

AI Index: PRE 01/244/2013  
15 May 2013

## **India must take prompt steps to address concerns of UN Special Rapporteur on extrajudicial, summary or arbitrary executions**

The government of India must take practical and immediate measures to address the scourge of unlawful killings and excessive use of force by India's security forces, Amnesty International said today.

Amnesty International also welcomes the final report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and urges the government of India to implement the Special Rapporteur's recommendations.

In particular Amnesty International echoes the Special Rapporteur's call for India to establish a "credible commission of inquiry" to look into instances of extrajudicial executions.

"The Indian authorities should constructively engage with the Special Rapporteur's findings and observations and pay special heed to his several recommendations intended to help India uphold its international human rights commitments," said G. Ananthapadmanabhan, Executive Director of Amnesty International in India.

India is also obligated under its national laws and international human rights commitments to ensure that no person is deprived of life or personal liberty except in accordance with the law," Ananthapadmanabhan added.

According to the Special Rapporteur most of the unlawful killings in India occur as a result of the excessive use of force by the security forces, attacks by various armed groups, and killings of vulnerable persons.

He also observed that impunity continues to remain the central problem in India and urged the government to remove obstacles to accountability, "especially the need for prior sanction of prosecutions of civil servants".

The Special Rapporteur also expressed concern about "fake encounters", or staged extrajudicial killings. The Special Rapporteur said he had received several submissions accusing central armed police forces, and the armed forces of engaging in such practice. While the National Human Rights Commission has previously acknowledged there is a problem of "fake encounters" in India that it believes has "become virtually a part of unofficial State policy".

Recently a Supreme Court bench hearing a Public Interest Litigation (PIL) alleging numerous extrajudicial executions in Manipur said fake encounters "reflect utter callousness and no respect for human rights and no respect for the right to life". NHRC regards 1,224 cases of the total 2,560 deaths during encounters with police recorded between 1993 and 2008 as "fake encounters".

Expounding on his call for a commission of inquiry, the Special Rapporteur such a commission should

also serve a transitional justice role to guarantee justice for victims, accountability and punishment for perpetrators. He proposed that such a government-appointed commission “should (a) investigate allegations concerning past and recent violations of the right to life; (b) propose relevant measures to tackle them; and (c) work out a plan of action for the future to eradicate practices of extrajudicial executions”.

Calling for repeal, or at least radical amendment to the Armed Forces (Special Powers) Act (AFSPA), the Special Rapporteur urged the government to revisit legislation regarding use of force by armed forces so that they respect the principles of proportionality and necessity in all instances, as stipulated under international human rights law. In a meeting with the Special Rapporteur even the National Human Rights Commission (NHRC) expressed its support for the repeal of AFSPA. He also urged the government to remove all legal barriers for the criminal prosecution of members of the armed forces.

The Special Rapporteur has called on the Indian government to sign the two optional protocols of the International Covenant on Civil and Political Rights (ICCPR), the Optional Protocol to CEDAW, the Rome Statute of the International Criminal Court and the two Optional Protocols to the Geneva Conventions. He also urged the government to swiftly enact the Prevention of Torture Bill and ensure that it is compliant with the Convention against Torture.

Commending NHRC’s role, the Special Rapporteur said the constitutional body had taken important steps to protect the right to life in India and laid down important guidelines on deaths in custody or encounter killings. However, he felt the NHRC was partially hampered by its own mandate “specifically by its competence to only investigate matters within one year from the date of the incident, which may constitute a serious impediment in efforts to shed light on past violations”. In this direction he recommended that a legal basis be put in place to enable the extension of the period of one year under which the NHRC can consider cases. He also recommended that section 19 of the Protection of Human Rights Act should be amended to provide the NHRC with the express authorization to investigate members of the armed forces for alleged human rights violations.

The Special Rapporteur urged all sides involved in armed activities to immediately cease attacking civilians, human rights defenders and journalists. He also suggested that the authorities put in place a mechanism that will review and monitor the status of implementation of the directives of the Supreme Court and the NHRC guidelines on arrest, encounter killings, and custodial violence and death.

“Amnesty International is greatly concerned by the general absence of accountability and a broader culture of impunity prevailing in India in relation to extrajudicial executions and other human rights violations. We hope that the Indian authorities will implement the Special Rapporteur’s recommendations without delay and continue engaging with UN Special Procedures,” said Ananthapadmanabhan.

## **Background**

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, went to India on mission in March 2012. He has since produced a final report. (A/HRC/23/47/Add.1 of 26 April 2013). A copy is available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1\\_EN.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1_EN.pdf). The report is scheduled for presentation to the Council at 15:00 (Geneva) on 29 May 2013. The presentation can be watched live on the UN webcast ( <http://webtv.un.org/>) and watched in reply on the webcast archives subsequently. The Delegation of India will have an opportunity to respond to the report when it is presented to the Council.

For more than five decades, Indian legislation - the Armed Forces (Special Powers) Act, 1958 (AFSPA) – has been in force in parts of north-east India which have faced armed insurgencies. An identical law – the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 – covers the state of Jammu and Kashmir which has faced an armed insurgency since 1989. Both laws grant soldiers operating in designated ‘disturbed areas’ wide powers, among them to use force, including lethal force. For such actions they are

granted immunity from prosecution and civilian suits unless the Central Government sanctions such proceedings, which it very rarely does. In addition, Article 136(2) of India's Constitution excludes from the judiciary's jurisdiction offences committed under the Army Act 1950. India's penal and criminal procedure codes also exclude such offences from the criminal courts' jurisdiction. Such offences can be tried in a court martial; the only court of appeal against the proceedings of a court martial is the Supreme Court or the high courts where a writ petition can be filed.