

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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(Please use this reference in your reply)

5 June 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 Enforced or Involuntary Disappearances; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 52/4, 45/3, 50/17 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of Kashmiri human rights defenders Mr. Irfan Mehraj and Mr. Khurram Parvez and their ongoing persecution.

Mr. **Irfan Mehraj** is a human rights defender and journalist based in Srinagar, Indian-administered Kashmir. He has extensively covered allegations of human rights violations in Kashmir in his work as a journalist and has contributed to a range of both national and international media outlets. He is the founder of Wande Magazine and is an editor at TwoCircles.net. He has also worked as a researcher with the Jammu Kashmir Coalition of Civil Society (JKCSS), an organization that carries out human rights monitoring in Indian-administered Jammu and Kashmir.

Mr. **Khurram Parvez**, a human rights defender also normally based in Srinagar, Indian-administered Kashmir, is the Programme Coordinator of the JKCCS and Chairperson of the Asian Federation against Involuntary Disappearances (AFAD), a regional federation of organizations that voices concerns on behalf of victims of enforced disappearances and Deputy General Secretary of the Fédération Internationale pour les Droits de l'Homme (FIDH). He is known for his work on the issue of enforced disappearances, as well as his work in combatting extrajudicial killings in India and the Asian region. His arrest and detention in November 2021 were the subject of a previous communication addressed to your Excellency's Government (UA IND 19/2021). We thank you for the response, dated 5 January 2022 which was submitted in a confidential basis. On 10 March 2022, the Working Group on Enforced or Involuntary Disappearances requested further information about the case following its 126th session, to which your Excellency's Government replied on 11 April 2022.

Mr. Parvez has regularly engaged with the United Nations, including the Special Procedures of the Human Rights Council, reporting human rights abuses in Kashmir and faced restrictions and harassment from the Indian Government as a result. The case of Mr. Parvez was included in the reports of the Secretary-General on reprisals against those cooperating with the United Nations, its representatives and mechanisms in the field of human rights in 2017, 2018 and 2019 (A/HRC/36/31

para. 9, Annex I paras. 39-42; A/HRC/39/41, para. 67, Annex II paras. 23-24; and A/HRC/42/30 para. 58, Annex II para. 59). We continue to express deep concern at what appears to be concerted judicial harassment of Mr. Parvez for his human rights work.

Aside from the communication of 2021 previously referenced, Mr. Parvez was the subject of three further previous communications sent to your Excellency's Government on 16 September 2016 (UA IND 7/2016), 11 October 2016 (UA IND 9/2016) and 21 December 2020 (AL IND 20/2020), including concerns relating to allegations of arbitrary arrest, detention, intimidation, and a travel ban issued against him in alleged reprisal for cooperating with the United Nations human rights mechanisms.

We take this opportunity to once again restate the concerns and recommendations addressed to your Excellency's Government in OL IND 7/2020, sent on 6 May 2020, in connection with the Unlawful Activities (Prevention) Amendment Act, 2019, and the current counter-terrorism legislation, the 1967 Unlawful Activities Prevention Act. We reiterate our regret that the Government has not provided a reply to this communication and that the Act continues to be used as a tool to silence human rights defenders.

According to the information received:

The case of Mr. Irfan Mehraj

On 20 March 2023, Mr. Mehraj received a phone call from the National Intelligence Agency (NIA) in which he was ordered to present himself at the NIA office in Srinagar. Upon arriving at the NIA office, he was arrested, accused of several offences under the Indian Penal Code and the Unlawful Activities Prevention Act (UAPA). His arrest was based on an investigation opened by the NIA in October 2020 into allegations that certain non-governmental organizations (NGOs), as well as other groups, had been collecting funds for the benefit of nationally-proscribed terrorist organizations as part of a criminal conspiracy also said to include publications inciting hatred and contempt of the Government. The investigation was launched following a raid on the offices of the Jammu Kashmir Coalition of Civil Society (JKCCS) in the same month of 2020, referred to in IND 20/2020.

On 21 March 2023, the NIA issued a press release describing a "first arrest in NGO Terror Funding Case". In the press release, the agency announced the arrest of Mr. Mehraj, describing him as "a close associate of Khurram Parvez" and citing his work with the JKCCS, whom it accused of "funding terror activities in the [Kashmir] valley" and propagating a "secessionist agenda in the Valley under the garb of protection of human rights." On the same date, a request by the NIA through the local courts to permit the transfer of Mr. Mehraj from Srinagar to New Delhi was granted.

On 22 March 2023, Mr. Mehraj was presented at the Patiala House Court in New Delhi and remanded in custody for a period of 10 days, accused of criminal conspiracy and sedition under sections 120A and 124A of the Penal Code, and of offences under sections 17, 18, 22A, 22C, 38, 39 and 40 of the UAPA, including raising funds for terror activities, conspiracy to commit

terror offences.

On 1 April 2023, Mr. Mehraj appeared in court following the end of his remand period. Subsequently, he was returned to judicial custody in Rohini Central Prison.

On 28 April 2023, Mr. Mehraj appeared in court by video link from Rohini Central Prison. He remains in detention where he has reportedly been permitted access to his lawyer. His next court date is scheduled for 26 May 2023.

The case of Mr. Khurram Parvez

On the same date, a court in New Delhi remanded human rights defender Khurram Parvez, who was already in detention for an earlier case (see IND 19/2021), to the custody of the National Investigation Agency (NIA) (for ten days). This was in relation to a new case filed against him.

On 1 April 2023, Mr. Khurram appeared in court following the end of his remand period, along with the aforementioned human rights defender Mr. Mehraj. They were both returned to judicial custody in Rohini Central Prison.

On 26 April 2023, the office of the JKCCS in Kashmir's Bugdam District was raided by NIA personnel accompanied by members of the Jammu and Kashmir Police, with those carrying out the raid seizing documents. The office in question had reportedly been closed for some time prior to the raid.

On 28 April 2023, Mr. Parvez, appeared in court, alongside Mr. Mehraj, by video link from Rohini Central Prison. Like Mr. Mehraj, at the time of finalizing this communication it is understood that Mr. Parvez also remains in detention where he has reportedly been permitted access to his lawyer. In parallel to the case of Mr. Mehraj, his next court date is scheduled for 26 May 2023.

We express our serious concern at the arrest, detention and accusations brought against Mr. Mehraj and Mr. Parvez, which would appear to gravely conflate their legitimate human rights work with terrorism. We underline the legitimacy of their work and of the activities of the JKCCS and express our fear that the arrest and detention of Mr. Mehraj, as well as the continued detention of Mr. Parvez since 2021 and his involvement in the second case at hand, are designed to delegitimize their human rights work and obstruct monitoring of the human rights situation in India-administered Jammu and Kashmir.

As we have repeatedly stressed in the past, counter-terrorism legislation should never be used to sanction human rights defenders. We express our abhorrence at the continued instrumentalization of national-security measures and discourse to undermine, obstruct and persecute those peacefully promoting, defending and seeking the advancement of human rights in the country, as well as to frustrate accountability for human rights violations. As we previously raised in OL IND 7/2020, we are deeply concerned about the definition of 'terrorist act' in the UAPA, which

substantially departs from the model definition offered by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and provides broad powers to the executive, without oversight or control from the judiciary. 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). Conflation of human rights work with terrorism is inconsistent with the obligations of State affirmed by the Security Council that counter-terrorism activities by States should not conflict with other international law obligations, particularly human rights, and with the agreed consensus of Member States contained in the Global Counter-Terrorism strategy opposing the misuse of counter-terrorism measures against civil society (A/RES/60/288).

We also note our deep concerns about allegation of “terror funding” and highlight that the Financial Action Task Force (FATF) has set forth international practices and guidelines aimed at preventing global money laundering and terrorist financing. The FATF recommendations, while non-binding, provide recognized international guidance for the countering of terrorism financing. Recommendation (1) states that “countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified”. Recommendation (8) provides guidance to States on the laws and regulations that should be adopted to oversee and protect NPOs that have been identified as being vulnerable to terrorist financing concerns. Such measures must be “focused and proportionate”; “a ‘one size fits all’ approach to address all NPOs is not appropriate.” FATF has reaffirmed that State compliance with Recommendation (8) and the other FATF Recommendations “should not contravene a country’s obligations under the Charter of the United Nations and international human rights law to promote universal respect for, and observance of, fundamental human rights and freedoms, such as freedom of expression, religion or belief and freedom of peaceful assembly and of association.” We are concerned that these arrests appear to contravene a “risk-based” approach to countering terrorism finance and appear to demonstrate a misuse of countering terrorism finance laws and practice to disproportionality target civil society.

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 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 information as to the factual and legal basis for the arrest and detention of Mr. Mehraj and Mr. Parvez, including the reasons for any charges being pressed against them, and how this complies with a strict understanding of terrorism as put forth in international legal norms including, but not limited to, United Nations Security Council resolution 1566 (2004).

3. Please provide information as to the rationale and legal basis for the transfer of Mr. Mehraj to New Delhi from Srinagar, and for the remand of Mr. Mehraj and Mr. Parvez in NIA custody from 22 March 2023 to 1 April 2023.
4. Please provide information as to the legal and factual basis for the alleged raid on the closed office of the JKCCS on 26 April 2023 and seizure of documents from the premises.
5. Please provide information on how the definition of terrorism in the UAPA counter-terrorism legislation is interpreted in a manner that does not unduly interfere with the legitimate exercise of human rights. Please safeguards of a fair trial and due process are granted for persons accused of terrorism related offenses, in accordance article 14 of the ICCPR.
6. Please address how the countering terrorism finance measures applicable in India are compatible with the principle of legal certainty, and if any risk assessments have been carried out in line with FATF recommendation 8.

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 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 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

Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 9 and 22 of the International Covenant on Civil and Political Rights (ICCPR), to which India acceded on 10 April 1979. These articles guarantee the right to liberty and security of the person and the right to freedom of association respectively.

Concerning article 9, which guarantees the right to liberty and security of person, the Human Rights Committee, in its general comment no. 35 interpreting the article's scope, has underscored the arbitrariness of any arrest or detention without a legal basis and further held that an arrest or detention may be arbitrary irrespective of its being authorized by domestic law. In the same comment, the Human Rights Committee stated that the notion of "arbitrariness" introduced in article 9 should be broadly interpreted to include elements of "inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality."¹ The Committee also held any arrest or detention carried out as punishment for the legitimate exercise of the rights as guaranteed by the Covenant to be arbitrary.

We recall that the definition of "terrorism" and "terrorism offences" must be confined to acts that are 'genuinely' terrorist in nature in accordance with the elements identified by the 19 UN Sectoral Conventions on terrorism offences, Security Council in its resolution 1566 (2004) and the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, and consistent with the definition of terrorism offered by the mandate of the UN Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism (E/CN.4/2006/98, paras. 26-50 and 72; A/HRC/15/51, para. 28). Criminal offences must thus be set out in precise and unambiguous language that narrowly defines the punishable offence. We further refer to the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 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. These resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law.

We underline that counter-terrorism measures must conform to fundamental assumptions of legality, proportionality, necessity and non-discrimination. Indiscriminate adoption of security and counter-terrorism regulations without due consideration to these principles can have exceptionally deleterious effects on the protection of fundamental rights, which disproportionately affects minorities, historically marginalized communities and civil society.

¹ Human Rights Committee, *General Comment No. 35 – Article 9 (Liberty and security of person)*, CCPR/C/GC/35, para 12.

We further bring to your Excellency's Government's attention the "principle of legal certainty" under international law (ICCPR article 15(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).

We also refer to the report of the Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering terrorism's (A/HRC/40/52), paragraphs 75(a) to (i) on the impact of terrorism measures on civic spaces and human rights defenders, stressing 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 and the International Covenant on Civil and Political Rights. 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 counterterrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34).

We would also like to refer 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, which state that everyone has the right to promote and to strive for the protection and realization of human rights and that each State has a prime responsibility and duty to protect, promote and implement all human rights.

We would further like to refer to articles 6(b), which states that everyone has the right, individually or in association with others, to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; 6(c), which states that everyone has the right, individually or in association with others, to study, discuss, form and hold opinions on the observance in law and in practice of all human rights and fundamental freedoms and to draw public attention to these matters; and 9(3)(a), which states that everyone has the right individually and in association with others, inter alia, to complain about the policies and actions of individual officials or governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means.

We would also like to draw attention to article 12 of the Declaration, and in particular 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.

Moreover, we wish to draw your Excellency's Government attention to articles 13(3) and 13(5) of the Declaration on the Protection of all Persons from Enforced Disappearance, which requires that steps be taken 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; and to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

Finally, we would 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.