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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by World Muslim Congress, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[01 June 2020]

* Issued as received, in the language(s) of submission only.

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Arbitrary detentions in Indian administered Jammu and Kashmir

The basic provision of international law as pronounced in the Universal Declaration of Human Rights (1948) stipulates that “individuals should not be deprived of their lives arbitrarily. Everyone has a right to life, liberty, security, freedom and equality”. However, all these international conventions, treaties, declarations and customs become inaudible in Indian administered Kashmir where suppression is a matter of routine. Nearly 900,000 Indian security forces have been deployed in Indian occupied Kashmir remained engaged in gross and systematic human rights violations. Mass killings, enforced disappearances, torture, rape, extra-judicial executions, fake encounters, political repression and suppression of freedom of speech, freedom of expression and freedom of assembly has become an integral part of the day life.

Government of Indian has committed gross violation of their international obligations in relation to the Indian administer Jammu and Kashmir and its residents. Including, inter alia obligations pursuant to commitments made by government of India at United Nations (UN) Security Council, United Nations security council 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) and United Nations commission on Indian and Pakistan resolutions of august 14, 1948 and January 5, 1949, article 9 of 4th Geneva Conventions, other 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 massive and systematic human rights violations perpetuated by government of Indian and its armed forces and other agencies are well documented by local and international human rights groups. The two reports by the office of the United Nations office of the high commissioner released on June 16, 2018 and July 8, 2019 on the situation of human rights in Jammu and Kashmir has held government of India responsible for massive human rights violations and repeated acts constituting war crimes and crime against humanity.

As a State party to the International Covenant on Civil and Political Rights (ICCPR), India is obligated to ensure the principles of legality and the right to liberty and security.

“Any person whose rights and freedom as herein recognized are violated shall have an effective remedy...., any person claiming such a remedy shall have a right thereto determined by competent judicial, administrative and legal authorities; [and] to ensure that competent authorities shall enforce such remedies when granted.”

However, the pattern of legal breakdown in Indian administered Kashmir violates the basic canons of international human rights. The legal system in Kashmir is riddled with delays and backlogs repudiating the victim effective remedy along with procedural duplicity for the claimants and the military forces which are advantageous for the latter as well as draconian laws which facilitate abuses to be committed with impunity.

The Indian authorities in Indian administrated Jammu & Kashmir (J&K) continue to use various forms of arbitrary detention to target protesters, political dissents and other civil society actors to suppress the dissent. A number of laws provide the legal basis for arbitrary detention but the one that is used most frequently to stifle political dissent is the Jammu and Kashmir Public Safety Act (PSA). This law does not provide for judicial review of detention and the Indian authorities issue successive detention orders thus defeating the Kashmir High Court orders and all other provisions of remedy.

Thousands of Kashmiri political activists, human rights defenders and commoners were already languishing in different Indian jails prior to August 5, 2019 when government of Indian stripped the autonomous status of Indian administered Kashmir and dismembered the state into two union territories of Jammu and Kashmir and Ladakh. To enforce this illegal and unconstitutional action government of Indian imposed with abusive restrictions,

including a complete Government siege, lockdown on internet and mobile phone services, and closure of essential services as well.

Any dissent, criticism to the government decision is being dealt with strict action including sedition allegations where the punishment for sedition is capital punishment.

Due to the voices from every corner of globe, the government of India informed the Rajya Sabha (the upper house of Indian Parliament) that a total of 5,161 people were detained after the state's constitutional autonomy was withdrawn on August 5, 2019. Most of the detentions were made under Public Safety Act, most inhumane law. However local civil society actors belied that over 13 thousand people of all ages have been taken into custody since, 5th August 2019.

Those booked under the PSA law were mostly youth, not older than 35 years of age. Even the juveniles were detained under Law which is against the Convention on the Rights of the Child (CRC) 1989 of which India is among signatory. In response to a petition filed in Supreme Court of India regarding the arrests of minors in Kashmir, the Juvenile Justice Committee of Jammu and Kashmir High Court had said that '144 boys, including a 9 year old child were arrested by state forces post Article 370 abrogation on August 5.

As per the recommendations of National human rights commission of India and Supreme Court of India ever prisoner must be put in a jail nearly his/her district. But 37.4% of detainees related to Public safety act case of Indian administered Kashmir have been moved to jails outside Jammu and Kashmir to different jails across India. The families and loved ones of the detainees are unable to reach to their loved ones. The location of 45% of the detainees remains unknown.

Ghulam Mohammad Bhat, 65 a prominent political worker was one of the hundreds of people detained under a preventive detention law, the Public Safety Act (PSA), in the run-up to revoking special provisions of Indian constitution guaranteeing autonomy to the region. Bhat was taken to one month after his arrest his family came to know that he has been taken to a faraway jail in Allahabad district, Uttar Pradesh state of India. On December 10, when world was commemorating International Human rights days, Bhat Family received his dead boy from the Jail authorities.

Mian Abdul Qayoom, president of Kashmir Bar Association, the largest lawyers' body in the region, has also been detained under the same preventive detention law. "He is a diabetic whose kidney has been removed. His blood creatinine levels had gone high. He needs to take medicine nine times a day. And because of a firearm injury suffered many years ago he has chronic pain in a leg and back".

Taking serious note about the safety of Kashmiri prisoners in Indian jails after the spread of COVID-19 in India six international human rights groups, Amnesty International India, the Asian Forum for Human Rights and Development, CIVICUS: World Alliance for Citizen Participation, International Commissions of Jurists, International Federation for Human Rights and World Organization Against Torture, in a joint statement said "The fate of hundreds of arbitrarily detained Kashmiri prisoners hangs in the balance as the number of confirmed cases of coronavirus in India passes the 4,000 mark and many more are likely to remain undetected or unreported".

They warned that inmates and prison staff remain extremely vulnerable to the disease and basic measures like hand washing are not possible for prisoners. "Under international law, India has an obligation to ensure the physical and mental health and well-being of inmates. However, with an occupancy rate of over 117%, precarious hygienic conditions and inadequate health services, the overcrowded Indian prisons constitute the perfect environment for the spread of coronavirus," the rights groups said.

The rights bodies also called for the restoration of high-speed internet in the region because "contacts between inmates and the outside world".

Soon after the joint statement of the six rights bodies, UN also showed concern on the safety of Kashmiri prisoners in Indian Jails. On 6th of April spokesperson of UN secretary general in a press briefing said that India should closely monitor the plight of detainees in Jammu and Kashmir as the coronavirus pandemic continues to spread across the world.

On March 25, UN High Commissioner for Human Rights Michelle Bachelet called on the international community to protect prisoners from the pandemic by releasing "vulnerable" ones.

In light of the above and the concerns of the international human rights bodies, UN Secretary General and UN high commissioner of human rights, World Muslim Congress urges the United Nations human rights council to prevail upon government of India to allow the working group on arbitrary detentions to visit Indian administered Kashmir and release all political leaders, human rights activists and other people detained arbitrary and obey its obligations which it took while seeking the membership of the human rights council.
