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Your Excellency,

India – Arrest and Detention of Mian Abdul Qayoom, President of the High Court Bar Association of Jammu and Kashmir

The Law Society of England and Wales (the "Law Society") is the professional body representing more than 180,000 solicitors in England and Wales. It aims to promote and support solicitors while upholding the rule of law, legal independence, ethical values, and the principle of justice for all around the world. The Law Society holds Special Consultative status with the United Nations Economic and Social Council since 2014.

The Law Society is gravely concerned about the arrest and detention of Mr Mian Abdul Qayoom, lawyer and President of Jammu and Kashmir High Court Bar Association. The night of the 4th of August 2019, Mr Qayoom was arrested under the Jammu and Kashmir Public Safety Act 1978 ("PSA"), together with others who were also arrested after the Government of India repealed Article 370 of the Constitution of India. We have been informed that the reason for his arrest was a belief that Mr Qayoom would "motivate people to agitate against abrogation of Article 370". The PSA permits preventive detention of a person without trial for up to two years. Mr Qayoom has not been formally charged with any crime and no allegation against him has been tested in a court of law.

We have been informed that, after his arrest, Mr. Qayoom was detained at the prison of Srinagar in Jammu and Kashmir. After four days, he was transferred to Agra Central prison in Uttar Pradesh, a state in northern India, which is many miles away from his home and family members. Within days after his arrest, the Jammu and Kashmir High Court Bar Association filed an application to the High Court in Srinagar to allow two legal representatives access to Mr. Qayoom. The judge first ordered to allow such access but suspended that order the next day. Mr. Qayoom did not have access to a lawyer during the first six months of his detention.

On 29 January 2020, Mr. Qayoom suffered a heart attack and was subsequently transferred to a hospital. His family has raised serious concerns about the quality of medical care he received there and the lack of appropriate medical care he is currently receiving. Mr. Qayoom has now been transferred to Tihar prison in New Delhi. He is in his seventies and suffers from chronic health problems, including diabetes, reduced kidney function, and heart problems. We have been informed that these medical conditions have worsened in detention and that Mr. Qayoom now has to use a wheelchair. We are concerned that Mr. Qayoom's ongoing detention in Tihar prison is likely to result in Mr Qayoom's health deteriorating further.

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Mr. Qayoom's family was not informed of his arrest or his whereabouts and were not allowed to visit him during the first month of detention. Thereafter, only close family members could visit him twice a month for a limited amount of time. In early February 2020, a petition against his detention was dismissed by the High Court of Jammu and Kashmir, referring to the role that preventive detention plays in maintaining public order and to an alleged lack of jurisdiction to review an administrative decision which orders detention.

The Law Society is alarmed by the fact that Mr Qayoom's arrest and detention seems to be politically motivated and a consequence of his work as a lawyer and representative for persons detained under the PSA in Kashmir. We have been informed that Mr Qayoom has been subject to arrest and detention before and that four criminal cases were registered against him between October 2008 and June 2010. We understand that those arrests also took place under the PSA, because Mr. Qayoom took part in allegedly peaceful protest marches of lawyers in Srinagar against human rights violations committed in the region. We have been informed that those events that took place between 2008 and 2010 were also used for his most recent arrest in 2019, without any precise criminal charges being brought against him.

To the extent that these proceedings would be politically motivated, this constitutes judicial harassment and impedes the ability of Mr Qayoom to carry out his legitimate work as a lawyer. In this context, the Law Society respectfully refers your Excellency to India's binding legal obligations under international law:

International Covenant on Civil and Political Rights, India acceded on 10 April 1979

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment

Article 9(1)

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Article 9(3)

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

Article 9(4)

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Article 10(1)

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Article 14.1: All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...]

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The United Nations Basic Principles on the Role of Lawyers, welcomed by the General Assembly in 1990 provides that:

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

The UN Standard Minimum Rules for the Treatment of Prisoners provide that:

24.1 The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

27.1 All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals.

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) states:

24. A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary.

The UN Basic Principles for the Treatment of Prisoners (1990) provides that:

9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

The Law Society respectfully urges the relevant authorities to:

1. Immediately release Mr Qayoom, in the absence of any charges having been brought against him on the basis of sufficient and credible evidence in proceedings that comply with international fair trial guarantees;

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2. Pending his release, to ensure the physical and psychological wellbeing of Mr Qayoom in correspondence with international standards regarding detention conditions, including by providing him with the medical care he requires, as well as access to legal counsel and visitation rights; and
3. Permit Mr Qayoom and other members of the legal profession in Kashmir to carry out their profession without intimidation, harassment or improper interference.

Yours sincerely,

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