



# Assemblée générale

Distr. générale  
26 avril 2013  
Français  
Original: anglais

## Conseil des droits de l'homme

### Vingt-troisième session

Point 3 de l'ordre du jour

**Promotion et protection de tous les droits de l'homme,  
civils, politiques, économiques, sociaux et culturels,  
y compris le droit au développement**

## **Rapport du Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, Christof Heyns**

### Additif

### Mission en Inde\*

#### *Résumé*

Le Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires a effectué une visite officielle en Inde du 19 au 30 mars 2012. Le présent rapport contient ses principales conclusions et des recommandations visant à assurer une meilleure protection du droit à la vie en Inde.

La situation des droits de l'homme en Inde présente maints aspects positifs. Pourtant, le nombre d'exécutions extrajudiciaires dans le pays soulève de sérieuses préoccupations. Il y a notamment des décès dus à un usage excessif de la force par les forces de sécurité et le fait que la législation qui est permissive face à un tel recours à la force entrave les efforts pour obtenir que les auteurs rendent des comptes. Le rôle de divers acteurs non étatiques dans la violation du droit à la vie est également examiné. Se pose notamment le problème des meurtres commis par des groupes armés et de ceux qui surviennent dans le cadre de violences communautaires. Les personnes vulnérables, en particulier les femmes, sont particulièrement exposées au risque d'homicide. L'impunité constitue un problème majeur.

Parmi les recommandations du Rapporteur spécial figurent la réalisation d'une série de réformes juridiques et l'adoption d'orientations visant à lutter contre l'impunité et à réduire le nombre des exécutions extrajudiciaires en Inde.

\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé, et il est distribué dans la langue originale seulement.

## Annexe

[Anglais seulement]

**Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, on his mission to India**

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–3	3
II. General observations.....	4–7	3
III. Violations of the right to life by State actors .....	8–36	4
A. Deaths resulting from excessive use of force .....	8–20	4
B. The Armed Forces (Special Powers) Act and related legislation .....	21–28	6
C. Deaths in custody .....	29–33	8
D. Imposition of the death penalty .....	34–36	9
IV. Violations of the right to life by non-State actors .....	37–63	9
A. Deaths resulting from attacks by armed groups.....	37–42	9
B. Killings related to communal violence .....	43–50	10
C. Practices affecting women’s right to life .....	51–63	12
V. Other challenges.....	64–87	14
A. Fight against impunity .....	64–76	14
B. Killings of vulnerable persons .....	77–85	15
C. Killings and enforced disappearances in Jammu and Kashmir.....	86–87	17
VI. The role of Human Rights Commissions .....	88–90	17
VII. Conclusions.....	91–95	18
VIII. Recommendations.....	96–126	18

## I. Introduction

1. At the invitation of the Government of India, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Christof Heyns, conducted an official visit from 19 to 30 March 2012. He travelled to New Delhi, and Ahmedabad (State of Gujarat); Thiruvananthapuram (State of Kerala); Jammu and Srinagar (State of Jammu and Kashmir); Guwahati (State of Assam); and Kolkata (State of West Bengal). The visit focussed on the protection of the right to life by State and non-State actors in India.

2. The Special Rapporteur thanks the Government of India for the invitation. During this visit, he met with Secretaries from the Ministry of External Affairs, the Ministry of Home Affairs (MHA), and the Ministry of Law and Justice, and high-level officials from the Ministry of Defence and other Ministries at Union level. At state level, he met the Lieutenant Governor of Delhi, state Chief Secretaries and other Secretaries; Commissioners, Directors General and other relevant officers of the Police; and other senior officials. He visited the Supreme Court, the National Human Rights Commission (NHRC) and the Assam Human Rights Commission. He also held meetings with the United Nations agencies, and a wide range of domestic and international non-governmental organizations, lawyers, witnesses, and victims and their families. However, the Special Rapporteur regrets that his official meetings scheduled in Gujarat were cancelled at the last minute.

3. This report covers the situation as it was during the visit, although some reference is made to subsequent developments. This report was finalized on 12 April 2013.

## II. General observations

4. The Indian Constitution guarantees a wide range of human rights. It is supported by broad public endorsement and enforced by a strong Supreme Court, whose human rights jurisprudence is widely recognized. The right to life, as protected in article 21 of the Constitution, has been given an extensive interpretation by the courts. There is a vigorous press in India, and a vibrant and engaged human rights civil society. India also accommodates a broad diversity in terms of religion, languages and culture, largely in a peaceful way. India manages to maintain a high level of protection for human rights while it faces significant challenges, including armed movements aimed at achieving various levels of autonomy, insurgencies, terrorism, and organized crime, who often do not hesitate to take innocent life.

5. The last few years appear to have registered a general drop in unlawful killings; however, extrajudicial killings remain a concern. To a large extent, the solution to these issues can be found within the existing mechanisms and standards established in India. Indeed, several issues raised by the Special Rapporteur during his visit have in the intervening period been recognized and addressed at the domestic level.<sup>1</sup> It should be emphasized that none of the concerns expressed in this report are new – they have been expressed by official organs within the structures of the State, and in many instances have also been raised by other international bodies.

6. In 2011, India extended a standing invitation to the mandate-holders of all thematic special procedures of the Human Rights Council. The mandate on extrajudicial, summary or arbitrary executions was the first to visit the country under this standing invitation. This

<sup>1</sup> See e.g. Report of the Committee on Amendments to Criminal Law, headed by retired Supreme Court Justice J.S. Verma, 23 January 2013.

may reflect a commendable willingness to engage with the international community on the issue of unlawful killings in a constructive manner.

7. The Special Rapporteur notes that some civil society representatives whom he met during the visit reported afterwards that they faced intimidation from the authorities for having cooperated with him. The Special Rapporteur calls on the Indian authorities to ensure that no intimidation or other type of reprisal takes place against any of the individuals or groups met.

### **III. Violations of the right to life by State actors**

#### **A. Deaths resulting from excessive use of force**

8. The Special Rapporteur received a series of complaints regarding deaths resulting from the excessive use of force by security officers with little adherence to the principles of proportionality and necessity as defined under international human rights law standards. According to these principles, use of force by security officers should be proportional to the legitimate objective to be achieved, and lethal force may only be used as a last resort in order to protect other life.

9. The official statistics of India's National Crime Records Bureau (NCRB) indicate that 109 civilian deaths occurred in the country due to police firing in 2011. The largest number of civilian casualties were found in Uttar Pradesh and Rajasthan, mostly in the context of riot control, as well as during alleged anti-extremism and anti-terrorist activities.

10. Section 46 of the Indian Criminal Procedure Code (CPC) authorizes law enforcement officials to use "all means necessary" to perform an arrest which is forcibly resisted. In the Special Rapporteur's view, these provisions are broadly formulated and may grant law enforcement officers powers to use force in response to resistance which go beyond those powers permitted under international human rights law.

11. Disproportionate use of force during demonstrations has also caused many deaths in various parts of the country. The Special Rapporteur received reports that, while many demonstrations occur without casualties, this is not always the case. For example, at least 100 deaths were caused due to excessive use of force against demonstrators in Jammu and Kashmir in 2010.<sup>2</sup> The Special Rapporteur recalls in this regard that the international human rights standards on the use of force in line with the principles of necessity and proportionality, as explained in paragraph 8, also apply in the context of policing assemblies, including the dispersal of violent assemblies.

12. Furthermore, the Special Rapporteur's attention was drawn to a practice known as "fake encounters" in parts of the country, which was widespread in the 1990s. While the extent thereof has dissipated, evidence shows that it still occurs. According to the NHRC, 2,560 deaths during encounters with police were reported between 1993 and 2008. Of this number, 1,224 cases were regarded by the NHRC as "fake encounters". The police, the central armed police forces, and the armed forces have been accused of "fake encounters". Complaints have been lodged, particularly against the Central Reserve Police Force, the Border Security Forces, and the armed forces acting under the Armed Forces (Special Powers) Act (AFSPA). The existence of this practice was recently acknowledged in the courts.<sup>3</sup>

---

<sup>2</sup> Amnesty International Report 2011: The State of the World's Human Rights; 2011, p. 169.

<sup>3</sup> *The Times of India*. "Indian security forces killing Indians: SC", 10 April 2013.

13. Where they occur, “fake encounters” entail that suspected criminals or persons alleged to be terrorists or insurgents, and in some cases individuals for whose apprehension an award is granted, are fatally shot by the security officers. A “shootout scene” is staged afterwards. The scene portrays those killed as the aggressors who had first opened fire. The security officers allege in this regard that they returned fire in self-defence.

14. After the incident, the security officers register a First Information Report (FIR) which often reflects their account of events. The Special Rapporteur heard concerns that the content of these reports is frequently undisputed, which eventually leads to the swift closure of the case. Along the same line, it appears that few, if any, encounter cases have been brought to the point of conducting investigations and, where applicable, prosecuting alleged perpetrators. Where inquiries are undertaken, the results are frequently not disclosed. Another difficulty in the investigation of encounters lies in the lack of witnesses, often due to the fact that encounters take place mostly during the early hours of the morning. Alternatively, witnesses fear coming forward with testimonies. In some cases, such a situation is further complicated by a reported practice of offering gallantry awards and promotions to security officers after the encounters,<sup>4</sup> as well as of pressuring law enforcement officers, who face already heavy workloads due to understaffing, to demonstrate results.

15. The Special Rapporteur heard *inter alia* of the encounter case that occurred on 30 April 2010, in the Machil Sector, Kupwara District of Jammu and Kashmir, where three young individuals were killed by the armed forces. Alleged to be terrorists, the individuals were later identified as civilians who went missing from their village Nadihal in Baramullah and had allegedly been exchanged for money to some members of the Army so they could be killed in a fake encounter for which awards were offered. The outcomes of the criminal case launched against the security officers involved are still pending.

16. According to information received, encounters have been used *inter alia* as a means to target specific groups. In Gujarat, a series of encounters specifically targeting Muslims were carried out. It is noteworthy that in 2012 a Special Task Force was consequently appointed to investigate them.

17. Several victims who made presentations to the Special Rapporteur on this issue emphasized the need to know the truth, and to “clear the names” of loved ones who had been labelled “terrorists” and killed in “fake encounters”. The NHRC also acknowledged the problem of encounters in India, and expressed its agreement with the view that encounter killings “have become virtually a part of unofficial State policy”.<sup>5</sup> The Special Rapporteur reiterates therefore the importance of shedding light on the acts committed during encounters and of bringing the perpetrators to justice in all cases.

18. The Special Rapporteur takes note of a number of positive measures undertaken by the Indian authorities to address the problem of fake encounters, and stresses the need for their implementation. He commends the NHRC for the adoption on 2 December 2003 of Guidelines on Encounter Deaths. These Guidelines require that (a) police officers record information about an encounter and a FIR must be registered; (b) encounter cases should be investigated by an independent investigating agency; (c) a magisterial inquiry must be undertaken in instances where deaths have occurred and compensation is awarded to the dependents of the deceased; and (d) disciplinary action should be taken against delinquent police officers and no out-of-turn promotions should be made. The Special Rapporteur is

<sup>4</sup> See e.g. “State Terrorism: Torture, extra-judicial killings and forced disappearances in India”, Human Rights Law Network, New Delhi, 2009, p. 200.

<sup>5</sup> NHRC, Report on Prevention of Atrocities Against Scheduled Castes & Scheduled Tribes, 2004, p.106.

concerned that, in the majority of incidents of encounter killings, the NHRC Guidelines appear not to be complied with.

19. At the time of drafting this report, a seminal case from the State of Andhra Pradesh is pending before the Supreme Court. The Andhra Pradesh High Court, on 13 July 2007 in the case *Andhra Pradesh Civil Liberties vs. State of Andhra Pradesh*, held that, in situations where deaths occur in cases of alleged returning of fire by the police, a FIR must be registered, the case investigated and the claim of self-defence by the police proven in a trial before the court.

20. The Special Rapporteur welcomes the steps taken by the Government to address excessive use of force in a more general context, such as the MHA decision of 22 September 2010 to establish a Task Force to recommend Standard Operating Procedures to handle public disturbances in a non-lethal manner.

## **B. The Armed Forces (Special Powers) Act and related legislation**

21. The situation regarding the use of force in India is exacerbated by what in effect though not in law could constitute emergency measures. In this regard, AFSPA, enacted in 1958, regulates instances of use of special powers by the Armed Forces in so-called “disturbed areas” of the country. In order for AFSPA to be applied in an area, the area must be defined disturbed or dangerous to the extent that the use of armed force is deemed necessary.<sup>6</sup> AFSPA first found application in the north-eastern States of Manipur and Assam as a way to address the continued unrest in the area, and was also extended to other areas, including in Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and Tripura. In 1990, the Jammu and Kashmir Armed Forces (Special Powers) Act, containing nearly identical provisions to those stipulated in AFSPA<sup>7</sup>, was enacted in Jammu and Kashmir.<sup>8</sup>

22. AFSPA provides wide-ranging powers to the Indian armed forces in respect of using lethal force in various instances, and fails to provide safeguards in case of excessive use of such powers, which eventually leads to numerous accounts of violations committed in areas where AFSPA is applied. The Special Rapporteur wishes to draw attention to two main concerns to which he was constantly alerted. Firstly, concerns were raised regarding AFSPA provisions regulating the use of lethal force. Section 4 of AFSPA provides: “Any commissioned officer, warrant officer, non-commissioned officer...may, in a disturbed area, (a) if he is of opinion that it is necessary to do so for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area...” Such provisions clearly violate the international standards on use of force, including lethal force, and the related principles of proportionality and necessity.

23. Secondly, Section 6 of AFSPA and 7 of the Jammu and Kashmir AFSPA, grant protection to the officers acting under these Acts and stipulate that prosecution of members of the armed forces is prohibited unless sanction to prosecute is granted by the central Government. Sanction is rarely granted in practice. In this context, the Special Rapporteur

<sup>6</sup> Article 3, AFSPA.

<sup>7</sup> In this report, reference to AFSPA will encompass the Jammu and Kashmir AFSPA, unless otherwise specified.

<sup>8</sup> India has deployed more than 500,000 members of the armed forces. Official data suggests that between 1988 and 2009, 42,657 people died in the conflict in Jammu and Kashmir. Other sources suggest the number of deaths is approximately 80,000; see *inter alia* “State Terrorism: Torture, extra-judicial killings and forced disappearances in India”, Human Rights Law Network, New Delhi, 2009, p. 132.

was informed of an application submitted in India under the Right to Information (RTI) Act in November 2011, requesting information on the number of sanctions for prosecution granted from 1989 to 2011 in the State of Jammu and Kashmir. The response received from the authorities revealed that in none of the 44 applications brought was sanction not granted. In addition to AFSPA, the CPC also protects members of the armed forces from being prosecuted without prior sanction being granted, which will be examined in chapter V.

24. The Special Rapporteur notes that the Supreme Court of India held that the declaration of a “disturbed area” under AFSPA must be “for a limited duration and there should be periodic review of the declaration before the expiry of six months”.<sup>9</sup> He found, however, that this procedure is not followed in practice, and AFSPA remains effective for prolonged periods without a review of the context in the respective area.

25. The Special Rapporteur wishes to underline that several international bodies have called for the repeal or reform of AFSPA,<sup>10</sup> including the former United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions.<sup>11</sup> Furthermore, Indian authorities at various levels have also expressed their support for the repeal of AFSPA. In this context, the Indian Government set up a special committee in 2004, tasked with examining the provisions of AFSPA and advising the Government on whether to amend or repeal the Act. The special committee found that AFSPA should be repealed – that it was “quite inadequate in several particulars” and had “become a symbol of oppression, an object of hate and an instrument of discrimination”.<sup>12</sup> The need to repeal AFSPA was reiterated by the Second Administrative Reforms Commission in its fifth report, published in June 2007.<sup>13</sup> Finally, the NHRC shared with the Special Rapporteur its views in support of AFSPA’s repeal during a meeting held in New Delhi.

26. The Supreme Court of India ruled, however, in 1997 that AFSPA did not violate the Constitution. The Special Rapporteur is unclear about how the Supreme Court reached such a conclusion. The Special Rapporteur, however, notes that in the same case the Supreme Court declared as binding the list of “Dos and Don’ts” elaborated by the Armed Forces, and containing a series of specifications on the manner of applying AFSPA in practice. Although the list contains more precise guidelines on the use of lethal force under AFSPA, the Special Rapporteur believes that they still fail to bring AFSPA in compliance with the international standards in this regard.

27. In the Special Rapporteur’s view, the powers granted under AFSPA are in reality broader than that allowable under a state of emergency as the right to life may effectively be suspended under the Act and the safeguards applicable in a state of emergency are absent. Moreover, the widespread deployment of the military creates an environment in which the exception becomes the rule, and the use of lethal force is seen as the primary response to conflict. This situation is also difficult to reconcile in the long term with India’s insistence that it is not engaged in an internal armed conflict. The Special Rapporteur is therefore of the opinion that retaining a law such as AFSPA runs counter to the principles of democracy and human rights. Its repeal will bring domestic law more in line with

<sup>9</sup> *Naga People’s Movement of Human Rights v Union of India And Others*, Supreme Court of India, 27 November 1997, para. 79 (8).

<sup>10</sup> See *inter alia* CCPR/C/79/Add.81; CEDAW/C/IND/CO/3; CERD/C/IND/CO/19; and E/C.12/IND/CO/5.

<sup>11</sup> A/HRC/8/3/Add.1 p. 176.

<sup>12</sup> Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958, Part IV, 2005, para. 5, p.74 and 75.

<sup>13</sup> Para. 8.5.16.

international standards, and send a strong message that the Government is committed to respect the right to life of all people in the country.

28. The Special Rapporteur was encouraged to hear from several Government officials that AFSPA is in the process of being amended, which will lead to reduced powers provided to the armed forces acting under this Act. This is a welcomed first step.

### C. Deaths in custody

29. According to the NCRB data for 2011, over 100 deaths occurred in police custody in India.<sup>14</sup> In this regard, formal accusations were brought against a total of 14 police officers; none of them have been convicted.

30. A report released by the Asian Centre for Human Rights (ACHR)<sup>15</sup> presented statistics gathered by the NHRC on deaths in custody in terms of which 1,504 cases of deaths in police custody and 12,727 cases of deaths in judicial custody were reported from 2001 to 2010.<sup>16</sup> ACHR suggested that in the majority of deaths in police custody, the death was preceded by torture and occurred within the first 48 hours of arrest. These statistics may not reflect the full extent of custodial deaths in India, given that not all deaths may be reported to the NHRC. The Armed Forces are, for instance, not required to convey such information to the NHRC.

31. During confidential interviews held throughout the visit, the Special Rapporteur was informed of several cases of individuals unlawfully taken into custody, severely beaten and taken to hospital where they subsequently died. He was informed that no steps had been taken to bring perpetrators of these acts to account.<sup>17</sup>

32. The Special Rapporteur, however, welcomes a series of steps undertaken in India to regulate the treatment of persons in custody with the aim of ensuring their rights. In this regard, in 1997 the Supreme Court of India elaborated directives on arrest and detention, following its judgement in the *D.K. Basu vs. State of West Bengal* case. The NHRC has also laid down Guidelines on Custodial Deaths and Rapes, including on the period within which a death is to be reported, the procedure to be followed and the methods to conduct autopsies. The guidelines also provide that a magisterial inquiry must be held in cases of deaths in custody, and, should a police officer be found responsible, prompt prosecution and disciplinary action must be taken. Judicial inquiries in cases of custodial deaths have been made mandatory through the adoption of the Code of Criminal Procedure (Amendment) Act in 2005. The Special Rapporteur found, however, that the mentioned provisions are not sufficiently complied with in practice. He heard that relatives are not informed immediately of the death, representatives of human rights organizations may not be present during the autopsy, and relatives are pressured to cremate the body, thereby destroying valuable evidence. In addition, autopsies are carried out by executive rather than judicial magistrates, who are not qualified to oversee such inquiries.

33. In 1997, India signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). In an effort to facilitate accession to this treaty, the Prevention of Torture Bill (PTB) was passed by the Lower House of the Indian Parliament on 6 May 2010. The Parliament's Upper House referred it to the Parliamentary

<sup>14</sup> NCRB MHA, "Crime in India 2011 – Statistics", p. 551–553.

<sup>15</sup> ACHR, "Torture in India 2011", 21 November 2011.

<sup>16</sup> The Government of India commented that, according to NCRB data, 1,048 persons were killed in police custody from 2001 to 2011.

<sup>17</sup> In addition to information received during confidential interviews held, see ACHR, "Torture in India 2011", 21 November 2011, pp. 9–16.



Select Committee for review. Since December 2010, the revised PTB with amendments proposed by the Upper House Select Committee has been pending before the MHA. In the Special Rapporteur's view, India must bring its national legislation in line with CAT to allow for its ratification, and thus strengthen the framework to protect individuals against deaths in custody. He invites the Indian authorities to take prompt action in the process of adopting the related domestic legislation.

#### **D. Imposition of the death penalty**

34. The death penalty may still be imposed in India, although a *de facto* moratorium on executions had been in place since 2004. The Special Rapporteur notes with concern, however, that this situation changed several months after his visit. In this regard, India voted in November 2012 against a General Assembly draft resolution calling for a moratorium on the death penalty<sup>18</sup> and executed the first person since 2004.

35. Following the judgement of the Supreme Court of India in the case of *Bachan Singh v. State of Punjab* from 9 May 1980, Indian law provides that the death penalty may be imposed in the "rarest of rare" cases only. In the Special Rapporteur's view, such a provision may be broader than the "most serious crime" requirement under international human rights law, stipulating that, in countries which have not abolished the death penalty, capital punishment may be imposed only for intentional killing. Certain legislative provisions in India provide for the imposition of the death penalty for offences that do not comply with the "the most serious crime" provision under international law, for example, for such offences as kidnapping not resulting in death,<sup>19</sup> sabotage of oil and gas pipelines,<sup>20</sup> and drug-related offences.<sup>21</sup>

36. The Special Rapporteur is further concerned that India has recently moved to extend, rather than reduce, offences for which the death penalty may be imposed. For instance, the Anti-Hijacking (amendment) Bill, adopted in 2010, makes provision for the death penalty in respect of aircraft hijacking.

### **IV. Violations of the right to life by non-State actors**

#### **A. Deaths resulting from attacks by armed groups**

37. A range of non-State actors in various parts of India, including in Jammu and Kashmir, resort to deadly violence which threatens the lives and security of civilians as well as the security of the State. The State has a duty to protect its people and the right to defend itself against such acts, in accordance with international human rights standards. The callous nature in which lives are taken by these non-State actors is strongly condemned. At the same time, the State must refrain from and act against any unlawful means to counter such violence, such as "fake encounters".

38. The attention of the Special Rapporteur was drawn particularly to the loss of life in areas reportedly affected by the Naxalite-Maoist insurgencies. The Naxalite insurgencies arose in the poor, tribal and rural areas in 1967. The Naxalite movement claims to protect

<sup>18</sup> A/C.3/67/L.44/Rev.1.

<sup>19</sup> Section 364A, Indian Penal Code.

<sup>20</sup> Section 15(4), The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Amendment Bill, 2011.

<sup>21</sup> Section 31A, The Narcotic Drugs and Psychotropic Substances Act, 1985.

marginalized groups while simultaneously engaging in armed activities against the State.<sup>22</sup> The violence appears at present to increasingly spill over into the cities. Maoist activities are spread across several states, the most affected being Jharkhand, Chhattisgarh, Bihar, Orissa and Maharashtra.

39. The Special Rapporteur was informed that in 2005, in response to Naxalite violence, a vigilante group called “Salwa Judum” was established, supported by the central and local authorities. The group has been reportedly responsible for significant acts of violence. It has been frequently accused of targeting civilians, who are forced to take sides, and thus exposed to violations from all sides involved in the violence occurring in the affected areas. The Special Rapporteur welcomes the 2011 Supreme Court decision that held that the creation of the “Salwa Judum” violates the Constitution.<sup>23</sup>

40. Maoist insurgents are also responsible for killing innocent civilians. They reportedly target the families of alleged deserters, as well as persons believed to support “Salwa Judum”. Moreover, Naxalites are known to conduct trials of suspected police informants or alleged traitors who if found guilty are executed.

41. India is faced with the serious challenge of terrorism, as one of the countries most affected by it.<sup>24</sup> According to data provided by non-governmental sources, alleged terrorist violence between 1994 and 2009 resulted in 58,288 deaths in India. More than 50 per cent of these were civilians and members of the security forces.<sup>25</sup>

42. As mentioned in paragraph 37, the Special Rapporteur strongly condemns the callous killing of ordinary citizens and members of the security forces. He takes note of the Government’s efforts, under the “Central Scheme for Assistance to Civilian Victims of Terrorists”, to pay compensation to the families of victims of terrorist, communal and Naxalite violence which has resulted in death or permanent incapacitation. He welcomes the extension of this scheme in 2010 to the victims of Naxalite violence.

## **B. Killings related to communal violence**

43. Tension between representatives of various communities remains an ever-present concern in India. Reports by official Commissions of Inquiry, Committees and civil society organizations have, regarding many major incidents of communal violence, indicated that the State and its agents, particularly the police forces, wilfully did not exercise diligence in its duty to protect, and thus tolerated attacks on the life and rights of religious minorities, and, in some cases engaged, in active support.<sup>26</sup>

44. According to the MHA, 580 communal incidents occurred in India in 2011, with 91 lives lost.

45. The Special Rapporteur was informed that attacks of communal violence are often planned in order to target members of a particular group or acquire its property. For

<sup>22</sup> For more details, see, J. Kennedy and S. Purushotham, “Beyond Naxalbari”, 2010 *Comparative Studies in Society and History* 54(4).

<sup>23</sup> *Nandini Sundar and Others vs. State of Chhattisgarh*, Supreme Court of India, 5 July 2011, para. 75.

<sup>24</sup> The Institute for Economics and Peace, “Global Terrorism Index”, 2012, p. 4.

<sup>25</sup> Small Arms Survey, “India’s states of armed violence: assessing the human cost and political priorities”, Issue Brief Number 1, Geneva Graduate Institute of International and Development Studies, September 2011, p. 1.

<sup>26</sup> See e.g. Concerned Citizen’s Tribunal, “An Inquiry into the Carnage in Gujarat Findings and Recommendations”, 2002, pp. 75–95. The Tribunal was headed by retired Supreme Court Justice V.R. Krishna Iyer; Human Rights Watch, “We Have No Orders To Save You”, April 2002, Vol. 14, No. 3 (C), p. 23.

instance, Hindu fundamentalists reportedly carried out attacks against Dalits, who had changed religion to escape the degrading treatment associated with being a Hindu Dalit. The Special Rapporteur was informed of the severe communal violence against Dalit and Adivasi Christians in Orissa, between 2007 and 2008 when, according to non-governmental sources, approximately 100 individuals were killed.<sup>27</sup> In this regard, the Government of India commented that, in the communal violence between Hindus and Christians, three persons were killed in 2007, and 40 persons were killed in 2008.

46. The Special Rapporteur's attention was particularly drawn to the high level of communal violence in Gujarat. The most serious incident dates to 2002, as a consequence of the burning of a train which caused the death of 58 Hindu pilgrims in February 2002. It was alleged that Muslims perpetrated the incident, which resulted in retaliatory acts and, eventually, communal violence. According to the data provided by the Government of India, the police records indicate 1,071 persons killed and 228 persons reported missing in the ensuing violence. Non-governmental organizations reported approximately 2,000 individuals killed and several hundred persons missing.<sup>28</sup> The Special Rapporteur heard several testimonies from survivors of the 2002 events on violence occurred against them, and their family members. He was informed of widespread allegations that the violence was fuelled by members of the Government of the State of Gujarat.<sup>29</sup>

47. The Special Rapporteur notes some progress, albeit slow, in respect of holding perpetrators of the 2002 Gujarat communal violence to account.<sup>30</sup> He is concerned, however, about the lengthy and less than effective conduct of the current inquiries into these events. In particular, the Nanavati-Mehta Commission, which was appointed the same year to investigate the 2002 events in Gujarat, has not yet published its final report. At the time of drafting this report, the Commission's term was extended for the 19th time in December 2012 and was required to publish its findings on 30 June 2013. The Special Rapporteur will follow the outcome in this regard.

48. The Special Rapporteur is concerned about the information received that the judicial investigations into the 2002 events are being hampered by destruction of evidence, refusal to investigate and witness intimidation.<sup>31</sup> Furthermore, a large number of the accused standing trial for the 2002 violence appear to have been released on bail, thus living in the areas where they allegedly committed serious violations. The Special Rapporteur acknowledges that the MHA released funds to the Government of Gujarat to ensure payment of compensation to the victims of the 2002 killings. He also notes the comments of the Government of India that the authorities have been sensitive to the issue of witness and victim protection, and provided protection when required. He encourages the Indian authorities to treat witness and victim protection as a crucial element specifically in the process of shedding light on the 2002 events.

49. In a broader context, several Governmental bodies are charged with investigating and addressing communal violence. In this regard, the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill was elaborated in 2011, with

<sup>27</sup> See National Coalition for Strengthening the Prevention of Atrocities Act and National Campaign on Dalit Human Rights, Joint Stakeholder's Report on Caste Based Discrimination in India, submitted for India's 2012 Universal Periodic Review session, para. 19.

<sup>28</sup> Human Rights Watch, "India: A Decade on, Gujarat Justice Incomplete, 24 February 2012".

<sup>29</sup> See e.g. Gardiner Harris and Hari Kumar, "32 People Convicted for Roles in Gujarat Riots", *New York Times*, 29 August 2012, available at: [http://www.nytimes.com/2012/08/30/world/asia/32-people-convicted-for-roles-in-gujarat-riots.html?\\_r=0](http://www.nytimes.com/2012/08/30/world/asia/32-people-convicted-for-roles-in-gujarat-riots.html?_r=0).

<sup>30</sup> The Government of India commented in this regard that 4,274 cases have been registered, and 27,007 persons accused have been arrested. See also "Indian Court jails 21 Hindus over Muslim deaths", available at: [www.guardian.co.uk/world/2012/jul/30/india-jails-hindus-muslim-deaths](http://www.guardian.co.uk/world/2012/jul/30/india-jails-hindus-muslim-deaths).

<sup>31</sup> Amnesty International, *Report 2011: The State of the World's Human Rights*, p 168.

the aim of preventing communal violence and ensuring accountability of those in positions of power and authority for failure to prevent it and protect life and property. The Bill also introduces the principle of command and/or superior responsibility, and stipulates the rights of victims to reparations and remedies.

50. It is also noteworthy that mechanisms have been put in place for investigating and prosecuting those responsible for violence motivated by religious tensions, namely through the creation of Special Investigative Teams (SIT)<sup>32</sup> and Fast Track courts.<sup>33</sup> The Special Rapporteur nevertheless was informed of concerns that high levels of corruption, religious bias and the inconsistent application of investigations impede effective progress in such cases, thus fostering a culture of impunity.<sup>34</sup>

## C. Practices affecting women's right to life

51. The Government of India has actively sought to introduce mechanisms to ensure that men and women are placed on equal footing, such as the enactment of gender-sensitive legislation, the development of campaigns to generate awareness, and the creation in 1992 of the National Commission for Women, responsible for protecting and promoting the rights of women. In 1993, India ratified the Convention on the Elimination of Discrimination against Women (CEDAW). Yet, it has not ratified the Optional Protocol to CEDAW.

52. Women in India remain vulnerable and are too frequently victims of lethal violence. Sexual violence also occurs in the context of other forms of violence against women. Concern surrounding the violence exercised against women, in all its forms, has been expressed by a variety of international bodies.<sup>35</sup>

53. The Special Rapporteur stresses that beyond creating laws and policies to ensure the protection of women, these must also be properly implemented. It is therefore important that gender-sensitization programmes are undertaken, particularly insofar as the law enforcement forces are concerned. The Special Rapporteur was also informed that in Kerala more women have been recruited into the police force, which has led to positive results in encouraging women to report cases and in strengthening efforts to seek justice in cases of violations.

### 1. Dowry deaths

54. Dowry-related deaths are a country-wide concern. The obligation to pay dowry rests on the family of the woman who is married. Where this is not done, or the amount is deemed unsatisfactory, there are a number of reported instances when the woman is killed by her husband or his family.

55. The official statistics indicate that the number of dowry deaths amounted to a staggering 8,618 in 2011.<sup>36</sup> The figure increased since 2010 and may still not fully reflect the scope of the problem due to apparent underreporting in respect of this particular offence.

<sup>32</sup> SITs conduct investigations and may register FIRs.

<sup>33</sup> These courts are designed to deal expeditiously with specific matters of concern.

<sup>34</sup> See e.g. Saumya Uma, "Kandhamal: The Law Must Change its Course", 2010, Multiple Action Research Group: New Delhi, pp. 93–119.

<sup>35</sup> See CCPR/C/79/Add.81, CEDAW/C/IND/CO/3, CEDAW/C/IND/CO/SP.1, CERD/C/IND/CO/19, E/C.12/IND/CO/5, and A/HRC/WG.6/13/IND/3,

<sup>36</sup> NCRB Statistics, 2011, p. 328.

56. The Government has taken steps to curb the problem of dowry deaths, including through the enactment of the Dowry Prohibition Act of 1961 and codification of “dowry deaths” as a separate offence in section 304B of the Indian Penal Code (IPC).

57. In 2010, in the *Rajbir Raju and Another vs. State of Haryana* case, the Supreme Court ordered prosecutors, in cases of dowry deaths, to include a charge of murder in addition to one of dowry death. A conviction for murder in terms of section 300 of the IPC may be punishable with the death penalty,<sup>37</sup> while that of a dowry death may result at most in a sentence of life imprisonment. The Court stated that persons guilty of such an offence should face capital punishment. While the attempt by the Supreme Court to seriously address the concern of dowry deaths is commended, the Special Rapporteur does not encourage the imposition of the death penalty in such cases, in particular for a problem with such complex social roots.

## 2. “Honour” killings

58. So-called “honour” killings are committed against persons believed to have sullied the honour of a family. They are almost always directed against women, usually for having exercised their right to choose a partner whom the family does not approve of. There are reports of a strong correlation between “honour” killings and inequalities of castes and gender.

59. Although the NHRC regards the number as low,<sup>38</sup> other sources estimate that approximately 1,000 to 1,200 deaths occur every year in honour-related killings.<sup>39</sup> Most of them reportedly occur in Haryana, Punjab and Uttar Pradesh States.

60. Honour killings are not regulated under separate legislation in India, and fall under the broader crime of murder.<sup>40</sup> In order to address honour killings, the IPC and Certain Other Laws (Amendment) Bill of 2010 proposed amendments to, *inter alia*, the IPC to create penalties for “honour” killings. Meetings of the Group of Ministers were convened in 2010 to discuss the matter of introducing amendments to the IPC or enacting separate legislation in order to address “honour” killings. Despite such steps, the Special Rapporteur was informed that there remains a lack of ensuring effective prosecution and prevention of such killings.

## 3. Witch killings

61. The Special Rapporteur observed the phenomenon of witch killings in parts of India, which appears to be largely directed against women. It is reportedly prevalent among poorer members of the population. Various reasons exist for accusing individuals of being witches, including superstitions and attempts to obtain property.

62. The NCRB reported 240 deaths due to witchcraft in 2011, an increase from 2010. The actual figure is likely higher due to possible underreporting. The Special Rapporteur heard from the Indian authorities that witch killings did not warrant his concern. Yet, authorities in Assam acknowledged that this was a valid concern and a growing one, as there was a trend of the practice’s spill-over beyond tribal groups.

63. The Special Rapporteur noted that a draft Act on matters of witchcraft was elaborated in Rajasthan, while legislation concerning witchcraft already exists in Bihar,

<sup>37</sup> Section 302 of the IPC.

<sup>38</sup> NHRC Comments on the observations/recommendations mentioned in the Press Release of United Nations Special Rapporteur Mr. Christof Heyns.

<sup>39</sup> See, *inter alia*, *The Times of India*, “More than 1,000 honour killings in India every year”, 4 July 2010.

<sup>40</sup> MHA, Annual Report 2010-2011, p. 232.

Jharkhand and Chhattisgarh. The legal provisions provide punishment for labelling a person a witch. However, such conduct results in light sentences, not commensurate with the long-term negative impact of labelling individuals as witches. The Special Rapporteur was also informed that when prosecutions occur witnesses are often unwilling to provide testimonies, either due to their fear of being associated with the alleged witch, or because they regard the death as an appropriate punishment.

## **V. Other challenges**

### **A. Fight against impunity**

64. Impunity represents a challenge in India not only in cases of recent violations of the right to life, but also of those perpetrated in the past in respect of which effective investigations and prosecutions still have not been conducted. Complaints were widely raised that the wheels of justice, when they turn, do so too slowly. Legal proceedings drift for years, while alleged perpetrators remain at large in the community, often on bail.

65. The fight against impunity in India is faced with challenges at various stages of the accountability process. At the stage of reporting a crime, the Special Rapporteur has heard numerous allegations that the security forces refuse to register FIRs, including those related to killings or death threats. Persons attempting to register FIRs are often subjected to threatening treatment or to the fact that their complaints are not given serious consideration. The Special Rapporteur heard that in particular the Dalits, the representatives of lower castes, tribes and poorer communities, as well as women are exposed to difficulties in registering FIRs. Individuals who wish to report violations by security officers face similar challenges which dissuade them from complaining and impede the accountability of State agents.

66. The burden of initiating civil, criminal or writ proceedings in cases of unlawful killings is frequently placed on the victim's family. Their vulnerable status often cripples their ability to seek and secure accountability. Families of victims are not always aware of their rights in respect of the investigation of the death of the victim. The lack of knowledge of such rights forecloses the very opportunity to enjoy these rights themselves.

67. Delay in judicial proceedings constitutes one of India's most serious challenges and has clear implications for accountability. For example, lengthy and ineffective proceedings exist in Punjab where large-scale enforced disappearances and mass cremations occurred between the mid-1980s and 1990s. The lack of political will to address these disappearances is evident in a context where steps to ensure accountability have been reportedly inconclusive.

68. The slow pace of proceedings is another feature of the various public commissions created to investigate violations of the right to life. The slow progress of the Nanavati-Mehta Commission of Inquiry in Gujarat, mentioned in the previous chapter, is a vivid example of the challenge. The Commission has been functioning for more than 10 years without reaching any conclusive results.

69. The Special Rapporteur is concerned with the obstacles to hold public servants, including members of the security forces, accountable, particularly due to statutory immunities provisions. Section 197 of the CPC requires prior sanction from the concerned government before cognizance can be taken of any offence by a public servant for criminal prosecution. This provision effectively renders a public servant immune from criminal prosecution. It has led to a context where public officers evade liability as a matter of course, which encourages a culture of impunity and further recurrence of violations.

70. The situation is aggravated by the fact that security officers who committed human rights violations are frequently promoted rather than brought to justice. The Special Rapporteur has heard of the case of Mr. Sumedh Singh Saini, accused of human rights violations committed in Punjab in the 1990s, who was promoted in March 2012 to Director General of Police in Punjab. Promoting rather than prosecuting perpetrators of human rights violations is not unique to Punjab. The Special Rapporteur heard this complaint from families of victims throughout the country.

71. The Special Rapporteur regards the absence of deterrent punishment and lack of prosecution to be main contributors to impunity of State actors. Laws requiring sanction to arrest and prosecute must be repealed. It is important that the leaders of various security forces are held to account.

72. In this regard, the Special Rapporteur notes the directive of the Supreme Court of India, issued in the 2006 case of *Prakash Singh and Others vs. Union of India and Others*, to establish Police Complaints Authorities with the aim of creating oversight mechanisms for the acts of the law enforcement agents. The Special Rapporteur regrets that these mechanisms have not yet been established throughout the country or, where they have been created, are not fully functional.

73. The practice of paying compensation to victims or their respective families in cases of unlawful killings, while not pursuing criminal investigation and prosecution of the perpetrators in their cases further perpetuates impunity due to an absence of individual accountability. The Special Rapporteur stresses that, while compensation of the victim is a crucial element to redress violations, it cannot replace the judicial process of bringing a perpetrator to justice.

74. Families of victims face further difficulties as they lack full and easy access to autopsy reports, death certificates and other relevant documentation. Several accounts were given to the Special Rapporteur of post-mortem examinations taking an unnecessarily long time before being conducted and the subsequent deterioration of evidence, their inadequate conduct, as well as of an inability of the families to obtain death certificates for a very long period. The Special Rapporteur was informed *inter alia* of autopsies being performed by members of the Dom community instead of trained medical practitioners, casting doubts on the quality of the conclusion reached after the medical examination.

75. Autopsies play a crucial role in the investigation and prosecution of murder cases. The system of autopsies and release of death certificates should be reformed to bring it in line with internationally accepted standards and allow families to have closure of cases.

76. The Special Rapporteur notes the NHRC's comments that the ratification of the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1) does not constitute a vital concern, given that India has a strong judiciary as well as commissions that hear individual complaints.<sup>41</sup> While the work of the Indian judiciary is acknowledged, the Special Rapporteur stresses that the ratification of the ICCPR-OP1 will enable individuals to hold the State responsible for all potential failures of ensuring accountability in all cases of violations, thus strengthening efforts to fight against impunity.

---

<sup>41</sup> NHRC Comments on the observations/recommendations mentioned in the Press Release of United Nations Special Rapporteur Mr. Christof Heyns.

## **B. Killings of vulnerable persons**

### **1. Scheduled castes and tribes and other marginalized communities**

77. Discrimination on the basis of caste is prohibited in India, and some positive steps have been taken to improve the situation, although the impact on lower castes and tribes in practice so far is limited. According to NCRB, there were 35 murders registered in 2011 due to caste-related reasons. Non-governmental organizations indicate that 3,593 murders against scheduled castes or tribes occurred between 1995 and 2007.<sup>42</sup>

78. The Special Rapporteur heard a number of cases on the killings of persons belonging to scheduled castes or tribes, as well as to other marginalized communities. The violence against them is more prevalent in rural areas, largely due to prejudices that are still firmly entrenched. Patterns of killings relate to condemnation of intermarriage between higher castes and scheduled castes, or witchcraft accusations. Tribal individuals may also be killed in the armed exchanges between the Government forces and armed groups, by any of the sides. In such contexts, members of tribes are sometimes labelled “terrorists” and killed, although later it becomes clear that they were ordinary civilians. Adivasis were moreover killed in ethnic violence in the 1990s, while their killing at present appears to be largely due to issues concerning land disputes and attacks in insurgency-affected areas.

79. The low social status of these persons renders them vulnerable to violations of all their rights, including the right to life, and hampers their access to justice and redress mechanisms.

80. The Special Rapporteur notes the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, adopted in 1989, which aims at dissuading violence by providing harsher punishment for persons committing offences against individuals protected under this Act. He is, however, concerned that Dalit Muslims and Dalit Christians have not been incorporated into the definition of scheduled castes under this Act, and thus do not benefit from its provisions. In addition, he wishes to underline the importance of ensuring the protection of all marginalized communities in practice through proper implementation of the related legislation, as well as the conduct of relevant education and awareness-raising campaigns.

### **2. Human rights defenders**

81. Human rights defenders are increasingly targeted by both State and non-State actors. Especially vulnerable are RTI activists, those exposing mining corruption, environmental and poverty issues, land rights of marginalized communities, and accountability concerns.

82. While the adoption of the RTI Act in 2005, aiming at ensuring access to information and transparency on violations of human rights, is a welcome measure, it is alarming that those who lodge requests for information are often targeted for doing precisely that and are sometimes killed. According to information received from non-governmental sources, it is estimated that 12 RTI activists were killed in 2010 and 2011.<sup>43</sup> For instance, on 20 July 2010, Mr. Amit Jethwa, an RTI activist, was killed by unidentified assailants near the Gujarat High Court, due to his exposing political involvement in illegal mining activities.

<sup>42</sup> See National Coalition for Strengthening Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, “20 Years Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act: Report Card”, 2010, p. 7.

<sup>43</sup> ACHR, “RTI activists”, *The Quarterly Journal of Asian Centre for Human Rights*, January-June 2011, Issue 3 & 4, p. 1.



83. Human rights defenders and journalists regularly are victims of violence between armed groups and Governmental forces, in a context where both sides suspect human rights defenders and journalists of supporting the other side.

84. The Government has attempted to address the concerns related to the protection of human rights defenders, including through its invitation to the United Nations Special Rapporteur on the situation of human rights defenders in 2011. Her 2012 report to the Human Rights Council<sup>44</sup> provided a range of recommendations which could assist in curbing violence against human rights defenders. The Government is therefore invited to make a concerted effort to implement these recommendations.

### 3. Protection of victims and witnesses

85. The Special Rapporteur found that witnesses are often intimidated and threatened. However, there is no witness and victim protection programme in India. Interlocutors met explicitly stated that several investigations by commissions have been compromised due to the refusal of witnesses to testify. In the Special Rapporteur's view, India must ensure that witnesses who may be exposed to intimidation and death are adequately protected. He was, for instance, informed of the case of *Zahaira Habibulla H. Sheikh vs. State of Gujarat*, concerning the deaths of 14 persons during the 2002 communal riots in Gujarat. In this case, 21 accused were acquitted due *inter alia* to the reported refusal of 37 witnesses for the prosecution to testify. The Special Rapporteur welcomes that the Supreme Court of India reversed the acquittals in this case, ordered a retrial outside Gujarat, and emphasized the crucial role of witness protection programmes.

## C. Killings and enforced disappearances in Jammu and Kashmir

86. Concerns have been voiced to the Special Rapporteur on unmarked graves found in Jammu and Kashmir containing bodies of victims of extrajudicial executions from the 1990 to 2009 period. The Special Rapporteur was informed that a total of 2,700 unmarked graves containing over 2,943 bodies have been discovered, some of these graves containing more than one body. While the Government expressed its intention to conduct investigations into unmarked graves, this has not yet been done.

87. The Special Rapporteur was presented with several cases of enforced disappearances in Jammu and Kashmir, and the difficulties to seek accountability and redress in those cases. The Government has estimated that 4,000 people have gone missing, and claimed in exchanges with the Special Rapporteur that a large portion of those allegedly missing crossed the border to join armed groups in Pakistan. Other sources have estimated the number to be 5,000–10,000. India has signed, but not yet ratified, the International Convention for the Protection of all Persons from Enforced Disappearances.

## VI. The role of Human Rights Commissions

88. The record of the NHRC includes important steps in protecting the right to life in India. The NHRC has, for instance, delivered several important guidelines on a variety of topics including deaths in custody and encounter killings and played a prominent role in ordering compensation in situations of "fake encounters". The Special Rapporteur, however, had the impression that currently the NHRC could be taking a too legalistic and deferential approach, and that the NHRC should take a more proactive view, and where appropriate, should be willing to take a critical stance towards the decisions of courts.

<sup>44</sup> A/HRC/19/55/Add.1.

89. The effective functioning of the NHRC is partially hampered by its mandate, and 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. Another difficulty lies in the lack of clarity on the NHRC's powers to examine alleged human rights violations by members of the armed forces. Specifically, section 19 of the Protection of Human Rights Act authorizes the NHRC to request in such situations a report from the central Government and enables the NHRC to make recommendations to the Government. In the Special Rapporteur's view, section 19 is formulated in a manner that does not provide express authorization to the NHRC to investigate members of the armed forces for alleged human rights violations.

90. With regard to the functioning of State Human Rights Commissions (SHRCs), the Special Rapporteur found they inspire little confidence, in terms of lack of independence from the authorities, limited resources and subsequent limited effectiveness. The Special Rapporteur was informed that the Manipur SHRC was for all practical purposes closed down after it challenged excess of power by the police. Interlocutors further revealed that they would refer no matters to the Assam SHRC in 2012, as it would be futile. The Assam SHRC mentioned to the Special Rapporteur that it was subordinate to the Government.

## **VII. Conclusions**

91. **While India is to be commended for several positive aspects in its human rights record, there is reason for serious concern, specifically about extrajudicial executions. The main patterns of unlawful killings in India at present involve, *inter alia*, killings resulting from various instances of excessive use of force by the security forces, those occurring in the context of attacks by various armed groups, and killings of vulnerable persons.**

92. **Impunity is the central problem. The obstacles to accountability, especially the need for prior sanction of prosecutions of civil servants, should be removed.**

93. **To a large extent, the required structures to decrease extrajudicial executions are already in place. The steps to be taken have also largely been identified within the system. A concerted and systematic effort is required by the State, civil society and others concerned to eradicate the occurrence of unlawful killings. In this process, some best practices that are already followed in the country should be used as models for reform elsewhere.**

94. **There is a strong need for victims to speak about their experiences. A credible national process under the form of transformative justice is called for. Justice for victims, accountability and punishment of the perpetrators are essential elements of such a process. Specific attention should be given to the following issues: (a) challenging the general culture of impunity; (b) addressing the practice of "fake encounters" to ensure that it is eliminated; and (c) ensuring swift, decisive action, with concrete outcomes, is taken in cases of large-scale killings.**

95. **A public commitment to the eradication of the phenomenon of unlawful killings is needed.**

## **VIII. Recommendations**

96. **A credible Commission of Inquiry into extrajudicial executions in India, or at least the areas most affected by extrajudicial executions, which inspires the confidence of the people, should be appointed by the Government. The Commission should also**

serve a transitional justice role. It 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. The Commission should submit recommendations on (a) legal reform; (b) the reform of State structures, including security bodies; and (c) the fight against impunity. It must complete its work within a reasonably short period. The scale of the task may require some priority areas of investigation to be determined.

97. Ratification of the following treaties should take place promptly: (a) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; and (b) the International Convention for the Protection of All Persons from Enforced Disappearance.

98. Ratification of the following instruments should be considered: (a) the two Optional Protocols to the ICCPR; (b) the Optional Protocol to CEDAW; (c) the Rome Statute of the International Criminal Court; and (d) the two Optional Protocols to the Geneva Conventions.

99. India should swiftly enact the Prevention of Torture Bill and ensure its compliance with CAT.

100. India should repeal, or at least radically amend, AFSPA and the Jammu and Kashmir AFSPA, with the aim of ensuring that the legislation regarding the use of force by the armed forces provides for the respect of the principles of proportionality and necessity in all instances, as stipulated under international human rights law. It should also remove all legal barriers for the criminal prosecution of members of the armed forces.

101. While waiting for the necessary amendment or repeal of AFSPA, it should be ensured that the status of a “disturbed area” under AFSPA is subject to regular review – for example, every six months – and a justified decision is made on its further extension.

102. Section 46 of the Criminal Procedure Code and legislation in all states regarding use of force, including the exceptional use of lethal force, by all security officers should be reviewed to ensure compliance with international human rights law principles of proportionality and necessity.

103. Section 197 of the Criminal Procedure Code should be reviewed in order to remove any legal barriers for the criminal prosecution of a public servant, including the need for prior sanction from the government before cognizance can be taken of any offence by a public servant for criminal prosecution.

104. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act should be reviewed with the aim of extending its scope to Dalit Muslims and Dalit Christians.

105. The criminal legislation should be reviewed to ensure that all gender-based killings, as well as killings of any member of a tribe or lower caste receive high sentences, possibly under the form of life imprisonment.

106. The Indian legislation regarding the imposition of the death penalty should be reviewed to provide that the death penalty may be imposed for the most serious crimes only, namely only for those crimes that involve intentional killing.

107. India should consider placing a moratorium on the death penalty in accordance with General Assembly resolutions with a view to abolishing it.

108. India should put in place a mechanism of regular review and monitoring of the status of implementation of the directives of the Supreme Court and the NHRC guidelines on arrest, encounter killings, and custodial violence and death.
109. The establishment and effective functioning of the independent Police Complaints Authorities should be made a priority in all states.
110. India should ensure that FIR registration is prompt and made mandatory in all cases of unlawful killings and death threats. The authorities should put in place an independent mechanism to monitor FIR registration following any request to do so, as well as of punishment of those law enforcement officials who refuse to register a FIR.
111. Compensation in cases of killings cannot play the role of replacement for criminal prosecutions and punishment. Alongside payment of compensation to the victims or their families, India should ensure that criminal investigations, prosecutions and trials are launched and conducted in a swift, effective and impartial manner in all cases of unlawful killings, irrespective of the status of the perpetrator.
112. Promotions and other types of awards for security officers suspected to have been involved in unlawful killings, including through encounters, should not be granted until a proper clarification of facts.
113. India should ensure that command and/or superior responsibility is applied for violations of the right to life by security officers.
114. All vigilante groups and civilians recruited to perform military or law enforcement tasks, and who are not part of the regular security forces, should be dissolved and prohibited with immediate effect.
115. The protection of civilians in all instances of violence should constitute the ultimate priority. All sides involved in armed activities should immediately cease attacking civilians, including members of tribes and castes, human rights defenders and journalists. While having the duty to protect its people from the attacks perpetrated by various non-State actors, the Indian authorities should ensure its acts do not target civilians by any means, and are directed in a very precise manner at neutralizing violent non-State actors.
116. An effective witness and victim protection programme should be established.
117. Autopsies should be carried out in conformity with international standards and families of victims should have full and easy access to autopsy reports, death certificates and other relevant documentation to allow them to proceed with the closure of the cases.
118. Information and awareness-raising campaigns should be launched to raise the level of knowledge of human rights and access to justice of the public at large, with a particular focus on vulnerable persons such as women and members of tribes and lower castes. Legal aid mechanisms for these vulnerable persons should be devised to enable them to seek protection, justice and redress in cases of violation of their rights.
119. Increased sensitization and orientation programmes in respect of all forms of killings of women should be undertaken for the police, judiciary and the public at large, especially in areas of the country which are most affected.
120. 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.
121. A legal basis should also be put in place to enable the extension of the period of one year under which the NHRC can consider cases.

122. The NHRC should issue guidelines on the conduct of inquests and autopsies in all cases of unlawful killings.

123. The independence and functioning of state human rights commissions should be reviewed to ensure compliance with the United Nations Principles relating to the Status of National Institutions.

124. The Nanavati-Mehta Commission, and all currently functioning Commissions of Inquiry on various violations of the right to life, should ensure that their findings are published in a swift and transparent manner.

125. India should consider launching a process of reflection upon the need to reform its judiciary with the aim of reducing the length of judicial proceedings and strengthening the independent functioning of the judiciary.

126. The practice of inviting United Nations special procedures should continue, especially in areas where international concern has been expressed, such as torture, counter-terrorism measures, enforced disappearances and minority rights. The recommendations made in 2012 by the Special Rapporteur on the situation of human rights defenders should be given serious consideration with a view to their implementation.

---