



# General Assembly

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## Human Rights Council

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Human rights situations that require the Council's attention

### **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 – withdrawal of all troops and sending United Nations Force**

More than ever before the protection of the rights of the People of the State of Jammu and Kashmir and the territorial integrity of the State, is a situation that requires the Council's attention. UN Security Council Resolution 38 of 17 January 1948 and UN Security Council Resolution 91 of 30 March 1951 protect the territorial integrity of the State and prescribe against any step by India that would violate the principle of a UN supervised free and fair plebiscite.

Government of India has assured at the 463<sup>rd</sup> meeting of the UN Security Council held on 7 February 1950, that, "According to the resolution of 5 January 1949, (S/1196, paragraph 15), the object of the plebiscite is to decide the question of accession – which necessarily includes continued accession, of the State of Jammu and Kashmir to India or to Pakistan. Now, accession does not mean dissolution: the acceding State remains intact and fully sovereign in its own field even after accession; it continues as a single unit. If, therefore, the plebiscite is to be held for the State as a whole, if the State is to accede as a whole, it must not be disrupted beforehand....We attach the greatest importance to sub-paragraph 3 (b), which was inserted in the resolution at India's instance, and which we regard as embodying the assurance that the State would have unquestioned sovereignty through its territory before the plebiscite was held".

On 5 August 2019 Indian Government violated UN Security Council Resolution 38 of 17 January 1948, UN Security Council Resolution 91 of 30 March 1951 and the assurance given at the 463<sup>rd</sup> meeting of the UN Security Council held on 7 February 1950.

BJP Government through a Presidential Order on 5 August 2019 has announced to dismember the State of Jammu and Kashmir (Indian administered) into two union territories, namely, The Union Territory of Ladakh and The Union Territory of Jammu and Kashmir. The former would not have a legislature and the latter shall have the legislature.

The immediate consequence to the people of the newly declared "The Union Territory of Jammu and Kashmir" has been that they remain under lock and key since then. People have been placed under a curfew and their contacts with the outside world and within the State with each other have been blocked. People have been made invisible.

Modi Government has carried out a dangerous act of aggression against the people of Kashmir and has savaged all existing obligations pending under UN Security Council Resolutions. The forced occupation, attempt to dismember the State and engineer a demographic change is being resisted by the people inside and outside Kashmir. A continued lock down of the people, proves that Indian Government is faced with a popular uprising against this occupation.

Jammu and Kashmir is not part of Indian union. Indian administered Kashmir has its own Constitution, its own flag, national anthem and its separate Penal Code. In addition, since the State is fractured into three administrations, no single administration has a full representative character. This infirmity has been duly addressed by the UN Security Council Resolution 91 of 30 March 1951. However, the abolition of special status of the State by India, de facto and de jure, has raised the status of the Government of Azad Jammu and Kashmir (Pakistan administered) to take over the responsibilities outsourced under UNCIP Resolutions and Security Council Resolutions to the Jammu and Kashmir Government, dissolved by the Governor of Kashmir. Under the present circumstances, the territorial integrity of the disputed State is a responsibility of the Government of Azad Kashmir, Government of Pakistan and the United Nations.

Indian administered Kashmir does not have an elected assembly and an elected Government. Notification C.O.272 has misstated the fact that the President of India has exercised powers 'with the concurrence of the government of State of Jammu and Kashmir'. There is no elected Government in Kashmir. The Governor of Jammu and Kashmir is an appointee of the President of India and the President could not sit in judgement twice in his own favour.

Even if the State had an elected Government in place, the UN Security Council Resolutions 38 of 1948 and 91 of 1951 would not allow the President of India to take any such action. The Governor could not usurp the authority of an elected Government of Jammu and Kashmir or could contemplate to violate the two UN Security Council Resolutions. President of India is recognised for any action in the State only if the State has an elected legislature. He is a non-State Subject and does not have any authority to assail the 92 year old special laws and rights in Kashmir.

The radical Hindu organization RSS's interest in Kashmir dates back to 20 December 1931, when "about six thousand Hindus including a batch of 'Hindu Defence Forces volunteers' paraded on the streets of Lahore" in solidarity with the Maharaja and his Government" and against the Muslims of Valley. RSS has waited for 84 years, till in March 2015 People's Democratic Party (PDP) made an error of judgement and helped BJP to become partner in the State Government.

Modi Government has decided to seek a political, if not religious, conversion in the Valley. Government has introduced a manner of administrative dismembering of a disputed State. Government notification is a misstatement, that President has exercised the power 'with the concurrence of the government of State of Jammu and Kashmir'. There is no Kashmiri Government in place and the man in charge is a representative of the President of India. The Governor's assent in President's favour, has no sanction in constitutional jurisprudence. Indian Government has moved from an interim administration into a forced occupation.

Jammu and Kashmir has reverted back to its status as between 14 August 1947 to 26 October 1947. It is high time that The Human Rights Council recommends an action by the UN Secretary General under article 99 of the Charter. It is time that bilateral engagement is taken over by article 103 of UN Charter. The options of arbitration and reference to International court of Justice have fallen due. More important is to take steps and force India to undo its aggression. As Iraq had to pay a reparation in Kuwait war, India should be made to pay reparation to the People of Kashmir and all others affected by it.

In view of the three UN Reports and the material change introduced by the Government of India, it is important that the Council supports the taking up for consideration by UN SC the Pakistan's proposal made at the 761<sup>st</sup> meeting of UN Security Council held on 16 January 1957. Pakistan's proposal at para 112 reads "... the Security Council should call upon the parties to withdraw all their troops from the State and should also ensure that the local forces which should be placed under the representative of the Security Council and left behind, are suitably reduced, if not disbanded altogether. The functions of protecting the State and ensuring internal security should be entrusted by the Council to a United Nations Force which should be introduced into the area at once. Let all other forces-Indian, Pakistani and local, be disbanded and non-Kashmiri nationals even in the police forces be removed from the State of Kashmir". The proposal has assumed significance more than ever before.

In regard to sending a UN force to Kashmir, Philippines has made a valuable contribution. Philippines has argued at the 773<sup>rd</sup> meeting of UN Security Council held on 20 February 1957, "I (Representative) must emphasize that the sovereignty of India or of Pakistan is not involved in the proposal to send a United Nations force into the State of Jammu and Kashmir for a temporary and limited purpose. In the view of both the Council and the Commission, neither India nor Pakistan can bring into question the sovereignty of the State of Jammu and Kashmir. This, position is crystal clear in the assurances given by the Commission to the Governments of India and Pakistan and which forms the basis of their acceptance of the resolutions of 13 August 1948 and 5 January 1949 (see documents S/1100, annex 12, p.105, and S/1430/ Add.1, see also annex V, section A, of the documents submitted as annexes to the statement made by Mr. Krishna Menon [S/PV.762/Add.1].) Under the circumstances and pending the holding of a plebiscite, neither India nor Pakistan can claim sovereignty over the State of Jammu and Kashmir."

JKCHR welcomes the statement made by the UN Secretary General reaffirming UN SC position on Kashmir and the concern shown by the UN Security Council during the closed door meeting held on 16 August 2019 at the request of Pakistan and formally introduced by

China on the Human Rights situation in Indian administered Kashmir. China has also presented the “Articles of Settlement” for a peaceful settlement of the dispute at the UN SC. The legitimacy of any democratic government in Jammu and Kashmir is the free consent of the people. It is missing and yet to be ascertained under UN supervision. Government of India has disenfranchised Kashmiri people and her attempts to deny a UN supervised vote in Kashmir need urgent attention.

In the interim UN has to create an effective mechanism that could ensure protection of life, honour and property of the people of Kashmir. Sovereignty of the State has to be protected as argued by India at the 463<sup>rd</sup> meeting of UN SC held on 7 February 1950.

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