

PRESS RELEASE**WGHR welcomes the report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, on his mission to India**

New Delhi, May 6, 2013 – The Working Group on Human Rights in India and the UN (WGHR) welcomes the report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions (SR EJE), Christof Heyns, on the main findings from his official visit to India in March 2012, which will be presented to the UN Human Rights Council (UN HRC) in Geneva in June 2013. In his report Mr. Heyns highlights that the level of extrajudicial executions in India still raises serious concerns and he recommends that the Government of India proceeds with the necessary legal reforms and policy measures in order to fight impunity, diminish the level of unlawful killings and ensure better protection of the right to life for its citizens.

The SR EJE states in his report that during his mission to India he received a series of complaints regarding violations of the right to life by State actors, including *“deaths resulting from excessive use of force by security officers with little adherence to the principles of proportionality and necessity as defined under international human right law standards”*. The SR EJE’s attention was drawn to the deaths caused by the disproportionate use of force during demonstrations, deaths occurred in police custody as well as to the imposition of death penalty in the country noting that India has recently moved to extend, rather than reduce, offences for which the death penalty may be imposed, despite the existence of a *de facto* moratorium on executions that had been in place since 2004. The Special Rapporteur flagged his concern on deaths caused by “fake encounters” with the police, the central armed police forces and the armed forces being accused of several incidences of this still existing practice, while endorsing the National Human Rights Commission (NHRC) concerns on encounter killings that *“have become virtually a part of unofficial State policy”*.

WGHR fully endorses the SR EJE’s view that the use of force in India is exacerbated by the emergency measures in the so-called “disturbed areas” of the country, namely the Armed Forces (Special Powers) Act and the related legislations. The Special Rapporteur drew attention to the AFSPA provisions regulating the use of lethal force by any officer and the prohibition of prosecution of members of the armed forces without sanction granted by the central Government. Even though the Supreme Court in 1997 enumerated precise guidelines on the use of lethal force under AFSPA, the Special Rapporteur believes that they have failed to bring AFSPA in compliance with the international standards. WGHR fully endorses the SR EJE’s recommendation that *“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”*. **Babloo Loitongbam**, Director of Human Rights Alert, noted that, *“Now that the relevant UN expert has laid out the international law position on AFSPA, it is time for the Cabinet Sub Committee on Security to take a decision without further delay”*.

In the context of violations of the rights to life by non-State actors, the SR EJE’s referred to killings related to communal violence and expressed his concern about the lengthy and less than effective conduct of the current inquiries into events such as the 2002 Gujarat communal violence, as well as about the judicial investigations which are hampered by the destruction of evidence, the refusal to investigate and witness intimidation.

Several cases of enforced disappearances and killings in Jammu and Kashmir have been brought before the SR EJE and he aptly noted that although India has signed the International Convention for the Protection of all Persons from Enforced Disappearances, it has not ratified it as yet.

Another area of concern aptly pointed out by the SR EJE, is the practices affecting women's right to life indicating dowry-related deaths as a country wide issue with staggering numbers of occurrence. Killings of vulnerable persons belonging to scheduled castes, tribes and other marginalized communities were also brought to the attention of the SR EJE, who underlined the importance of ensuring their protection through proper implementation of the related legislation, as well as the conduct of relevant education and awareness-raising campaigns. WGHR would also like to mention here that children are quite vulnerable to extra judicial killings, in conflict areas and otherwise. While the same have not found mention in Mr. Heyns' report, WGHR urges the Gol to address the issue of protection of children in this context.

Welcoming the comprehensive report of Mr. Heyns, **Vrinda Grover**, lawyer, expressed that, *"The report identifies, institutional failures, systemic omissions and legislative lacunae, as factors responsible for the widespread infringement of the right to life through extrajudicial executions. It casts a duty upon the Indian State and statutory bodies such as the NHRC, to undertake time bound and effective statutory and structural reforms, to curb this impunity."*

WGHR endorses the SR EJE's view that impunity represents a challenge in India at various stages of the accountability process, including the registration of FIRs, the burden of initiating civil, criminal or writ proceedings, the delay in judicial proceedings, as well as the unaccountability, immunity and impunity of public servants. While acknowledging the work of the Indian judiciary, Mr. Heyns stressed that that the ratification of the Optional Protocol to the International Covenant on Civil and Political Rights (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"*.

In Mr. Heyns' report human rights defenders have been identified as another constituency increasingly targeted by both State and non-State actors. In that regard, the SR EJE urged the Gol to make a concerted effort to implement the recommendations made in 2011 by the UN Special Rapporteur on the situation of human rights defenders, which could assist in curbing violence against human rights defenders in the country. Significantly, in the report, the UN envoy 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.

Mr. Miloon Kothari, WGHR Convenor and Former UN Special Rapporteur, stated that, *"The report of Mr. Christof Heyns days after the statement of Ms. Rashida Manjoo, UN Special Rapporteur on violence against women, is a tragic reminder that under the veneer of democracy and secularism India is a deeply violent society. This brutality is deepened by the complicity of the government, the police and the armed forces in the numerous human rights violations that continue to scar our country with the perpetrators enjoying almost total impunity for these acts. Let us hope that the Gol engages in a constructive dialogue with Mr. Heyns when he presents his report to the UN Human Rights Council in June 2013 and that radical and immediate measures, in accordance with the Special Rapporteur's recommendations follow"*.

WGHR strongly recommends the GoI that it initiates the necessary legal reforms and policy measures in order to fight impunity and diminish the level of unlawful killings. Such reforms and measures have been comprehensively reflected in the recommendations made by the SR EJE, Mr. Christof Heyns, included in his country report on India. WGHR urges the Indian Government to implement these recommendations, many of which have been reiterated by other UN human rights treaty bodies and Special Rapporteurs in the past, in order to comply with international human rights standards in view of providing better protection of the right to life in the country. ■

The full version of the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, is available at:

<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1.EN.pdf>

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