

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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3 October 2016

Ms. Mehbooba Mufti Sayeed
Honourable Chief Minister
Chief Minister's Office Government of Jammu and Kashmir
Srinagar, India
fax +91 194 2545529; cmsect-jk@nic.in

Dear Chief Minister Mehbooba Mufti,

Re: Release human rights defender Mr. Khurram Parvez

The undersigned international human rights organizations are seriously concerned about the arbitrary detention of Kashmiri human rights defender Mr. Khurram Parvez under Jammu and Kashmir's *Public Safety Act* (PSA) in violation of international human rights law.

We are also concerned that the detention of Mr. Parvez took place after he was prevented by immigration authorities from boarding a flight to Geneva on 14 September 2016 to attend the 33rd session of the United Nations (UN) Human Rights Council. The obstruction of Mr. Parvez' legitimate work as a human rights defender in cooperation with a UN human rights body is extremely troubling. The prohibition of Mr. Parvez' travel to the Human Rights Council, and his arbitrary arrest and detention, have the appearance of being an unlawful response to and reprisal for his legitimate human rights advocacy.

If, indeed there are reasonable grounds to believe that Mr. Parvez has committed any legally cognizable offence, your government should produce evidence, ensure pre-trial release as required by international law and then ensure a prompt and fair trial, instead of arbitrarily detaining him. The grounds for detention say that Mr. Parvez backs "secessionist ideology," but

India's Supreme Court has repeatedly said that holding and expressing an opinion cannot be punished and there needs to be direct evidence of incitement to violence.¹

The judicial harassment and arbitrary detention of Mr. Parvez suggest a deliberate attempt to obstruct his human rights activities and are in violation of rights protected by the *International Covenant on Civil and Political Rights (ICCPR)*² and other treaties to which India is a State Party, including rights to liberty, the right to due process, and the right to freedoms of expression and movement. We equally remind you of the numerous UN instruments concerning the right of all persons to have unhindered access to and engage with UN human rights mechanisms, and not to be retaliated against for doing so.³ We urge your government to ensure the immediate and unconditional release of Mr. Parvez.

Summary of facts

Khurram Parvez is internationally recognized for his long history of peaceful human rights advocacy. He was the recipient of the prestigious 2006 Reebok Human Rights Award, which recognises those who have made significant contributions to human rights causes through non-violent means. Mr. Parvez is currently the Chairperson of the Asian Federation Against Involuntary Disappearances (AFAD) and the Program Coordinator of the Jammu and Kashmir Coalition of Civil Society (JKCCS), which in September 2015 published a report cataloguing official impunity for serious human rights violations in Kashmir, including extrajudicial killings, torture and enforced disappearances.⁴

On 14 September 2016, immigration authorities at the New Delhi Indira Gandhi International Airport refused to allow him to board a flight to Geneva to attend the 33rd session of the UN Human Rights Council. His colleagues were allowed to travel to Geneva.

After he returned to Srinagar on 16 September, Mr. Parvez was arrested at 12:30 am at his home in Srinagar reportedly on grounds that police feared "he may cause a breach of peace." Mr. Parvez was denied access to a lawyer.

On 20 September, Principal District & Sessions Judge, Rashid Ali Dar, ruled that Mr. Parvez's detention was unlawful and directed the police to release him, reprimanding the executive magistrate, a revenue officer, who ordered Khurram's detention under Section 107 and 151 of the *Code of Criminal Procedure*, for not following due process.

The police failed or refused to implement the order. Instead of releasing him as ordered, on 21 September, police took Mr. Parvez to Kotbalwal jail in Jammu city, 300 kilometres from

¹ See for example, *Shreya Singhal v. Union of India*, March 24, 2015.

² UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>.

³ See, for example, the 1998 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN General Assembly Resolution 53/144, articles 5 and 9, discussed below.

⁴ The International Peoples' Tribunal on Human Rights and Justice in Indian-Administered Kashmir [IPTK] and The Association of Parents of Disappeared Persons [APDP] *Structures of Violence – The Indian State in Jammu and Kashmir*, Srinagar: Jammu Kashmir Coalition of Civil Society, September 2015, available at: <http://www.jkccs.net/structures-of-violence-the-indian-state-in-jammu-and-kashmir-2/>

Srinagar and booked him under the PSA, which allows police to detain a person without trial for up to six months. Mr. Parvez' family made a request to Farooq Ahmad Lone, the Deputy Commissioner, that he not be transferred to Kotbalwal jail due to his disability. Mr. Parvez had to undergo the amputation of a leg in 2004 when his car was caught in an explosion triggered by militants opposing elections that he was monitoring. However, no response to that request has been received. He has appealed the courts against his detention.

International human rights law binding on India, including officials in Jammu & Kashmir

The obstruction by officials of Mr. Parvez's travel to the UN Human Rights Council in Geneva and his subsequent arbitrary detention violates internationally protected human rights guaranteed by the ICCPR, binding on all authorities in Jammu and Kashmir since India acceded to the ICCPR on 10 April 1979. Several of Mr. Parvez's internationally protected rights have been violated, including his rights to liberty and freedom from arbitrary detention (Article 9), his freedom to leave the country (Article 12.2), his freedom of expression (Article 19), his freedom of association (Article 22), and his right to due process guaranteed by Article 14, including his right to a lawyer pursuant to Article 14.3, and his right to an effective remedy (Article 2(2)).

Jammu and Kashmir's administrative detention laws, including the PSA, fail to ensure persons' internationally protected rights to a prompt and fair trial on legally cognizable offences and the presumption of innocence.⁵ In 2011, the UN Special Rapporteur on the Situation of Human Rights Defenders expressed concern that administrative detention laws were being unlawfully used against human rights defenders and recommended that they be repealed.⁶ While modest changes have been made since the Special Rapporteur's 2011 report, the PSA has not been repealed and remains inconsistent with international human rights standards.

We also draw your attention to the duties of all States under the UN *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders)*⁷ to ensure that anyone, including human rights defenders, is effectively able exercise his or her right to conduct human rights advocacy at national and international levels, including the UN Human Rights Council. The Declaration states:

- "everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national *and international levels*" (Article 1);

⁵ See e.g. Amnesty International, *Still a Lawless Law: Detentions Under the Jammu and Kashmir Public Safety Act*, 1978. London: Amnesty International, 2012, available at: <http://www.refworld.org/pdfid/50864f1a2.pdf>

⁶ "India's human rights defenders need better protection, says UN expert" *UN News Center*, 21 January 2011, <http://www.un.org/apps/news/story.asp?NewsID=37339#.V-SPsPR5LgI>; See the Special Rapporteur's report at <http://www.ohchr.org/Documents/Issues/Defenders/A-HRC-19-55-Add1.pdf>.

⁷ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>. The Declaration, while not in itself a binding instrument, is based on human rights standards enshrined in other international instruments that are legally binding including the ICCPR. The Declaration was adopted by consensus of the General Assembly and thus represents a unanimous commitment by States to its implementation.

- “For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national *and international levels*: to meet or assemble peacefully” (Article 5(a));
- “To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.” (Article 9.4);
- “the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration” (Article 12.2) (emphasis added).

We remind your government that on 17 December 2015, India voted in favour of General Assembly Resolution A/RES/70/161, entitled “Human rights defenders in the context of 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.”⁸ This resolution calls for accountability for intimidation of human rights defenders and urges States to release defenders who have been arbitrarily detained for exercising their fundamental rights to freedom of expression, peaceful assembly and association. Further, the General Assembly in 2011, as part of its adoption of the outcome of a review of the work and functioning of the Human Rights Council, strongly rejected “any act of intimidation or reprisal against individuals and groups who cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights,” and urged States “to prevent and ensure adequate protection against such acts.”⁹

We also point out your government’s duties to ensure that all persons, including prisoners, are to be protected from all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are absolutely and non-derogably prohibited by ICCPR articles 7 and 10.1, as well as by customary international law as confirmed by the International Court of Justice, and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.¹⁰ The UN *Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules)*¹¹ provide that all prisoners be ensured adequate medical treatment and facilities

⁸ A/RES/70/161. See <http://www.un.org/press/en/2015/ga11745.doc.htm>. Voting record at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/PV.80

⁹ A/RES/65/281, Annex, para 30 (India voted in favour of this resolution).

¹⁰ See International Court of Justice, Questions relating to the Obligation to Prosecute or Extradite (*Belgium v. Senegal*), Judgment, I.C.J. Reports 2012, p. 422, para 99; Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010, p.639, para 87. See also the UN *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>, signed by India 14 October 1997 but not yet ratified.

¹¹ United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, originally adopted 30 August 1955, revised and renamed by General Assembly resolution 70/175 of 7 December 2015. Available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/175.

that meets all requirements of health including clean and decent sanitation and adequate bathing and shower installations. In particular, the *Convention on the Rights of Persons with Disabilities*,¹² ratified by India in 2007, requires States to provide reasonable accommodation for prisoners with disabilities (Article 14.2).

Recommendations

The undersigned call upon authorities in Jammu and Kashmir to:

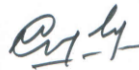
- Immediately and unconditionally release Mr. Khurram Parvez.
- Ensure that Mr. Khurram immediately and at all times has all necessary medical treatment and all other accommodations required by him as a person with a disability;
- Ensure the right of Mr. Parvez to immediate and confidential access to lawyers of his own choosing, and ensure at all times that he is protected from all forms of torture or other ill-treatment;
- Respect the independence, impartiality and integrity of the courts, ensuring Mr. Parvez procedural rights as required by the ICCPR, Articles 2, 9 and 14;
- Cease all judicial and other harassment against Mr. Parvez and all other non-violent human rights defenders in Jammu and Kashmir, and guarantee in all circumstances a safe and enabling environment by which they may carry out their human rights work without fear of reprisals and free from restrictions, including hindrances to international travel, in accordance with the UN *Declaration on Human Rights Defenders* and other international rules and standards;
- Repeal the *Public Safety Act*.

We look forward to a reply to this letter.

Yours sincerely,



Catherine Morris,
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Lawyers' Rights Watch Canada



Meenakshi Ganguly
South Asia Director
Human Rights Watch



Ian Seiderman
Legal and Policy Director
International Commission of Jurists

¹² UN General Assembly, *Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106, available at: <http://www.refworld.org/docid/45f973632.html>

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