

Mandates of 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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the right to privacy and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
AL IND 20/2020

22 December 2020

Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the right to privacy and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 45/3, 44/5, 43/4, 41/12, 43/16, 37/2 and 40/16.

In this context, we would like to draw the attention of your Excellency's Government to the information we have received regarding allegations of intimidations, searches and confiscations committed during raids performed by national security agents in Jammu & Kashmir, reportedly pursuant to the enforcement of counter-terrorism measures. The targeted individuals are human rights defenders and journalists, including Ms. **Parveena Ahangar**, Mr. **Khurram Parvez**, and Mr. **Parvaiz Ahmad Bukhari**. The premises of NGOs including the Association of Parents of Disappeared Persons (APDP), Athrout, and the Jammu & Kashmir Coalition of Civil Society (JKCCS), as well as the offices of the local newspaper *Greater Kashmir*, were also allegedly targeted.

APDP is an NGO co-founded in 1994 by Parveena Ahangar with the support of legal professionals and activists, as well as victims of enforced disappearances. Since its foundation it has been documenting cases of enforced disappearances in Jammu & Kashmir and campaigning for an end to this practice at local, national and international fora. JKCCS is a union of various non-profit organizations based in Srinagar and founded in 2000, which conducts research, collects data, provides legal advice, advocates against human rights violations and seeks impartial investigation, effective prosecution and proper reparation to victims of those acts. Athrout is a non-profit voluntary organization, which provides a wide range of humanitarian services to communities in Nawa Kadal, Srinagar. Finally, the *Greater Kashmir* is one of the most widely read newspapers, both in English and in Urdu, in Jammu & Kashmir.

Ms. **Parveena Ahangar** is a human rights defender and chair of the Association of Parents of Disappeared Persons in Jammu & Kashmir. In 2017, she won the Rafto Prize for Human Rights for her protests against enforced disappearances and for demanding justice for victims of violence and human rights violations in Jammu & Kashmir. In 2005, she was nominated for the Nobel Peace Prize. Prior concerns

regarding the use of excessive force and the arbitrary arrest of Ms. Ahangar and other members of the APDP during a march in Srinagar, were transmitted to your Excellency's Government on 5 October 2004 (JAL IND 20/2004).

Mr. **Khurram Parvez** is a human rights defender based in Srinagar. He is the spokesperson and programme coordinator of JKCCS, a human rights and civil society group working on a range of issues including extrajudicial killings. He is presently the Chairperson of Asian Federation against Involuntary Disappearances (AFAD), a federation of 13 non-governmental organizations from 10 Asian countries which voices concerns on behalf of victims of enforced disappearances. In 2016, he was the subject of two urgent appeals sent to your Excellency's Government on 16 September 2016 ([UA IND 7/2016](#)) and 11 October 2016 ([UA IND 9/2016](#)) on allegations of arbitrary arrest, detention, intimidation and travel ban issued against him in alleged reprisal for cooperating with the United Nations human rights mechanisms.

Concerns regarding the degradation of human rights and restrictions to fundamental freedoms in Jammu & Kashmir have been the subject of several previous communications this year: [UA IND 4/2020](#) (sent on 27 February 2020), [AL IND 6/2020](#) (sent on 4 May 2020), [AL IND 8/2020](#) (sent on 12 May 2020) and [AL IND 11/2020](#) (sent on 1 July 2020). We deeply regret that only one of these communications received a response from your Government (AL IND 6/2020 on 31 July 2020).

According to information received:

On 28 October 2020, the National Investigation Agency (NIA), Jammu & Kashmir Police and the Central Reserve Police Forces conducted raids on the office of the Association of Parents of Disappeared Persons (APDP) and the house of its Chair, Ms. Parveena Ahangar; the premises of the NGO Athrout; the office of the daily newspaper Greater Kashmir; the office of the Jammu & Kashmir Coalition of Civil Society (JKCCS), and the houses of its Coordinator Mr. Khurram Parvez; and against journalist Mr. Parvaiz Ahmad Bukhari.

The NIA confiscated laptops, mobile devices, and a significant amount of documents, ranging from passports to salary strips, as well as hard drives containing surveys, testimonies, report drafts and highly sensitive data collected over decades about human rights violations victims and their families. While it is not known under what law or act the agents conducted searches and seizures, it appears that warrants were not always produced authorizing them to proceed.

The NIA issued a First Information Report explaining the rationale that motivated these actions. The case was registered under the title "Money transfer to J&K by NGOs through Hawala Channel for terrorist activities in Kashmir valley". Through this official statement, the NIA explains that the targeted entities and individuals were "collecting funds domestically and abroad through donations, business contributions, etc., in the name of charity and various welfare activities such as public health and education" in order to "sustain the secessionist and terrorist activities in Kashmir Valley, as a part of a larger criminal conspiracy hatched by these NGOs, Trusts and Societies [...], prejudicial to the unity, integrity, sovereignty and security of India." These NGOs are also accused of having connections with proscribed terrorist

organizations and diffusing anti-national and incriminating ideas to arise hatred and contempt against the Government of India¹.

On the abovementioned document, reference is made to the Unlawful Activities (Prevention) Act (UAPA).² In particular, provisions sanctioning the support to terrorist organizations were invoked to allow these measures³. It has also been reported that the NIA has been conducting increasingly frequent raids in Jammu & Kashmir using this law. Other incursions against associations' premises following the same *modus operandi* are allegedly still ongoing in the region.

These actions took place in a context of generalized disquiet stirred by the passing of recent land laws⁴ that could significantly change the socio-economic panorama of the region. The people and entities that were targeted by the above mentioned alleged acts had been particularly active and vocal about the radical changes that this new legislation would trigger in Jammu & Kashmir and about the concatenation of policies and national legal acts that tend to make Jammu & Kashmir's autonomy shrink.

While we do not wish to prejudge the accuracy of the information made available to us, we express serious concern at the alleged use of counter-terrorism measures as a basis for searches, confiscations and investigations against human rights defenders, journalists and related entities. Should these allegations be confirmed, they would constitute acts of intimidation and reprisals initiated against the legitimate activities related to human rights advocacy and journalism on the situation of Jammu and Kashmir. In this context, the reported use of security and counter-terrorism legislative provisions, such as the UAPA to regulate the activities of human rights defenders and journalism is of particular concern to the Special Rapporteurs. The information received thus raises concerns that your Excellency's Government has employed its counter-terrorism financing oversight powers in a broad and arbitrary manner against human rights defenders. The acts would additionally contravene article 12 of the Universal Declaration of Human Rights and to article 17 of the International Covenant on Civil and Political Rights, ratified by India on 10 April 1979, which prohibit arbitrary interference in private matters including home and correspondence.

In this regard, we express our deep concern as to the increasingly challenging situation human rights defenders are facing in Jammu & Kashmir. Indeed, this topic has been at the core of several of the communications we have sent to your Government ([UA IND 4/2020](#) (sent on 27 February 2020), [AL IND 6/2020](#) (sent on 4 May 2020), [AL IND 8/2020](#) (sent on 12 May 2020) and [AL IND 11/2020](#) (sent on 1 July 2020)). On this particular case, these searches and seizures could constitute a form of

¹ FIR - Case No RC-37/2020/NIA/DLI

² We note that previously the Special Procedures experts have noted their profound concern as to the compatibility of this law with your Excellency's international human rights obligations" OL IND 7/2020;

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25219>

³ Unlawful Activities (Prevention) Act (UAPA), articles 17, 18, 22A, 22C, 38, 39 and 40

⁴ On 26 October 2020, the Union Territory of Jammu and Kashmir Reorganisation (Adaptation of State Laws) Third and Fifth Order, 2020 repeals 12 state laws, including historic land reforms laws, and amends 14 other laws, some of which deal with the sale and purchase of land in Jammu and Kashmir. The Third and Fifth Order remove the restriction that only a permanent resident or state subject can acquire, buy and own land in J&K.

intimidation and even harassment against the NGOs and the newspaper targeted. We are particularly concerned that these measures may be aimed at discrediting their work, in an effort to stop their reporting on regional and national political and human rights affairs. The reported seizure of their personal and professional equipment, their call data records and contacts information, could adversely affect their work and endanger and compromise their sources. We are also concerned that the reported acts of harassment and violation of the right to privacy against the abovementioned people and entities may deter other human rights defenders and journalists from reporting on issues of public interest, and human rights, which are particularly pertinent worldwide and at this territory.

In this regard, we express serious concern that the abovementioned allegations suggest a pattern of silencing independent reporting on the situation in Jammu and Kashmir through the threat of criminal sanction. In this regard, we recall that the penalization of a journalist solely for being critical of the government or the political social system espoused by the government is incompatible with the State's obligations under international human rights law. We remind that the freedom of expression also protects source confidentiality, and note that the seizure of material, including documents, hard drives and laptops which could contain privileged information, could constitute a violation of the right to freedom of expression.

The use of the UAPA is also concerning to us since this Act authorises warrantless searches and individual arrests for up to 6 months when the person is designated as "terrorist". Moreover, its broad scope makes it easily amenable to abuse. This is particularly troubling given the severity of the punishment that anyone charged may suffer. In this regard, we refer to the requirements, in particular of legality and proportionality, under article 19 (3) of the ICCPR. We further recall the 2017 joint declaration on fake news, disinformation and propaganda, in which UN and regional mechanisms of freedom of expression affirmed that "general prohibitions on the dissemination of information based on vague and ambiguous ideas, including "false news" or "non-objective information", are incompatible with international standards for restrictions on freedom of expression". As for the use of UAPA, we reiterate the concerns and conclusions of our legal analysis made available to you through a communication ([OL IND 7/2020](#)) sent on 6 May 2020 and we regret the lack of response to it.

Moreover, we express concern at the apparent lack of regard by police authorities for the rights of those charged with a criminal offence or subject to investigation. We refer, in particular, to the right of everyone charged by a criminal offence to be informed promptly and in detail the nature and cause of the charge against him (ICCPR Art. 14 (3)(a)). The lack of warrant and the long time taken to file a First Information Report stating the charges against the person who is being inspected, contravene this internationally recognised principles.

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 mandate 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 any comment you may have on the above-mentioned allegations.
2. Please provide information on the measures taken to ensure the right to effective remedies, including the investigation of the alleged violations against the journalists mentioned in this letter.
3. Please provide detailed information about the legal and factual basis of any investigation involving Ms. **Parveena Ahangar**, Mr. **Khurram Parvez**, and Mr. **Parvaiz Ahmad Bukhari**, and/or the organizations they work for and how these comply with your Excellency's Government obligations under international human rights law.
4. Please provide information on what steps are being taken to ensure that measures taken to combat terrorism financing do not infringe upon the rights to freedom of association, opinion, and expression as well as the right to take part in the conduct of public affairs guaranteed under the International Covenant on Civil and Political Rights.
5. Please indicate what measures have been taken to ensure that human rights defenders, journalists and other civil society actors are able to freely carry out their legitimate activities, including the freedom to solicit and receive financial support from domestic and international sources.
6. Please provide detailed information about the legal basis for the search and the confiscations mentioned in this communication, as well as how such measures comply with international human rights norms and standards. If any investigation were to suggest any incompatibility with international human rights law, including the right to privacy, please provide information on the return of the material seized and the appropriate remedy to the individuals concerned.
7. Please indicate what measures have been taken to ensure that Ms. **Parveena Ahangar**, Mr. **Khurram Parvez**, and Mr. **Parvaiz Ahmad Bukhari**, and all journalists and human rights defenders in India (especially in Jammu & Kashmir) are able to carry out their legitimate work in a safe and enabling environment without fear of threats, harassment or acts of intimidation and reprisals of any sort.
8. Please indicate what remedial measures are taken when measures to combat terrorism financing are undertaken without due process of law, or in contravention of domestic legal standards. Specifically, what measures to address financial and reputation harm to individuals negatively affected are undertaken.

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

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence 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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Agnes Callamard
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Joseph Cannataci
Special Rapporteur on the right to privacy

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, 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 the situation described above.

We are drawing your Excellency's Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, in particular article 13, which establishes that every State has to take steps in order to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

We would also like to recall that, in its resolution 7/12, the Human Rights Council urged Governments to take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected.

We also wish to remind that the financing of terrorism has been a concern for States evidenced by negotiation and agreement on the 1999 International Convention for the Suppression of the Financing of Terrorism which was designed to criminalize acts of financing terrorism.⁵ In parallel, a number of Security Council resolutions expressly call for the criminalization of terrorism financing from references in the landmark Resolution 1373 to the more recent Resolution 2462, which is the first comprehensive resolution addressing the prevention and suppression of terrorism financing. That resolution also reaffirms that Member States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law.⁶

We also wish to refer to the Financial Action Task Force (FATF), which has set forth international practices and guidelines aiming at preventing global money laundering and terrorist financing. The FATF recommendations, while non-binding,⁷ provide recognized international guidance for the countering of terrorism financing. Specifically, Recommendation 8 provides guidance to States on the laws and regulations that should be adopted to oversee and protect non-profit organizations that have been identified as being vulnerable to terrorist financing abuse.⁸

We further refer to the principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions which sets out that complainants,

⁵ 189 States are parties to the Convention, including Serbia who ratified it on 10 October, 2002.

⁶ We highlight specifically that, in Resolution 2462, the Security Council “[demanded] that Member States ensure that all measures taken to counter terrorism, including measures taken to counter the financing of terrorism as provided for in this resolution, comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law”; and paragraph 23 of the Resolution on non-profit organizations.

⁷ On the role of “soft law” generally in the counter-terrorism contest see Report of the Special Rapporteur A/74/335

⁸ For India's compliance, see http://www.fatf-gafi.org/media/fatf/documents/reports/mer/India_FUR8_2013.pdf.

witnesses, those conducting an investigation into such killings and their families shall be protected from violence, threats of violence or any other form of intimidation (principle 15).

We would like to refer your Excellency's Government to articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), to which India acceded in 1979, which guarantee the right to freedom of opinion and expression and the right to freedom of association respectively. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and must be necessary and proportionate.

We recall that the right to freedom of expression is a precondition for the the full development of the person, for democracy, human rights, and the fulfilment of the principles of transparency and accountability. A free, uncensored and unhindered press or other media is essential in any society, and restrictions on the rights of journalists deprives the public from their right to access information necessary to develop their own thoughts and ideas.

As stated by the Human Rights Committee, "Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights", CCPR/C/GC/34, para. 3. The protection of journalists is particularly strong. As further stated by the Human Rights Committee, "A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society", *id.* para. 13. As further held by the Committee, "the penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression" (*id.* para. 42). The arbitrary detention of journalists for exercising their right to freedom of expression is incompatible with the Covenant (*id.* para. 23). Moreover, searches, including the confiscation of material which would lead to the disclosure of journalistic sources will constitute an interference with the rights under Article 19 (2), which must comply with the requirements of Article 19 (3). As stated by the Committee, "States parties should recognize and respect that element of the right of freedom of expression that embraces the limited journalistic privilege not to disclose information sources", CCPR/C/GC/34 para. 45.

We would also 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, 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 realisation 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. Further to this, we wish to bring to the attention of your Excellency's Government article 13 of this UN Declaration which provides for the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose

of promoting and protecting human rights and fundamental freedoms through peaceful means.

We would also like to refer to Human Rights Council resolution 22/6, which indicates that domestic law should create a safe and enabling environment for the work of human rights defenders (paras. 10-13). On this topic, the Special Rapporteur on the situation of human rights defenders noted in his report to the Human Rights Council (A/64/226) that the only legal grounds upon which an interference with the freedom of association that is prescribed by law can be justified is if it meets the test as outlined by article 22, paragraph 2 of the ICCPR. This provisions requires the interference in question to be pursuant to 'legitimate aims', such as in the interests of national security or public safety; public order (*ordre public*); the protection of public health or morals, or the protection of rights and freedoms of others. Without such a legitimate aim, interference is rendered contrary to international human rights law.

We also wish to draw the attention of your Excellency's Government to the fundamental standards set out in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. In particular, we would like to refer to articles 1 and 2 which state that everyone has the right to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has the primary responsibility and duty to protect, promote and realize all human rights and fundamental freedoms. In addition, we would like to refer to article 5 (a), which provides for the right of peaceful assembly or demonstration.

Moreover, the 2015 report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/30/29) reiterates the Secretary-General's firm position that any act of intimidation or reprisal against individuals or groups for their engagement with the United Nations, its mechanisms and representatives in the field of human rights is completely unacceptable and must be halted, immediately and unconditionally (para. 47).

We also refer to the obligations of your Excellency's Government under article 17 of the International Covenant on Civil and Political Rights (ICCPR), guaranteeing the right not to be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence and Article 12 of the Universal Declaration of Human Rights which prohibits any arbitrary interference with a person's privacy, family, home or correspondence. The right to privacy is essential to human dignity, and any restriction in its enjoyment must be prescribed by law, necessary to achieve a legitimate aim, and proportionate to the aim pursued.

In this regard, we would like to draw the attention of your Excellency's Government to Human Rights Council resolution 34/7 "Recognizing that the right to privacy can enable the enjoyment of other rights and the free development of an individual's personality and identity, and an individual's ability to participate in political, economic, social and cultural life, and noting with concern that violations or abuses of the right to privacy might affect the enjoyment of other human rights, including the right to freedom of expression and to hold opinions without interference" and which notes "with deep concern that, in many countries, individuals and

organizations engaged in promoting and defending human rights and fundamental freedoms are frequently subject to threats, harassment and insecurity as well as to unlawful or arbitrary interference with their right to privacy, as a result of their activities”.