

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; 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 promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

Ref.: AL IND 2/2023  
(Please use this reference in your reply)

3 April 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; 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 promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/16, 51/8, 43/4, 50/17, 49/10 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the detention and alleged ill-treatment of human rights defender Muhammad Ahsan Untoo**.

Mohammad Ahsan Untoo is a Kashmiri human rights defender in Indian-Administered Kashmir and has been the Chairperson of the International Forum for Justice and Human Rights Jammu and Kashmir. His human rights activities have included the pursuit of justice for victims of killings in Jammu and Kashmir and women victims of sexual violence by Indian Armed Forces since 1990, the identification of mass graves, the identification of victims killed or blinded by the use of lethal pellet guns on unarmed protestors, and the provision of legal aid to prisoners and families of victims of state violence. He has spent approximately an accumulative 21 years of his life in prison, on seven separate occasions.

Concerns about the misuse of counter-terrorism legislation to criminalize human rights defenders, particularly the Unlawful Activities Prevention Act ("UAPA"), 1967, have previously been raised by Special Procedures mandate holders, in particular through OL IND 7/2020, to which your Excellency's Government has not yet replied. We highlight our concern at the wide scope of activities criminalized under the Public Safety and Unlawful Activities Prevention Act, many of which would appear to be legitimate activities of assembly, dissent, expression and participation in public affairs protected by international law, as well as at what appears to be widespread and systematic use of this legislation against human rights defenders.

According to the information received:

On 5 January 2022, Mr. Untoo provided a virtual testimony in support of a universal jurisdiction claim for torture to solicitors of Stoke White Ltd., based in London, United Kingdom. On 13 January 2022, he was arrested, by the Indian authorities, without a warrant under sections 13 (unlawful activities)

and 38 (membership of a terrorist organization) of the UAPA and Section 153-A (promoting enmity between different groups) and 506 (criminal intimidation) of the Indian Penal Code in relation to tweets he had posted which the authorities alleged were secessionist. The tweets in question were related to Mr. Untoo's work as a human rights defender and described human rights violations in Jammu and Kashmir. Mr. Untoo's family became aware of his arrest through an article published on 15 January 2022 in TheQuint news website<sup>1</sup>.

Mr. Untoo was transferred to Central Jail, Srinagar until 2 June 2022 when he was additionally charged under section 8(1)(a)(i) under the Jammu and Kashmir Public Safety Act (PSA), which authorizes the government to preventively detain any person to prevent them from acting "in any manner prejudicial to the security of the State or the maintenance of the public order" for two years without authorities being required to bring charges or have a trial. He was subsequently transferred to Central Jail, Kot Bhalwal, Jammu. On 23 June 2022, Mr. Untoo was granted bail for the charges under the UAPA and the IPA after posting a bond of 100,000 INR (1221 USD) but Indian authorities rearrested him under the Jammu and Kashmir PSA despite the order of the court, and remains in Central Jail, Kot Bhalwal, Jammu presently. The practice of issuing additional charges to prevent a detainee from being released or "revolving door detentions" (immediate re-arrest upon bail under a preventive detention law) is reportedly a common practice deployed by Indian authorities against Kashmiri detainees. The Jammu and Kashmir police is yet to file any charge sheet against Mr. Untoo, and the victim has only been provided with a copy of the order of extension of his detention.

Mr. Untoo suffers from various ailments for which he has been denied adequate medical treatment. The barracks in Kot Bhalwal Jail where Mr. Untoo is detained are reportedly overcrowded. Each cell is 8 feet by 6 feet and holds 5 Kashmiri detainees. Kot Bhalwal Jail is approximately 350 km from Mr. Untoo's home, which deprives Mr. Untoo the opportunity to be visited by his family.

The food served in prisons is allegedly substandard and food items for sale are priced at exorbitant rates in comparison to the fair market price. Any complaints about facilities, food or access to healthcare by individual prisoners are reportedly met with punitive action, typically in the form of being shifted to far-off prisons located out of Jammu and Kashmir.

It is worth noting that Mr. Untoo was reportedly previously arrested on 30 December 2004, without a warrant from Priya Guest House Darya gung, Delhi by a special cell of Delhi Police. He was charged under the Indian counter-terrorism laws of the time (TADA/POTA) for allegedly acting as a Pakistani agent. During his detention by the Delhi police, he was reportedly subjected to severe physical and sexual torture by interrogators, and police commissioners. After more than four years of detention in various locations, Mr. Untoo was released for reported lack of evidence against him.

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<sup>1</sup> [J&K Human Rights Activist Ahsan Untoo Arrested by Police \(thequint.com\)](https://thequint.com)

While we do not wish to prejudge the accuracy of these allegations, we are expressing our most serious concern at the allegations of arbitrary detention and ill-treatment of Muhammad Ahsan Untoo and that his detention appears to be part of a strategy to disrupt, intimidate, detain and punish those engaging in journalism and human rights advocacy.

We are furthermore concerned by the use of the UAPA, a counter-terrorism law, against human rights defenders as a justification for arbitrary arrest and ill-treatment, and that its use may relate to his peaceful exercise of his right to freedom of expression and may be in retaliation for his legitimate human rights activities. As we previously raised in OL IND 7/2020, we are deeply concerned that the definition of ‘terrorist act’ in UAPA differs substantially from the definition offered by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism<sup>2</sup>. We further remind your Excellency Government that the definition of terrorism and terrorism offences must be ‘genuinely’ terrorist in nature in accordance with the elements identified by the Security Council in its resolution 1566 (2004).

We further express concern at persistent allegations of poor conditions of detention, patterns of issuing additional charges to prevent a detainee from being released, and at the practice of preventing a detainee from appearing in court due to no charge sheet being filed.

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.

We are issuing this appeal in order to safeguard the rights of abovementioned individual from irreparable harm and without prejudicing any eventual legal determination.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information about the factual and legal grounds for the arrest and continued detention of Mr. Mohammad Ahsan Untoo.
3. Please provide detailed information, setting out the factual basis for the charges against Mr. Mohammad Ahsan Untoo of membership of a terrorist organisation. Please specify how these charges are compatible with the principle of legal certainty and in accordance with Security Council Resolution 1566.
4. Please provide detailed information about the existing laws, regulations and procedures that guide police conduct during arrest, detention and

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<sup>2</sup> A/HRC/16/51

interrogation; and what mechanisms exist to monitor its conduct and prevent abuse of power.

5. Please explain the legal ground for rearresting Mr. Untoo after being granted bail and how the use of the Jammu and Kashmir PSA to detain individuals for up to two years without trial is compatible with human rights standards.
6. Please provide information on measures adopted to ensure the right of persons to effective remedy for human rights violations, including arbitrary arrest and detention, torture and ill-treatment. If no such measures have been taken, please explain how this is compatible with the international human rights obligations of India.
7. Please provide detailed information on healthcare services provided to Mr. Untoo during his detention, and on the overall detention conditions in which he has been held. In addition, please explain any measures taken by your Excellency's Government to bring detention conditions in Indian jails into compliance with international standards, notably the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).
8. Please provide information on the steps taken to ensure that all human rights defenders in India can carry out their legitimate human rights work in a safe environment, free from any form of restrictions, including threats, harassment, detention or ill-treatment.
9. Please provide information on how the definition of terrorism is interpreted in India's counter-terrorism legislation so as not to unduly interfere with human rights. Please also explain how your counter-terrorism legal framework ensures the right of the accused to fundamental safeguards of a fair trial, in accordance with article 14 of the ICCPR.

We would appreciate receiving a response within 60 days. Past 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.

We may 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.

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

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Mumba Malila  
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan  
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

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

Alice Jill Edwards  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

## **Annex**

### **Reference to international human rights law**

In connection with 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.

In this context, we would firstly like to recall the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, which allows no exceptions, as well as the right to humane treatment if deprived of liberty, per articles 7 and 10 of the International Covenant on Civil and Political Rights (ICCPR), to which India has been a State party since 1979.

In this respect, we would like to recall that the UN Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 5 November 2015, the "Nelson Mandela Rules") provide inter alia for appropriate accommodation, including minimum cubic content of air and floor space, lighting and ventilation (rules 12 to 17), requirements to be met regarding personal hygiene (rule 18), clothing and bedding (rules 19 to 21), food (rule 22), and healthcare services (rules 24 to 35). We also refer to paragraph 19 of the General Assembly resolution 77/209 (2022) which "Emphasizes that conditions of detention must respect the dignity and human rights of persons deprived of their liberty, highlights the importance of reflecting on this in efforts to promote respect for and protection of the rights of persons deprived of their liberty, calls upon States to address and prevent detention conditions amounting to torture or other cruel, inhuman or degrading treatment or punishment, notes in this regard concerns about solitary confinement, and encourages States to take effective measures to address overcrowding in detention facilities, which may have an impact on the dignity and human rights of persons deprived of their liberty."

Inmates are entitled to prompt and regular access to doctors and lawyers (paragraph 11 of the Human Rights Committee's general comment no. 20 on article 7). Allegations of torture and other cruel, inhuman or degrading treatment or punishment are to be promptly and effectively investigated, and the victim provided with remedies and rehabilitation, pursuant to paragraph 14 of the Human Rights Committee's General Comment no. 20 on article 7 of the ICCPR. These obligations are restated in General Assembly resolution paragraphs 19, 26 and 34-36.

In reference to the seemingly arbitrary nature of the victim's arrest, we would like to refer to article 9 of the Covenant 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. The 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), and freedom of association (art. 22). This has also been established in consistent jurisprudence of the Working Group on Arbitrary Detention.

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.

The Universal Declaration of Human Rights also establishes, through its article 10, that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his/her rights and obligations and of any criminal charge against him/her”. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, specifically principle 2, makes clear that “[a]rrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose. It should also be noted that principle 9, states that “[t]he authorities which arrest a person, keep him/her under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.” Lastly, principle 11 outlines the right of all detainees to be heard promptly by a judicial authority.

We reiterate that article 19 of the ICCPR protects the right to freedom of expression of everyone. We would like to remind your Excellency’s Government that any limitation to the right to freedom of expression must meet the criteria established by article 19(3) of the ICCPR. 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.

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, 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 realization 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6(b), which provides that everyone has the right, individually and in association with others to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We want to bring the attention of your Excellency's Government to Security Council's resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180 which require that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with States' obligations under international law, in particular international human rights law, refugee law and international humanitarian law. Counter-terrorism measures must conform to fundamental assumptions of legality, proportionality, necessity and non-discrimination. Wholesale adoption of security and counter-terrorism regulations without due regard for these principles can have exceptionally deleterious effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities and civil society.

We would like to further bring your Excellency's Government's attention to the "principle of legal certainty" under international law (ICCPR article 15(1); ECHR article 7(1)), which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined or overly broad laws are open to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations (A/73/361, para. 34).

Finally, we would like to bring the attention of your Excellency's Government to paragraphs 75(a) to (i) of the 2018 report of the Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering terrorism's (A/HRC/40/52) on the impact of terrorism measures on civic spaces and human rights defenders. We want to stress that counter-terrorism legislation should not be misused against individuals peacefully exercising their rights to freedom of expression, peaceful association, and assembly. These rights are protected under the Universal Declaration. The non-violent exercise of these rights cannot be a criminal offence. Any restriction on expression or information that a government seeks to justify on the grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate

national security interest (CCPR/C/GC/34).