

PERMANENT MISSION OF INDIA TO THE UN, GENEVA
HUMAN RIGHTS COUNCIL

23rd SESSION (27th May -14 June 2013)

**Report of Special Rapporteur on extrajudicial, summary or arbitrary
executions – Mission to India**

(30 May 2013)

Statement by India

President,

We thank the Special Rapporteur, Mr. Christof Heyns, for his report on his visit to India in March 2012.

2. In his report, the Special Rapporteur has noted the challenges faced by state authorities in ensuring the protection of right to life. This is the most basic of human rights and quite understandably gets the highest priority in any government. We welcome the Special Rapporteur's acknowledgement of the maintenance of a high level of protection of human rights in India while facing significant challenges, including armed insurgencies and terrorism.

3. We note with appreciation the report's recognition that there has been a general drop in unlawful killings in recent years. The report maintains that extrajudicial killings nonetheless, remain a concern. We recognize this. The report rightly observes that the solution to these issues can be found within the already existing mechanisms and standards established in India. Indeed, the report has mentioned that several issues raised by the Special Rapporteur during his visit "have in

the intervening period been recognized and addressed at the domestic level". This is an acknowledgement of India's seriousness on this matter.

Mr. President,

4. We are, nevertheless, surprised at some of the sweeping generalizations based on anecdotal and unverified allegations made in the report. The Special Rapporteur has taken statements and allegations made to him by a few people brought to him during his visit and drawn general conclusions without verifying or checking from the authorities if they had been addressed within our own legal system. It is not acceptable that such individual and specific incidents be used to make sweeping generalizations for a country as large and diverse as India. Such generalized allegations detract from the objectivity of the report and, indeed, its credibility. The Special Rapporteur has quoted reports by some civil society representatives, whom he met during the visit, of intimidation from authorities for having cooperated with him. No details of these have been provided. Thus, it is not possible for Government to verify them.

5. The Special Rapporteur has identified impunity as the central problem behind unlawful killings in India. This suggests state indifference, if not complicity. This is totally unacceptable. The Special Rapporteur has acknowledged the presence of a vigorous press and a vibrant and engaged human rights civil society. Indeed, an active and watchful judiciary has played an important role in upholding fundamental rights, including the right to life. Investigations of allegations of violation are carried out in a transparent manner and punishment is meted to those who are found guilty. Drawing conclusions

without citing specific instances which can be investigated reduces the usefulness of the report and exposes it to the charge of being biased.

6. In paragraph 26 the Special Rapporteur states that he is “unclear about how the Supreme Court” upheld the constitutionality of AFSPA. We take strong exception to this statement. AFSPA has been there since 1958 and it is an affront to our judicial system to say that it has wrongfully held it to be constitutional. All judgments of the Supreme Courts are in the public domain and if the Special Rapporteur disagrees with them, he should have explained why.

7. The Special Rapporteur has asserted that the use of force by India’s security forces does not meet international standards. He does not elaborate on these standards but refers to the principle of proportionality in the use of force. We do not know how he concludes that Indian security forces use disproportionate force. Each such case has to be examined on its merits. The Special Rapporteur has himself cited that more than 50% of casualties of terrorist violence during 1994 and 2009 were civilians and members of the security forces. It is unclear to us as to what threshold according to him would qualify proportionality in the use of force. We hope it is not the intention of the Special Rapporteur that during terrorist acts, states should turn a blind eye to civilian casualties. Governments have to be realistic and effective in fulfilling their responsibility of providing protection to their people. The experience of countries facing terrorism shows that governments the world over have been able to counter it only by strengthening legal provisions.

8. With regard to the recommendations in the report, many of them have been already implemented while some require further examination.

One of the recommendations of the Special Rapporteur is the appointment of a Commission of Inquiry into extrajudicial executions in India. A Commission of Inquiry is appointed to investigate a specific incident. The Special Rapporteur has recommended appointment of an omnibus commission for the whole country covering incidents over an unspecified period. At the same time, he has noted in paragraph 5 of the report that the solution of these issues can be found in already existing mechanisms and standards established in India. He has also noted various measures and steps taken by the Government including the creation of Special Investigative Teams (SITs) and Fast-Track Courts to deal with specific incidents of violence. We, therefore, reject the recommendation to appoint a Commission of Inquiry as impractical and unnecessary.

9. Regarding death penalty, we would like to reiterate that the imposition of the death penalty is according to the law of the land and does not violate any international obligations of India.

10. Finally, Mr. President, we support the work of the special procedure as long as he or she is independent and such independence must be absolute in every sense – including from over-activist NGOs, donors and ideological extremism. In most cases, it is not so. Further, it is important that while India has given the UN SR Christof Heyns unfettered access, he has still failed to take an objective view but tried to exaggerate specific cases leading to an avoidable bias in his reporting. This is even more evident since he has not bothered to reflect the best practices followed in India which even our civil society has acknowledged. Special Procedures does not mean Special Prosecutors. To this end, they must be mindful of the Council resolution 5/2 and Presidential Statement 8/2 that are their sole guides on the Code of

Conduct adopted by the Council, as distinct from any other manual or procedures which are internal procedural guidelines, unendorsed by the Council.

Thank you, Mr. President.
