

May 23, 2020

To:

His Excellency, António Guterres, Secretary-General, United Nations

His Excellency, Adama Dieng, Special Adviser of the Secretary-General on the Prevention of Genocide, United Nations Office on Genocide Prevention and the Responsibility to Protect

Her Excellency, Karen Smith, Special Adviser of the Secretary-General on the Responsibility to Protect, United Nations Office on Genocide Prevention and the Responsibility to Protect

All members of the United Nations Security Council (UNSC)

CC:

Bureau of the Fourth Committee (Special Political and Decolonization)

Karima Bennoune, Special Rapporteur in the field of cultural rights

Mr. David Kaye, Saad Alfarargi, Special Rapporteur on the right to development

Mr. Clément Nyaletsossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association

Dr. Koumbou Boly Barry, Special Rapporteur on the right to education

Dr Fernand de Varennes, Special Rapporteur on minority issues

Ms. E. Tendayi Achiume, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Robert Mardini, Permanent Observer of the International Committee of the Red Cross to the United Nations

**Open letter to the UN Secretary General, the UN Office on Genocide Prevention and the Responsibility to Protect and the UN Security Council: Requesting an immediate intervention to prevent forced demographic change in Jammu and Kashmir**

Your Excellencies,

We urge and request an intermediate intervention to prevent forced demographic change in Indian-Administered Jammu and Kashmir (IAJK), the portion of the historic state of Jammu and Kashmir (J&K) administered by the Government of India (GoI). Forced population transfers and moved

populations are illegal under international law, prohibited by Article 49 of the Fourth Geneva Convention and condemned by the [United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities](#).

The already dire humanitarian and human rights situation in IAJK has [substantially deteriorated since August 5, 2019](#) when GoI stripped the people of IAJK of critical rights, intensified its militarized occupation and embarked on a campaign of collective punishment and [mass incarceration](#). In the last few weeks, GoI has implemented [policies](#) that will result in the forcible transfer of indigenous Muslims out of IAJK and the transfer of non-local Hindus from India into IAJK. This is a worst-case [eventuality](#) that observers had feared for some time; it is now an actuality. In context, these policies materially increase the already high [risk of genocide](#). At the same time, GoI is manufacturing a *de facto* reality that obviates all practical possibility of a peaceful resolution of the longstanding international [territorial dispute](#) over J&K and the exercise by the people of J&K of their fundamental human rights, including their [right to self-determination](#), which has been recognized by numerous UNSC resolutions (including [Resolution 47 \(21 April 1948\)](#), [Resolution 51 \(3 June 1948\)](#), [Resolution 91 \(30 March 1951\)](#), [Resolution 96 \(10 November 1951\)](#), [Resolution 98 \(23 December 1952\)](#), [Resolution 122 \(24 January 1957\)](#) and [Resolution 126 \(2 December 1957\)](#)).

Kashmiris have been under an intensive, militarized, near-total lockdown since August 4, 2019. While Mr. Guterres recently called for a [global ceasefire of all hostilities](#) and urged world leaders to focus on the pandemic, GoI has instead used the current pandemic to [escalate hostilities](#) in the armed conflict with Pakistan [endangering](#) Kashmiri civilian lives, and to rapidly advance its ongoing [assault against human rights in Kashmir](#) and the already precarious existence of Kashmiris. In addition to a further tightening of the post-August 2019 lockdown of Kashmir and the militarized, [and violent enforcement](#) of nominal public health measures, GoI has [assaulted](#) people trying to provide aid to others, intensified its [arrest, intimidation and persecution](#) of Kashmiri journalists, stepped up its campaign of [assassinating](#) armed resistance fighters accompanied by destruction of [civilian homes](#) and [attacks on property](#), killed numerous [civilians](#), denied Kashmiris the right to [mourn their dead](#), further [restricted basic communications](#) and accelerated its implementation of [policies](#) promoting forced demographic change in IAJK.

### **Key Context**

J&K is a territory that remains colonized, the subject of a longstanding international territorial dispute and under intensive military occupation. It is a theatre for armed conflict, both international and internal. It is also the situs of one of the longest-running pro-democracy movements in the world which began in the early 20th century (pre-dating the creation of the States of India and Pakistan) and remains ongoing. That popular movement has sought to redress discrimination (primarily against the Muslims of J&K) and secure economic, social, cultural and civil and political rights, including the right to self-determination. In IAJK, GoI has, as the

occupying power and over the course of decades, repeatedly and systematically violated the human rights of the people of IAJK. GoI created an institutionalized apparatus of [intense militarization](#), state suppression of information (and promotion of [disinformation](#)), [legalized impunity](#) by its armed forces and a denial of basic rights (including to [speak](#) and to assemble) while maintaining the nominal pretense of constitutional democracy and the rule of law.

GoI and its instrumentalities have committed gross violations of their international obligations in relation to IAJK and its residents, including, *inter alia*, obligations pursuant to commitments made by GoI at the UNSC, dozens of applicable UNSC and United Nations Commission for India and Pakistan resolutions, international human rights obligations (including pursuant to the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment, the Convention for the Protection of All Persons from Enforced Disappearances and the International Convention on the Elimination of All Forms of Racial Discrimination), the Geneva Conventions and various treaty obligations, including those pursuant to the Instrument of Accession (IoA), the contested treaty that GoI cites as the basis for its territorial claim to J&K. GoI is also responsible for massive, well-documented (including by the [UN Office of the High Commissioner of Human Rights](#)) rights violations and repeated acts constituting war crimes and crimes against humanity committed against the Muslims of IAJK. The cumulative effect of those violations and crimes has been, over decades and generations, brutal and devastating.

On August 5, 2019, GoI took unprecedented, extraordinary [steps](#) relating to IAJK, in further violation of GoI's international obligations to IAJK and its residents as well as GoI's Indian Constitutional obligations to IAJK and its residents (although these obligations were implemented in contravention of GoI's international commitments regarding J&K). The substantive effect of those steps include:

- The unilateral and illegal [disintegration](#) of the Indian State of J&K (pursuant to the Jammu and Kashmir Reorganisation Act, 2019), eliminating India's only Muslim-majority state, and cancellation of the Indian State of J&K's separate constitution, flag and head of state;
- The political disempowerment of IAJK's Muslims by "reorganizing" the territory and subdividing and [gerrymandering](#) boundaries to dilute the influence of its Muslim populations;
- The imposition of direct GoI control over IAJK and the elimination of even the pretense of local control over public administration;
- The complete [disenfranchisement](#) of the Muslims of Ladakh and Kargil;
- The legalization of the denial of the [right of return](#) for Muslim refugees and political exiles from IAJK;
- The elimination of [historic protections](#) of the local population's ownership of immovable property, access to government employment and access to educational opportunities; and

- The [dismantling](#) of IAJK's land ownership system and, consequently, the foundations of its historic economy.

Experts on the reality of IAJK understood that, effectively, GoI had achieved an unprecedented degree of total domination over the already subjugated Muslims of IAJK and had set in motion a long-planned plan to forcibly change the demographics of IAJK in favor of Hindus, a "[final solution](#)" for IAJK.

These August 5, 2019 steps against IAJK were a long-sought victory for the *Hindutva* (or Hindu supremacist) movement in India. The *Hindutva* movement is a militant, virulently anti-Muslim, ultranationalist movement which has achieved dominance in and over India. Since Partition, the autonomy of the Indian State of J&K and the rights of the Muslims of J&K have been an obsession and special target of the *Hindutva* movement. *Hindutva* parties in the post-Partition period insisted that [J&K was an integral part of India, that J&K's autonomy \(pursuant to IoA and also later "guaranteed" by India's Constitution\) was a clear violation of India's sovereignty and called for the "complete integration" of J&K with India and an end to two constitutions, two flags and two heads of state](#). In India's early years, this was contrary to then-mainstream Indian politicians from across the political spectrum who respected (at least nominally) India's international commitments in relation to J&K. However, in recent decades, GoI's policy towards IAJK (both under *Hindutva* and secular nationalist-led governments) and mainstream Indian thought regarding J&K has been *Hindutva* in its orientation, insisting that J&K was "an integral part of India," demonizing IAJK Muslims for insisting on their legal and legitimate rights, justifying all manner of violations in IAJK through specious, ultranationalist arguments regarding "[terror](#)," and declaring any other position in respect of J&K [seditious](#). With the "revocation" of Article 370 and Article 35A of the Indian Constitution and the passage of the J&K Reorganisation Act in August of 2019, the [current Hindutva GoI legalized India's annexation](#) and full integration of IAJK in violation of international law.

Since August 2019, Kashmir has suffered the [longest communications shutdown](#) in a nominally democratic state, which lasted 213 days (after which time, only 2G internet access has been intermittently allowed for certain sites subject to total surveillance, detention for accessing disallowed sites and discontinuance by government authorities at any time). Thousands have been detained, many of whom remain under [detention](#), including [children](#), the elderly and the disabled, often held in overcrowded jails hundreds of kilometers away from IAJK. [Torture](#) is rampant and killings continue with total [impunity](#). The local economy has [been devastated](#) and the local population is facing existential economic stress and a severe [mental health crisis](#). Media organizations are not allowed to operate freely and journalists are being [jailed](#) and charged [with terrorist offences for reporting news](#). The Muslims of IAJK are not allowed to assemble or speak, [including through social media](#) (to which they have been denied access). They are denied [access to healthcare](#), [access to education](#), [due process](#), the opportunity to make a living, the freedom to move freely and the freedom to practice their religion ([links to various reports providing details](#)

[can be found on our website](#)). GoI has stepped up its persecution and killing of anyone who dares to resist GoI's occupation of IAJK, collectively punishing civilians with impunity and denying the Muslims of IAJK even the opportunity to [perform last rites over their dead](#). GoI has also enforced the economic strangulation of IAJK, begun to [allocate public lands to preferred, non-local parties](#) and replaced [local place names with those of Hindutva icons](#). In India (outside of IAJK), IAJK Muslims have continued to be [targeted](#), discriminated against, wrongfully imprisoned, tortured, assaulted, abused and killed.

GoI has institutionalized in IAJK a regime of total unfreedom characterized by intense, unchecked, discrimination against, and the total domination of, the Muslims of IAJK. Hindu nationalists have achieved a major, long-fought victory in the "total integration" of IAJK into India. They have now been emboldened to continue their project and operationalize the forced demographic change of IAJK in favor of Hindus, conduct which constitutes a crime against humanity and a grave breach of the Fourth Geneva Convention. A social, cultural and demographic transformation of IAJK is underway. To that end, GoI has, among other things, implemented a new [Domicile Law](#).

### **Key Developments**

In [early April](#) we brought to your attention the new Domicile Law. On May 18, 2020, GoI [notified](#) the Jammu and Kashmir Grant of Domicile Certificate (Procedure) Rules, 2020, which diminished the people of IAJK's rights to access public employment opportunities, which are economically vital and symbolically significant. This move, deemed illegal, has been opposed by various [sections of society](#), including [pro-India political parties in IAJK](#). On [May 20, 2020](#), GoI made the domicile certificate a condition for access to education in IAJK. Again, these changes are in direct violation of international humanitarian law as well as the IoA and the now-abrogated J&K Constitution and Indian Constitutional provisions relating to J&K. The immediate effects of the new rules include:

- Indigenous people of IAJK no longer automatically qualify for public employment or education opportunities in IAJK. Traditionally, "state subject" (i.e., of the historic state of J&K) or "permanent resident" status (a previous GoI modification of "state subject" status), both of which are now replaced with the new "domicile" rules, entitled indigenous residents of IAJK rights to public employment, education, ownership of immovable property and other important rights. It is anticipated that the implications of the new status will be similarly broad and less accessible to the indigenous residents of IAJK.
- Indigenous people of IAJK, or holders of the previous "state subject" or "permanent resident" status, are not automatically grandfathered under the new domicile rules. They must apply for status like any non-local resident of India. Their applications are subject to rejection. It is believed that many indigenous people of IAJK do not possess the certificate required to obtain the new domicile status (which may never have been issued, may have been lost, may have been destroyed in natural disasters like the [2014 floods that ravaged](#)

[IAJK](#) or may have been destroyed in acts of state violence or collective punishment like the recent [destruction of at least 12 houses](#) in downtown Srinagar). Historically, such certificates have been extremely difficult to obtain and may now be practically impossible to obtain.

- The new domicile status is available to any Indian (subject to certain qualifying criteria) and their children (in some cases, even if they never reside in J&K). There is a special qualification category for the [children](#) of GoI officials and military personnel who have served in IAJK for ten years, i.e., the families of those officials most directly responsible for the human rights violations and acts constituting war crimes and crimes against humanity committed in IAJK.
- The documentary requirements for non-locals to obtain domicile status are minimal and [easily obtained](#).
- The new domicile status is not available to any “state subjects” or “permanent residents” or their progeny who are not Indian citizens. All refugees or exiles from IAJK including those in Pakistan-Administered J&K, who are predominantly if not entirely IAJK Muslims, are rendered ineligible. This is in stark contrast to Hindu refugees from “[West Pakistan](#)” who are granted domicile rights. All diaspora Kashmiris and their children who are not Indian citizens are rendered ineligible.
- Local authorities have strong incentives to not resist a mandate from GoI officials regarding the greenlighting of Indian citizens for the new status. Specifically, the [rules provide for a Rs.50,000 fine](#) (per instance; this amount represents a substantial portion of the monthly earnings of most local authorities) for local authorities who do not comply within 7 business days with an appellate authority’s (who are GoI bureaucrats) decision to grant a domicile certificate.
- The procedures fast-track decisions and stipulate that they are to be made within 15 business days (with only a 15-business day appeal period). The procedures are designed to rush decisions and prevent deliberation and scrutiny.
- There are no meaningful procedural safeguards. Primary decision making authority resides with low-level local authorities who are notoriously subject to influence and were previously considered unqualified to make grave decisions of this type. Appeals are heard by GoI bureaucrats, functionaries for the GoI executive. While it is widely known that the [Indian judiciary has failed to safeguard the rights of Kashmiris](#), there is not even the semblance of due process afforded the people of IAJK with respect to important legacy rights that are fundamental to their continued welfare and existence.
- The rules are being interpreted [retrospectively](#), immediately qualifying an untold number of Indians according to the criteria for the new domicile status.

In order to appreciate some aspects of the profound and grave significance of these new developments, please note:

- There is recent GoI precedent for the conduct of an exercise comparable to that which is now being implemented in IAJK -- the conduct of the National Register of Citizens (NRC) in Assam. The conduct of the NRC was done in an arbitrary, capricious and discriminatory manner in which the near-impossible burden of evidencing in an existentially significant situation (the risk of [statelessness](#) and denial of the rights of citizenship) was [shifted](#) to those least able to meet that burden and people were denied fundamental rights on practically meaningless or faulty technicalities. In the Assam case, there was at least a long-lead time, a more robust process and some judicial oversight. All of that is lacking in IAJK in a much more highly politicized environment whose likely victims, the Muslims of IAJK, are the most demonized group in India and where there is a well-known desire of the ascendant *Hindutva* movement to repopulate the state.
- These rules further incentivize (through access to employment and education) demographic flooding as well as service of GoI in the repression of the people of IAJK. *Hindutva* politicians in India have already been encouraging Indian men to [go to Kashmir](#) to take Kashmiri land and marry “[fair Kashmiri women](#).”
- The state is the most prevalent employer in IAJK and the primary employer of people who have obtained higher education. Sociologically, state employment is essential for economic stability, particularly for urban and more educated people in IAJK. The new rules will [increase the levels of unemployment](#) in IAJK and diminish future employment prospects and increase unemployment. There were reportedly over [250,000](#) highly educated and unemployed youth in IAJK prior to the successive months of lockdowns; unemployment has [rapidly risen](#) in the past months. As a result, many indigenous residents of IAJK may become economic migrants and further accelerate demographic change in IAJK.
- The new domicile rules’ impairment of the opportunity to obtain state employment is a further attack in the ongoing, broad assault by GoI on the economic welfare of the people of IAJK. This assault includes the ongoing lockdown and denial of access to internet connectivity, which has resulted in [massive economic losses](#) with no opportunity for businesspeople to shift to online business models, pivot to other markets or otherwise seek to survive. It also includes the longstanding [non-operation of major sectors of the IAJK economy](#), including the tourism, fruit export and handicrafts industries.
- The new domicile rules’ impairment of the opportunity to obtain education is a further attack on the broad assault on IAJK residents’ [access to education](#) due to, among things, long-term closure of schools, denial of access to internet connectivity and restrictions on movement or travel. In addition, Muslim IAJK students who have sought educational opportunities in India have, like other IAJK Muslims, been discriminated against, harassed, evicted, [arrested](#), intimidated and assaulted.
- The popular pro-democracy movement in J&K began in the early 20th century and continues to this day. The major demands of that rights struggle were: equal access to education, an end to economically exploitative practices, equal access to state employment

and the right to self-determination. GoI is making the exercise of the right to self-determination, a goal that was never achieved, a *de facto* impossibility through changes to the demography of IAJK. GoI has reversed or is reversing all of the accomplishments won by that movement (including re-distribution of land to landless farmers, improved access to education and improved access to state employment) through multigenerational civil struggle in the face of intense repression and extravagant state violence.

- While it is understood that the Muslims of IAJK are intended to be the primary victims of these developments, IAJK is a multi-ethnic, multi-religious place. These developments facially impact most historic residents of IAJK and are expected to have grave, detrimental impacts on various vulnerable populations in IAJK, including ethnic and religious minorities, refugees, stateless people and families divided across international borders.

As a result of these developments, analysts anticipate “[demographic flooding](#)” of IAJK by Indian Hindus. It is reasonable to expect severe dislocation and further disenfranchisement, discrimination and persecution of the indigenous people of IAJK and, in particular, the Muslims of IAJK. This will be exacerbated by GoI’s long-planned and still-anticipated Hindu [settler colonial project](#) for IAJK. Consistent with the general suppression of speech and criminalization of dissent of any kind in IAJK, the Inspector General of Police has threatened to arrest people “[instigating](#)” against the new Domicile Law, including by posting about the law on social media. Through state violence, impunity, an intensive military occupation, the widespread denial of human rights and now an active and credible threat of forced demographic change by an ideologically driven superior power, the survival of the Muslims of IAJK is threatened today.

### **Urgent Appeal**

GoI, through its policies, has effectively cut off the Muslims of IAJK from international assistance, oversight and support. The international community, including the UN and the UNSC, are nonetheless aware of what GoI has perpetrated against and is perpetrating against the people, and particularly the Muslims, of IAJK. Various UN bodies, including the UNSC, the United Nations Monitoring Group for India and Pakistan and the UN OHCHR, and various UN special rapporteurs and experts have been directly involved in the situation in IAJK over the course of years. Despite massive rights violations and the commission of atrocity crimes, there has been no effective intervention or accounting.

The “state security” / “anti-terror” rationale of GoI has been and is a canard. The fundamental reality in IAJK has been and remains one of state violence to deny and suppress people’s legitimate rights. With the ascendance of *Hindutva* forces, that regime of repression has been systematically transformed into a regime of total domination of IAJK Muslims and is actively advancing toward an intentional destruction of that people. At this critical juncture, the international community’s continued silence and failure to act goes beyond institutional failure, the abdication of

responsibility and the politicized hollowing out of supposed commitments -- it goes to complicity and the facilitation of that which GoI has perpetrated and is today perpetrating in IAJK.

The targeting, demonization, domination and violence against the Muslims of IAJK threatens their existence. The longstanding international territorial conflict, which is both [active](#) and nuclear, coupled with political and economic stress in neighboring states and the intensifying competition for vital, [dwindling critical resources](#) create a desperate and explosive situation that continues to threaten global peace. The situation in IAJK today is akin to both that in Srebrenica in 1995 and that in the Sudetenland in 1939. It is an exigent, desperate situation that demands an extraordinary response.

We appeal for your urgent intervention in IAJK, in the interests of the credibility of international human rights and humanitarian law, the credibility of the United Nations Organizations, international peace and stability and the survival of the people of IAJK. We urge you, by any and all means, to:

1. Ensure GoI complies with its international obligations to IAJK and the people of IAJK, including pursuant to dozens of applicable UNSC and United Nations Commission for India and Pakistan resolutions, human rights laws (including pursuant to the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment, the Convention for the Protection of All Persons from Enforced Disappearances and the International Convention on the Elimination of All Forms of Racial Discrimination), the Geneva Conventions and various treaties, including IoA;
2. Prevent GoI from implementing its new Domicile Law and related rules;
3. Ensure GoI does not allow any further changes to landholding in, or the demography of, IAJK;
4. Ensure GoI respects and protects the rights of the people of IAJK, including to free expression, free movement and free assembly;
5. Ensure GoI restores, and ceases its restrictions on, communications in IAJK;
6. Ensure GoI provides adequate access to healthcare and education in IAJK;
7. Ensure GoI compensates and rehabilitates individuals, businesses and industries that have suffered economic consequences due to GoI's policies in IAJK;
8. Ensure GoI allows international aid, humanitarian, relief, human rights and media organizations and UN observers to freely operate in IAJK and allow humanitarian aid to flow to IAJK without restriction from abroad;
9. Ensure GoI immediately and unconditionally release all political prisoners, prisoners of conscience and detainees from IAJK;
10. Ensure GoI to immediately ceases to enforce and begins the process of repealing all applicable laws that do not conform for widely regarded norms of fairness and due process, including the [Public Safety Act](#) and [Armed Forces Special Powers Act](#);

11. Ensure GoI withdraws its military and other instrumentalities from populated areas in IAJK with a view to commencing a UN-supervised demilitarization;
12. Immediately commence the process of implementing a free and impartial plebiscite in J&K in accordance with applicable UNSC resolutions; and
13. Empower a special rapporteur to investigate human rights violations, war crimes and crimes against humanity committed in IAJK.

We thank you for your attention.

Sincerely,

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