



# General Assembly

Distr.: General  
30 August 2019

English only

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## Human Rights Council

Forty-second session

9–27 September 2019

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 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.

[22 August 2019]

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\* Issued as received, in the language(s) of submission only.



## **Jammu and Kashmir- agreed settlement, consistent with the principles of the Charter of the United Nations**

Article 1 (2) of UN Charter, Article 1 (1) of ICPR and Article 1 (1) of ICES uphold the “equality and right of self-determination” of all people.

One such people who have been recognised by the United Nations for their “rights and dignity” and “security and self-determination” are the people of the State of Jammu and Kashmir. United Nations has defined these people as “People of legend, song and story, associated with snow-capped mountains, beautiful valleys and life giving waters”. Today we associate them with living in a highly militarised zone and locked down inside their homes. We associate them with a habitat where children are recruited to carry out espionage for the Indian Security Forces (a war crime).

The latest references to their right of self-determination have been made in the two OHCHR reports of 14 June 2018 and 8 July 2019 on the Human Rights situation in Jammu and Kashmir. The 30 July 2019 report of the UN Secretary General on Children and Armed Conflict also makes a reference to Kashmir.

United Nations has known these people for the last 71 years and has continued an un-interrupted interest in their rights until the 2151st meeting of Security Council held on 5 November 1965. So much so, the Secretary General of the United Nations visited Kashmir for two days in March 1959 to ascertain the situation.

People of Kashmir remain locked down and cut off from the world because UN failed to carry forward the Pakistan’s January 1948 proposal for a UN supervised vote in Kashmir in March-May 1948. UN failed a second time, to carry forward the United Kingdom’s April 1948 proposal of a UN supervised vote before October 1948. A third failure is that UN failed to carry on work, on the five principles proposed by United States of America at the 607<sup>th</sup> meeting of the UN SC held on 5 December 1952. United States of America set out the following five principles to proceed to assist the parties to carry out their Charter obligations:

- “In the first place, a lasting political settlement must be an agreed settlement.
- Secondly, the Security Council will, we feel, always welcome any agreement which the parties themselves reach on any basis which will settle the dispute, provided of course that, that basis is consistent with the principles of the Charter of the United Nations.
- Thirdly, we feel that it is the role of the Security Council to assist the parties in seeking to reach agreement. In this case the Security Council has made available the services of Mr. Frank Graham as the United Nations Representative.
- Fourthly, we believe that agreement most frequently is reached step by step through negotiation and that negotiation involves an element of compromise.
- Finally, we believe that the Security Council should consider with care the views and the recommendations of its representative and indicate to him and to the parties its views on the positions he has taken”.
- India and Pakistan have used the mechanism of bilateral engagement and it has brought no results so far. It has even complicated the UN jurisprudence of the case and has added to enormous human rights violations, in particular in the Indian administered Kashmir.

There is a war going on between the people of Kashmir and the Indian Security forces. The June 2018 and July 2019 reports by OHCHR have detailed the situation. According to these reports “The Armed Forces (Jammu and Kashmir) Special Powers Act (AFSPA) grants broad powers to the security forces in Jammu and Kashmir and effectively bestows immunity on security forces from prosecution in civilian courts for their conduct, by requiring the Central Government to sanction all prospective prosecutions against such personnel”.

From the intervening night of 4 and 5 August 2019, people of Kashmir have been placed under curfew. A Human Rights Defender and a scholar from Queen Mary University of London and SOAS University of London, Faizah Gilani has said in her recent article, “The

situation within Kashmir at present is dire. People have been cut off from the outside world, with telephone and internet lines suspended. There is also a food shortage, with people on the verge of starving, and mothers worrying for their infants who need milk. Those in need of medical treatment are also left house bound, without access to medical assistance. This Eid Ul Adha, no sacrifices were made, and there was no call to prayer from the Mosques, which is another infringement of the Human Right to practice religious beliefs. Kashmir has become a cage for its people. Due to the communications blockade, many remain ignorant of the revocation of Article 370, but the Indian government insists that the people of Kashmir are happy about developments that many are not even aware of”.

Government of India seems to have freed itself of all international and bilateral obligations in Kashmir. United Nations Security Council Resolution of 21 April 1948 binds Indian security forces to a strict discipline in respect of their number, behaviour and location. The two OHCHR reports have confirmed that the number of these forces in Indian administered Kashmir made the habitat world’s most militarised place. It is frightening to note that more armed forces have been moved into Kashmir since these two UN reports were published. The militarised character in the State has further aggravated. We have one Indian soldier for every nine Kashmiris.

Modi Government does not seem to have any regard for the two UN Reports on Kashmir, the concerns expressed by United States of America, China, pleadings of the Government of Pakistan and concerns expressed by the international community. Delhi is all out to decimate the Kashmiri Muslims and violate their right to a quality of life and dignity of person in the Valley.

The uproar against the massive military presence in the Valley continues to reverberate in the air. On 25 July 2019 New Delhi has through Order Number III-11018/1/2019-G/P-II ordered the despatch of another 100 Coys (Companies) of CAPFs (The Central Armed Police Forces) to allegedly strengthen the CI grid (Counter Insurgency) and maintain law and order in Jammu and Kashmir. It is a frightening development.

Former chief minister and former ally of BJP, Mehboob Mufti had asked Government of India to ‘rethink and overhaul its policy’. Shah Faecal the head of the Jammu and Kashmir People’s Movement (JKPM) had said that ‘something sinister is about to happen’. And it happened on 5 August 2019. People have been locked down ever since. Kashmiri leaders in National Conference, National Congress, Communist party and all other parties (activists) have been placed under arrest and all dissent has been muted.

The habitat represents a scene of an occupation since after 5 August 2019. All human rights specified in para 12 of the 21 April 1948 Resolution, that is, freedom of press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit have lost their meaning. The release of political prisoners as demanded in para 14 of the Resolution has been seriously ignored and more Kashmiris have been taken prisoners inside and outside the valley.

Human Rights Council should take note that people in the Indian administered Kashmir were disenfranchised for a purpose. Indian Government wanted to use the Governors rule and now the Presidents rule directly from Delhi to push through some laws, which an elected legislature would have debated and refused.

Indian Government does seem to have many plans, in particular, the plan to tamper with laws to allow a change in the demography is dangerous. The most sinister thing that has been highlighted in the 8 July 2019 UN report is the amendment made through Governor’s order in the Section 10 of Jammu and Kashmir Public Safety Act. After the amendment by the Governor (which has violated the principles of Legislative authority) through proclamation No P-1/18 of 2018 dated 20 June, the citizens of Jammu and Kashmir have lost this protection from removal from the State. They are removed from the State and lodged in various jails in India.

Human Rights Council has the benefit of three UN Reports on the Human Rights situation in Jammu and Kashmir. There are two other reports done by All Parties Parliamentary Group on Kashmir in the British Parliament and by the OIC Independent Permanent Human Rights Commission (OIC-IPHRC). The Council has the benefit of listening to India, Pakistan, OIC,

EU and the Kashmiri Human Rights defenders at every session. It has the benefit of the presence of such member states, who have contributed to the debates on Kashmir at the UN Security Council.

Council has a higher burden of responsibility. It should not hold back from considering the OHCHR Reports and in particular in acting on the recommendation to establish a “commission of enquiry to conduct a comprehensive independent international investigation into allegations of human rights violations in Kashmir”.

OHCHR Reports have qualified the human rights situation in the Indian administered Kashmir as “serious human rights violations and patterns of impunity”. Council needs to take note of the fact that recommendations 19 and 10 made in the UN Reports to India and Pakistan respectively, ask to “Fully respect the right of self-determination of the people of Kashmir as protected under international law”. The Council as a collective has a duty to stand up for a people locked down and cut off from the outside world.

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