

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Working Group on Arbitrary Detention; the Special Rapporteur on the right to education; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on freedom of religion or belief

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Working Group on Arbitrary Detention; Special Rapporteur on the right to education; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 41/12, 42/22, 26/17, 35/15, 34/18, 34/5, 34/6, 34/35 and 40/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of excessive use of force, arrests and arbitrary detention of protesters, in the context of demonstrations against the Citizenship (Amendment) Act (CAA).**

Our concerns over the seemingly discriminatory nature of the Citizenship (Amendment) Act (CAA) have already been shared with your Excellency's Government through a previous joint communication dated 13 February 2019 (case no. OL IND 2/2019). We regret that no reply has yet been received to this communication.

According to the information received:

Enacted on 12 December 2019, the Citizenship (Amendment) Act (CAA), amending the 1955 Citizenship Act, enables undocumented migrants to obtain Indian citizenship through registration and naturalisation. However, only Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan who entered India on or before 31 December 2014 are eligible for expedited Indian citizenship. The Citizenship (Amendment) Act therefore appears to discriminate against Muslims and other minority groups on the basis of their religion and to deny them equal protection under the law.

Since early December 2019, thousands of peaceful protesters throughout the country have demonstrated against the enactment of the CAA. Mass protests took

place in the capital, Delhi, and the states of Uttar Pradesh, Assam, Tamil Nadu, Tripura, Maharashtra, Karnataka, Rajasthan, West Bengal and Manipur. The protests have reportedly led to at least 50 deaths, many of which allegedly resulted from the excessive use of force by security forces. It has been brought to our attention that security forces reportedly used live ammunition, rubber bullets, batons and large quantities of tear gas to disperse protesters.

Section 144 of the Criminal Procedure Code (CPrC), which forbids unauthorised assemblies of four or more people, was allegedly invoked to restrict assemblies throughout the states of Gujarat, Karnataka and Uttar Pradesh, and in parts of the state of Madhya Pradesh and Delhi. Authorities also reportedly restricted the right of peaceful assembly by systematically refusing legitimate authorisation requests, such as in Chennai (Tamil Nadu), where Section 41(3)(a) of the Madras City Police Act was reportedly used in this way, leading to subsequent charges being filed against protesters for unauthorised assembly. Curfews were imposed in parts of Assam, Meghalaya and Madhya Pradesh. While some individuals have allegedly committed acts of vandalism and violent attacks on security forces, the information we received indicates that the majority of protesters have demonstrated peacefully.

The protests began in Assam on 4 December 2019, the day on which the federal cabinet of ministers cleared the CAA for introduction in Parliament. Police in Assam reportedly arrested 393 people for alleged involvement in violent incidents. Five people in total were killed in Assam state in the course of the protests, and more than 100 were injured. Reportedly, four of these fatalities resulted from police gunfire. The fifth person was a truck driver who was killed when the oil tanker he was driving was set ablaze by protesters in Upper-Assam.

In the State of Uttar Pradesh clashes between demonstrators and security forces resulted in the deaths of 24 individuals, mostly from firearm injuries. Security forces allegedly used live ammunition in several instances, shooting directly at unarmed demonstrators who were reportedly posing no direct threat to life or safety of the security forces. Uttar Pradesh police said they filed 327 complaints of arson, vandalism, attempt to murder, rioting, attack on police force and violations of Section 144 of the Criminal Procedure Code. More than 1,000 people were arrested for alleged involvement in violence, and 5,558 preventive arrests were made. According to sources, 16 deaths have been reported due to bullets fired by police. 288 police personnel were reportedly injured.

In Varanasi, peaceful protests between 10 and 23 December 2019 were repeatedly forbidden or dispersed by police forces. The police are alleged to have arbitrarily arrested and used excessive force against protesters and bystanders. The police used batons to beat demonstrators, which led to dozens of injuries and an 8-year old child being crushed to death. At least 70 people were arrested and reported ill-treatment and intimidation during detention.

On 15 December 2019, students at Aligarh Muslim University (AMU) in the city of Aligarh took part in a peaceful protest. The police reportedly dispersed the protest violently on the streets, and then entered the university campus and the students' residential compounds. Police officers are alleged to have used tear gas, rubber bullets and water cannons arbitrarily, indiscriminately, and excessively, which led to 60 students being hospitalised. On 7 January 2020, the High Court in Allahabad, Uttar Pradesh, instructed the National Human Rights Commission (NHRC) to undertake an independent investigation into the incidents at AMU. Based on the NHRC investigation's findings, on 24 February 2020 the High Court is reported to have ordered the state prosecutor to identify and take action against the police officers who were involved in the "unnecessary caning of students" and "damaging motorcycles" on 15 December 2019.

On 15 December 2019, police in Delhi allegedly fired tear gas against students inside Delhi's Jamia Millia Islamia university. Police reportedly entered the university and targeted students indiscriminately in the university library and hostels, beating students and some staff with batons. The police reportedly claim they were attempting to disperse a protest which had turned violent. Nearly 60 people, including students and police, were reportedly injured at the Jamia Millia Islamia protests. A video was widely circulated on social media, allegedly showing police brutally beating a man as female students try to defend him and chase police away from a residential neighborhood close to the university. The university's vice chancellor has reportedly sought a high-level inquiry into the violence.

On 18 December 2019, the police issued over 3,000 notices to individuals in Uttar Pradesh, demanding that they do not take part in protests against the CAA the next day. On 19 December 2019, security forces are alleged to have arbitrarily detained 5,300 people in order to prevent their participation in demonstrations. The majority were released in the following days, but 879 were arrested and at least 164 were subject to criminal investigation.

On 19 December 2019, opposition political leaders and activists were also reportedly detained in Delhi, along with at least several hundred protesters. They are alleged to have been detained arbitrarily, without regard to due process, taken to the periphery of Delhi in buses and released there. The following day, several arterial roads and metro stations were closed by Delhi Police, reportedly due to security concerns in the wake of protests in Uttar Pradesh. Delhi Metro Rail Corporation (DMRC) reportedly barred entry and exit at 19 stations to restrict the movement of anti-CAA protesters.

On 20 December 2019, security forces clashed with protesters in the city of Kanpur, Uttar Pradesh. Live ammunition was reportedly used by security forces. Video footage from after the demonstrations reportedly shows security forces

smashing car windows and damaging property in a predominantly Muslim-populated neighbourhood in a seemingly retaliatory fashion.

In parallel, the authorities reportedly did not take action against leaders of citizenship law supporters who advocated for hatred, constituting incitement to violence. On 20 December 2019, a Bharatiya Janata Party (BJP) leader reportedly led a large demonstration in Delhi, chanting that the police should “shoot the traitors,” referring to citizenship law protesters. The slogan was reportedly repeated two days later at a pro-BJP demonstration in Maharashtra state.

On 5 January 2020, a group of masked individuals armed with sticks, rods and sledgehammers reportedly entered the campus of Jawaharlal Nehru University (JNU) in New Delhi, where students have been at the forefront of protests and activism against the CAA. The masked men, numbering approximately one hundred, reportedly attacked students and faculty members. Twenty-six students and members of faculty were reportedly hospitalised as a result of injuries sustained. Police allegedly did not attempt to prevent or stop the violence. Journalists who arrived on the scene to report on the violence were also reportedly attacked, as were ambulances that were trying to enter the campus. It is alleged that the mob comprised of members of ABVP (Akhil Bhartiya Vidyarthi Parishad), a student body associated with the ruling BJP party. Reportedly, the ABVP denied involvement in the attacks.

Further, it is reported that the authorities used internet shutdowns on a wide scale across the country in response to protests against the CAA, justifying such actions as being necessary to maintain law and order. Shutdowns have been reported in many regions, including in Assam, Uttar Pradesh, West Bengal, Tripura, Meghalaya, Karnataka and Arunachal Pradesh states and the National Capital Territory of Delhi (NCT).

Furthermore, the Ministry of Information and Broadcasting reportedly released an advisory, cautioning television news broadcasters to “abstain from showing any content that promotes anti-national attitudes”.

While we do not wish to prejudge the accuracy of the above allegations, we express our deep concern at what appear to be undue restrictions on the rights to liberty and security of person, right to a fair trial before a competent court, rights to freedom of peaceful assembly, freedom of expression and freedom of religion or belief, and right to equal treatment before the law, in violation of articles 6, 9, 14, 18, 19, 21 and 26 of the International Covenant on Civil and Political Rights (ICCPR), and the rights to equality and non-discrimination enumerated in the International Convention on the Elimination for Racial Discrimination (ICERD).

We express our grave concern over the reportedly excessive use of force by police and security forces in response to the widespread protests across the country in relation to the Citizenship (Amendment) Act. While we recognise the challenges posed by the large

scale of the demonstrations, we are concerned by allegations of excessive force used against protesters, including the use of live ammunition, rubber bullets, large amounts of tear gas, and the beating of protesters with batons, which have caused hundreds of injuries and resulted in a number of deaths. We acknowledge that in a limited number of cases certain protesters have resorted to violence, but reiterate that only the minimum use of force necessary should be used and only if less indiscriminate and intrusive means of managing the situation have failed.

We furthermore express our concern over what appears to be several incidents of undue restrictions to the rights to freedom of peaceful assembly and of expression of protesters, ranging from internet shutdowns and curfews to the use of arbitrary detention to prevent and curtail protest. We are concerned by allegations that Section 144 of the Criminal Procedure Code has been used extensively to detain large numbers of peaceful protesters.

We are additionally concerned by reports of attacks on protesters by alleged sympathisers of political groups, in contradiction with States' responsibility to protect peaceful protesters and ensure that there is an enabling environment for protesters to assemble safely, and to take action against those who instigate violence regardless of their political sympathies.

We express further concern that the attacks and violence taking place on university campuses in relation to the demonstrations is negatively impacting on the right of students in these facilities to receive their education in a safe environment and to freely express themselves on the campus.

We express serious concern that the Citizenship (Amendment) Act appears to discriminate based on religious belief in violation of the right to freedom of religion or belief and the rights of religious minorities. The CAA also appears to be incompatible with ICERD, which prohibits discrimination based on race, colour, or national or ethnic origin and guarantees the right to equality before the law without any distinction.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legality, necessity and proportionality of the use of force in the context of the recent demonstrations. Please explain

measures taken to ensure that the use of force is exercised in compliance with international human rights law, particularly the right to life.

3. Please provide information on the domestic legal basis for the alleged restrictions to the right to peaceful assembly and freedom of expression, and how these restrictions are compatible with international human rights law and standards, including with regard to the principles of necessity and proportionality.
4. Please provide information on the legal and factual basis for the arrests and detention of political leaders, activists and protesters, including any charges brought against them, and explain how they are compatible with the international human rights obligations of your Excellency's Government.
5. Please provide information on the number of people arrested and detained during the protests. Please indicate the number of those who have been released and of those who are still in detention, as well as the specific places of their detention.
6. Please provide information on the measures undertaken to ensure fair trial guarantees for individuals charged with a criminal offence, including their right to access legal counsel, as well as other due process measures. Please also explain what measures are being taken to ensure that protesters are not subject to ill-treatment in detention.
7. Please provide information on measures taken by your Excellency's Government to carry out a prompt, impartial, independent and effective investigation into the alleged excessive force against protesters and any efforts to hold any perpetrators accountable. If no investigations have yet been undertaken, or if they have been inconclusive, please provide information for the reasons thereof.
8. Please provide information on measures undertaken to eliminate any discriminatory treatment of minorities with regard to the right to nationality and to ensure that no person belonging to ethnic, religious or linguistic minority is arbitrarily deprived of her or his nationality.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to

the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and to the regular procedure.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

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Ahmed Shaheed

Special Rapporteur on freedom of religion or belief

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 6 (1), 9, 14, 18, 19, 21 and 26 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by India on 10 April 1979, which protect the right to life, the right to not be subjected to arbitrary arrest or detention, the right to a fair trial before a competent court, the right to freedom of religious belief, the right to freedom of opinion and expression, the rights to freedom of peaceful assembly and of association, and the right to equal treatment before the law. As a state party to the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), ratified on 3 December 1968, India must also guarantee non-discrimination and equality, take effective measures to amend or eliminate racially discriminatory policies and provide effective protection and remedies.

With regard to Article 6 of the ICCPR, the Human Rights Committee, charged with monitoring compliance with the Covenant, has indicated that the obligation under Article 6 "extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life", CCPR/C/GC/36 para. 7. The obligation entails taking all necessary measures to prevent arbitrary deprivations of life, including by soldiers tasked with law enforcement missions, *id.* para. 13. The notion of arbitrariness in Article 6 includes elements of "inappropriateness, injustice, lack of predictability, and due process of law as well as elements of reasonableness, necessity, and proportionality", *id.* para. 12. The use of potentially lethal force for law enforcement purposes is an extreme measure, which should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat, *id.* While preferable to lethal weapons, the use of less lethal weapons is also subject to strict tests of necessity and proportionality, *id.* para. 14. The Human Rights Committee preventive measures include the adoption of "appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life, mandatory reporting, review, and investigation of lethal incidents and other life-threatening incidents, and the supplying of forces responsible for crowd control with effective "less-lethal" means and adequate protective equipment in order to obviate their need to resort to lethal force.", *id.* para. 13

We would also like to highlight Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, endorsed also by the Human Rights Committee, which provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms", and the Code of Conduct for Law Enforcement Officials, ensuring protesters right to peaceful assembly and without resorting to excessive use of force.

We also refer to the Joint compilation of practical recommendations for the proper management of assemblies of the Special Rapporteur on the rights to freedom of peaceful

assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/31/66, in which was stated that: “The use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality. The necessity requirement restricts the kind and degree of force used to the minimum necessary in the circumstances (the least harmful means available), which is a factual cause and effect assessment. Any force used should be targeted at individuals using violence or to avert an imminent threat. The proportionality requirement sets a ceiling on the use of force based on the threat posed by the person targeted. This is a value judgement that balances harm and benefit, demanding that the harm that might result from the use of force is proportionate and justifiable in relation to the expected benefit” (paras. 57 and 58). Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary) (para. 59). Firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (para 60).

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment examined the issue of extra-custodial use of force in his interim report to the General Assembly (A/72/178) and concluded that “any extra-custodial use of force that does not pursue a lawful purpose (legality), or that is unnecessary for the achievement of a lawful purpose (necessity), or that inflicts excessive harm compared to the purpose pursued (proportionality) contradicts established international legal principles governing the use of force by law enforcement officials and amounts to cruel, inhuman or degrading treatment or punishment. Moreover, failure to take all precautions practically possible in the planning, preparation and conduct of law enforcement operations with a view to avoiding the unnecessary, excessive or otherwise unlawful use of force contravenes the State’s positive obligation to prevent acts of cruel, inhuman or degrading treatment or punishment within its jurisdiction” (para.62(c).)

Furthermore, the use of the tactic of stop-and-search by law enforcement against individuals organizing or participating in an assembly may affect the rights to liberty and bodily security, as well as privacy. Stop-and-search must not be arbitrary and must not violate the principle of non-discrimination. It must be authorized by law, necessary and proportionate. The mere fact that an individual is participating in a peaceful assembly does not constitute reasonable grounds for conducting a search (para. 43).

With regards to security of person in Article 9(1) of the ICCPR, this right concerns freedom from injury to the body and the mind, or bodily and mental integrity regardless of whether the victim is detained or non-detained (CCPR/C/GC/35, para. 3 and 9). As interpreted by the Committee, “the right to personal security also obliges States parties to take appropriate measures (...) to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury”. Furthermore, we would like to

recall that “States have a duty to prevent and redress unjustifiable use of force in law enforcement” (CCPR/C/GC/35, para. 9).

Article 18 of the ICCPR provides that everyone shall have the right to freedom of thought, conscience and religion [...]. Article 2 (1) of the ICCPR urges the State to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as religion. Article 26 of the ICCPR also stresses all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as religion.

We would also like to bring to the attention of your Excellency’s Government the international standards regarding the protection of the rights of persons belonging to minorities. In particular, article 27 of the ICCPR establishes that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities have the right, in community with the other members of their group, “to enjoy their own culture, to profess and practice their own religion, or to use their own language”. We also refer to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them.

Any restriction on the right to freedom of opinion and expression in Article 19 of the ICCPR must meet the requirements of legality, it must meet one of the exhaustively enumerated legitimate aims of Article 19 (3), and it must be necessary and proportionate. Any attack against an individual for the exercise of their rights under Article 19 is incompatible with the Covenant. Such attacks must be subject to prompt, effective independent and impartial investigations, with a view to prosecuting and punishing those responsible, see CCPR/C/GC/34 para 23.

With particular regard to internet access, we recall that the same rights that people have offline must also be protected online, see e.g. CCPR/C/GC/34 para. 12, UN General Assembly resolution 68/167, Human Rights Council Resolutions 26/13 and 32/13, as well as the Report by the Special Rapporteur on the Freedom of Expression A/HRC/35/22 paras. 76 and 77. The complete shutdown of the internet and telecommunication networks would appear to contravene the fundamental principles of necessity and proportionality that must be met by any restriction on freedom of expression. Shutdowns fail to reach the established test for restrictions to the right to

freedom of opinion and expression under article 19(3) of the ICCPR, as well as for restrictions on the freedom of peaceful assembly and of association under articles 21 and 22(2) ICCPR. Article 21 also provides that “No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”.

We would also like to draw the attention of your Excellency’s Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

The principles of non-discrimination and equality before the law are core State obligations affirmed in ICERD. We strongly urge your Excellency’s Government to comply with its treaty obligations to ensure equality before the law and equal protection of the law. This commitment to non-discrimination and equality is clearly evident from Article 1 of ICERD broadly defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” We would also like to underscore that article 5 of the ICERD obliges States parties to guarantee the rights of all people to equality before the law, without distinction as to race, colour, or national or ethnic origin.

Furthermore, we would like to recall articles 5 and 12 of the UN Declaration on Human Rights Defenders, which provide that, for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, to meet or assemble peacefully; and that the State shall take all necessary measures to ensure the protection of anyone facing violence, threats, discrimination, or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.