

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Working Group on Arbitrary Detention

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Working Group on Arbitrary Detention, pursuant to Human Rights Council resolutions 43/4 and 42/22.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **acts of alleged arbitrary detention and intimidation of journalists covering the situation in Jammu and Kashmir**.

Our concerns over the situation of journalists in Jammu and Kashmir have been shared with your Excellency's Government through a previous joint communication dated 6 May 2020 (IND 8/2020). We regret that no reply has yet been received to this communication.

Mr. **Fahad Shah** is a journalist and editor of The Kashmir Walla, a weekly newspaper that reports on political and human rights issues, in particular in Jammu and Kashmir. His journalistic work has been widely disseminated in international media outlets.

Mr. **Auqib Javeed** is an independent journalist based in Srinagar, Kashmir. His work has appeared in various Indian and international media publications, and is often focused on the political situation in the region.

Mr. **Sajar Gul** is a freelance journalist based in north Kashmir's Bandipora district. He writes articles for the online news magazine The Kashmir Walla.

Mr. **Qazi Shibli** is a journalist and editor of the Kashmiri news magazine *The Kashmiriyat*.

The Kashmir Times is a daily journal that published reports on political matters in Jammu and Kashmir since 1964.

According to the information received:

Alleged arbitrary detention of Mr. Fahah Shah

On 18 June 2017, the local police detained without a warrant Mr. Shah outside his home, in Srinagar, and took him on their vehicle to the local police station. From there, he was driven to the "Cargo", a detention center in Soura (about 18 kms away) without explanation. Mr. Shah was allegedly interrogated for eight hours by a group of officers who inquired about his journalistic work and his travels. Although his mobile phone was returned, his laptop was kept by

the police. During the interrogation, he did not have access to legal representation, nor could he inform his family that he had been detained. He was released on the same day with no charges.

On 8 July 2020, Mr. Shah's residence in Srinagar was attacked by unknown individuals who fired tear gas while he was inside.

In May 2020, Mr. Shah was summoned by the Srinagar police for questioning in connection with articles published in Kashmir Walla, which reported incidences of gunfight in downtown Srinagar on 19 May 2020, in which two individuals were killed and 19 residential houses were damaged. He was released after four hours of interrogations without being accused of any charge and without access to legal representation. On 10 July 2020, Mr. Shah was summoned again for questioning by Jammu-Kashmir Police for the same reasons and released after five hours. He did not have access to a lawyer during this time.

A week later, on 18 July 2020, Mr. Shah's car was damaged and its windows broken by the police officers during a counter-insurgency operation in the neighborhood. Allegedly, his car was the only one damaged during this operation.

On 3 October 2020, Mr. Shah and another colleague were returning from a reporting trip from the state of Punjab when police officers stopped his vehicle at the first checkpoint upon entering the community. An officer asked for his ID, and then went to the Senior officer at the checkpoint. Subsequently, a dozen police officers with rifles encircled the journalists, while asking them to exit the car. The Senior officer demanded Mr. Shah to hand over the journalists' mobile phones, before they were taken to the Qazigund police station, where Mr. Shah was interrogated for four hours by a deputy superintendent of police about his work, and warned him to show "self-restraint" and report "cautiously" about matters related to "national security". Mr. Shah was released at 10 pm after signing a statement mentioning that his car, phones, and other belongings were returned without any tampering. He did not have access to legal representation during the interrogation.

On 30 January 2021, a complaint was filed against the Kashmir Walla for reporting that authorities had obliged a local school in Shopian District (South Kashmir) to celebrate India's Republic Day. The police accused the Kashmir Walla of inciting enmity between groups and provoking riots. Mr. Shah and one of his colleagues were charged with "provocation to cause a riot" and "public mischief" (article 153 and 505 of the Indian Penal Code), which establish a punishment of up to three years. Mr. Shah and other members of the newspaper approached the district court in Shopian seeking anticipatory bail, however, it was denied by the court.

Alleged arbitrary detention of Mr. Auqib Javeed

From 14 to 16 July 2018, Mr. Javeed was arrested and questioned by India's National Investigative Agency (NIA), in New Delhi, after he had interviewed a Kashmiri separatist leader for an English newspaper. His personal belongings were confiscated for three days. His lawyer was allegedly barred

from attending the questionings by the NIA.

On 18 September 2020, Mr. Javeed published a story about several active Twitter users who had stopped tweeting about contentious issues in Kashmir. Allegedly, the reports showed that the police had probed 300 social-media accounts, calling them a “cyber-bullying group”. During his reporting investigation, Mr. Javeed allegedly contacted some of these users, who, anonymously said they had been questioned, intimidated by police and left off only after promising not to issue posts against the government and its policies. While preparing the story and in order to put the police version of events on record, Mr. Javeed called the Superintendent of Police (SP) of the Cyber Wing, who denied the claims of users summoned by his officers to Srinagar’s Cyber Police Station for “political tweets”.

That same day, at around 5 pm, Mr. Javeed was summoned by a State official via phone for the next day in relation to this story in the city of Shergadi, located 66 km from his home town. He was accompanied by two colleagues from the Kashmir Press Club. Their phones were taken when they entered the premises, while the journalists were asked to wait in a room. Subsequently, a police officer asked Mr. Javeed to accompany him, and asked the other two journalists to wait in the room. During the interrogation, Mr. Javeed was slapped multiple times, while officers inquired about the article he had written and accused him of publishing a fabricated story. He was also threatened, and was told that the “Kashmir police is burning houses because of people like [him] were spreading fake narratives.” Mr. Javeed was then told to change the headline of the article, as well as the picture in it, which portrayed an establishment of the Cyber Wing of the Kashmiri police. During the interrogation, Mr. Javeed had no access to legal representation. Although his phone was given back, some conversations about his journalistic work were allegedly deleted. He was released on the same day without charges.

Intimidation against Mr. Sajar Gul

On 9 February 2020, Mr. Gul reported a demolition without permission carried out by the police in Hajin. After the report was published, Mr. Gul received a call from a local police officer threatening legal action against him.

The next day, the same police officer went to Mr. Gul’s village, Shahgund, and demolished his maternal uncle’s fence and Gul’s property. Shahgund villagers started pelting stones and organized a peaceful protest in situ. The police officer filed a first information report (FIR), a complaint, against the locals including against Mr. Gul and four of his family members. The journalist has been charged with “rioting” according to Article 147, “criminal trespassing” Article 447, “assaulting public servant” and Article 353 of the Indian Penal Code. According to the defense, the journalist was in Srinagar at the moment of the alleged protests, about 40 kilometers away from the location it took allegedly took place. The FIR under number 12/2021 is still registered against Mr. Sajar Gul at Police station in Hajin.

Alleged arbitrary detention of Mr. Qazi Shibli

On 29 July 2019, Mr. Shibli was detained in Anantnag (Jammu) allegedly for reporting a story related to the deployment of security troopers in the Kashmir valley. After being questioned intermittently, he was kept in detention under the Public Safety Act for a period of 9 months and placed in solitary confinement. He was subsequently released on 24 April 2020.

In July 2020 July, he was arrested again for reporting on a Fake Encounter in Shopian Kashmir. He was reportedly detained for more than 18 days with no access to legal representation.

Closing of the Kashmir Times

On 6 September 2020, officers from the State Department informed the Kashmir Times staff that their allotment of the building was due to be closed; however, they did not show any order. Later, the newspaper manager and bureau chief went to the State Department's office and met with an officer and an assistant director to inquire about this decision, but failed to get any response. After two days, one of the officers revealed that there was indeed an order of closure, but that it could not be shared.

On 19 October 2020, around 5p.m some employees of the Jammu and Kashmir State Department entered the newspaper office and asked the staff to leave the premises. When the staff asked for the relevant printed order, they were told that they should meet the "higher-ups" of the State Department. After two days, the court order and an inventory of objects in the office was shared through WhatsApp. According to the information we received, an eviction process establishes that a notice needs to be served to the occupant before the eviction takes place, stating valid grounds on which allotment is being cancelled with a time period of not less than seven days for the occupant to respond, according to the J&K Public Premises (Eviction) Act, article 4. Up to this date, the offices of the Kashmir Times remain closed and no opportunity to appeal the decision has been granted.

While we do not wish to prejudge the accuracy of the information made available to us, we express serious concern at the reported acts of harassment and seemingly arbitrary detention and criminal proceedings and detentions levied or imposed against the aforementioned journalists, which is reportedly related to their journalistic activities on the situation in Jammu and Kashmir.

We are also deeply concerned by the alleged closure of the Kashmir Times offices, which also seems to be connected to its independent and reportedly outspoken reporting in the region. We respectfully recall that journalism constitutes a necessary service for any society, as it provides individuals, and society as a whole, with the necessary information to allow them to develop their own thoughts and to freely draw their own conclusions and opinions (A/HRC/20/17 para 3). We note that the deprivation of liberty of any individual for exercising his/her right to freedom of expression would constitute an arbitrary deprivation of liberty, contrary to Article 9 of the Covenant, (CCPR/C/GC/35 para. 17)

We also express deep concern at reports indicating that Mr. Javeed's computer and mobile phone were allegedly searched without a warrant and that data contained within them was reportedly deleted, in apparent disregard for the prohibition of

unlawful and arbitrary interference in the private life of individuals, which we recall is an essential component of media freedom. We are also particularly concerned that some of the above journalists seemingly did not have access to legal representatives while in detention, in apparent contravention of the right to counsel and to a fair trial under international human rights law. We are deeply concerned that these alleged violations of the rights to freedom of expression, privacy, and to a fair trial and defence guarantees may be part of a broader pattern of silencing of independent reporting in Jammu and Kashmir, which in turn may ultimately deter other journalists and civil society more broadly from reporting on issues of public interest and human rights in the region.

Finally, we remain deeply troubled by the fact that, in addition to being punished for it, some of these journalists were reportedly told or threatened to change the focus of their reporting, sometimes on vague national security related grounds. We remind your Excellency's Government that any limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

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 legal and factual basis for the arrests and charges brought against the aforementioned journalists and how these are compatible with your Excellency's Government's international human rights obligations under the ICCPR. Please provide information about the journalist's access to legal representation during the periods they were detained.
3. Please provide information on the legal basis for the decision of the State Department to close the allotment of the Kashmir Times office and how this decision complies with India's obligations under international human rights law.
4. Please provide information on the compatibility of the criminal charges against Mr. Javeed, Mr. Shah and Mr Qazi with your Excellency's Government's obligations under international human rights law.
5. Please indicate what measures have been taken to ensure that journalists and human rights defenders of the region 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.

We would appreciate receiving a response within 60 days. Passed this delay, 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 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.

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 the case 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 urgent appeal and the regular procedure.

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we refer to the obligations under the International Covenant on Civil and Political Rights which India acceded to on 10 April 1979, in particular the right to freedom of opinion and expression enshrined in article 19.

We would like to refer to article 9 ICCPR enshrining the right to liberty and security of person and establishing in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law as well as the right to legal assistance from the moment of detention.

The international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation, under articles 3 and 9 respectively of the Universal Declaration of Human Rights and Article 9 of the Covenant, as well as under principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Article 9 (4) also entitles everyone detained to challenge the legality of such detention before a judicial authority. United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court state that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation. Furthermore, in its General Comment No 35, the Human Rights Committee has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22) and freedom of religion (art. 18). This has also been established in consistent jurisprudence of the Working Group on Arbitrary Detention.

According to rule 45 of the Mandela Rules, the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, subject to independent review, and authorised by a competent authority. Prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43(1)(b) and 44 of the Mandela Rules.

Furthermore, article 14 upholds the right to a fair trial and equality of all persons before the courts and tribunals, the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, as well as the right to legal assistance.

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. In accordance with Article 19 (3), any restriction on the right to freedom of expression must pursue one of the exhaustively enumerated aims of the provision, it must be provided by law, and it must be necessary and proportionate.

As stated by the Committee, “The penalization of a [...] 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. Moreover, the criminalisation of speech based on notions of falsehood is in and of itself too vague to comply with the requirement of legality in Article 19 (3), see e.g. id. para. 25 and the 2017 joint declaration on freedom of expression and “fake news”, disinformation and propaganda, no. 2 litra a.

As stated by the Committee, the deprivation of liberty of an individual for exercising their freedom of expression constitutes an arbitrary deprivation of liberty contrary to Article 9 of the Covenant, see CCPR/C/GC/35 para. 17, and a concurrent violation of Article 19. Such attacks against individuals for exercising their rights to freedom of expression should be “vigorously investigated in a timely fashion, and the perpetrators prosecuted”, CCPR/C/GC/34 para. 23.

Any interference with the confidentiality of sources of journalists 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. Likewise, any restriction on the freedom of movement of journalists within or outside the territory of the State Party to the Covenant will constitute an interference with Article 19 (2), id.