

Mandates of the Special Rapporteur on violence against women and girls, its causes and consequences; 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 Working Group on discrimination against women and girls

Ref.: AL IND 4/2024
(Please use this reference in your reply)

14 August 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on violence against women and girls, its causes and consequences; 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 Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 50/7, 52/9, 50/17, 49/10 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of **freedom of expression violations, arbitrary detentions, torture and inhuman treatment against Asiya Andrabi, Nahida Nasreen and Fehmeeda Sofi.**

According to the information received:

Ms. Asiya Andrabi is a political activist in Jammu and Kashmir who exposed and resisted human rights violations allegedly committed by the Indian security forces, including sexual violence and rape. She founded Dukhtaran-e-Millat, one of the largest women-led outfits working on the promotion and protection of fundamental freedoms and rights of women in Jammu and Kashmir. She also established girls' schools and assisted widows and orphans of Kashmiris killed in the context of violence in Jammu and Kashmir. Due to these activities, she and her organization have been labeled as 'anti-national' and 'terrorist' by some state officials, and have been banned and targeted under the Public Safety Act (PSA) and several sections of the Unlawful Activities Prevention Act (UAPA).

Ms. Andrabi was first arrested in 1992 with her family under the PSA and was allegedly subjected to arbitrary arrest, inhuman treatment, torture, and illegal detention. Following the first arrest, she has reportedly been detained several times under the PSA for a cumulative period of over 15 years. Most recently, she was arrested in April 2018 and has since remained in detention with false charges by the National Investigation Agency under sections 120B, 121, 121A, 124A, 153A, 153B and 505 of the Indian Penal Code and sections 18, 20, 38 and 39 of the UAPA, along with her associates Ms. Nahida Nasreen and Ms. Fehmeeda Sofi, who allegedly face false charges brought by the National Investigation Agency (NIA) under various sections of the Indian Penal Code and the UAPA. These charges, which include criminal conspiracy, waging war, sedition, terrorism and other serious offenses, carry severe penalties,

potentially as grave as life imprisonment or the death penalty.

The conditions of the three individuals' prolonged imprisonment allegedly involve a denial of basic rights and dignity, with claims of physical and psychological torture and inhuman treatment. The trial court is said to have charged the three activists under sections 18, 20, 38 and 39 of UAPA, which relate to membership in and support to a terrorist organization. Their legal proceedings are said to be in their final stages, with concerns expressed by the family over the possibility of a life sentence or the death penalty being imposed.

Without prejudging the accuracy of the information received, we wish to convey our profound concern regarding the purported arbitrary detention of Ms. Andrabi, Ms. Nasreen, and Ms. Sofi, and allegations that such detention has been executed as a reprisal for their advocacy for human rights in Jammu and Kashmir. Moreover, we are troubled by the grave accusations leveled against these activists, including terrorism, sedition, waging war, among other criminal allegations, under the Unlawful Activities Prevention Act. Special Procedures mandate holders have consistently raised concern that this Act is recurrently employed to suppress human rights advocates and obstruct their indispensable work. We recall that in communications OL IND 6/2023 and OL IND 7/2020, the Special Procedures mandate holders raised concern about the UAPA, which, due to its overly broad and imprecise definition of "terrorism" and the underlying criteria for "terrorist threats" and "terrorist acts," may risk conflating human rights and civil society activities with terrorism, in particular in the context of ongoing discrimination directed at religious and other minorities, human rights defenders and political dissidents in Jammu and Kashmir.

Numerous Special Procedures mandate holders have documented that women human rights defenders are persistently targeted due to their legitimate human rights work as well as their sex and gender, including most recently in communications AL IND 9/2023 sent on 29 August 2023, AL IND 7/2022 sent on 22 September 2022, AL IND 2/2022 sent on 9 February 2022, AL IND 5/2021 sent on 9 April 2021, UA IND 1/2020 sent on 21 January 2020, UA IND 10/2018 sent on 16 May 2018 and UA IND 8/2016 sent on 22 September 2016. We are concerned that the allegations in question may be connected to the above set of systematically discriminated identities of Ms. Andrabi, Ms. Nasreen, and Ms. Sofi. Furthermore, Special Procedures mandate holders have also consistently brought attention to the routine misuse of counter-terrorism and security measures (see OL IND 7/2020 and OL IND 6/2023). Special Procedures mandate-holders have also 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 (AL IND 4/2020; AL IND 6/2020; AL IND 8/2020; AL IND 11/2020; UA IND 4/2021; AL IND 9/2021; AL IND 11/2021; AL IND 15/2021; UA IND 19/2021; AL 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 (AL IND 11/2020).

Against this backdrop, we wish to raise concern about gender-based targeting of women activists and misuse of counter-terrorism and security legislation to suppress legitimate human rights activities undermine the principles of equality and non-discrimination. Both issues warrant serious consideration and prompt action to ensure the protection of human rights defenders and the integrity of relevant international human rights treaties to which your Excellency's Government is a party.

We are also concerned about the chilling effect for other activists in Jammu and Kashmir, particularly women, that this case may trigger, in terms of the continued performance of their work and the exercise of their rights, including freedom of expression, peaceful assembly and association.

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 on instances in which Ms. Andrabi has been detained and arrested, including all legal charges, factual assertions and any actions taken by the Government or state authorities against her.
3. Please provide information on the factual and legal basis for the arrests and detentions of Ms. Andrabi, Ms. Nasreen, and Ms. Sofi, including specific charges and the current status of their legal proceedings. For the terrorism related charges under the UAPA, please indicate how these comply with a strict understanding of terrorism as put forth in international legal standards including, but not limited to, United Nations Security Council resolution 1566 (2004).
4. Please provide information regarding the conditions of detention for Ms. Andrabi, Ms. Nasreen, and Ms. Sofi, focusing on their access to legal representation and family members, treatment from penitentiary staff and overall conditions of their deprivation of liberty.
5. Please explain the measures that have been implemented to ensure that the rights of Ms. Andrabi, Ms. Nasreen, and Ms. Sofi to be free from torture or cruel and inhuman treatment are respected.
6. Please indicate the steps your Excellency's Government has taken to ensure that all human rights defenders in Jammu Kashmir are protected, especially with respect to their rights to freedom of expression and association. Furthermore, provide information on the safeguards your Excellency's Government has implemented to ensure that arrests and detentions of these individuals satisfy the international

law requirements of legality, necessity, proportionality, and non-discrimination.

7. Please provide information on the manner in which your Excellency's Government interprets the definition of terrorism in the UAPA, how it ensures that its provisions do not unduly interfere with the legitimate exercise of activists, and any plans to review the definition. Please indicate whether Ms. Andrabi, Ms. Nasreen and Ms. Sofi were granted due process and fair trial safeguards 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 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.

Reem Alsalem

Special Rapporteur on violence against women and girls, its causes and consequences

Irene Khan

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

Gina Romero

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ben Saul

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

Laura Nyirinkindi

Chair-Rapporteur of the Working Group on discrimination against women and girls

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 the international norms and standards applicable to the present case.

First and foremost, we underscore the significance of articles 9, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), which India ratified on 10 April 1979 with reservations on articles 1, 9 and 13. These articles respectively ensure the rights to personal liberty and security, freedom of expression and freedom of association. Regarding article 9, which ensures the right to personal liberty and security, the Human Rights Committee, in its general comment No. 35 (2014) on article 9, liberty and security of person, highlighted the arbitrariness of any arrest or detention lacking a legal foundation (CCPR/C/GC/35). The Committee further noted that an arrest or detention could be considered arbitrary even if sanctioned by domestic law. The Committee also deemed any arrest or detention intended as punishment for the legitimate exercise of rights guaranteed by the Covenant to be arbitrary.

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right "to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media". This right applies online as well as offline. Any restriction to the right to freedom of expression must be "provided by law", 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 it is predicated. In its General Comment No. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including "political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse" (para. 11). The Committee asserts that there is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (para. 23). Recognizing how persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports are frequently subjected to threats, intimidation and attacks because of their activities, the Committee stresses that "all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims be in receipt of appropriate forms of redress" (para. 23).

Article 22 of the ICCPR protects the right to freedom of association with others. As stated in a report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards (A/HRC/17/27, para. 66 and A/HRC/29/25/Add.1). We also draw your attention to article 15(1) of the ICCPR, which contemplates the principle of legal certainty under international law and requires criminal laws to be precise to clarify the types of behavior that constitute criminal offence and its consequences thereof. This principle acknowledges that

vague or overly broad laws are prone to arbitrary application and abuse.

We also wish to refer to the fundamental principles outlined 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, known as the United Nations Declaration on Human Rights Defenders. Specifically, we recall articles 1 and 2, which affirm the universal right to promote and strive for the protection and realization of human rights, and the States' prime responsibility to protect, promote, and implement all human rights. Additionally, we refer to article 6(b) of the Declaration, which asserts that everyone has the right to publish, impart, or disseminate views, information, and knowledge on all human rights and fundamental freedoms; article 6(c), which states that everyone has the right to study, discuss, and hold opinions on the observance of human rights and fundamental freedoms; and article 9(3)(a), which grants everyone the right to complain about policies and actions regarding human rights violations. We also draw attention to article 12 of the Declaration, particularly paragraphs 2 and 3, which require States to take all necessary measures to protect individuals against violence, threats, retaliation, discrimination, and any arbitrary action due to their legitimate exercise of the rights mentioned in the Declaration.

Moreover, we would like to draw your attention to the United Nations General Assembly resolution 68/181, which urges States to publicly acknowledge the important and legitimate role of women human rights defenders in the promotion and protection of human rights, democracy, the rule of law and development and underscores the importance of ensuring their protection, including by publicly condemning violence and discrimination against them (OP7). We refer you to the Human Rights Council resolution 31/32, in which States expressed particular concern about the systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective into their efforts to create a safe and enabling environment, including through establishing comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women defenders. Such policies and programmes should be developed with the participation of women defenders themselves (OP5, 19 and 20).

We would like to refer you to the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India ratified on 9 July 1993. The Convention calls on States parties to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with this obligation. Article 2 of the Convention also calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Furthermore, article 3 mandates States parties to take all appropriate measures in political, social, economic, and cultural fields to ensure women's full development and advancement, guaranteeing the equal enjoyment of human rights and fundamental freedoms with men.

We would like to recall the CEDAW Committee's general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, which calls on States parties to protect women's human rights at all times, advance substantive gender equality before, during and after conflict as well as to provide access to justice for victims of sexual violence (CEDAW/C/GC/30). Furthermore, in

general recommendation No. 35 (2017) on gender-based violence against women, updating the general recommendation No. 19 (1992), the CEDAW Committee clarifies that the due diligence obligation underpins the Convention as a whole and that States parties will be held responsible should they fail to take all appropriate measures to prevent, investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women (CEDAW/C/GC/35).

In addition, article 1 of the United Nations Declaration on the Elimination of Violence against Women adopted by the United Nations General Assembly resolution 48/104 of 20 December 1993 provides that the term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Article 4 of the Declaration further stipulates that States should implement policies that eliminate violence against women by all appropriate means and without delay.

Furthermore, we bring your attention to the United Nations General Assembly resolution 68/181 adopted on 18 December 2013, which emphasizes that giving respect and support for the activities of human rights defenders, including women human rights defenders, is essential for the overall enjoyment of human rights. The resolution condemns all human rights violations and abuses against those promoting and defending human rights and fundamental freedoms. It further urges States to publicly acknowledge the crucial role of women human rights defenders in promoting and protecting human rights, democracy, the rule of law, and development, and to publicly condemn violence and discrimination against them.

The Working Group on discrimination against women and girls recommended States to implement gender-sensitive measures on conflict, crisis, terrorism and national security and warned against depriving women’s liberty for the purposes of pursuing Government aims (A/HRC/41/33). In their report on sexual and reproductive health rights, experts noted that women belonging to ethnic and other minority groups have been systematically subjected to a complex spectrum of human rights abuses involving discriminatory and coercive practices, including sexual abuse and reproductive violence (A/HRC/47/38). In the report on the gendered inequalities of poverty, the Working Group noted that these inequalities are exacerbated by conflict and violence, which often disproportionately affect ethnic minority women and girls (A/HRC/53/39). The Working Group highlighted that the absence of effective protection against violence not only deprives women living in poverty of their right to personal integrity, but also impedes their rights to equal participation in public life, education and employment, as well as income-earning activities.

We would also like to bring your attention to the report of the Special Rapporteur on the situation of human rights defenders, which stresses the importance of women human rights defenders and recognizes their essential role in the promotion and protection of these rights worldwide (A/HRC/40/60). However, due to perceptions of their identity and actions, women human rights defenders face discrimination, marginalization, and repression. The Special Rapporteur urged all Member States to protect the rights of women human rights defenders by adopting public stances against violations, ensuring a safe and conducive environment for exercising their rights, allocating budget to women’s participation in human rights

activities, not interfering with funding for activism, and addressing obstacles to their participation in public life.

Definitions of terrorism and terrorist offences must be limited to acts that are genuinely terrorist in nature, as identified by the 19 United Nations Sectoral Conventions on terrorism offences, the United Nations Security Council resolution 1566 (2004), the Declaration on Measures to Eliminate International Terrorism 1944, the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, and the model definition of the United Nations 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). The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has also emphasized the risks posed by overly broad definitions of terrorism in domestic law, which fall short of international treaty obligations (A/73/361, para. 34). We 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 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.

Finally, we wish to refer to relevant provisions of 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 United Nations General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. These resolutions mandate that any measures taken to combat terrorism and violent extremism, including the incitement of and support for terrorist acts, must comply with all obligations under international law. We stress that counter-terrorism measures must adhere to principles of legality, proportionality, necessity, and non-discrimination. Indiscriminate implementation of security and counter-terrorism regulations without considering these principles can severely undermine fundamental rights and disproportionately affect minorities, historically marginalized communities, and civil society.