



# General Assembly

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## Human Rights Council

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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.

[03 June 2019]

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

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## **Jammu and Kashmir – Freedom of opinion and expression**

United Nations Security Council has accepted that Kashmir was “the greatest and gravest single issue in international affairs”. It involves freedom of expression to be ascertained in a free and fair plebiscite conducted under the supervision of United Nations. The freedom of expression of the people of Jammu and Kashmir involves, “rights and dignity” and “security and self-determination.”

OHCHR June 2018 report has called upon India and Pakistan to “fully respect the right of self-determination of the people of Kashmir as protected under international law.”

In order to ensure a free and fair vote in Kashmir United Nations Security Council has placed extra emphasis on some Human Rights. As a start UN Security Council Resolution of 21 April 1948 requires India to reduce its forces to the minimum strength and arrange in consultation with the Commission (UN) for the stationing of the remaining forces to be carried out in accordance with the following principles:

- The presence of troops should not afford any intimidation or appearance of intimidation to the inhabitants of the State;
- That as small a number as possible should be retained in forward areas;
- That any reserve of troops which may be included in the total strength should be located within their present area.

Human Rights Council has a mandate to check if governments do what they agreed on at the United Nations. The UN Security Council Resolution of 21 April 1948 requires India to carry out 27 obligations and Pakistan to carry out 2 obligations in respect of Jammu and Kashmir. Pakistan has discharged its two obligations and the 27 obligations required of India remain undischarged.

The Indian security forces present in Jammu and Kashmir have a restraint on their behaviour, number and location. Para 12 of the UN Security Council Resolution, has flagged four rights, as associate rights with the right of self-determination. It reads:

“The Government of India should themselves and through the Government of the State declare and make known that all subjects of the State of Jammu and Kashmir, regardless of creed, caste or party, will be safe and free in expressing their views and in voting on the question of accession of the State and that there will be freedom of the press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit.”

Para 14 of the UN Security Council Resolution calls for the release of prisoners and right of the displaced people to return. It reads:

“The Government of India should ensure that the Government of the State releases all political prisoners and take all possible steps so that:

- a) All citizens of the State who have left it on account of disturbances are invited, and are free, to return to their homes and to exercise their rights as such citizens;
- b) There is no victimization;
- c) Minorities in all parts of the State are accorded adequate protection.

Human Rights Council shall have to take note of the fact that Indian security forces have failed to keep to the three principles envisaged in the UN Security Council Resolution of 21 April 1948. Government of India has inducted 80000 more forces since February 2019. These forces enjoy a complete immunity from any accountability under special powers granted to them.

Indian security forces were temporarily let into Kashmir to “defend the territory”, protect “life”, “property” and “honour” of the people of Kashmir. In 2018 Indian troops have killed 375 innocent civilians, including 10 women and 35 youth. Indian security forces conducted 2,939 cordon and search operations all across the Kashmir valley during the year. The targeted killings included highly qualified youth like Professor Dr Muhammad Rafi Butt, Dr

Manan Bashir Wani, Dr Sabzar Ahmad Sofi, Dr Aijazud Din Khan and Dr Abdul Ahad Ganai.

Hurriyat leaders, who follow a constitutional discipline from 31 July 1993 and have been conducting themselves in accordance with the jurisprudence of UNCIP Resolutions on Kashmir, have also been killed. The deaths of Mir Hafizulla, Tariq Ahmad Ganie, Mohammad Yousuf Nadeem and Hakim-ul-Rehman Sultani remain noticeable. 21 Kashmiris were killed in custody.

Indian forces destroyed 605 residential houses during the period. Since January 1990, Indian security forces have killed over 100000 people in the Valley of Kashmir. Human Rights Council needs to consider that these killings by the Indian security forces are a violation of all the 4 terms under which, they have been granted a temporary admission into the State.

Common citizens have been arrested for their views and peaceful dissent. Indian backed administration has placed all kinds of restrictions on the “freedom of speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit”.

Government of India has used National Investigation Agency to arrest Kashmiri leaders. Shabir Ahmed Shah head of Democratic Freedom Party is currently in Tihar Jail in Delhi. He is highly respected for his peaceful opposition to Indian rule. Council needs to address Shah’s imprisonment. Chairman Jammu and Kashmir Liberation Front Muhammad Yasin Malik has also been arrested and kept under inhumane conditions in Tihar jail in New Delhi. His health is failing and Council needs to intervene.

Over five hundred Kashmiri activists remain in different jails of Indian administered Kashmir and various prisons in India under the draconian Public Safety Act. Nayeem Ahmed Khan, Ghulam Muhammad Khan Sopori, Masarat Alam Bhat, Mushtaq-ul-Islam, Dr. Qasim Faktoo, Asiya Andrabi head of Dukhtaran-e-Milat and her two associates Nahida Nasreen and Sofi Fahmeeda are held in Tihar jail New Delhi.

OHCHR June 2018 report on Kashmir has asked India to, “Amend the Jammu and Kashmir Public Safety Act, 1978 to ensure its compliance with international human rights law” and “provide reparations and rehabilitation to all individuals injured and the family of those killed in the context of security operations”. It requires a follow up.

Prisoners are being held after the completion of over 24 years in various prisons of India outside Jammu and Kashmir. Distance, economic constraints and fear of harassment have made family visits to these prisoners very difficult. These prisoners are helpless and at the mercy of the hostile administration and hostile climate. Council needs to address the length of imprisonment, rights of prisoners and the issue of family visits to these prisoners.

Under UNCIP Resolutions, Government of Pakistan shares a constitutional arrangement with the Government of Azad Kashmir (Pakistan administered Kashmir). On 5<sup>th</sup> February 2019 commemorated as “Kashmir Day” President of Pakistan Dr Arif Alvi addressed “Azad Jammu and Kashmir” Legislative Assembly in Muzaffarabad and presided over a function at the Presidency. President of Pakistan highlighted the need to defend the rights of the people of Kashmir. He made eight demands to Government of India and JKCHR wishes to flag these demands for the attention of the Council. The demands are:

Free all political prisoners

- Uphold freedom of expression in Kashmir
- Ban the use of firearms against Kashmiri citizens
- Ban the use of pellet guns against Kashmiris
- Withdraw draconian ‘black laws’ in Kashmir
- Allow Indian administered Kashmir leaders to travel freely and “make their case abroad”
- Allow international rights observers into Indian administered Kashmir to “see the situation for themselves”
- Lift restrictions on electronic communications

Human Rights Council needs to take an urgent note of the living conditions and rights of women and children of Kashmiri youth who gave up the armed resistance in order to benefit from rehabilitation policy announced by the State Government in 2010. The State Government has been overrun by the Direct Rule imposed from Delhi. It has failed to rehabilitate these families and does not allow them to visit their families in the Pakistan Administered Kashmir (Azad Kashmir).

Non-local women whose husbands have died in the Indian administered Kashmir, are left without any support. They desire to visit (or return) their families living in the Pakistani administered part of Kashmir (Azad Kashmir). It is important that Human Rights Council intervenes so that these women are granted citizenship rights and travel documents. They have not been able to travel, for the last many years.

In conclusion JKCHR wishes to point out that right to life and dignity precedes all other human rights. The records show that during 85 years of the rights movement from 1846-1931, only 22 people were killed in July 1931, while as Kashmir has lost a generation in the last 29 years from 1990-2019.

Five generations of Kashmiri Muslims and one generation of Kashmiri Pandits have lost their homes. It would be a great step, if the Human Rights Council encourages Government of India to discharge its obligation under UN Security Council Resolutions, in particular that, “All citizens of the State who have left it on account of disturbances are invited, and are free, to return to their homes and to exercise their rights as such citizens.”

The people of Jammu and Kashmir were scheduled to go through a UN supervised referendum in April 1948 or by October 1948. India and Pakistan, the two member nations of the UN need to discharge their Charter obligations and obligations accrued under UN Security Council Resolutions and UNCIP Resolutions on Kashmir.

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