to give an undertaking stating that his son would not take part in any stone pelting or protests thereafter. There was no first information report registered for this arrest and detention.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern at the alleged excessive use of force, torture and other forms of ill-treatment reportedly committed during the arrest and detention, and death in custody of the above mentioned persons. We are further concerned that these individuals reportedly belong to minorities residing in the state of Jammu and Kashmir, and that they appear to be targeted based on their ethnicity and/or religious identities.

Should these allegations be confirmed, they would constitute violations of articles 2, 6, 7, 9, 21, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR) ratified by the State of India on April 10, 1979, as well as articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which codify the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment. They would also contravene the protections provided for by the Declaration on the Protection of all Persons from Enforced Disappearance adopted by General Assembly resolution 47/133 of 18 December 1992, specifically articles 2, 7, and 10, as well as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, in particular articles 2, 3 and 4.

We also express our concern that the alleged arbitrary arrests, torture and other illtreatment which, in at least 4 cases reportedly led to the death of the victim, which appears to be inflicted against persons belonging to minorities targeted because of their ethnic and religious identities, who had been exercising their freedom of expression and peaceful assembly. We also note that among the instances cited, 3 minors were reportedly subjected to severe beatings. The United Nations Human Rights Committee has determined that “arresting or detaining an individual as punishment for legitimate exercise of the rights guaranteed by the Covenant constitutes a violation of article 9” (General Comment 35, para 17). Furthermore, Resolution 8/8 of the Human Rights Council reminded Governments that corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture.

We urge your Excellency’s Government, if it has not done so already, to conduct a prompt and impartial investigation into the allegations of arbitrary killings, torture and

ill-treatment and to prosecute suspected perpetrators, as is required, inter alia under articles 6 and of the ICCPR, and articles 7 and 12 of the CAT.

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 the observations of your Excellency's Government 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 the factual and legal grounds for the arrest and detention of the above mentioned persons identifying as ethnicity and/or religious minorities and explain how these measures are compatible with international standards related to the right to liberty and security of the person, enshrined in article 9 of the ICCPR, and the prohibition of discrimination based on religion contained in article 26 of this treaty.
3. Please provide information on the steps taken by your Excellency's Government to address the above mentioned allegations, in particular the measures taken by the Government to protect rights of members of these minorities to freely and peacefully exercise their rights, including the freedom of expression and of peaceful assembly.
4. 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 the allegations of torture and other cruel, inhuman or degrading treatment or punishment alleged to have been inflicted upon the persons whose cases are described above, whether in military or police custody. What has been the justification invoked by the police or the military to inflict corporal punishment to the victims? If no such enquiries have been conducted, please explain why, and how this is compatible with the international human rights obligations of India, especially the CAT.
5. 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 the death in police or military custody of the 4 individuals mentioned in this letter. In this regard please provide detailed descriptions, including if possible, copies of forensic reports, of the causes and circumstances that have lead to the death of the detainees. If no such investigation were conducted, please explain why, and how this is compatible with the international human rights obligations of India, especially the ICCPR and the CAT.

6. Please also provide detailed information about the steps taken by judicial authorities to investigate and prosecute any act of torture and ill-treatment, of arbitrary arrest and detention, as well as any death that has occurred in police or military custody, particularly against persons belonging to religious or ethnic minorities. If no such measures have been taken, please explain why, and how this is compatible with the international human rights obligations of India under ICCPR and CAT.
7. Please provide detailed information on the policies, laws, procedures and institutional arrangements in place ensuring that people belonging to ethnic, linguistic, religious or other minorities in India are treated equally like other citizens and are not subjected to discriminatory measures or treatment because of their identity.

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.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Fernand de Varennes
Special Rapporteur on minority issues

Ahmed Shaheed
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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 articles 6, 7, 9, and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by India on 10 April 1979, which protect the right to life, the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the right to not be subjected to arbitrary arrest or detention and the right to freedom of peaceful assembly and of association.

Article 2 (1) of the ICCPR provides that "each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as [...] religion [...]." At the same time, Article 26 of the ICCPR stresses that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as [...] religion [...]."

Article 27 of the ICCPR protects the rights of persons belonging to minorities, as well as the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. In particular, the Declaration refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). The Declaration also provides that persons belonging to minorities have the right to enjoy their own culture, to profess and practise their own religion and to participate effectively in cultural, religious, social, economic and public life (article 2). Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination (article 3).

We would like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "[l]aw enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result."

In addition, Principle 5 provides that, "[w]henver the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment" (adopted by the Eighth United

Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

We would also like to highlight the Principle 15 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, " (l)aw enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened." In addition, the Rule 82 of the to UN Standard Minimum Rules for the Treatment of Prisoners (as amended on Nov. 5, 2015 by the General Assembly and readopted as the "Mandela Rules") provides that prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations.

Furthermore, we would also refer to the paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."

We wish to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance and in particular article 2 which prohibits enforced disappearances and article 7 that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. Further, the Declaration establishes that any person deprived of liberty shall be held in an officially recognised place of detention (article 10.1), that an official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention (article 10.3). In this connection, we stress that a failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration.