



JKCHR – Jammu and Kashmir Council for Human Rights
NGO in Special Consultative Status with the ECOSOC of the United Nations
Established in 1984

"All human beings are born free and equal in dignity and rights."
- Universal Declaration of Human Rights

Aide Memoire on Human Rights Situation in Jammu and Kashmir

Further to our communications dated 6 August and 18 August 2016 addressed to the UN High Commissioner for Human Rights, and our communication dated 25 July 2016 addressed to the National Human Rights Commission of India and 21 August 2016 addressed to the Chief Minister of Indian administered part of Kashmir, (copies of which were shared with the office of the High Commissioner) JKCHR delegation wishes to present this Aide Memoire on Human Rights Situation in Jammu and Kashmir.

The delegation wishes to express its deep gratitude to the High Commissioner and office of the High Commissioner for his concern on the Human Rights Situation in the Indian administered part of Jammu and Kashmir shown in the opening statement made to the 33rd session of Human Rights Council on 13 September 2016. We also thank OHCHR for arranging this meeting at a very short notice.

We fully support the demand made by the High Commissioner for Human Rights that "an independent, impartial and international mission is now needed crucially and that it should be given free and complete access to establish an objective assessment of the claims made by the two sides." We would respectfully urge that a sense of priority and urgency has to prevail in following upon this request.

We also support the demand for "an independent inquiry into the extra-judicial killings, and a UN fact finding mission to investigate brutalities perpetrated by the Indian occupying forces, so that those guilty of these atrocities are punished" made by the Prime Minister of Pakistan at the 71st session of UN GA on 21 September 2016.

Indian no to the High Commissioner's demand has no merit. It should not be accepted as a privilege of a member nation of UN, in particular when it is attempting to humble a people against their wishes and is widely seen to be committing massive violation of Human Rights.

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Indian Government has failed to correct the behaviour of its massive number of erring soldiers/security forces stationed in Kashmir since the matter was raised at the UN World Conference on Human Rights in Vienna and agitated in Resolutions L40 (28 February 1994) and L21 (20 August 1997) at the Human Rights Commission and Sub Commission sessions in Geneva. JKCHR Written Statements, in particular NGO 44 and NGO 45 submitted to the 33rd session of Human Rights Council remain in reference.

The recent record of human rights situation in India has been disturbing at various levels. Justice C.S. Karnan (a Dalit) of Madras High Court in his address to media on Monday 15 February 2016 said that India “is a racist nation” and he was “ashamed to be born here”. He also declared that he would “cancel his birth right”, and migrate to “a country where there is no racism”. On the evening of 28 September 2015, Mohammad Akhlaq a Muslim of Village Bisadi, Dadri in the State of Bihar was accused of slaughtering a cow and consuming its meat on Eid-ul-Adha. A public announcement was made from the local temple in this regard. Hindu mob came and lynched Mohammad Akhlaq to death. Justice C.S. Karnan and Mohammad Akhlaq are Indian nationals, while as the people of the State of Jammu and Kashmir are not Indian nationals.

Kashmir as on today 26th September 2016 continues to remain under the 80th day of curfew brutally enforced by the Indian security forces. People are locked in doors and have no access to telephone and internet. Indian security forces have breached the four terms of reference which allowed them a temporary admission into the State in October 1947. In addition to this Indian forces have breached the three restraints placed on their behaviour, number and location in the UN Security Council Resolution of 21 April 1948.

Indian Government and the Government of Jammu and Kashmir, working under the influence of the former, have reneged on the assurances given at the UN Security Council in regard to the character of these forces. These assurances state that “There need be no fear, since the Indian Army is there, that this army will interfere in the exercise of a free vote. After all, a Commission of the Security Council will be there in order to watch”. In sharp contrast to this assurance, India through its security forces has insulated the people of Jammu and Kashmir from the outside world. Indian forces are engaged in gross and systematic violations of Human Rights.

Indian security forces are engaged in a war with the people for the last 80 days. They are using lethal pellet guns, to kill, blind and maim Kashmiris for life. Kashmiri youth in particular are the target population. The youngest death on Friday 16 September 2016 was of an 11 year old boy Nasir Shafi of Harwan, Srinagar. His bullet ridden body was found in the evening and he was buried on Saturday 17th September.

In February 2016 Inspector General of Police on the Indian side of Kashmir took a decision to enhance the reward money for killing militants (in fact unarmed Kashmiri youth). The reward money is paid by the police for killing militants fighting Indian rule in the state. The amount of money is fixed according to the category of a militant, which is decided by his activity. “The highest paid category is A++, followed by A+, A, B and C categories.

Reward for killing A++ category militant has been enhanced from Rupees 10 lakh to Rupees 12.5 lakh; for A+ category the amount is increased from Rupees 5 lakh to Rupees 7.50 lakh. For category A militants, the amount has been increased from Rupees 3 lakh to Rupees 5 lakh, for category B militants it has been increased from Rupees 2 lakh to Rupees 3 lakh and for the C-category, the reward money is increased from Rupees 1 lakh to

Rupees 2 lakh. It is an open contract to any private group or individual to earn through the killing of a ‘militant’ – in fact a State Subject, who is identified for opposing the Indian rule.

The broad spread of Indian security agencies, not part of the first admission of Indian army in October 1947 into the State but a totally private force inducted over the years, has been conducting demographic and psychographic profiling of Kashmiris and has already done an in-depth survey of central Kashmir’s Budgam district and Srinagar’s East Zone areas. This profiling serves as the guide for private military to hound and kill the ones flagged.

We wish to draw your attention to Para 2 of General Assembly Resolution 60/251 “that the Council shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner” and Para 3 “that the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon” and respectfully submit that Human Rights Situation of a people placed under a continuous curfew for the last 80 days merits the urgent attention of the High Commissioner for Human Rights and Human Rights Council.

Human Rights situation in Kashmir has to be assessed in accordance with obligations laid down in Para 2 (c) (i) (ii) (iii) and Para 12, Para 13, Para 14 of UN Security Council Resolution of 21 April 1948. In this regard we point out and recommend as follows:

1. The 170 year old history of the people of Kashmir (March 1846- September 2016) has been a tale of poverty, agony and oppression. They have been victims of the relentless tyranny of the callous rulers for centuries. The miseries and injustices suffered by the hapless Kashmiris have evoked sympathy and support from the people of the adjoining areas and other Westerners who used to visit Kashmir. Sir Henry Hardinge, Secretary to the Government of India in para 2 of his letter dated 07 January 1848 raised the plight of the people of Kashmir with Hindu Ruler Maharaja Gulab Singh and cautioned him that “British Government can never consent to incur the reproach of becoming indirectly the instrument of the oppression of the people committed to the Prince’s charge”.
2. Various organizations were formed before Partition of the sub-Continent to support the cause of the people of Kashmir and to extend solidarity. All India Muslim Kashmiri Conference was formed at Lahore in 1908 and later All India Kashmir Committee was constituted in 1931 at Shimla. These Committees highlighted the atrocities inflicted on the Kashmiris at national and international level. A “Kashmir Day” was observed on 14th August, 1931 in India and Burma. Governments of Pakistan since early 1990s have continued to have Parliamentary Committees on Kashmir in the Parliament to support the cause of the people of Kashmir, in accordance with UN Resolutions on Kashmir. Article 257 of the Constitution of Pakistan respects the free choice of the people as envisaged in UN Resolutions.
3. Indian propaganda that it is faced with a sponsored terrorism in Kashmir has no merit, unless it accepts the demand made by the UN High Commissioner for Human Rights that "an independent, impartial and international mission is now needed crucially and that it should be given free and complete access to establish an objective assessment of the claims made by the two sides."
4. The UN brokered cease fire between India and Pakistan is monitored by UNMOGIP since January 1949. The border is defended by over 700000 Indian army and India has erected a wall with high-tech surveillance systems. India is using the excuse to mislead the world community and to divert world attention from the atrocities being committed in its administered part of Kashmir
5. The Hindu Ruler of Kashmir also placed the people of Jammu and Kashmir under a Curfew on 24 September 1931, providing for the “conferment of special powers upon certain officers for suppression of disorder and the restoration and maintenance of law and order” in the State. His promulgation designated the people as “turbulent persons” mainly because the phrase ‘TERRORISM’ was not known at that time. Hindu Ruler was forced to withdraw the Proclamation after 12 days on 05 October 1931.

6. Indian Government is exploiting the global concern about terrorism and has been blaming Pakistan for sponsoring terrorism in Kashmir. This unfounded allegation is making the lives of 2.5 million Kashmiri refugees, displaced and deported by Indian administration and settled in Azad Kashmir and various provinces of Pakistan difficult (five generations). The false allegation is impacting the lives of the Kashmiri Diaspora living all over the world. These Kashmiris are attempting to build a constituency of peace in Kashmir and in other parts of the world.
7. The former chief of Indian intelligence RAW, A S Dulat in his recently published book "Kashmir – The Vajpayee Years" at pages 232 and 233 has admitted that "the army justifies its heavy deployment by periodically raising the bogie of infiltration...many Kashmiris feel the army has turned the entire valley into a cantonment". He writes at page 233 "It's a different thing that nowadays the generals make the army out to be indispensable by offering some theory or another about infiltration and terrorism every six months or so".
8. Pakistan as a member nation of UN and a party to the Kashmir dispute, has assumed duties in Azad Kashmir under UNCIP Resolutions "to provide for the better Government and administration of Azad Jammu and Kashmir until such time as the status of Jammu and Kashmir is determined through the democratic method of free and fair plebiscite under the auspices of the United Nations as envisaged in the UNCIP Resolution". India has continued to deny these refugees their lawful entry and exit or a return in safety and dignity.
9. It is an irony that in September 1931 Hindu Ruler described the people of Kashmir as 'Turbulent people', India in 2016 has tried to describe them as 'Terrorists, while as the United Nations Report in January 1952 has described the People of the Valley of Kashmir as "a people of legend, song and story, associated with snow-capped mountains, beautiful valleys and life giving waters...who are worthy of the right of their own self-determination through a free, secure and impartial plebiscite." We want that the view held by the UN prevails for all times to come.
10. There is urgent need to find the chain of command of the erring soldier and the erring integrated security grid, to apportion liability for all the crimes and atrocities committed against the people on the Indian side of Jammu and Kashmir.
11. Find on the failure of the State Government in assuming itself as required by UN in shape and manner of work. Recommend that a Government as defined in Para 6 of UN SC Resolution of 21 April 1948 be established to ensure promotion and protection of Human Rights.
12. Find on the current status of the temporary bilateral agreement made with government of India which has allowed the Indian soldier a temporary admission.
13. In view of the caution given in UN SC Resolution of 30 March 1951 on the merits of the representative character of Srinagar Government, recommend to reinstate the visa requirement (Permit System) for an Indian citizen into the State. Permit System was unlawfully rescinded by the Prime Minister of J & K on 31 March 1959.
14. Examine the human rights situation in the light of guarantees provided in UN Security Council Resolutions and see whether an action under Article 36(3) merits an urgent consideration.
15. Make a finding on the violation of restrictions placed on the use of firearms under Article 3 of UN Code of Conduct for Law Enforcement Officials.

In this regard JKCHR (and the delegation) assures the High Commissioner and his office of all possible co-operation and assistance.

1. **Dr. Syed Nazir Gilani** – President JKCHR
2. **Javed Muhammad Athar** – JKCHR Representative to the UN in New York
3. **Mohammad Yasin Chaudhry** Leader of the opposition in the Legislative Assembly of Azad Kashmir
4. **Lord Qurban Hussain** Member House of Lords in the British Parliament & Vice Chair of All Party Parliamentary Committee on Kashmir in the British Parliament
5. **Amjad Hussain** – Civil Society Activist

**Delivered on Monday 26 September 2016
High Commissioner's Office
48 Avenue Giuseppe Motta, Geneva- Switzerland**