

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 24/7, 27/1, 25/2, 24/5 and 25/18.

In this connection, we refer to the communication dated 16 September 2016 (UA IND 7/2016), sent to your Excellency's Government by the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the situation of human rights defenders, concerning allegations of arbitrary arrest, detention, intimidation and a travel ban against Mr. **Khurram Parvez**. Mr. Parvez is the coordinator of the Jammu Kashmir Coalition of Civil Society (JKCSS), and the chairperson of the Asian Federation Against Involuntary Disappearances (AFAD).

We thank your Excellency's Government for the prompt reply received on 29 September 2016, and take this opportunity to convey further queries and concerns, based on the information provided in the response.

According to the information provided by your Excellency's Government, Mr. Parvez has been working against the interests of the State of Jammu and Kashmir (J&K) "in the garb of being a human rights activist". It is also stated that Mr. Parvez has been involved in "anti-India activities" to "disrupt the public order by instigating and attracting more and more youth of J&K to resort to organized violent protest targeting security institutions". Nevertheless, the reply by your Excellency's Government does not provide any factual elements to support those assertions. We express our concern at the very broad and vague nature of these accusations. We are also concerned at the implication that Mr. Parvez would not be a human rights defender or that he would pretend to be one, despite his longstanding and positive engagement with the United Nations human rights mechanisms.

Your Excellency's Government also mentions that Mr. Parvez has often resorted to false propaganda, criticized and challenged the efforts and plans to bring normalcy in J&K. Again, the response does not provide any specific factual elements. We believe that, in a democratic society, the open criticism of Government is a legitimate exercise of

the right to freedom of expression of every person. It is also stated that Mr. Parvez has “incited the people for violent protest and secessionists”. Once again, we express concern at the generic nature of these statements. We would be grateful to receive more detailed information as to the exact charges against Mr. Parvez, including the specific instances in which he has reportedly incited to violence, in order to better understand the situation.

It is reported by your Excellency’s Government that Mr. Parvez was taken into preventive custody on 16 September 2016, “for his activities against the public order” under Section (U/S) 151, 107 Code of Criminal Procedure (Cr.PC). He was then released and re-detained on 21 September 2016 under the provision of the Jammu and Kashmir Public Safety Act, as according to your Excellency’s Government, “the ordinary law has not been found adequate to deter Mr. Parvez from indulging in acts of ‘anti-India activities’”. Mr. Parvez has reportedly been put under preventive detention in the Central Jail in Kot Bhalwal, Jammu, a facility that is reportedly 300 kilometers away from Srinagar, “to restrain him from indulging in activities which are prejudicial to public order”.

In this respect, we would appreciate receiving information as to why the ordinary laws would be inadequate and under whose authority this assessment was made.

According to the information received, Mr. Parvez was not allowed to travel to Geneva in September 2016, as his visit could have delayed the investigation in the cases registered against him. We kindly request your Excellency’s Government to provide further information on the specific cases against Mr. Parvez and since when those cases are open, as well as information as to why Mr. Parvez had not been arrested before. Kindly also indicate if Mr. Parvez was informed in advance of the investigation against him, and if so, when and by whom he was informed.

As clearly indicated in the communication dated 16 September 2016, we do not wish to prejudge the accuracy of the allegations received. Neither the Working Group, nor the Special Rapporteur on the situation of human rights defenders have characterized the situation as one of an enforced disappearance. However, we remind Your Excellency’s Government that the Working Group is mandated to take appropriate action in cases of intimidation, persecution or reprisal against relatives of disappeared persons, witnesses to disappearances or their families, members of organizations of relatives and other non-governmental organizations, human rights defenders or individuals concerned with disappearances (see Declaration on the Protection of all Persons from Enforced Disappearance, A/RES/47/133. Art. 13).

In addition, we would like to draw your Excellency’s Government’s attention to paragraph 23 of the methods of work of the Working Group on Arbitrary Detention, according to which, “after having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals — which are of a purely humanitarian nature — in no way prejudge any opinion the Working

Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure.

We express, once more, our serious concern that the arrest of Mr. Khurram Parvez, and/or the timing of his arrest, may represent a direct retaliation for his legitimate activities as a human rights defender, including in particular the exercise of his rights to freedom of expression and freedom of association.

We draw once again the attention of your Excellency's Government to articles 13 (3) and 13 (5) of the Declaration on the Protection of all Persons from Enforced Disappearance; Human Rights Council resolution 7/12, on adequate protection against intimidation or ill-treatment to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances and the lawyers and families of disappeared persons; articles 12 and 19 of the International Covenant on Civil and Political Rights; articles 1, 2, 6 and 8 of 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; and to Human Rights Council resolutions 12/2 and 24/24 on acts of intimidation or reprisals.

Furthermore, the above allegations appear to be in contravention with international law, in particular the right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) and articles 9 and 10 of the Universal Declaration of Human Rights (UDHR).

We also wish to draw the attention of your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights (ICCPR), which India ratified on 10 April 1979, which protects everyone's right to maintain an opinion without interference and to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through any media. Under article 19(3) of the ICCPR, restrictions on the right to freedom of expression must be "provided by law", and necessary for "respect of the rights or reputations of others" or "for the protection of national security or of public order (ordre public), or of public health and morals". In this regard, Human Rights Council Resolution 12/16 calls on States to refrain from imposing restrictions that are not consistent with article 19(3), including on discussion of government policies and political debate, reporting on human rights and expression of opinion and dissent. With respect to the use of national security as grounds to limit freedom of expression, we would like to remind your Excellency's Government that while national security is a legitimate basis for restricting the right to freedom of expression under article 19(3), it is incumbent on the State to demonstrate that it is necessary to do so to achieve a legitimate objective. As stated by the Human Rights Committee in General Comment No. 34, article 19(3) may never be invoked as a justification for the muzzling of any advocacy of human rights (CCPR/C/G/34). We would also like to draw the attention of your Excellency's Government to article 22 of the ICCPR, which guarantees the right to freedom of association. According to the Special Rapporteur on the rights to freedom of peaceful

assembly and of association, individuals exercising this right should be able to operate freely without fear that they may be subjected to any acts of intimidation (A/HRC/20/27, para. 63).

Finally, we take this opportunity to recall the serious concerns expressed in the past regarding the use of the Jammu and Kashmir Public Safety Act, as a means of preventive detention, and its effects *vis-à-vis* the targeting of human rights defenders. During her visit to India in January 2011, the former Special Rapporteur on the situation of human rights defenders was deeply disturbed by the large number of cases brought to her attention by defenders who claimed to have been targeted by the police and security forces under counter-terrorism legislation such as the Jammu and Kashmir Public Safety Act, among others. It was reported that the Jammu and Kashmir Public Safety Act, which applies exclusively to the state of Jammu and Kashmir, permits administrative detention of individuals without judicial intervention for a maximum period of two years, which is non-renewable, if the Government is “satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of the public order” (art. 8.1(a)). During her visit, the Special Rapporteur was told that these laws were being arbitrarily applied, particularly, but not solely, in areas where internal conflict or severe civil unrest exist, to provide legal grounds for a number of human rights violations against human rights defenders. In her recommendations, the Special Rapporteur called for the Jammu and Kashmir Public Safety Act, as well as other counter-terrorism legislation, to be repealed.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or www.wgeid.org or can be provided upon request.

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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Kindly provide further details as to the exact charges against Mr. Parvez and since when the cases against him have been open. Kindly also indicate if Mr. Parvez has been informed of the investigation against him prior to his detention, and if so, when and by whom he was informed.
2. Please provide detailed information on the measures taken to ensure that Mr. Parvez is provided with the guarantees of due process and fair trial, including effective access to a lawyer, as established in international human rights norms and standards, and in particular articles 9 and 14 of the ICCPR.
3. Kindly provide further information on the “activities against public order” in which Mr. Parvez has allegedly participated. Also kindly explain in what way the activities of Mr. Parvez have allegedly “challenged the efforts and plans to bring normalcy in Jammu and Kashmir”.

4. Kindly provide further information related to the allegation that Mr. Parvez is acting “in the garb of being a human rights activist”.
5. Kindly provide further information as to why the ordinary laws would be inadequate to deter Mr. Parvez from “indulging in acts of anti-India activities”, and under whose authority this assessment was made. Please also specify under which provisions of the Jammu and Kashmir Public Safety Act Mr. Parvez has been detained.
6. Kindly indicate why Mr. Parvez is being detained in the Central Jail in Kot Bhalwal, Jammu, a facility that is reportedly 300 kilometers away from Srinagar.
7. Please provide information regarding any steps taken to implement the recommendation made by the Special Rapporteur on the situation of human rights defenders following her visit to India in January 2011, to repeal of the Jammu and Kashmir Public Safety Act.

We undertake to ensure that your Excellency’s Government’s response will be available in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Khurram Parvez are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

We would also like to inform your Excellency’s Government that we are reserving the right to publicly express our concerns in the near future in a press release as we are of the view that the information upon is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency’s Government’s to clarify the issues in question.

Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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