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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 International Action for Peace & Sustainable Development, a non-governmental organization in special consultative status

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

[16 August 2024]

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



Arbitrary Detentions in Indian Administered Jammu and Kashmir

Introduction

The issue of arbitrary detentions remains a significant concern in the context of international human rights law and local legal frameworks. The Working Group on Arbitrary Detention (WGAD) has an essential mandate to address these violations, report on their findings, and recommend measures for states to comply with their international obligations. During the 55th session of the Human Rights Council, the WGAD presented critical reports highlighting the alarming trend of arbitrary detentions worldwide, with particular emphasis on regions experiencing conflict and political instability, including Indian Administered Jammu and Kashmir.

Mandate of the Working Group on Arbitrary Detention

The WGAD was established by the United Nations Commission on Human Rights in 1991 to investigate cases of arbitrary detention and to promote adherence to international human rights standards. Its mandate includes examining claims of arbitrary detention, providing recommendations to states, and raising awareness about the implications of such practices on individual rights and freedoms. The WGAD operates under the premise that arbitrary detention is a violation of fundamental human rights, including the right to liberty and security of person, as enshrined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

Findings of the Working Group on Arbitrary Detention

In its recent reports, the WGAD has documented numerous cases of arbitrary detentions in various contexts, with a particular focus on regions where political dissent is met with repressive measures. The findings indicate that arbitrary detentions are often justified under the guise of national security, public order, or other state interests. However, these justifications frequently lack legal basis and are inconsistent with international human rights norms.

The WGAD has noted that detainees, including political leaders, human rights defenders, and ordinary citizens, are subjected to a “revolving door policy,” where they are repeatedly arrested and detained without due process. This practice not only undermines the rule of law but also perpetuates a climate of fear and repression. The WGAD has called for states to adhere to their obligations under international law and to implement safeguards against arbitrary detention.

Arbitrary Detentions in Indian Administered Jammu and Kashmir

The situation in Indian Administered Jammu and Kashmir exemplifies the troubling trend of arbitrary detentions. The region has been under prolonged military and administrative control, leading to widespread human rights violations, including unlawful detentions. The Indian government has employed draconian laws, such as the Public Safety Act (PSA) and the Armed Forces (Special Powers) Act (AFSPA), to justify the detention of individuals without trial.

Under the PSA, authorities can detain individuals for up to two years without charge, based solely on the subjective assessment of the state regarding the person’s activities. This law has been criticized for its vague definitions and broad applicability, allowing the government to detain individuals arbitrarily. Moreover, the AFSPA grants special powers to security forces, including the authority to arrest without warrant and use lethal force, further exacerbating the situation.

Legal Framework and Violations

From an international law perspective, arbitrary detention is prohibited by various treaties and conventions. Article 9 of the ICCPR explicitly states that “no one shall be subjected to arbitrary arrest or detention.” Furthermore, the UN Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court also emphasize the right to challenge the lawfulness of detention.

In the context of Indian Administered Jammu and Kashmir, the use of draconian laws violates both international human rights standards and domestic legal principles. The Constitution of India guarantees the right to life and personal liberty under Article 21, which has been interpreted by the Supreme Court of India to include the right to a fair trial and due process. However, the application of laws like the PSA and AFSPA undermines these constitutional protections, leading to widespread violations.

Reports have documented cases where individuals are arrested without warrants, and upon release, are often re-arrested under similar charges, creating a cycle of detention that is difficult to escape. Even when higher courts quash the detention orders, the authorities often find ways to re-detain individuals under different pretexts, demonstrating a blatant disregard for judicial authority and the rule of law.

Impact on Society and Human Rights Defenders

The implications of arbitrary detentions extend beyond the individuals directly affected; they create a chilling effect on society at large. Political dissent is stifled, and the space for civil society and human rights defenders is severely restricted. The fear of detention discourages individuals from speaking out against government policies or advocating for human rights, leading to a culture of silence and complicity.

Human rights defenders in Indian Administered Jammu and Kashmir face particular risks, as they are often targeted for their work in documenting abuses and advocating for accountability. The arbitrary detention of these individuals not only violates their rights but also hampers the broader human rights movement in the region. The WGAD has called for the protection of human rights defenders and for states to create an enabling environment for their work, free from harassment and intimidation.

Recommendations and Conclusion

In light of the findings presented by the WGAD and the alarming situation in Indian Administered Jammu and Kashmir, it is imperative that the international community takes decisive action. States must be held accountable for their human rights obligations, and mechanisms must be established to monitor and prevent arbitrary detentions.

The WGAD has recommended that states:

1. Repeal or amend laws that permit arbitrary detention, ensuring that any deprivation of liberty is in accordance with international standards.
2. Strengthen judicial oversight of detention practices and establish independent bodies to investigate allegations of arbitrary detention.
3. Provide training for law enforcement and security personnel on human rights standards and the legal framework governing detention.
4. Ensure that individuals detained have access to legal representation and the right to challenge their detention in court.
5. Protect human rights defenders and journalists from harassment and arbitrary detention, recognizing their crucial role in promoting accountability and transparency.

In conclusion, arbitrary detentions are a grave violation of human rights that must be addressed urgently. The situation in Indian Administered Jammu and Kashmir serves as a stark reminder of the need for vigilance and action in the face of such abuses.

The international community, alongside local actors, must work collaboratively to uphold the rule of law, protect individual rights, and ensure that those responsible for violations are held accountable. Only through concerted efforts can we hope to end the cycle of arbitrary detention and restore respect for human rights in Indian Administered Jammu and Kashmir and beyond.
