

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; 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 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 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 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 33/30, 36/6, 35/15, 34/18, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning severe restrictions on freedom of expression and freedom of peaceful assembly and of association imposed during the past week in the state of Jammu and Kashmir, as well as the arbitrary arrests and detention of political figures, journalists, members of civil society and human rights defenders in the state, and violations to the right to life.

According to the information received:

On 5 August 2019, India's Minister of Home Affairs tabled the bill "The Constitution (Application to Jammu and Kashmir) Order, 2019" in the Upper House (Rajya Sabha) of Parliament, revoking key provisions of article 370 of the Indian Constitution, which gives Jammu and Kashmir special autonomous status. On the same day, the bill was passed despite opposition protests in Parliament. On 6 August 2019, the bill was also passed by the Lower House (Lok Sabha) of Parliament.

The revoking of key provisions of article 370 will also change the special privileges enjoyed by citizens of Jammu and Kashmir under article 35A of the Indian Constitution, including the reservation of state government jobs and exclusive right to own land in the state.

On 5 August 2019, the Government introduced the bill "Jammu and Kashmir (Reorganisation) Bill, 2019" in the Rajya Sabha, which bifurcates Jammu and

Kashmir into two Union Territories. The Lok Sabha also passed this bill on 6 August 2019. Union Territories do not have the same autonomy as states in India's federal system and are administered by the Federal Government.

In the days leading up to the passing of the above-mentioned bills, tens of thousands of additional troops from the Central Armed Police Force (CAPF) were deployed to Jammu and Kashmir in addition to the half-a-million troops already stationed there. Citing terror threats, the authorities allegedly ordered pilgrims, tourist and students to vacate the area.

Further, a curfew was brought into effect and Section 144 of the Code of Criminal Procedure was imposed in the whole of the Kashmir Valley and in some places in Ladakh, including Kargil, prohibiting any gatherings of more than 4 people, amounting to a blanket ban on peaceful assembly.

On 4 August 2019, several leading political figures in Jammu and Kashmir were placed under house arrest and have since been placed in administrative detention. Reportedly, hundreds of journalists, members of civil society, human rights defenders and other prominent citizens of Jammu and Kashmir have also been detained.

Since the night of 4 August 2019, there has been a near total communication blackout in Jammu and Kashmir, with internet access, mobile phone networks, phone landlines, and cable and Kashmiri television channels cut off. Websites of local news media were last updated on 5 August 2019. Allegedly, several journalists have reported that authorities are restricting their free movement especially to access town and villages outside Srinagar city. As a result, regional and national news media have been unable to independently and extensively cover the current situation and citizens of Jammu and Kashmir are struggling to access information on the situation in the state.

On 9 August 2019, despite the restrictions on peaceful assemblies, an estimated 10,000 citizens of Jammu and Kashmir protested in Srinagar city. Reportedly, Indian security forces opened fire using live ammunition, rubber bullets, pellet guns and tear gas, reportedly causing significant injuries.

Reports suggest that security forces have raided private homes during the night and arrested boys and teenagers.

Reportedly, the whereabouts of some of the individuals arrested or abducted in Jammu and Kashmir, including children, remain unknown.

While we do not wish to prejudge the accuracy of the above allegations, we express our deep concern over the severe restrictions on the rights to freedom of expression and freedom of peaceful assembly and of association, and violations to the right to life, in Jammu and Kashmir, and remind your Excellency's Government that such rights are protected under articles 6, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by India on 10 April 1979.

We wish to express our concerns over the adverse effects that the shutting down of the internet and telecommunication networks, as well as landline and television channels, may have on these rights, especially on the right to disseminate and receive information and the right to peacefully assemble and associate, including online. 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.

Access to the internet and telecommunications networks are crucial to prevent disinformation, and they are crucial to protect the rights to health, liberty and personal integrity, by allowing access to emergency help and other necessary assistance. Access to telecommunications networks is also crucial to ensure accountability of authorities for possible human rights violations, including the excessive use of force against peaceful protesters and others. We express our deep concern that the network disruptions will fuel chaos and unrest in Jammu and Kashmir, and that they contribute to a climate fear and uncertainty in the population.

We express our grave concern at reports on the use force by the authorities, including live ammunition. We recall that allegations of violations to the right to life in Jammu and Kashmir have been the subject of multiple communications by special procedures mandate holders, including IND 8/2019. The right to life under article 6 ICCPR restricts the use of force by authorities. As indicated by the Human Rights Committee, "States parties are expected to take all necessary measures intended to prevent arbitrary deprivations of life by their law enforcement officials, including soldiers charged with law enforcement missions", CCPR/C/GC/36 para 13. This includes a duty to use less-lethal weapons wherever possible, and to take adequate safeguards before employing less-lethal weapons, *Id.* paras. 13 and 14. In this connection, we would also like to draw the attention of your Excellency's Government to the Code of Conduct for Law Enforcement Officials, in particular article 3, and to the Basic Principles on the Use

of Force and Firearms by Law Enforcement Officials, in particular principles 9, 12, 13 and 14. Lastly, we remind that any deprivation of life contrary to domestic or international law would constitute an arbitrary deprivation of life, *Id.* para. 12. Thus, for example, the use of force resulting in the death of demonstrators exercising their right of freedom of assembly would constitute a violation of the right to life under article 6 of the Covenant, *Id.* para. 17.

Furthermore, without expressing at this stage an opinion on the facts of the case and on whether detentions of the abovementioned individuals were arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 ICCPR.

We express our most grave concerns over reports alleging the enforced disappearance of individuals by the security forces. This constitutes a clear and serious violation of international human rights law. We also wish to express grave concern over the general heightened risk of enforced disappearances, which may proliferate against a backdrop of mass arrests and restricted access to the internet and other communication networks. In this regard, we would like to refer to the International Convention for the Protection of All Persons from Enforced Disappearance, which India signed on 6 Feb 2007, as well as to the Declaration on the Protection of All Persons from Enforced Disappearance. In particular, we underline that no one shall be subjected to enforced disappearance (article 1 of the Convention and 2 of the Declaration), that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance (article 1 of the Convention and 7 of the Declaration) and that individuals should only be held in officially recognized and supervised places of deprivation of liberty, that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family and that accurate information on the their place or places of detention, including transfers, shall be made promptly available to their family members (article 17 of the Convention and 10 of the Declaration).

We express additional concern over the imposition of Section 144 of the Code of Criminal Procedure in region, that blanket bans on the right to freedom of peaceful assembly are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly (A/HRC/23/39, para. 63).

We would also like to refer to 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 articles 1, 2, 5(a), 6(b) and (c), and 12.

With reference to the above, we remind Your Excellency's Government of the duty under human rights law to provide effective remedies to victims, including the duty to conduct investigations promptly and in accordance with the principles of independence and impartiality. Where investigations reveal violations of human rights, those responsible must be prosecuted and punished, see CCPR/C/21/Rev.1/Add.13 paras. 15 and 18.

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 citizens of Jammu and Kashmir 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 information on the legal basis of the alleged communication network shutdowns in Jammu and Kashmir under both domestic law and international human rights law.
3. Please provide information on the measures taken to ensure that the use of force by the authorities in Jammu and Kashmir is compliant with human rights standards, particularly the right to life.
4. Please provide information on measures taken to ensure that any interference in the right to peaceful assembly in Jammu and Kashmir is in accordance with the law, pursues a legitimate aim and complies with the requirements of necessity and proportionality.
5. Please indicate what steps have been taken to inform family members of reportedly detained individuals about their fate and whereabouts.
6. Please provide information on the legal basis on which journalists have been denied free movement across the Kashmir Valley.
7. Please provide information on the legal basis on which scores of Kashmiri politicians, journalists, members of civil society and human rights defenders have been detained.

8. Please provide information on the legal basis of the alleged arrests of boys and teenagers.
9. Please provide information on whether the authorities have initiated investigations in compliance with human rights standards of promptness, impartiality and independence, following alleged violations of human rights law during its law enforcement operations in Jammu and Kashmir.
10. Please indicate what measures have been taken to ensure that human rights defenders in India are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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 responsible of the alleged violations.

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 issue/s in question.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention 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 urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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.

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

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders