



General Assembly

Distr.
GENERAL

A/HRC/6/NGO/14
31 August 2007

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Sixth session
Item 3 of the provisional agenda

**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.

[30 August 2007]

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

General Assembly Resolution 60/251 sets out “ that the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote the effective coordination and the mainstreaming of human rights within the United Nations system;”

One such situation has continued to engulf a people who were described by Frank P Graham UN Representative for India and Pakistan, at the 570th to 572nd meetings of Security Council on 17, 30, and 31st January 1952 as “...people of legend, song and story, associated with snow capped mountains, beautiful valleys and life giving waters...These people, Moslems, Hindus, Sikhs and Christians, as farmers, craftsmen and artists, small shopkeepers, boatmen, bearers and other workers in areas now on both sides of the cease fire line have, through the centuries, been the victims of exploitation and conflict. The recognition of the rights and dignity, the security and the self-determination of these historic people, under the auspices of the United Nations, might well become a challenging example of the progressive values of self-determination to the dependent peoples of the earth. The people of Jammu and Kashmir through a free and impartial plebiscite would signal through the darkness of these times a ray of hope that not by bullets but by ballots, not through conflict of armies but through co-operation of peoples, is the enduring way of people to determine their destiny and way of life”. UN Security Council described the people of Jammu and Kashmir “worthy of the right of their own self determination through a free, secure and impartial plebiscite”.

By 12 August 1947 the people of Jammu and Kashmir had graduated through their 101 year long struggle and had achieved “State for the State’s People” a “responsible government”, “peoples association”, a “constitution” a “regime of rights” guaranteed in the constitution and were still hungry in the desirability of dynamic rather than static conceptions of the future.

Unfortunately on two dates, August 15 1947 and October 26 1947 everything changed for them. Today they are distributed under three administration, influenced by five governments, five constitutions, supervised by two armies and watched by a wide spread of intelligence network. The jurisprudence of these two dates has been taken over by UNCIP Resolutions of 13 August 1948.

People of Jammu and Kashmir have no bilateral agreement with Pakistan. Future relationship with Pakistan is set out under article 257 of the Constitution of Pakistan. Constitution stipulates a voluntary and not a compulsory relationship.

As a provisional measure of administering Azad Kashmir on its side of LOC Pakistan seeks a reliance on its responsibilities under UNCIP Resolutions. In just after 8 months of UNCIP resolution in April 1949 Government of Pakistan violated the UNCIP responsibilities in respect of the People of Gilgit and Baltistan. It has sought an unpopular control of Gilgit and Baltistan through an Agreement called Karachi Agreement of April 1949. The jurisprudence, of these two controls is at variance to each other.

UNCIP resolutions provide for an administration run by the local magistrates in accordance with local laws, practices and customs under the supervision of UN in Azad

Kashmir. It embeds a 'free vote', 'popular legislature' and a 'popular and non communal government', in accordance with para 7 of the Provisional Declaration of 24 October 1947. It also embeds equidistant sentiments of the utmost friendliness and good will towards its "neighbouring Dominions of India and Pakistan"

UNCIP resolution of 13 August 1948 through appointment of UNMOGIP and institution of cease-fire are being part implemented. We have to see whether Pakistan has duly discharged its obligations accrued from its assumed responsibilities under UNCIP resolutions in Azad Kashmir or not. And if it has failed or has willfully through its surrogates in power in AJK frustrated the jurisprudence of UN SC/UNCIP resolutions, what are the reasons and what is the remedy available?

If it does not make us anti-Britain if we oppose war in Iraq. It is in the same manner that pursuing a 'free vote', 'popular legislature' and a 'popular Government' in Azad Kashmir and Gilgit and Baltistan should not make any one of us anti Pakistan. There is a need to assist the victims of this black mail and a need to contest that we are state subjects. The constitution of Pakistan under article 257 would invite us in future to be or not to be Pakistanis.

We need to examine the life as a process and life as a quality in Gilgit and Baltistan. They have to have access to full regime of human rights, rule of law, good governance, right of a freely expressed politics and civil society institutions.

In Azad Kashmir we have set for ourselves a moral code on 24 October 1947 at least two days earlier to 26 October 1947 when the Government of Jammu and Kashmir entered into a bilateral agreement, the Instrument of Accession, with the Government of India.

We have pledged not to be 'communal', have expressed 'sentiments of the utmost friendliness and good will towards its (our) neighbouring Dominion of India and Pakistan and have expressed our hope 'that both the Dominions will sympathize with the People of Jammu and Kashmir in their efforts to exercise their birthright of political freedom'.

We do not want the Government of India to physically seek control of the two administrations on the Pakistani side of LOC but we would have been within the guarantees provided in the Constitution and Law to remind India of its higher burden of responsibility in a process leading up to a free vote for self determination.

A true friend of the people and a true friend of self-determination is one who assures that living numbers in Kashmir are saved for a final count in self determination. He is one who treats the plurality of the civil society as sacred. India has accrued a criminal liability for failing to protect 'life', 'honour' and 'property' under the Instrument of Accession and Pakistan has accrued a higher burden of criminal liability for failing in its assumed responsibilities under UNCIP resolutions and for failing to save a 'living numerical' envisaged in article 257 of the Constitution of Pakistan.

The distribution of the people of Jammu and Kashmir and the question of human rights, in particular, the question of a 'free vote', 'popular legislature' and 'popular government', rule of law, good governance in Jammu and Kashmir, Azad Kashmir and Gilgit and Baltistan falls under General Assembly Resolution 5 (e) which directs that the Human Rights Council "Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session;"

Government of Pakistan should be asked to take immediate corrective measures in respect of a restraint placed on the freedom of association under article 4(7)(2) of Azad Jammu and Kashmir Act 1974 which is at war with its accrued obligations under UN Security Council Resolutions and UNCIP resolution of 13 August 1948. The restraint on the freedom of association is a violation of the basic human right.

Government of Pakistan and its agencies should be restrained from carrying a surreptitious campaign aimed to prejudice the rights of those State Subjects who wish to advance the best interests of the people in accordance with the jurisprudence of the title of the people and dare to remain in opposition to the broad spread of secret services operating inside and outside the State. It has to demonstrate its duty to fairness in maintaining a just balance between its support of self-determination and its embedded sovereign interest of accession and other interests embedded in the waters/and other natural resources of Kashmir.

Government of Pakistan should be asked to honour the Judgement of the High Court of Azad Kashmir in respect of Gilgit and Baltistan and bring these areas within the fold of Azad Kashmir and follow the UN dictate in regard to the proposed administrations for these areas. These people have a right to a 'free vote', 'popular legislature' and a 'popular government' as well.

Human Rights Council inherits the concern of the people and the habitat, namely four people distributed in Jammu and Kashmir, Azad Kashmir, Gilgit and Baltistan and a strong Kashmiri Diaspora living around the globe. The Government of Jammu and Kashmir has to be reminded of its duty under article 4 of The Constitution of Jammu and Kashmir to assure the geographical unity of the State as on 15 August 1947.

Human Rights Council should ensure that India and Pakistan make an advance on their Charter obligations under article 1(1) and 1(2) without prejudicing one for the other.
