

India: Authorities must investigate excessive use of force in Kashmir

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Indian authorities must immediately, independently and thoroughly investigate all incidents of excessive, particularly lethal, use of force in Kashmir over the past week, the International Commission of Jurists (ICJ) said today. Indian security forces have an obligation to comply with Government commitments to avoid using excessive force to quell protests, and must be held to account for any violations.

Violent clashes between protesters and security forces broke out in Kashmir after a popular Kashmiri militant leader, Burhan Wani, was killed, along with his two associates, by security forces on 8 July. More than 35 people have been killed, including one security officer, and over 2000 injured. In some areas, protestors threw stones and attacked police stations. Security forces used tear gas, pellet guns and firearms.

"Security forces must respect the right to life at all times, and only use force when strictly necessary and in a manner proportionate to the legitimate performance of their duties," said Sam Zarifi, ICJ Asia Director. "The number of persons injured over the past week, as well as the nature of their injuries, indicates the urgent need for investigations" he said

"If security forces use any kind of weapon, they are governed by international standards that require force to be used as a last resort in self-defence or defence of others against an imminent threat of death or serious bodily injury, and in a manner to minimize injuries", Zarifi added.

Indian security forces began using pellet guns routinely after 2010 following heavy criticism of their misuse of firearms against protesters. But during the recent protests, the use of pellet guns, considered non-lethal weapons by security forces, has resulted in serious and potentially permanent health consequences for persons affected, including eye injuries and organ damage, which have required urgent treatment. A recent report has suggested that at least a 100 people have sustained eye injuries. Pellet guns have also injured non-protestors, including children.

"Indian authorities should stop the use of pellet guns until they can assess whether these weapons can be used in a manner that is consistent with human rights standards on the use of force, including whether they are inherently inaccurate, indiscriminate and arbitrary; and ensure that the use of all non-lethal weapons is strictly regulated, because they have the capacity to cause serious and permanent injury," Zarifi said.

Hospitals in Kashmir are struggling to cope with the high number of patients. There have also been reports that security forces have stopped ambulances carrying injured people, and disrupted the functioning of hospitals.

"All allegations of excessive use of force and other unlawful behaviour by the security forces must be investigated immediately," Zarifi said. "At the same time, protesters who resort to violence or injure other people must also be properly investigated and brought to justice by proper trials."

"Security forces absolutely must not interfere with access to health care. In addition to prompt, independent and effective investigations on this, the Government must proactively ensure that all injured persons are able to safely access necessary and quality health care," he added.

Indian Prime Minister Narendra Modi has called on security forces in Kashmir to exercise “absolute restraint”. The Chief Minister, Mehbooba Mufti, has committed to ensuring accountability in all cases where excessive force was used by security forces. It is crucial that the Government follows through on this promise, and conducts thorough, independent and prompt investigations.

In the past, violations by security forces have largely enjoyed impunity in Kashmir for several reasons, including laws like the Armed Forces Special Powers Act that shield security forces from legal accountability for human rights violations. For example, in 2010, clashes between protestors and security forces in Kashmir resulted in over 100 deaths. Very few, if any, of these have been credibly investigated to date. Current events also cast doubt over whether the reforms introduced since have improved policing practices and made security forces more accountable.

The ICJ is therefore calling on Indian authorities to:

- Order that security forces desist from using excessive and unlawful force, comply with international human rights law, and only use force when strictly necessary and in a manner proportionate to the legitimate performance of their duty;
- Promptly, independently and effectively investigate all allegations of excessive and lethal uses of force by security forces, make the results of these investigations public, initiate prosecutions where appropriate, and ensure that all victims are provided with effective redress;
- Provide necessary and quality health care to injured persons, ensure they are able to access it, that hospitals are stocked and equipped to deal with the increased patient load, and that all allegations of security forces attacking ambulances and hospitals are immediately investigated.

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Additional Information:

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials state that law enforcement officials may use force and firearms only if other means remain ineffective. Whenever the lawful use of force and firearms is unavoidable, it must be used in a proportionate manner, cause minimal damage and injury, and law enforcement must ensure that assistance and medical aid are rendered to any injured persons at the earliest. Principle 9 of the Basic Principles prohibits the use of firearms against persons “except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life”.

Similarly, as per Article 3 of the UN Code of Conduct for Law Enforcement Officials, law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. The commentary to article 3 explains that: “In no case should this provision be interpreted to authorise the use of force which is disproportionate to the legitimate objective to be achieved”.

In his 2014 report to the UN Human Rights Council, the Special Rapporteur on extrajudicial, summary or arbitrary executions has acknowledged that while less-lethal weapons can lead to greater restraint in the use of firearms, in some cases they “are indeed lethal and can lead to serious injuries... Innocent bystanders may also be affected where weapons cannot be directed at one individual” (UN Doc A/HRC/26/36 (2014)).