



General Assembly

Distr.: General
6 September 2011

English only

Human Rights Council

Eighteenth session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Jammu and Kashmir Council for Human Rights (JKCHR), 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.

[23 August 2011]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Right to water and sanitation**

The UN Human Rights Council has affirmed that the right to water and sanitation is derived from the right to an adequate standard of living.

The decision of the Human Rights Council follows the July 2010 resolution of the UN General Assembly which recognized access to water and sanitation as a fundamental right but did not specify that the right entailed legally binding obligations. The resolution tabled at the Human Rights Council by the Governments of Germany and Spain, with support from many others, closes the legal gap by clarifying the foundation for recognition of the rights and the legal standards which apply.

According to the UN Independent Expert on human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque “this means that for the UN, the right to water and sanitation is contained in existing human rights treaties and is therefore legally binding.”

The Independent Expert notes that nearly a billion people still do not have access to an improved water source and nearly 3 billion do not have a tap in their home.

With no global system for monitoring water quality in place, the extent of the crisis remains unknown, but it is thought billions of people are drinking unsafe water.

The recognition of the right by the Human Rights Council is crucial because it sets the standard for all service providers, whether public or private, in relation to human rights. The ceiling of duty in accepting the human rights responsibilities is raised where the water resources are embedded in a habitat which is in dispute and a subject of UN interest.

The State of Jammu and Kashmir which is distributed under three administrations on both sides of cease fire line (CFL supervised by UNMOGIP personnel) is known for the richness of its water resources. These water resources are in the nature of a ‘trust property’ embedded in the disputed habitat of Kashmir. India and Pakistan have trust responsibilities under UNCIP Resolutions in regard to the use of these water resources. Both India and Pakistan as member nations of the UN and as two parties to the question of self-determination of the people of Kashmir have corresponding human rights responsibilities towards the benefit of the people of Kashmir embedded in these waters, while taking any decision between them to share these waters for the benefit of their respective peoples. They must set up service provision in a manner consistent with human rights standards and aim for universal coverage on a non-discriminatory basis.

Governments must fully implement their obligations to create an enabling environment and to regulate and monitor the right to water and sanitation in the three administrations of Kashmir situated at Jammu and Kashmir, Azad Kashmir and Gilgit and Baltistan.

India and Pakistan are locked in a continuous clash of claims over water in Jammu and Kashmir. Water resources are not unlimited and available forever. The actual stewardship of water resources in any part of Kashmir rests with the people of Kashmir. It is unfortunate that Srinagar, Muzaffarabad and Gilgit governments have failed to defend the manner and extent to which the people of Kashmir are entitled to have a role in the use of their water resources at Mangla, Baglihar and Diamir.

** Muslim Women’s Aid, an NGO without consultative status, also shares the views expressed in this statement.

It is a violation of trust that India and Pakistan have been taking unilateral decisions in regard to water as a natural resource in Kashmir. Both countries have failed to incorporate the right of the people of Kashmir in the management of water uses and water-related activities under the Indus Water Treaty.

Water in Eastern culture is seen as sacred and this culture treats its provision as a duty for the preservation of life. In contrast, the West and its associates conform to a culture where water is seen as a commodity and its ownership and trade as a fundamental corporate right. Water in our culture is given from earthen water pots as a free gift to the thirsty. Hindus have Jal Mandirs (water temples), part of an ancient tradition of setting up free water stands in public areas. This is a common practice among Muslims as well.

Obviously a culture treating water as a commodity has to clash with cultures of sharing, receiving and giving water. Therefore, water wars are cultural wars and global wars. An economic fascism is out to destroy people's right to their water resources. It is much more important when disputed and trust territories among other resources have water brutally ravaged. The water resources in the state of Jammu and Kashmir are being exploited at Mangla, Baglihar and Diamir by all the three administrations on the two sides of the LoC. In 1995, Ismail Serageldin, then vice president of the World Bank, made a prediction that "if the wars of this century were fought over oil, the wars of the next century will be fought over water."

On Aug 21, 1957, the government of India complained to the United Nations that Pakistan was about to build Mangla Dam in the disputed territory under Pakistani control. The Indian complaint added that "the execution of the Mangla Dam Project by the government of Pakistan was a further instance of Pakistan's consolidating its authority over the Indian territory of Jammu and Kashmir and of the exploitation of the territory to the disadvantage of the people of the state and for the benefit of the people of Pakistan." The complaint added that Pakistan's action was in violation of the Security Council's Resolution of Jan 17, 1948, and of the assurances given to India by the chairman of the United Nations Commission for India and Pakistan (UNCIP).

Less than three years later in April 1960, India reversed its earlier position and entered into a water treaty, on the waters of Kashmir, with Pakistan. The Indus Water Treaty was brokered by the World Bank. By concluding the Indus Water Treaty with India, Pakistan in practice accepted the sovereignty of India over Kashmir's water resource.

The use of water in the Indus Water Treaty has not been aligned on a principled, fair and just basis. It does not recognise the interests of the affected people (Kashmir) and has failed to develop a mechanism to include those interests in water allocation decision.

Under the Treaty the government of India on its part has breached the trust embedded in the instrument of accession (a disputed bilateral agreement). Under this agreement with the Government of Kashmir, Government of India is obliged to defend the waters of Kashmir (as a property). India cannot trade a natural resource of Kashmir with Pakistan, or vice versa. Pakistan's trust obligations too restrain it from violating any resource in its trust jurisdiction.

The water dispute at Mangla, Baglihar and Diamir has made keener the Kashmiri people's interest in their natural resource. They feel being driven to economic insecurity, cultural subordination and ecological dispossession. Water exploitation is fast spreading as a virus of hate.

Kashmiris are not averse to the welfare of the people of Pakistan or the people of India. Their stand on the Mangla, Baglihar and Diamir disputes is based on the jurisprudence of the habitat and the water resources embedded in it. They will have to argue for a corresponding and reciprocal benefit of compensation. India and Pakistan should embrace

and honour the welfare of the Kashmiri people, which includes the use or preservation of water as a natural resource.

Kashmiri interest is guaranteed by their bilateral agreement with the government of India and Pakistan's "assumed responsibilities in Azad Kashmir" and its responsibilities under the 1949 Karachi Agreement on Gilgit and Baltistan.

The World Bank has made an error in not taking into consideration the jurisprudence of the Kashmir dispute and of the use of its resources without assuring a corresponding benefit for the Kashmiri people. Water resources are not unlimited. It is a genuine argument that the Indus Water Treaty promotes inequity. At the same time, it has failed to preserve and protect water resources and the environment.

It is encouraging to note that in Jammu and Kashmir the Government has called for according top priority to the land and water management components in the conservation of Wullar, the largest fresh water lake in Asia. Chief Secretary Madhav Lal chairing the 4th meeting of high level Monitoring Committee constituted to ensure proper utilization of grants under 13th Finance Commission underlined the importance of land and water conservation in the overall development of the famous water body.

India and Pakistan have Charter Obligations and Trust Obligation during their respective controls in Jammu and Kashmir. In addition to this the two countries have to accept their human rights responsibilities towards the natural resources, in particular, water embedded in the habitat of Kashmir. They must exercise due diligence to become aware of and address potential or actual negative impacts on human rights caused by their activities. Besides complying with national laws and regulations, non-State service providers must take proactive steps to ensure that they do not violate international human rights standards. Water resources in the natural habitat of Kashmir need to be defended as an integral part of self-determination.
