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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.

[30 January 2024]

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



Counter-Terrorism Framework and its Impact on Human Rights. Interactive dialogue with the Special Rapporteur on the promotion and protection of human rights while countering terrorism.

The Global Counter-Terrorism Strategy, a collective agreement among Member States, advocates for a comprehensive, integrated approach to combating terrorism while upholding human rights and the rule of law. However, India faces challenges in aligning its national counter-terrorism legislation with these principles. The enactment of broadly formulated laws has led to issues such as prolonged detentions, torture, and violations of due process, undermining human rights and fair trial standards.

These legislations hinder public and independent investigations into past renditions and contribute to surveillance practices without adequate safeguards, particularly concerning the right to privacy. Despite India's FATF membership since 2010, its compliance, particularly in areas like terrorism financing, remains "partially compliant," as noted in the 2010 Mutual Evaluation Review (MER). The MER prompted amendments to the UAPA and PMLA, executed in 2012 and 2018, but concerns persist. The FATF recommended a broader terrorism definition, yet the interpretation raises questions about its efficacy in addressing the intricacies of terrorism financing.

Special Procedures mandate-holders and international bodies have expressed concerns about human rights violations, including arbitrary detentions, extrajudicial killings, and discrimination against minorities. Joint communications, on 8 August 2023 & 31 October 2023, from the Special Rapporteur on Counterterrorism, the Working Group on Arbitrary Detention, the Special Rapporteur on Freedom of Opinion and Expression, the Special Rapporteur on Freedom of Peaceful Assembly and Association, the Special Rapporteur on human rights defenders, and the Special Rapporteur on freedom of religion or belief urged the Government of India to provide information on the alignment of Jammu and Kashmir laws with international human rights standards, along with details on arrest safeguards and measures protecting human rights defenders and journalists.

The abrogation of Article 370 in August 2019 marked a transformative moment in the history of Jammu and Kashmir, redefining its legal and political landscape. In the aftermath, concerns have been raised about the application of counter-terrorism laws, including the Unlawful Activities Prevention Act (UAPA), Public Safety Act (PSA), National Security Act (NSA), Code of Criminal Procedure (CrPC), Penal Code, and Foreign Contribution Regulation Act (FCRA).

- The UAPA, a key instrument in India's counter-terrorism framework, underwent significant amendments in 2019. The broader definition of terrorism, introduced to encompass acts that threaten the economic security of the country, allows authorities to target individuals collecting funds for perceived terrorist acts, irrespective of the specific use of these funds. This broad definition, while aiming to strengthen counter-terrorism efforts, has raised concerns about potential human rights abuses.
- The Public Safety Act grants authorities the power to detain individuals for up to two years without a trial. This preventive detention measure has faced criticism for its potential misuse, as it allows authorities to detain individuals based on suspicion rather than evidence. Critics argue that the prolonged detention without trial, often used against political dissidents, journalists, and human rights defenders, raises serious human rights concerns, particularly about the right to liberty and security.
- The NSA provides for preventive detention in cases involving national security threats. Like the PSA, it allows for prolonged detention without trial, raising concerns about potential abuse. The overlapping application of the PSA and NSA compounds the negative human rights consequences for individuals, their families, and communities. The act has been criticized for its potential to stifle dissent and curb freedom of expression, particularly in a region that has witnessed longstanding political tensions.

- The CrPC governs the procedural aspects of criminal law in India. In the context of Jammu and Kashmir, concerns have been raised about the misuse of provisions related to arrest, detention, and search operations. The expansive powers granted to law enforcement agencies, coupled with the broader counter-terrorism legal framework, have led to arbitrary arrests and detentions, undermining due process and fair trial standards.
- The Indian Penal Code includes provisions related to offenses against the state, such as sedition and waging war against the government. The broad interpretation of these provisions, combined with the expansive definition of terrorism under the UAPA, has led to the targeting of individuals exercising their right to freedom of expression. The misuse of these provisions raises questions about the balance between national security and the protection of fundamental rights.
- The FCRA regulates the acceptance and utilization of foreign contributions by individuals, associations, and companies. Amendments to the FCRA have been viewed in the context of Jammu and Kashmir, particularly about restrictions on foreign funding for NGOs and civil society organizations. Critics argue that these restrictions hinder the work of human rights defenders and organizations working in the region, limiting their ability to operate independently.

Arbitrary Confiscation of Kashmiri Properties under UAPA

The implementation of counter-terrorism laws in Kashmir, particularly under the UAPA, raises concerns about the concentration of powers within the Executive and the potential for abuse. The concerning trend of property confiscation in the name of counter-terrorism in Jammu and Kashmir diverges from international definitions and principles. The UAPA provides the Executive with wide-ranging powers to investigate, seize property, and detain individuals based on suspicions of their likelihood to threaten or engage in terrorist activities. This encroachment into the "pre-criminal" sphere, where actions are taken solely on suspicions, challenges established legal norms that require concrete evidence before punitive measures are implemented.

The recent property seizures in Jammu and Kashmir, conducted by the State Investigative Agency, exemplify the arbitrary exercise of power. The confiscation of properties without a court's determination of unlawful ownership contradicts established legal procedures. This approach undermines the principle that the state should act within the confines of the law and avoid arbitrary actions, safeguarding citizens' rights.

The listing of over four thousand private properties owned by Kashmiris for confiscation, including agricultural land, schools, houses, and offices, raises serious questions about the discriminatory nature of these measures. The State Investigation Agency and National Investigation Agency's involvement in collecting this list intensifies concerns about potential bias and selective targeting.

Power Abuse and International Definitions of Terrorism

The concentration of powers and arbitrary property seizures in Kashmir diverge from international definitions of terrorism. Counter-terrorism measures should adhere to established principles of legality, necessity, proportionality, and non-discrimination. Confiscating properties based on mere suspicions, without due legal process, reflects an abuse of power, undermining fundamental human rights.

The counter-terrorism framework in Kashmir, lacking clear definitions, particularly for terms like "security of the State" or "public order," becomes a tool prone to abuse. This ambiguity,