

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
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27 February 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/15, 42/22, 42/16, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary detention, and deteriorating health condition in detention of Mr. **Miyan Abdul Qayoom**, a human rights lawyer and President of Jammu and Kashmir High Court Bar Association.

According to the information received:

During the night of 4 and 5 August 2019, Mr. Miyan Abdul Qayoom was arrested, under the Public Safety Act, in Srinagar, as part of a reported mass crackdown targeting those expressing dissent against the decision taken by the Government of India, on 5 August 2019, to abrogate Jammu and Kashmir's special status. Mr. Qayoom was accused of being a "most staunch advocate of secessionist ideology".

On 8 August 2019, Mr. Qayoom was placed in solitary confinement in Agra Central Jail, in Uttar Pradesh State, more than one thousand kilometers away from his home.

On 21 August 2019, Mr. Qayoom's lawyer filed a habeas corpus petition.

Mr. Qayoom is seventy-six years old and suffers from multiple health conditions, including diabetes, double vessel heart disease and kidney problems. He has been surviving on a single kidney for the last twenty-five years and suffers from partial renal failure. He is diagnosed with hypertension and has a prostate ailment for which he has undergone two surgeries, in 2012 and 2018. He also has a cataract in

the left eye and suffers from arthritis in his right foot and right knee. He was scheduled for open heart surgery at the time of his detention.

During the evening of 29 January 2020, Mr. Qayoom's family received a phone call from Agra Central Jail's authorities informing them that Mr. Qayoom had been transferred to Sarojini Naidu Medical College after feeling chest pain and sense of breathlessness; he suffered a heart attack.

On 30 January 2020, upon reaching Agra Central Jail, Mr. Qayoom's relatives discovered that he had been taken back to the dispensary of Agra Central Jail, even though his health conditions had not improved. During the one day Mr. Qayoom spent at Agra Hospital, he was allegedly deprived from food and water despite being diabetic. He was reportedly left only with the one water bottle he had brought along with him from the jail. Medical tests performed at the hospital reportedly indicated various serious health problems including artery blockage of 60 percent which is near fatal at his age.

Mr. Qayoom's family requested several times that he be transferred to Srinagar Central Jail, where they live, but there was no response from the authorities.

On 31 January 2020, the habeas corpus hearing was held before the Jammu and Kashmir High Court Srinagar bench. The judge heard Mr. Qayoom's lawyer's arguments and scheduled the next hearing to 2 February 2020. The habeas corpus request had been filled on 21 August 2019. The Jammu & Kashmir High Court Case Management Flow Rules 2010 stipulate that after the filing of a habeas corpus petition, the High Court should issue a notice within 48 hours.

On 1 February 2020, Mr. Qayoom was transferred from Agra Central Jail to the All India Institute of Medical Science (AIIMS) in New Delhi, for a medical check-up. He was then transferred to Tihar Jail, New Delhi, which is located more than eight hundred kilometres away from Srinagar.

At the hearing of 3 February 2020, the Jammu and Kashmir High Court Srinagar bench heard the final arguments and reserved its judgment regarding the habeas corpus request. The scheduled date of the judgment is still to be announced.

Mr. Qayoom's health is reportedly deteriorating. He has lost substantial weight while in detention and is now unable to walk unaided.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our concern that, if confirmed, may be in contravention of the rights of every individual to life, liberty and security, as set forth in articles 6 and 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by India in 1979; the absolute prohibition of torture and other cruel, inhuman or degrading treatment of punishment, as

set forth in Article 7 of the ICCPR and in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), signed by India in 1997; the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person, as set forth in Article 10 of the ICCPR; the right to a fair trial, as set forth in Article 14 of the ICCPR; and the right of everyone to hold opinions and to freedom of expression, as set forth in Article 19 of the ICCPR.

The reported allegations also appear to be in violation of Article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by India in 1979, which imposes on States the obligation to respect, protect and fulfil the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services;

In this regard, we wish to recall that, by depriving persons of their liberty, States assume responsibility to care for their lives, health and bodily integrity. Due to this heightened duty of care, they must take all necessary measures to protect the lives of individuals deprived of their liberty. The duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriately regular monitoring of their health<sup>1</sup>.

The Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) include provisions on the responsibility of States regarding health care for persons detained in prisons (rules 24–35)<sup>2</sup>. For example, States have the obligation to ensure that medical services in prisons guarantee continuity of treatment and care as well as the obligation to transfer prisoners requiring specialized treatment to specialized institutions or civil hospitals, and to ensure that clinical decisions are taken solely by responsible health-care professionals and not overruled or ignored by non-medical prison staff. Furthermore, pursuant to Rule 59, prisoners shall be allocated, to the extent possible, to prisons close to their homes.

We also express concern that Mr. Qayoom's deprivation of liberty appears to be a reprisal for his opinions, the legitimate and peaceful exercise of his freedom to express them and his human rights work, including in light of the absence, thus far, of a ruling on

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<sup>1</sup> Human Rights Committee, General comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life (CCPR/C/GC36):

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf); and Human Rights in the administration of justice, Report of the United Nations High Commissioner for Human Rights (A/HRC/42/20):

<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/session42/Pages/ListReports.aspx>

<sup>2</sup> [https://www.un.org/en/events/mandeladay/mandela\\_rules.shtml](https://www.un.org/en/events/mandeladay/mandela_rules.shtml).

the lawfulness of his detention. We wish to recall that Article 9 paragraph 4 of the ICCPR entitles anyone who is deprived of liberty by arrest or detention to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the detention and order release if the detention is not lawful. We emphasize that persons deprived of liberty are entitled not merely to take proceedings, but to receive a decision, and without delay. The adjudication of the case should therefore take place as expeditiously as possible<sup>3</sup>. In the present case, it has reportedly lasted more than 6 months.

Under international human rights law, any restriction to the exercise of the right to freedom of opinion and expression must be provided by law and be necessary and proportionate to the aim pursued. Arrest or detention as punishment for the legitimate exercise of other rights, as guaranteed by the ICCPR, is arbitrary, including the right to freedom of opinion and expression<sup>4</sup>. In this regard, we also wish to recall that, in paragraph 5 (p) (i) of its resolution 12/16, the Human Rights Council has stated that certain types of expression should never be subject to restrictions. These include discussion of government policies and political debate; reporting on human rights and/or government activities; and engaging in peaceful demonstrations or political activities.

Finally, we would like to refer to the fundamental principles set forth in 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to article 6 (c), which provides for the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

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

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<sup>3</sup> Human Rights Committee, General comment No. 35 (2014) on Article 9 of the International Covenant on Civil and Political Rights (Liberty and security of person) (CCPR/C/GC/35) paragraph 47:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en)

<sup>4</sup> Ibid., GC No. 35 paragraph 17.

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide detailed information about the factual and legal grounds for the arrest and detention of Mr. Qayoom, including the charges brought against him. Please explain how his arrest and continued detention are in conformity with India's international human rights obligations under the conventions it has acceded to.
3. Please provide detailed information on the treatment by the court of the habeas corpus petition initiated by Mr. Qayoom. Please explain how the absence of a decision on his petition more than six months after it was made is compatible with the requirement that the lawfulness of his detention's petitioner is adjudicated as expeditiously as possible, and with India's obligations under ICCPR.
4. Please provide detailed information on the present medical situation of Mr. Qayoom and explain how his medical concerns have been duly taken into account and addressed since he was arrested and placed in detention. Please explain what measures are being taken to ensure Mr. Qayoom's access to appropriate medical care on a reliable and regular basis.
5. Please indicate what measures have been taken to ensure that human rights defenders in India are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.
6. Please provide detailed information, included disaggregated data to the extent possible, as to the number of persons from Jammu and Kashmir who have been detained under the Public Security Act since August 2019.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We may publicly express our concerns in this case in the near future, as the age, frail health, poor medical care reported, and continued detention may contribute to put Mr. Quayoom's life at risk, a matter which warrants prompt attention. We also believe that the wider public should be alerted to the potential implications of the above-the arrest and detention of that person, apparently for the peaceful exercise of his opinions. For

these reasons, we would welcome a prompt response to this letter. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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.

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

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Leigh Toomey  
Vice-Chair of the Working Group on Arbitrary Detention

Dainius Puras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment