

Mandates of the Special Rapporteur on minority issues; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on freedom of religion or belief

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on minority issues; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 43/8, 43/4, 41/12, 43/46 and 40/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **elimination of Jammu and Kashmir's special autonomy status under Article 370 of the Constitution of India and the implementation of the new Jammu and Kashmir Grant of Domicile Certificate ("Domicile Rules") and other legislation in Indian administered Jammu and Kashmir. These changes may lead to a reduced level of political representation and participation of the native groups (Kashmiri, Dogri, Gojri, Pahari, Sikh, Ladhaki and other minorities), due to the abolishment of the regional government and its power to legislate. In addition, newly adopted legislation may cause demographic changes and risks undermining the linguistic and cultural rights and the freedom of religion or belief of the people of Jammu and Kashmir in the autonomous region which had been established in 1947 to guarantee their ethnic, linguistic and religious identities.**

Other concerns relating to the deterioration of the human rights situation in Jammu and Kashmir, including alleged ongoing human rights violations of India's Kashmiri minorities, particularly Kashmiri Muslims, have been raised in several communications sent by various Special Procedures mandate holders, including on 1 July 2020 (Ref. IND 11/2020); on 12 May 2020 (Ref. IND 8/2020); on 4 May 2020 (Ref. IND 6/2020), on 27 March 2020 (Ref. IND 5/2019); and on 16 August 2019 (Ref. IND 16/2019).

According to the information received:

On 5 August 2019, the Government unilaterally and without consultation revoked the constitutional special status of Jammu and Kashmir under Article 370 of the Constitution of India. The state legislature had been suspended since June 2018 upon imposition of direct rule by the Government in New Delhi. As a result, the population of Jammu and Kashmir, Kashmiri and other minorities, no longer have control over their own affairs nor can they legislate in relation to matters in Jammu and Kashmir which they could previously. In parallel, the central Union Parliament adopted the Jammu and Kashmir Reorganization Act, which came into effect on 31 October 2019. Religious

and ethno-linguistic identities helped mold the contours of the constituent states of India's federal system, leading to a number of Indian states such as Jammu and Kashmir, Nagaland, Manipur, Mizoram and Sikkim, having special constitutional status and legislative authority to represent and protect the rights of the minority communities concentrated in these regions. Jammu and Kashmir was the only state in India where Muslims are more than half of the population. It was also the only state to have its constitutional status revoked.

This dissolution also led to the political division of the former state of Jammu and Kashmir into the two Union Territories of "Jammu and Kashmir" and "Ladakh", both of which are now governed directly by the central Government in New Delhi. Jammu and Kashmir's local political leaders, mainly members of the Kashmiri and other minorities, were not consulted about these changes as most were among the thousands of persons placed in prolonged arbitrary detention as a preventive measure against protests, and a complete communications blackout was imposed in the former state of Jammu and Kashmir for months. The Reorganization Act was enforced, while Jammu and Kashmir was under strict curfew that also lasted for many months. The events starting from 2019 with the elimination of the special status without consultation of the population of Jammu and Kashmir involves a political disenfranchisement, particularly impacting India's Kashmiri, Dogri, Gojri, Pahari and Ladhaki minorities.

In addition to the central Government in New Delhi dissolving the state's autonomy, on 18 May 2020, the Government issued the Domicile Rules – a set of provisions that define "domicile", for the purpose of receiving residency benefits regarding education, employment, and land ownership in Jammu and Kashmir. The Domicile Rules digress from earlier residency laws in the state, which granted the Kashmiri Muslim, Dogri, Gojri, Pahari, Sikh, Ladhaki and other established minorities exclusive rights to buy property, own land, and access certain state jobs. These new rules allegedly have the potential to pave the way for persons from outside the former state of Jammu and Kashmir to settle in the region, alter the demographics of the region and undermine the native minorities' ability to exercise effectively their human rights in a number of areas, including political representation and participation without discrimination.

The Domicile Rules remove most legal differences between permanent residents of Jammu and Kashmir, who are mainly minorities in the rest of India, and persons from any other part of India, who have lived in the region for a limited period. Accordingly, the following categories of individuals are eligible for domicile certificates: 1) residents of Jammu and Kashmir for a minimum of 15 years; 2) those who have studied for seven years and appeared in 10th or 12th standard examinations in Jammu and Kashmir; 3) all the children of central government officials who have served in Jammu and Kashmir for a total of 10 years; and 4) refugees from West Pakistan who are registered as migrants under the Relief and Rehabilitation Commission.

The process of awarding domicile certificates to individuals from outside Jammu and Kashmir appears to have been excessively simplified, with little or no scope of verification, to the point that it is easier for individuals outside

Jammu and Kashmir to obtain a domicile certificate than a long-standing resident, most of whom are members of the Kashmiri Muslims, Dogri, Gojri, Pahari, Sikh and Ladhaki minorities. Non-Kashmiris now only have to provide readily available documentary evidence (ration card, educational records, or an employer certificate). This procedure is not available to the long established minorities of Jammu and Kashmir, who have to provide an affidavit and a permanent resident certificate which can be a lengthy procedure. In addition, junior revenue officers must issue the certificates within 15 working days or face a penalty of around 670 USD, in case the applicant decides to file a complaint with the Appellate Authority. The imposition of monetary penalties without a prior inquiry or the right to appeal is allegedly in direct contravention of the Jammu and Kashmir Employees Conduct Rules and State Subject Law, which ensured multiple levels of checks in the process of issuing the domicile certificates.

The Domicile Rules also risk diminishing the rights to access public employment opportunities for natives of the Union Territories of Jammu and Kashmir, which are economically vital and symbolically significant for them and may have an adverse impact on the local economy. In addition, there is a risk that the new legislation may lead to the loss of land owned by locals and heightened intercommunal tensions between new arrivals and established communities. This in turn would increase the likelihood of the use of force by the authorities and may further jeopardise the linguistic, cultural and religious rights of Kashmiri Muslim, Dogri, Gojri, Pahari, Sikh, Ladhaki and other minorities.

On 1 September 2020, according to information received, the Jammu and Kashmir administration announced that 1,718,887 people had applied for the domicile certificates, and 1,243,996 (72%) have been issued these certificates. Out of the total applicants, 1,473,141 (86%) applied using their Permanent Resident Certificates; 1,095,458 (74%) were issued domicile certificates. The other 194,758 people who did not produce Permanent Resident Certificates in their applications for the domicile certificates are believed to be from outside the region. Out of this group, 144,846 people (74%) obtained domicile certificates. The percentage of successful applications for certificates from original residents with Permanent Resident Certificates was thus 74%, meaning 26% of those originally resident were denied the new domicile certificates. It is also not clear why existing, long-term and permanent residents holding valid Permanent Resident Certificates would need to reapply or have their applications declined at all. In addition, 12 % of successful applicants for domicile certificates appear to be from outside Jammu and Kashmir raising concerns that demographic change on a linguistic, religious and ethnic basis is already underway. A total of 3,380,234 domicile certificates were issued by 25 January 2021.

It is further alleged that the elimination of Jammu and Kashmir's special autonomy status under Article 370 of the Constitution of India and recent amendments and legislation, including the Union Territory of Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Third and Fifth Orders, appear to remove previous protections on land ownership and use, intended to protect the distinct identities of the people of Jammu and Kashmir and open up instead property ownership to eligible individuals from any part of India,

which would not be possible for populations in parts of India governed by special laws and provisions. This would seem to suggest that the population of Jammu and Kashmir, and particularly its minority communities, are treated less favourably than minorities in other parts of the country. It is also claimed that the Jammu and Kashmir Land Revenue Act has been amended to make it far easier to convert agricultural land to non-agricultural use by officials. It is further claimed that these changes would disenfranchise Kashmiri minorities, including nomadic Gujjars, and affect their rights to land ownership and use. Forest dwellings and huts of the Gujjar minority around localities such as Lidroo in Southern Kashmir, in some cases used for generations, have been allegedly targeted for destruction or eviction orders for illegal occupation under, among others, orders from the Pahalgam Development Authority.

Finally, it is also feared that the military presence in the area is likely to increase and that this may lead to a possible higher risk of human rights violations. A related concern is the central Government's decision to notify areas of the former state as 'strategic areas' for development by the army, suggesting further expansion of the military presence in hinterland and border areas. The Government has also identified over 57,000 acres of land for setting up industrial estates for prospective entrepreneurs. Existing industrial estates in Kashmir are highly militarized. The setting up of new industrial estates creates the impression that there may be an increase of military presence in the area.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern that the loss of political autonomy and the implementation of the new Domicile Rules and other legislation, which may alter the demographic composition of the former state of Jammu and Kashmir, may result in political disenfranchisement, and significantly reduce the degree of political participation and representation of the Kashmiri and other minorities previously exercised in the former state, undermining their linguistic, cultural and religious rights.

We are also concerned that the loss of autonomy and the imposition of direct rule by the Government in New Delhi suggests the Kashmiri minorities no longer have their own government and have lost power to legislate or amend laws in the region. This would seem to be inconsistent with the exercise by minorities of their right to effective political participation since the loss of autonomy excludes Kashmiri Muslim, Dogri, Gojri, Pahari, Sikh, Ladhaki and other established minorities from the presence of a representative government at the regional level and of an executive, accountable to the electorate. For the minorities involved, it also affects their human rights as citizens to take part in the conduct of public affairs, directly or through freely chosen representatives. While other states have been allowed to preserve their special autonomy status under the Constitution with protections for their native ethno-linguistic groups, there is concern that the former state of Jammu and Kashmir, as the only state in India where Muslims form the greater part of the population, may have been singled out because of this. Furthermore, Kashmiri Muslim, Dogri, Gojri, Pahari, Sikh, Ladhaki and other minorities have also been deprived of being part of an autonomous state and having a greater say in the matters related to them directly.

Moreover, it is of grave concern that the Government in New Delhi could modify unilaterally and without local or minority consultation the Domicile Rules or any legislation at any time to further expand those able to purchase property or claim

residency rights. The fast-tracking process of domicile certification, the revision of residency rights of Jammu and Kashmir's local population as well as the changes to the sale and ownership of land, may be discriminatory and further deteriorate the overall human rights situation of the minorities there.

Finally, we reiterate our concerns expressed in previous communications regarding the ongoing internet shutdowns, standing restriction against 4G access and restrictions on the right to freedom of assembly and the right to freedom of expression, as well as the reported pattern of detentions and harassment of journalists and human rights defenders, which may not have given the people of Jammu and Kashmir the possibility to meaningfully participate in the political process around the new Domicile Rules and other matters affecting them.

We call on the Government to ensure that the people of the Union Territory of Jammu and Kashmir have the possibility to express their political opinions and participate meaningfully in the political processes, so that minorities in Jammu and Kashmir -Kashmiri Muslim, Dogri, Gojri, Pahari, Sikh, Ladhaki and other minorities- as part of the people of India, may exercise regional political autonomy on an equal footing to other states in India and freely pursue their economic, social and cultural development.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please clarify on what grounds Jammu and Kashmir, as India's only Muslim-majority state, lost its the constitutional special status.
3. Please explain how the revocation of autonomy better ensures the right of the minorities of Jammu and Kashmir, as part of the people of India, to equally and freely pursue their economic, social and cultural development.
4. Please indicate what constitutional or legal measures have been adopted since the revocation of Constitutional Article 370 in 2019 to ensure a high level of political participation and representation of the Kashmiri Muslim, Dogri, Gojri, Pahari, Sikh, Ladhaki and other minorities, including any autonomy arrangement.
5. Please clarify specifically how the human rights of Kashmiri Muslim, Dogri, Gojri, Pahari, Sikh, Ladhaki and other minorities to take part in the conduct of public affairs and participate effectively in public life, directly or through freely chosen representatives, is maintained or

strengthened at the regional level despite the loss of power to legislate regionally, and the abolition of the regional legislative and executive branches.

6. Please clarify how decisions to grant domicile certificates are adopted; if there are multiple levels of checks in practice to ensure a fair and transparent process that will not be detrimental to existing and established minorities in the former state of Jammu and Kashmir, including the possibility to challenge such decisions; and how revenue officers responsible for the process are safeguarded from any undue pressure.
7. Please indicate specifically how established populations of Jammu and Kashmir, and particularly Kashmiri Muslim, Dogri, Gojri, Pahari, Sikh, Ladhaki and other minorities are not potentially discriminated by the changes a procedure which appears to be easier and faster for individuals from outside Jammu and Kashmir.
8. Please clarify how the traditional residency rights of Jammu and Kashmir minorities will be respected and what steps will be taken to prevent the loss of land owned by them and mitigate heightened tensions between new arrivals and established communities to minimise the use of force by authorities.
9. Please clarify how traditional land ownership and usage rights of Kashmiris, including specifically of groups such as the Gujjars existing before the revocation of autonomy in 2019, are maintained. In this regard, please describe on what basis development authorities such as the Pahalgam Development Authority can order the destruction of Gujjar seasonal dwellings.
10. Please provide information on any measures taken to protect and promote the rights of minorities from the region such as the Kashmiri Muslim, Dogri, Gojri, Pahari, Sikh and Ladhaki, including their linguistic, cultural and religious rights.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Fernand de Varennes
Special Rapporteur on minority issues

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Annex

Reference to international human rights law

In light of the above-mentioned allegations of human rights violations affecting Kashmiri and other minorities, we call to the attention of your Excellency's Government of its obligations under the International Covenant on Civil and Political Rights (ICCPR), to which India has been a State party since 1979. In particular, Article 2 (1) of the International Covenant of Civil and Political Rights (ICCPR), which provides that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 26 of the ICCPR contains a general right to equality without discrimination on ground, such as religion, language or ethnicity, in fact or in practice, and stresses that all persons are equal before the law and entitled without discrimination to the equal protection of the law. In this regard, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on grounds such as religion. Moreover, in Article 5 (1) of the ICCPR, it also stresses that "Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant."

We also remind your Excellency's Government of the international standards regarding the protection of minorities, including article 27 of the ICCPR, which protects persons who belong to ethnic, linguistic and religious minorities to enjoy their own culture, use their own language, and practice their own religion with other members of their group. This right imposes positive obligations on states not to deny the exercise of these rights among themselves. Furthermore, we wish to refer to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. In particular, the Declaration refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).

We would also like to remind your Excellency's Government of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which India has been a State party since 1968. In particular, we would like to recall article 1 on the prohibition of racial discrimination; article 2 on the obligation of the States to eliminate any act or practice of racial discrimination against persons and/or groups of persons; article 5 on the right of everyone, without any distinction, to equality before the law in the enjoyment of human rights and fundamental freedoms; and article 6 on the right of everyone to effective protection and remedy against any acts of racial discrimination. In addition, article 7 of the Convention requires that "States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups."

We would also like to appeal to your Excellency's Government to take all necessary steps to respect and ensure the right to freedom of opinion and expression in accordance with article 19 of the ICCPR. The Human Rights Committee has affirmed that "States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression". (General Comment 34 para. 23) Attacks on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. (*id.*) Journalists and those who publish human rights-related reports are frequently subjected to threats, intimidation and attacks because of their activities. "All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress." (*id.*) States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Under no circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19.

We also recall that according to Article 21 of the ICCPR, "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others." The 'provided by law' requirement means that any restriction 'must be made accessible to the public' and 'formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly' (CCPR/C/GC/34). Moreover, it 'must not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution'. The requirement of necessity implies an assessment of the proportionality of restrictions, with the aim of ensuring that restrictions 'target a specific objective and do not unduly intrude upon the rights of targeted persons. The ensuing interference with third parties' rights must also be limited and justified in the interest supported by the intrusion. Finally, the restriction must be 'the least intrusive instrument among those which might achieve the desired result'.