

An Open Letter to the United Nations High Commissioner of Human Rights,

Geneva, 22 February 2020

**Re: The current state of Arbitrary Detentions in Jammu and Kashmir in Indian-administered Kashmir**

At the 43rd session of the Human Rights Council, UN High Commissioner Michele Bachelet [expressed concern regarding Kashmir](#) that “no steps have been taken to address allegations of excessive use of force and other serious human rights violations by security forces.” The Kashmir Scholars Consultative and Action Network (KSCAN) appreciates the High Commissioner’s emphasis on the fact that “as many as 800 people reportedly remain in detention, including political leaders and activists.” Based on our expertise, we offer the following report and analysis of the current state of arbitrary detentions in the context of the grave human rights and humanitarian crisis following the revocation of key articles of the Indian constitution providing partial autonomy to Kashmir.

The Government of India has long used a system of arbitrary and preventive detentions in Kashmir for the purpose of political repression, constituting collective punishment of the population in light of the Kashmiri aspiration for self-determination in accordance with international UN Security Council Resolutions. As stated by the International Court of Justice in 2012, “Preventive detention, as a general matter, is a practice anathema to respect for human rights under the rule of law, creating conditions not only for arbitrary detention, but also related human rights violations.”

**The System of Arbitrary Detentions in Kashmir**

Arrests and detentions are carried out under a wide variety of vague and overly-broad security laws and powers, including the Public Safety Act (PSA) 1978 and the Unlawful Activities (Prevention) Act (UAPA) 1967, among others. In 2011, Amnesty International released a report describing PSA as a “[lawless law](#)” that has enabled detentions in Kashmir for decades. From 1988 to 2015, there were 16,329 PSA detention cases in J&K, and another 1000 cases in 2016-17. In Kashmir, “revolving door PSAs” have long been used to rearrest a recently-released person, often immediately upon their release. Preventive detentions are often combined with criminal detentions that occur through First Information Reports (FIRs), the prelude to legal prosecution. In [open FIR cases](#), police stations issue FIRs regarding crowd actions and cite “unknown persons” as the accused, enabling them to arrest targeted individuals later.

The abrogation of Article 370, revoking the partial autonomy of the state of Indian-administered Jammu and Kashmir, has been followed by an intensification of arbitrary detentions against activists, politicians, business persons, and even children across all levels of Kashmiri society. These detentions have been documented by [Amnesty International](#), [Jammu & Kashmir Coalition of Civil Society \(JKCCS\)](#), [People’s Union for Civil Liberties](#), and other human rights organisations. These arbitrary detentions include criminal detention, preventive

detention, and undocumented detention carried out with or without bringing persons before the courts.

On November 20, the Indian government informed its parliament that 5,161 persons had been detained since August 5, but provided no figures on PSA detentions. In its [Annual 2019 Human Rights Review](#) published on December 31, 2019, JKCCS criticises the government for its ambiguity over the total number of detentions: “There is no clear statement (from the government) on how many (people) were booked under the PSA.” The JKCCS report documents 412 cases of preventive detention after August 5, and 360 fresh *habeas corpus* petitions challenging PSA detentions filed after August 5.

Since January 2020, the government has been using the Unlawful Activities (Prevention) Act (UAPA) to detain individuals found to be using virtual private networks (VPNs) to access social media. This new development has increased fears and curtailed the right of freedom of expression for civilians in Kashmir, many of whom use VPNs to talk to their families across the globe. This denies the fundamental right to communicate -- along with a host of other civil rights -- to Kashmiris at large.

Since August 5, many detained and arrested individuals, including youth as well as political and business leadership, have been moved to prisons outside of Kashmir. As of December 2019, at least 260 detainees [have been acknowledged by the BJP Union Minister](#) to be being held in Uttar Pradesh (234) and Haryana (27). Families often do not know where loved ones have been taken, and this is compounded by the communications blackout. The total number of detainees is also not known, and the practice of dispersing them into different parts of India leaves them more vulnerable, isolated, and harder for the families to know their fate.

The widespread use of arbitrary detention, as well as other related violations of rights including the right to life, are causing mass trauma across the territory of Kashmir. The prevailing situation must be addressed with urgency to prevent the spiraling crisis from becoming a humanitarian disaster as arbitrary detention is being used against the people of Kashmir as an instrument of dispossession and disempowerment.

### **Obstruction of Justice for Arbitrary Detentions in Kashmir**

The J&K High Court is [failing to check the indiscriminate use of administrative detention](#). There are massive delays and a huge backlog before the J&K High Court of hundreds of appeals of rubber-stamped PSA detention orders from the lower courts, as well as hundreds of *habeas corpus* petitions for persons whose locations may not be known. There has also been flouting of court orders, as persons who were released by the court were subsequently placed under house arrest or otherwise detained by state authorities.

One highly urgent case is the President of the Kashmir Bar Association, Mian Abdul Qayoom. In refusing to revoke Qayoom’s PSA detention, [J&K High Court Justice Tashi Rabstan found](#) that preventative detention means “the detention of the person is not to punish him for what he

has done but to intercept and prevent him from doing it” under a subjective standard. Therefore, “... subjective satisfaction of the detaining authority to detain a person or not is not open to objective assessment by a court. A court is not a proper forum to scrutinize the merits of administrative decision to detain a person.” Such judgments reveal breakdowns in the separation of powers in terms of the ability of the courts to intervene independently, and have their judgments observed. The International Federation for Human Rights (FIDH) and the World Organisation against Torture (OMCT) issued an [urgent appeal](#) regarding Mian Qayoom’s health in detention on February 12, 2020.

The J&K High Court has been subservient to the executive, leaving the police to determine who is released or re-arrested. JKCCS, in its [Annual 2019 Human Rights Review](#), reports that in 2019, judicial processes did not result in adjudication of any human rights violation cases, either leading to prosecution of any perpetrators or ordering any serious inquiries into the human rights violations: “The orders of the Jammu Kashmir High Court have been subservient to the Executive, even in the cases where preventive detention orders were quashed, the police on their own reasoning determined whether the detainee has to be released or re-arrested in another detention order.”

This context includes the near-collapse of the legal system in Jammu & Kashmir and also the serious limitations placed on the lawyers to represent the interests of their clients who have been arbitrarily detained, and thereby creating a crisis of access to justice and the continuity of the legal profession.

***In light of the prevailing judicial crisis, and the intensification of arbitrary detentions in Kashmir, we urge you to***

- Closely monitor the issue of arbitrary detentions in the broader context of human rights and humanitarian crisis in Kashmir.
- Raise the issue of arbitrary detentions as well as the broader context of human rights and humanitarian crisis in Kashmir in your statements under Agenda Items 2, 4, 5, and 8 at the 43rd, 44th, and 45th HRC sessions.
- Pressure India to:
  - release detainees; and
  - allow detained Kashmiris access to due *habeas corpus* processes.
- Initiate or support a joint statement or resolution calling on the OHCHR to report annually on the human rights situation in Kashmir, including a call for unconditional access to both Indian-administered Kashmir and Pakistan-administered Kashmir for the purpose of a fact-finding mission.

We strongly argue that given the serious human rights situation in Kashmir, which involves use of arbitrary detentions against Kashmiri civilians as a means of oppression and intimidation, a Commission of Inquiry including investigation into mass arbitrary detention including preventive detention is essential for ensuring justice and accountability. This Commission of

Inquiry will also significantly contribute towards preventing further mass arbitrary arrests and other atrocities committed against Kashmiris by Indian state armed forces.

Sincerely,

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