

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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 situation of human rights defenders and the Special Rapporteur on freedom of religion or belief

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8 August 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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 situation of human rights defenders and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 49/10, 51/8, 52/9, 50/17, 52/4 and 49/5.

In this connection, we offer the following comments regarding the counter-terrorism legislative and regulatory framework applicable to Jammu and Kashmir since the abrogation in August 2019 of its special autonomous status pursuant to Article 370 of the Indian Constitution. We highlight that the present architecture—including relevant provisions of the Unlawful Activities Prevention Act, Public Safety Act, National Security Act, Code of Criminal Procedure, Penal Code, and Foreign Contribution Regulation Act—is ripe for human rights abuse in potential violation of your Excellency's Government's obligations under international human rights law, particularly the obligation to respect, protect, and fulfill the rights to equality and non-discrimination, the rights to freedom of expression and freedom of association, and the right of liberty and security of person. We especially note the undue harms that could arise from the concurrent and/or consecutive application of these laws and regulations against the same individual, group, or entity, thus compounding the potential human rights consequences on them, as well as their families and communities.

We reiterate in this context the serious issues highlighted by Special Procedures mandate-holders with regard to the revocation of Jammu and Kashmir's autonomous status and contemporaneous allegations of undue restrictions on freedom of expression, assembly, and association against civil society actors, human rights defenders, political figures and journalists, as well as youth, particularly boys ([IND 16/2019](#)). Special Procedures mandate-holders have also jointly addressed the issues related to the applicable counter-terrorism framework, namely the Unlawful Activities Prevention Act and Amendment, particularly given the context of ongoing allegations of discrimination directed at religious and other minorities ([IND 7/2020](#)). In addition, Special Procedures mandate-holders have issued multiple communications on individual allegations of human rights violations including arbitrary detention, extrajudicial killings, enforced disappearance and torture and ill treatment, intimidations, and reprisals against human rights defenders, journalists, lawyers, political dissidents, and Muslim and other minorities in Jammu and Kashmir—all on the basis of counter-terrorism or national security more broadly ([IND 4/2020](#); [IND](#)

6/2020; IND 8/2020; IND 11/2020; IND 4/2021; IND 9/2021; IND 11/2021; IND 15/2021; IND 19/2021; IND 21/2021)—as well as the sudden closure of the Jammu and Kashmir State Human Rights Commission, which renders people in the region with severely limited legal recourse to seek redress and accountability for human rights violations (IND 11/2020).

We recall that effective measures to counter terrorism and violent extremism conducive to terrorism and respect for human rights, fundamental freedoms, and the rule of law are complementary and mutually reinforcing.¹ As ever, we remain available to provide technical assistance to your Excellency's Government in order to support full compliance of your counter-terrorism and broader national security architecture with your obligations under international law, including international human rights law, international humanitarian law, and international refugee law.

Applicable International and Human Rights Law Standards

We underline in this context your Excellency's Government's international human rights law obligations, including to promote and protect the rights to freedom of opinion and expression, freedom of peaceful assembly and association, freedom from arbitrary detention, and protection from discrimination pursuant to the Universal Declaration of Human Rights (UDHR), and variously protected by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which India acceded to on 10 April 1979, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which India ratified on 3 December 1968, and the Convention on the Rights of the Child (CRC), which India acceded to on 11 December 1992.

We refer specifically to the rights enshrined in articles 9, 17, 19, 21, 22, 25 and 26 of the ICCPR which guarantee the rights of every person to be protected against arbitrary detention and arrest and arbitrary or unlawful interference with her privacy, family, home and correspondence or reputation; the right to freedom of opinion and expression; the right to freedom of peaceful assembly and of association; the right to participate in public affairs and the right to equality and non-discrimination before the law. We recall that any restrictions on these rights on counter-terrorism grounds must comply with the objective criteria of legality, proportionality, necessity, and non-discrimination under international human rights law, including by being the least intrusive means capable to achieve a legitimate aim. (ICCPR, arts. 17, 19, 21, 22; A/69/397, para. 30). Pursuant to article 2(3)(a) of the ICCPR, States parties are further obliged to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

We stress the importance of ensuring non-discrimination and minority rights in particular. Article 2(1) of the ICCPR provides that your Excellency's Government undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Article 27 of the Covenant further stipulates that where ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the

¹ See e.g., UN Security Council Resolution 2617, S/RES/2617 (2021).

other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. Moreover, we would like to remind your Excellency's Government that article 18 of the ICCPR guarantees the right of freedom of thought, conscience, and religion: "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching." The Human Rights Committee stressed in General Comment No. 22, paragraph 2 that it "views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community."

We also remind your Excellency's Government that article 19 of the ICCPR states that "everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". The right to freedom of opinion and expression is reflected also in global and regional human rights treaties and while the freedom of expression may be subject to certain limitations, the freedom of opinion is absolute (CCPR/C/GC/34, general comment no. 34, para 9). The conditions for permissible restrictions are reflected in article 19(3) ICCPR which provides that any limitation must be determined by law, be necessary and proportionate and pursue a legitimate objective. Therefore, any restriction on freedom of expression or information that a government seeks to justify on grounds of national security or counter terrorism, must have the genuine purpose and the demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). In particular, the requirement of legality necessitates that laws are "formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution." (CCPR/C/GC/34, general comment no. 34, para 25.) Precision is essential in the use of exceptional counter-terrorism powers, and ambiguity must be remedied to ensure adherence to international human rights obligations. The Human Rights Committee has particularly highlighted that prohibitions on the "encouragement", "praising", "glorification", or "justification" of terrorism or of extremist activity must adhere to the requirement in article 19(3) (CCPR/C/GC/34, general comment no. 34, paras. 24, 25, 46, 50 and 51).

We also recall article 21 of the ICCPR, which recognises that the right to freedom of peaceful assembly should be enjoyed by everyone, as provided for by article 2 of the Covenant and resolutions 15/21, 21/16 and 24/5 of the Human Rights Council. In its resolution 24/5, the Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs and human rights defenders (A/HRC/26/29, para. 22.). We also recall article 22 of the ICCPR protects the right to freedom of association, which protects the rights of everyone to associate with others, to pursue common interests. Freedom of association is closely linked to the rights to freedom of expression and to peaceful assembly and is of fundamental importance to the functioning of democratic societies. The rights to freedom of

peaceful assembly and freedom of association can only be restricted in very specific circumstances, where the restrictions serve a legitimate public purpose as recognized by international standards and the restrictions must be a necessary and proportionate means of achieving that purpose within a democratic society, with a strong and objective justification.

Compatibility of the Domestic Counter-Terrorism Legal Framework with International Human Rights Law

Unlawful Activities Prevention Act

The Unlawful Activities Prevention Act of 1967 and subsequent amendments provide specific procedures to deal with terrorist activities, including the designation of “terrorist” organizations and individuals. The Act also assigns executive authorities expansive investigative and asset seizure powers where individuals are responsible for acts “likely to threaten” or “likely to strike terror in people”; permits search, seizures, and arrests based on “personal knowledge” of police officers absent written validation from a judicial authority; reverses the burden of the proof on the accused where governmental authorities find arms or fingerprints of the accused on materials associated with terrorist acts; stipulates up to 180-day pre-charge detention and 6-month pre-trial detention without evidence or custodial justification and with stringent bail provisions; and extends imprisonment to seven years where an individual, among others, commits, takes part in, or abets “any unlawful activity” (see IND 7/2020).

We would like to recall to your Excellency’s Government the previous communication IND 7/2020 regarding the compatibility of the Unlawful Activities Prevention Act (UAPA) with India’s international human rights obligations, including as applied in Jammu and Kashmir. We echo in particular our observations regarding the overbroad and imprecise underlying definitions and criteria for a “terrorist threat” and “terrorist act” (IND 7/2020, pp. 3-6). We previously underscored the dangerous risk of conflating human rights and civil society activities with terrorist activities (IND 7/2020, p. 7), and we continue to highlight the acute dangers of such conflation and potential enforcement of the UAPA against human rights defenders and civil society members, including those that report on alleged human rights violations in the region or express opinions criticizing the revocation of Jammu and Kashmir’s autonomous status or other political decisions. In this regard, we wish to emphasize your Excellency’s Government’s obligation to promote the rights to freedom of expression and association and non-discrimination, including on the basis of religion.

We stress that counter-terrorism and broader national security grounds must not be weaponized as a tool to repress fundamental rights and freedoms. Any rights limitations on these grounds must meet the objective criteria of proportionality, necessity, legality, and non-discrimination. We stress in this context that “[t]he onus is on the Government to prove that a threat to one of the grounds for limitation exists and that the measures are taken to deal with the threat” (A/61/267, para. 20).

We further reiterate the observations previously expressed by Special Procedures mandate-holders regarding the concentration of powers with the Executive under the UAPA and the vulnerability of such powers to abuse. We also reiterate our observations about the expansive powers to investigate, seize property, and designate and detainee individuals, including through an encroachment into the “pre-criminal” sphere based solely on suspicions of likelihood to threaten or strike terror (IND

7/2020, pp. 6-7). The provision for preventive detention without charge or trial, expanding your Excellency's Government standard pretrial detention of 60-90 days to 180 days, poses particular challenges to the right to liberty and security, as well as fundamental due process and fair trial rights under international human rights law, such as these right to presumption of innocence. We appeal to your Excellency's Government to take all necessary measures to guarantee their rights not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 ICCPR. We also underscore in this context the right to protection of the law against interference or attacks on a person's privacy, family, home, honor, and reputation.

Public Safety Act

The 1978 Jammu and Kashmir Public Safety Act continues to apply to Jammu and Kashmir after abrogation of its autonomous status. The Public Safety Act provides for detention "with respect to any person with a view to preventing him from acting in any manner prejudicial to ... the security of the State or the maintenance of the public order," including by "promoting, propagating, or attempting to create, feelings of enmity or disharmony on ground of religion, race, caste, community, or region" (Section 8(1), (3)). Preventive detention without trial is stipulated for a maximum period of two years for individuals acting in any manner prejudicial to the security of the state (Section 18(1)(b)). Section 10(b) stipulates that a detainee may "be removed from one place of detention to another place of detention by order of the Government." Section 13 states that the grounds of the detention order must be disclosed to the detainee within five or exceptionally, ten days, but clarifies in this regard that the authority is not required to disclose facts "which it considers to be against the public interest to disclose."

We note that the Public Safety Act (PSA) raises distinct human rights challenges, including because it grants authorities expansive powers and discretion to detain individuals based on what are vague and conclusory grounds allegedly related to terrorism, including due to alleged "terrorist activities," "terrorist funding," "disruption to or activities prejudicial to the maintenance of public peace and order," "anti-national activities," "sedition," "creating panic," or "motivating people to secede." Section 8 of the PSA, labeled 'Detention of Certain Persons,' authorizes preventive detention of up to two years if the authorities believe that the person will act in any manner "prejudicial to the security of the State or the maintenance of the public order." We recall that the failure to use precise and unambiguous language in relation to terrorism and national security offences fundamentally affects the protection of a range of fundamental freedoms and rights. We observe that the PSA introduces great ambiguity and vulnerability to abuse by State officials as it does not define these fundamental terms including "security of the State" of "public order."

We highlight that, as with the UAPA, the PSA may be invoked and applied against individuals like political dissidents, public figures, and civil society partaking in legitimate activities, in contravention of the rights to freedom of expression and freedom of association under articles 19 and 22 of the ICCPR. In this context, we remind your Excellency's Government that the Human Rights Council has expressed grave concern that "in some instances, national security and counter-terrorism legislation and other measures . . . have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law" (see, e.g., A/HRC/RES/25/18). We specifically remind your Excellency's Government that a vague and broad scope of anti-terrorism legislation

risks contravening the principle of legality, among others (CCPR/C/GC/34, para. 50). We further stress that arrest or detention as punishment for the legitimate exercise of other rights, including the right to freedom of opinion and expression, is per se arbitrary (CCPR/C/GC/35).

Further, we understand that preventive detention under the PSA may be invoked by administrative authorities based on a dossier, distinct from a warrant (section 8). Section 13(2) of the PSA allows the detaining authority to refrain from disclosing “any facts [of detention] which it considers to be against public interest” to the detainee. These provisions raise serious arbitrary detention, due process, and fair trial challenges in potential violation of articles 9 and 14 of the ICCPR. They also serve to weaken in substance and effect Section 13(1) of the PSA, which requires ‘promptness’ to communicate the grounds of detention to the detainee but also allows for ‘exceptional circumstances’ where delayed disclosure is warranted. Moreover, the PSA is premised on a ‘subjective satisfaction’ standard, which allows authorities to infer (to their subjective satisfaction), from previous conduct or associations with unlawful groups, that a person is likely to act prejudicially to the State and detain the person on that basis. We note that this burden of proof is so low as to risk contravening the international law requirement of legality and may result in infringement of their right to be free from arbitrary deprivation of liberty as protected by article 9 of the ICCPR. We echo in this context the decades-long stance of the UN Human Rights Committee, expressing concerns about your Excellency’s Government’s reliance on special powers under legislation including the Public Safety Act and National Security Act (CCPR/C/79/Add.81, para. 18).

We also note that Section 10 of the PSA allows for the transfer of detainees to different jails and centers outside of the Jammu and Kashmir region. We underscore the importance of guaranteeing access to counsel and communication to family members of detainee whereabouts in line with article 14 of the ICCPR. We stress that families must not be left to file missing persons requests with authorities when their family members are detained and taken into custody. We also underscore in this context Section 5 of the Mandela Rules guaranteeing detainees families visits and communication, as well as notification to families of detainee imprisonment, serious illnesses, injury, death, and transfers to other detention centers and institutions.

We find that several other provisions of the PSA appear to be vulnerable to abuse. The Act does not allow for ordinary access to a judicial authority, nor does it provide for judicial review of grounds of detention or any independent appeals process in potential contravention of the right to be free of arbitrary arrest and deprivation of liberty. Section 15 provides that a detention order be referred within four weeks of the date of detention to the Advisory Board. Section 16(5) provides a bar on legal representation for detainees and requires proceedings of the Advisory Board to be confidential. These sections raise significant human rights challenges with regard to the right to counsel and adequate legal aid as protected by article 14 of the ICCPR. Sections 18(2) allow for detention of foreign nationals—including “a person residing in the area of the State under the occupation of Pakistan” (section 8(b))—for indefinite periods “in case his expulsion from the State has not been made possible.”

Basic procedural safeguards appear to be missing in the PSA. The PSA does not mandate a trial nor contain any limits on the number of times the government may impose a new period of detention invoking the Act. Section 19(2) provides “there shall be no bar to making of a fresh order of detention against a person on the same

facts as an earlier order of detention” where the prior detention was not based on a technical error or revoked by apprehension. This provision may be vulnerable to abuse by authorities that may wish to deliver repeated detention charges and orders on the same grounds in order to delay the release of detainees, or to maintain their detention indefinitely without trial. We stress that indefinite detention absolutely contravenes the protections guaranteed by article 9 of the ICCPR.

Lastly, we observe that Section 22 of the PSA provides immunity and a complete bar on criminal, civil, or legal proceedings against any person for anything done or intended to be done in good faith in pursuance of the provisions of the Act. We find that this section raises significant issues of abridging remedies guaranteed to individuals in article 2(3) of the ICCPR. We observe that these provisions collectively and impermissibly broaden the discretionary powers of authorities.

For all of the above reasons, we observe that without rigorous procedural safeguards and independent appeals mechanisms, the PSA including its preventive detention provisions may be used by authorities to quell legitimate expression, including on discriminatory grounds against Muslim and other minorities and against youth and adolescent boys, in potential violation of the well-settled rights to equal treatment before law and non-discrimination under the ICCPR. We note in this regard the related obligations of your Excellency’s Government under the ICERD and CRC. We further underscore that counter-terrorism should, to the broadest possible extent, be entrusted to civilian authorities whose functions relate to combating crime and whose performance of counter-terrorism functions is pursuant to ordinary powers (A/HRC/16/51, Annex, Practice 3(1)).

National Security Act

The National Security Act is a preventive detention statute, which was enacted in 1980. The Act operates as a central framework for India’s counter-terrorism and national security legislation and became applicable to Jammu and Kashmir upon the abrogation of Article 370 and the state reorganization Bill. The Act allows for preventive detention for up to 12 months if authorities are satisfied that the individual is a threat to national security or law and order.

We understand that since the revocation of Jammu and Kashmir’s autonomous status, the National Security Act (NSA) now applies throughout the region, and operates to complement the above discussed counter-terrorism laws. We highlight that the NSA may be misused either alone or in conjunction with the UAPA and PSA, including to further extend preventive detention absent charge or trial (up to 12 months without trial), raising potential due process and fair trial rights violations. As with the terminological vagueness of “public order” under the PSA, we note that the “public order” and national security grounds of the NSA may be overbroad, imprecise, and vulnerable to human rights abuse. Among other interpretations, we understand that the NSA can be invoked by law enforcement officials in cases of alleged religious conversion, cow slaughter, among other religious acts, and may therefore be particularly vulnerable to disproportionate enforcement against Muslim and other minorities. We reiterate that under international human rights law, the burden is on your Excellency’s Government to demonstrate that a legitimate national security exists and that the measures taken in fact deal with that threat (A/61/267, para. 20).

Code of Criminal Procedure

The Code of Criminal Procedure also became effective in Jammu and Kashmir upon the abrogation of Article 370. It grants police officers wide authority to arrest and detain individuals without a warrant as a preventive measure. Among other provisions, Section 107 grants the Executive Magistrate “wide authority to require an individual to show cause as to why she should be ordered to execute a bond upon receiving information that ‘any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility.’” Section 151 grants police officers the authority to “arrest individuals without orders from Magistrate or a warrant if the police officer believes the offense cannot be prevented otherwise.”

We note that in conjunction with the UAPA, PSA, and NSA, the Code of Criminal Procedure (CrPC) also provides for detention and pursuant to sections 107 and 151, may be invoked in cases where, among others, individuals have criticized the abrogation of Jammu and Kashmir’s autonomous status or otherwise expressed political dissent. The CrPC stipulates the joint application of these two provisions whereby an individual may be arrested under section 151 and proceedings against the individual can then be initiated under section 107. These provisions allow for arrests for “nuisance or apprehended danger” and the “power to issue order in urgent cases of nuisance or apprehended danger” without orders from the Magistrate or a warrant, so long as the police officer believes the offense cannot be prevented otherwise. Notwithstanding the language in the provision suggesting its exceptional use only in emergency situations, we observe that such expansive discretionary powers in the hands of law enforcement, absent adequate human rights safeguards, are vulnerable to arbitrary and discriminatory enforcement.

Penal Code

The Indian Penal Code became effective in Jammu and Kashmir upon the abrogation of Article 370 and includes several provisions criminalizing expression that is considered objectionable to the State, including:

- Sedition, defined in Section 124A as “words, either spoken or written, or by signs, or by visible representation, or otherwise ... which bring or attempt to bring into hatred or contempt, or excite or attempt to excite disaffection towards, the Government”;
- Imputation, assertions prejudicial to national integration, defined in Section 153B as any communication “concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community” which “causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons”; and
- Statements conducive to public mischief, defined in Section 505 as “any statement, rumour or report ... with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility.”

We highlight shortcomings in provisions of the Indian Penal Code that risk criminalizing protected expression and contravening the basic requirement of legality. We understand that the Penal Code may be invoked separately and also in conjunction

with the UAPA and other counter-terrorism and national security laws. We note that the Penal Code may be used to suppress voices of legitimate dissent including by human rights defenders, journalists, political dissidents, and minorities. We stress that labeling such lawful dissent as acts of terrorism, sedition, or other criminal offenses would per se violate the fundamental right to freedom of opinion and expression and would also pose significant risks of violating the rights to freedom of religion or belief and association, among fundamental rights and freedoms. We underscore that the Human Rights Committee in General Comment No. 34 has clearly stated that the right to seek, receive, and impart information and ideas of all kinds as stated in Article 19 of the ICCPR includes political discourse, commentary on one's own and public affairs, cultural and artistic expression, and discussion of human rights, as well as expression of criticism or dissent.

We stress the imprecise and ambiguous language in sections 124A (sedition), 153B (assertions prejudicial to national integration), and 505 (statements conducing to public mischief) of the Penal Code. The charge of "sedition" under section 124A may be brought against "[w]hoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in with [India]." Under this section, "disaffection" is defined as "disloyalty and all feelings of enmity"—the latter category lacks specificity sufficient under the requirement of legal certainty. We note that the charge is not applicable to "comments expressing disapprobation of the measures of the Government" as long as those statements do not excite or attempt to excite "hatred, contempt, or disaffection." We observe that this exception is not sufficiently narrow to protect legitimate political dissent and other expression as those legitimate views can readily be characterized as "disaffection."

Similarly, sections 153A, 153B, and 295A of the Penal Code prohibit hate speech, speech "likely to cause disharmony or feelings of enmity or hatred or ill-will" between "members of any religious, racial, language or regional group or caste or community," and "deliberate and malicious" speech intended to outrage religious feelings. We note that these provisions are overbroad, lack specificity, and risk codifying subjective, imprecise standards vulnerable to abuse. The phrase "disharmony and all feelings of enmity" in particular lacks legal precision. Section 505 further prohibits the publication or circulation of statements which intend to or are likely to cause or incite "fear or alarm to the public" or "any class or community of persons to commit any offense against any other." However, the provision does not specify what amounts to such "fear or alarm."

We emphasize that journalists, civil society and human rights defenders make important contributions to public debate and limitations on freedom of expression must be necessary, proportionate, and narrowly tailored, which does not appear to be the case here. Moreover, we recall that international human rights law offers a sophisticated and nuanced framework for challenging the promotion of doctrines of the incitement of racist and religious violence, including under the ICERD, ICCPR, Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence—none of which appear to be referenced in the applicable domestic law framework. We remind your Excellency's Government that such measures must also be compatible with requirements and limitations set out in articles 19(3), 21, and 22(2) of the ICCPR²,

² See also ECHR, art. 6 (affirming the principle of legal certainty).

ensuring that there are no arbitrary interferences with the freedom of expression, freedom of peaceful assembly and freedom of association of journalists, human rights defenders, and civil society actors.

Foreign Contribution Regulation Act

The Foreign Contribution Regulation Act of 2010 regulates the acceptance and use of foreign donor funding and assistance for non-profit organizations and prohibits foreign funding “for any activities detrimental to the national interest.”

We stress that the Foreign Contribution Regulation Act (FCRA) may be abused to abridge the rights of human rights defenders and civil society actors to access foreign funding as protected by the right to freedom of association. We underscore that the right to freedom of association under the ICCPR relates not only to the right to form and register, but also guarantees the right of such an association to freely carry out its legitimate activities, including the freedom “to solicit and receive voluntary financial and other contributions” (A/HRC/RES/22/6).

We recall in this context the analysis carried out by the previous Special Rapporteur on the rights to freedom of peaceful assembly and association on the potential non-conformity of the FCRA with India’s international human rights obligations.³ We observe that the FCRA and its registration renewal and broader reporting requirements contain broad and vague terms that allow for expansive discretion in the investigation and closure of human rights organizations and other civil society groups that exercise legitimate and protected activities, including human rights investigations, religious and cultural activities, and political dissent. We underscore that “the right to freedom of association equally protects associations that are not registered” (A/HRC/20/27, para. 96) and we reaffirm the rights of human rights defenders to advocate for rights and the responsibility of your Excellency’s Government to ensure a safe and enabling environment in accordance with international human rights law standards and norms, including the Declaration on Human Rights Defenders, which stipulates under article 5 (b) and (c), that there is a right of all persons to form, join and participate in non-governmental organizations, associations and groups; and to communicate with non-governmental or intergovernmental organizations;. We note that the dissolution and delayed operations of civil society organization not only infringe on the right to freedom of association, but also poses detrimental consequences for employment, livelihood, and core economic, social, and cultural rights as protected under the ICESCR.

Conclusion

We observe that the present counter-terrorism legal framework stipulates expansive powers to detain and otherwise target individuals loosely perceived by authorities as likely to partake in terrorism, sedition, or other national security threats, and that these provisions may be easily abused, as well as invoked consecutively or conjunctively. We caution that the cumulative effects of these laws further compound the potential negative human rights consequences for individuals, including human rights defenders, journalists, lawyers, and political dissidents, religious and other minority groups, families, and whole communities in Jammu and Kashmir. We observe that under the present counter-terrorism framework, authorities may be able to prolong preventive detention or enact re-arrests and repeated detention through successive invocation of these laws including as regards the same underlying

³ <http://freemassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>

activity—leading to potentially indefinite arbitrary detention in contravention of international human rights law. We underscore that article 14 of the ICCPR provides that pre-trial detention shall only be used as a last resort when it is necessary, reasonable, and proportionate to a lawful objective sought by the prosecution.

Our observations regarding the overlapping and overburdensome application of the UAPA, PSA, NSA, CrPC, Penal Code, and FCRA are further based on the numerous allegations of systematic discrimination and human rights abuse against the local population of Jammu and Kashmir which have previously been communicated by Special Procedures mandate holders (i.e., IND 2/2023; IND 6/2022; IND 19/2021; IND 20/2020). Among others, we recall the increase of anti-Muslim popular campaigns, which have stoked a wave of Islamophobic sentiment across the country and exacerbated violence and discrimination against Muslim individuals and communities (see IND 7/2022). The subject of the current communication should be viewed in connection with these broader patterns of alleged discrimination and intolerance targeting and harassing members of ethnic and religious minorities. We note in this regard the Human Rights Committee’s commentary on the rights of minorities, including the clarification that under article 27 of the ICCPR, “a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation” and thus “[p]ositive measures of protection are [...] required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party” (CCPR/C/21/Rev.1/Add.5, para 6.1).

We strongly recommend that your Excellency’s Government independently assess the counter-terrorism and broader national security framework applicable in Jammu and Kashmir and across jurisdictions in order to ensure consistency with international human rights law norms and standards. We reiterate in particular our prior suggestion that your Excellency’s Government appoint an independent expert or body to review the application and operation of the applicable counter-terrorism law, as recommended by best practice by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/16/51, para. 14, Practice 4(2)). We remain open and willing to provide technical assistance in this regard.

As it is our responsibility, under the mandates provided to us by the Human Rights Council to seek to clarify matters 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 concerns.
2. Please explain how the aforementioned provisions of the UAPA, PSA, NSA, CrPC, Penal Code, and FCRA are compatible with your Excellency’s Government’s obligations under articles 2, 9, 14, 15, 17, 19, 20, 21, 22, 25 and 26 of the ICCPR and how it may remediate any potential inconsistencies with international human rights law standards and norms.
3. Please provide information on what safeguards your Excellency’s Government has implemented to ensure that arrests and detentions of individuals implemented pursuant to these laws are exercised in accordance with the international law requirements of legality,

necessity, proportionality, and non-discrimination.

4. Please indicate what judicial or procedural safeguards are available for individuals, groups, and civil society organizations in Jammu and Kashmir to lodge complaints about law enforcement actions taken pursuant to these laws, and what remedial measures are available.
5. Please indicate what measures have been taken to ensure that human rights defenders, journalists and civil society organizations in Jammu and Kashmir are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Fionnuala Ní Aoláin

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

Matthew Gillett

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Nazila Ghanea

Special Rapporteur on freedom of religion or belief