



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2005/NGO/204
28 February 2005

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sixty-first session
Item 9 of the provisional agenda

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD**

**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.

[11 February 2005]

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

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

One single discipline that binds and bonds the human person across the various geographies, nationalities, cultures, faiths and other social and political restraints and prejudices is a common belief in 'human rights and fundamental freedoms'. Every conscientious individual harbours a nascent desire to enjoy a full regime of his human rights and fundamental freedoms.

A realisation of this desire entails that we anchor our practice around a fundamental slogan that – human rights are for all. We should know them, demand them and defend them.

However, the civil society movement for the promotion and protection of human rights continues to take myriad many and different shapes depending upon the political and social habitat of the members of that civil society. Settled communities and backed by the enduring institutional wisdom of democratic institutions keep the hope going under an arrangement of an expressed, non violent, democratic and an accountable culture of politics.

Unfortunately there are still many communities around the world that have failed to energise their popular means to secure for themselves a mandated representation necessary for the promotion and protection of human rights and fundamental freedoms. These communities are subjected to violence and distribution – and as a consequence are made vulnerable to yield to all kinds of prejudicial controls.

One such people, that have failed to secure for themselves a mandated representation are the People of Jammu and Kashmir. At a time when India and Pakistan assumed well defined geographical and political habitat for their respective people, the people of Jammu and Kashmir were subjected to an invasion and as a consequence were distribute under three administrations. India and Pakistan took control of these three distributed people. India controls one administration at Srinagar and Pakistan controls two administrations at Muzaffarabad and Gilgit.

The size and scope of the enjoyment of 'human rights and fundamental freedoms' in these three administrations is different and at variance reflecting the interest and political content of the controlling countries of India and Pakistan.

The valiant people of Jammu and Kashmir struggled through the ages from 1877 to secure for themselves a special legal personality under State Subject Law of 20 April 1927 as a result of a civil society movement popularly named as 'State for the State's People'. They moved to another phase and demanded a 'responsible government' in 1932 and successfully secured a Constitutional Act in 1934. By the year 1938 the political movement developed into a vibrant civil society cry of – *'Kashmiri's will to freedom and independence'*.

The people of Jammu and Kashmir had succeeded to exact concessions and constitutional advances from the ruler of Kashmir. On 11 February 1939 Maharaja issued a Proclamation sanctioning further Constitutional advance called the Jammu and Kashmir Constitution Act 1939. It was a firm beginning of a basis of governance and empowering the people.

Unfortunately the distribution of the people of Kashmir under three administrations under the respective controls of India and Pakistan has altered the 'size and scope' of 'human rights and fundamental freedoms' of these enslaved people.

India and Pakistan rival and manage each other on the Jurisprudence of the Rights Movement of the people of Jammu and Kashmir. Their respective mechanisms of administration have promoted a proxy politics and a proxy war in Jammu and Kashmir. The people of the three administrations are refused a freedom of travel from one part into the other and India and Pakistan continue to violate the freedom of a 'lawful entry and exit' guaranteed under UNCIP Resolutions.

Violence to command compliance of vested interests has been inducted into Valley and in just 15 years the civil society has lost a generation. Death has claimed human life at all levels of age and of either gender. A male dominated politics of violence has evoked a violent and repressive response from the various Security Forces of India. The civil society has suffered a massive violation of human rights – including rape, torture, death under torture, degrading and inhuman treatment, disappearances and deaths in fake encounters.

Militants and the State Police have used the cover of civil society disarray to increment their private cause and dilate their source of corruption. Extortion, blackmail and threat of violence are aggressively used to make up for the loss of income caused due to a supplanted militant politics since 1990.

A rights movement has been converted into a class war between a common man and woman and a class of myriad more dazzling hues of genuine and fake militants on the one hand and the various Security Forces of India on the other. Life is exposed to threat of a death at every corner of civic life.

The institutionalised restraint on the freedom of expression and a restraint on the freedom of choice during an election hitherto rooted in the politics of Azad Kashmir has been exported into the Valley currently under Indian administration with an added adjective of the use of violence to seek a non participation in an expressed non violent form of politics.

Under article 4(7)2 of the Azad Jammu and Kashmir Interim Constitution Act 1974 the Government of Pakistan has institutionalised a control on the expression of opinion to favourably increment its desired interest in Azad Kashmir. This restraint and articles 19(2), 31(3) and 56 of Azad Jammu and Kashmir Interim Constitution Act 1974 are a serious violation of General Assembly resolution 46/137 of 17 December 1991 on the importance of elections, which impact the effective enjoyment of a wide range of other human rights and fundamental freedoms.

Through an administrative and institutionalised control in Azad Kashmir and Northern Areas (Gilgit and Baltistan) Pakistan has continued to violate the Human Rights and Fundamental Freedoms of the people guaranteed in UNCIP Resolutions which stipulate that – *“No restriction are placed on legitimate political activity throughout the State. All subjects of the State, regardless of creed, caste or party, shall be safe and free in expressing their views and in voting on the question of accession of the State to India or Pakistan. There shall be freedom of the Press, Speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit”*.

In this paragraph UN resolution guarantees a wide regime of rights and freedoms. The people of Jammu and Kashmir however have only one principal reservation on the question of the restrained jurisprudence envisaged. It has failed to take a full cognizance of the equity in favour

of the people of Jammu and Kashmir, keeping a legitimate space for a separate state as well. The flaw at core is understandable because the resolution was passed during the early stages of the history of Human Rights and Fundamental Freedoms. More so there was no formal audience granted to the people of Jammu and Kashmir at the time of UN debates on Kashmir.

The administrative and the institutional control of Pakistan in Azad Kashmir is in breach of a guarantee offered in the 24 October 1947 Declaration of the Government of Azad Kashmir. The Declaration guarantees that – *“The Provisional Government, which is assuming the administration of the State is most emphatically not a communal Government. It will include Muslims as well as non Muslims in the provisional Cabinet which will serve the people, the temporary purpose of restoring law and order in the State and enable the people to elect by their free vote a popular legislature and a popular Government”*.

It needs to be pointed out that article 4(7)2 of the Azad Jammu Kashmir Interim Constitution Act 1974 does not permit a ‘free vote’ in Azad Kashmir. The Government of Pakistan has not only failed to ensure a non-communal Government but its avowed moral, political and diplomatic support of the people in the Valley has tainted the face of a pluralistic and tolerant civil society. A politics of violence and many other variables have caused a generation of Kashmiri Pandits to flee from their centuries old homes adding a communal hue to an otherwise tolerant and composite civil society.

The interest of Pakistan to restrain and control the freedom of expression in Azad Kashmir has remained embedded in its plan much earlier than the restraint institutionalised in article 4(7)2 of the Azad Kashmir Interim Constitution Act 1974.

In 1952 the Government of Pakistan arrested Khawaja Sona Ullah Bhat for his written opinions carried in his News Paper Weekly Kashmir published from Muzaffarabad, Azad Kashmir. Bhat and four of his friends were arrested at the behest of the Government of Pakistan, detained, interrogated and deported into the Indian administered Kashmir by the army of Pakistan. The military personnel of Pakistan have no lawful authority to arrest, detain, interrogate and deport a State Subject. Khawaja Sona Ullah Bhat is a leading journalist at Srinagar and edits Daily Aftab since 1952.

The arrest, detention and interrogation of President K H Khurshid, Maqbool Butt, G M Lone, G M Mir, Mustafa Alvi, Hashim Qureshi, Ashraf Qureshi (and their colleagues), Chief Justice M Y Saraf, Dr. Syed Nazir Gilani, President Manzar Masood, Mumtaz Rathore, Shaukat Ali Kashmiri and of many others till todate has remained in full violation of a guarantee envisaged in UNCIP resolutions that *“No restriction are placed on legitimate political activity throughout the State. All subjects of the State, regardless of creed, caste or party, shall be safe and free in expressing their views and in voting on the question of accession of the State to India or Pakistan. There shall be freedom of the Press, Speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit”*.
