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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 Community Human Rights and Advocacy Centre (CHRAC), 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.

[22 May 2024]

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



Independence of Judges and lawyers in India

Most of the countries of our world today still continue to be under threat for threats, intimidation, external interference to Judges, prosecutors and lawyers in conducting their professional activities, and even arbitrary detention, prosecution, and killings are common.

A significant number of attacks against judges and prosecutors and restrictions to the free and independent exercise of their profession have been seen in areas of conflicts and especially in areas of foreign conflicts.

Judges individually shall be free, and it shall be their duty, to decide matters before them impartially in accordance with their assessment of the facts and their understanding of law without any restrictions, influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

In the decision-making process, judges shall be independent vis à-vis their judicial colleagues and superiors. Any hierarchical organization of the judiciary and any difference in grade or rank shall, in no way, interfere with the right of the judge to pronounce his judgment freely. Judges, on their part, individually and collectively, shall exercise their functions with full responsibility of the discipline of law in their legal system and the Judiciary

shall be independent of the Executive and Legislature.² Some derogation may be permitted in times of grave public emergency which threatens the life of the nation but only under conditions prescribed by law, only to the extent strictly consistent with internationally recognized minimum standards and subject to review by the courts. However, these are certain disqualification for judges. Judges may not serve in a nonjudicial capacity which compromises their judicial independence. Judges and courts shall not render advisory opinions except under an express constitutional or statutory provision. Judges shall refrain from business activities, except as incidental to their personal investments or their ownership of property. Judges shall not engage in law practice. A judge shall not sit in a case where a reasonable apprehension of bias on his part or conflict of interest or incompatibility of functions may arise. The examination of the legal system in light of the international human rights standards pertaining to the administration of justice in areas of conflicts especially in areas under foreign occupation has been very disturbing. A live example is of Indian Administered Jammu and Kashmir which is a UN recognized disputed territory and is under occupation of India. Occupation and system of human right abuses had resulted in massive human rights violations and in particular deprivation of independence of judges and lawyers and the legal remedy. The brutal denial of due process of law had denied the people their basic rights. In Indian Administered Jammu and Kashmir, the state had stopped the exercise of freedom of expression, peaceful protests against the State. The courts are under immense pressure not to provide and relief to people in this connection.

The rights of detained persons are systematically ignored in Indian Administered Jammu and Kashmir . The government disregards its own standards governing detention, refuses to honor court orders quashing detention, and exploits procedural impediments to avoid presenting detainees in court.²⁶ The court system is slow to process detainees' claims, and judges routinely fail to question the government's authority to detain. They also fail to issue contempt citations to government actors who ignore orders to release detainees. India violates its treaty obligations and basic principles of human rights law by detaining people for lengthy periods without allowing them an opportunity to effectively challenge their detention in court.

The Indian forces in Indian Administered Jammu and Kashmir enjoy impunity under various laws enforceable there. But Indian Penal Code and Indian Criminal Procedure provide protection against prosecution. Section 197 of the CrPC states that when officers of the central government are "accused of any offence alleged to have been committed by [them] while acting or purporting to act in the discharge of [their] official duty no court shall take cognizance of such offence except with the previous sanction . . . of the Central Government."³⁶ Section 45 of the CrPC places a more specific prohibition on the arrest of Armed Forces members; it requires that "no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government.

Procedural impediments—both those inherent in the judiciary and those imposed by the executive and the military—undermine the ability of courts to respond effectively to human rights claims brought against security forces. This section tracks these procedural impediments in relation to the process for affirmative claims. Filing of a First Information Report Victims⁴ intending to seek legal remedies for human rights abuses are often prevented from filing an FIR by police officers who decline to issue one. A 1992 circular instructed Kashmiri police stations, contrary to the requirements of the Code of Criminal Procedure, to stop filing FIRs against security forces without the approval of higher authorities. Even when the police file an FIR, a lack of cooperation from security forces often prevents the police from conducting a complete investigation. As a punitive measure, the executive usually transfers judges who are takes case of these petitions regarding to human rights violation. Unless the states ensure independence of Judges and lawyers, neither democracy nor the basic human rights can be protected and promoted. State are under obligation to protect the peoples human rights though in conflicts or under its occupation.

Determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination is state's obligation. The Universal Declaration of Human Rights enshrines in particular the principles of equality before the law. The administration of justice in every country should be inspired by those principles.
