

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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 Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the use of disproportionate force against student demonstrators, and the adoption of measures by the State authorities in Jammu and Kashmir banning 22 social media websites and apps, including Baidu, Xanga, QQ, Whatsapp, Facebook, Twitter and Skype, as well as suspending the networks providing 3G and 4G services in the region, in the context of the escalating tensions between student protesters and security forces.**

Similar restrictions on access to internet in the state of Jammu and Kashmir were the object of a previous communication sent to your Excellency's Government on 28 July 2016 (AL IND 5/2016), when mass demonstrations and civil unrest following the killing of Mr. Burhan Wani led the Indian authorities to establish a ban on access to the internet, allegedly with the purpose of blocking "the dissemination of information" that could provoke violence. We thank your Excellency's Government for your reply of 26 September 2016, which provided details on the legal framework established in India concerning the use of force by security forces in the context of demonstrations, but that nonetheless failed to address the specific reasons behind the police action in Mr. Wani's case, and did not provide sufficient information on the motives for adopting restrictions on access to internet in that context.

According to the information received:

On 15 April 2017, Indian security forces in the State of Jammu and Kashmir entered the premises of the Pulwama Decree College, engaging in clashes with students and using pellet guns and teargas shells against them. The incident reportedly took place after stones were thrown at an army vehicle by college students demonstrating against the political situation in the region, and resulted in more than 60 students being injured, some of them critically. Following these

events, a rising number of demonstrations have been taking place in different campuses of the Kashmir region.

On 17 April 2017, the Government of the State of Jammu and Kashmir ordered the shutdown of 22 social media, websites and apps, including Baidu, Xanga, QQ, Whatsapp, Facebook, Twitter and Skype, and decided to suspend the networks providing 3G and 4G services in the region. State authorities claimed that these measures were adopted in order to prevent social media from being used by "anti-national and subversive elements" to harm peace in Jammu and Kashmir. The measures have had the consequence of preventing the circulation of information, the dissemination of videos and live broadcasts of the demonstrations, and the organization of new gatherings and protests.

The blockage of internet services has been repeatedly used by authorities as a means to defuse demonstrations and social unrest in India. In the state of Jammu and Kashmir alone, authorities have according to reports, shut down internet services on 31 occasions since 2012, including the ban of websites and apps, as well as the suspension of mobile and broadband internet services.

Serious concern is expressed at the use of disproportionate force by security forces against student demonstrations, leading to the critical injuring of a large number of students. Serious concern is also expressed at the large scale shutdown of social media websites and apps, and at the suspension of the networks providing 3G and 4G services in the State of Jammu and Kashmir. These measures represent a severe restriction on the right to freedom of expression, as they impede the free exchange of information and communication for all sorts of purposes, curtail the right to freedom of peaceful assembly, and deprive people of access to essential services and basic resources.

While we do not wish to prejudice the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by this situation.

In particular, we would like to refer to articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded by India on 10 April 1979, which provide for the right to freedom of expression and freedom of peaceful assembly. Regarding the ban on websites and apps, as well as the suspension of access to internet services, we would like to remind your Excellency's Government that any restriction on expression or information on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest. In particular, a government must demonstrate that (a) the expression or information at issue poses a serious threat to a legitimate national security interest; (b) the restriction imposed is the least restrictive means possible for protecting that interest; and (c) the restriction is compatible with democratic principles.

We would also like to underline the principle enunciated by the Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions that are not consistent with paragraph 3 of article 19, including on (ii) the free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship, and (iii) access to or use of information and communication technologies, including radio, television and the Internet. These violations must not be facilitated or aggravated by abuse of states of emergency. We also would like to highlight the principle enunciated in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, acknowledged by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in his report E/CN.4/1996/39, which states that everyone has the right to obtain information from public authorities, including information relating to national security.

We would like to refer 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 to its articles 1,2,5,6 and 12.

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

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 your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide additional information concerning the events of 15 April 2015 in the Pulwama Decree College. In particular, please provide information on the legal basis and justification for using force against students and how this measure was compatible with the applicable standards of use of force in the context of demonstrations. Likewise, please provide information on the number of students injured and the measures adopted to provide them the required medical attention. Please

also indicate whether any investigation has been initiated about the use of force by security forces.

3. Please provide information about the legal basis for the restrictions on the rights to freedom of expression and of peaceful assembly through the blockage of social media websites and apps, and the suspension of 3G and 4G services in the State of Jammu and Kashmir. Please explain how these measures comply with international human rights standards, including articles 19 and 21 of the ICCPR.

While awaiting a reply, we urge your Excellency's Government to take all necessary measures to ensure that the rights to freedom of expression and assembly are fully respected in the State of Jammu and Kashmir. Moreover, we request that your Excellency's Government adopt effective measures to prevent future crackdowns on protesters and restriction on internet services.

We intend to 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 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.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders