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**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 2021]

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



A subordinate army – subject of a withdrawal and a UN discipline

The June 2018 report on the Human Rights Situation in Kashmir – Indian Administered Jammu and Kashmir and Azad Jammu and Kashmir and Gilgit-Baltistan (Pakistan Administered) has made 17 recommendations to the authorities in India and 7 recommendations to the Government of Pakistan.

The first recommendation made to India and Government of Pakistan calls to “Fully respect international human rights law obligations” in Indian Administered Kashmir and in the Pakistan Administered Kashmir.

The last recommendation (recommendation 17) made to India and the last recommendation (recommendation 7) made to Pakistan is to “Fully respect the right of self-determination of the people of Kashmir as protected under international law”.

After the UN Secretary General Mr. Dag Hammarskjöld’s visit to Srinagar – Kashmir in March 1959, the two OHCHR Reports of June 2018 and July 2019 are a significant development.

Government of India has expressed a hope at the UN Security Council on 20 January 1948 that, “We hope to be able to convince the Security Council that once we have dealt with the Kashmir question, there will probably not be anything of substance which will divide India and Pakistan to the extent of endangering international peace and security”.

Bharatiya Janata Party (BJP) entered into an Alliance with J&K People's Democratic Party (PDP) in March 2015 and set out a Common Minimum Programme (CMP) for power sharing in Kashmir (Indian Administered). Item 10 of the CMP reads “While recognising the different positions and appreciating the perceptions BJP and PDP have on the constitutional status of J&K, considering the political and legislative realities, the present position will be maintained on all the constitutional provisions pertaining to J&K, including the special status in the Constitution of India.”

Agenda of the Alliance was the guiding framework for governance of the coalition government in Jammu & Kashmir for the next six years. BJP however decided to pull out of the Alliance with PDP in June 2018. The Chief Minister Mehbooba Mufti (PDP) did not club with National Conference, Congress and Communist Party to form the Government. She chose to resign. BJP contrived the disenfranchisement of the people by dissolving the State Legislative Assembly and imposed a direct rule from Delhi.

Jammu and Kashmir has been through many direct rules from Delhi, but the Constitution of the State and its special status remained in place. The Delhi representative could not violate the legislative boundaries reserved for an elected Assembly.

This time Government of India took a military and an administrative action on 5 August 2019. The State has been stripped of its Constitution, Assembly, Special Status and Special Laws protecting the people for the last 92 years. It is a violation of the agreement of 27 October 1947 and a violation of UNCIP Resolution of 13 August 1948 and UN Security Council Resolution of 30 March 1951.

Government of India has reneged on her statement made at the 533rd meeting of the UN Security Council held on 01 March 1951 stating that “...the authority of the Government of India over the Government of Kashmir is limited to certain subjects; outside that sphere, it can only advise and cannot impose any decision”.

Life and habitat of Kashmir have been wronged. In fact as pointed out by the Netherlands at the 611st meeting of the UN Security Council held on 23 December 1952, “The party that would dare to violate an agreement thus reached would load upon itself a very grave offence against the other party, against the United Nations, and against the right of the people of Jammu and Kashmir to self-determination...”. India without doubt has “loaded upon itself a very grave offence”.

The Valley of Kashmir has been handed over to police, Indian security forces and a broad spread of surveillance network. Para 42 of June 2018 OHCHR report records that, “Impunity

for human rights violations and lack of access to justice are key human rights challenges in the State of Jammu and Kashmir. Special laws in force in the State, such as the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (AFSPA) and the Jammu and Kashmir Public Safety Act, 1978 (PSA), have created structures that obstruct the normal course of law, impede accountability and jeopardize the right to remedy for victims of human rights". Para 43 of the OHCHR records that "a separate version of the same law had to be enacted specifically for Jammu and Kashmir due to its special status under article 370 of the Indian Constitution".

60,000 families in Kashmir have been security indexed and members of these families have been blacklisted for any clearance. They would not be cleared for the issuance of a Passport and for the entitlement of a job.

On 21 April 2021 the Jammu and Kashmir government led by Lieutenant Governor Manoj Sinha ordered the constitution of a Special Task Force to take actions under Article 311(2) (C) of the Constitution of India against an employee on the grounds of security of the State. This provision does not provide for any enquiry or a reasonable opportunity of being heard. A public servant could be removed from the service through an administrative note and without an enquiry.

Nine days after the Special Task Force was constituted, the Lieutenant Governor ordered the termination of three government employees from Kashmir: a school teacher Idrees Jan from Kupwara, an assistant professor Abdul Bari Naik from Kulgam and a naib tehsildar Nazir Ahmad Wani from Pulwama district.

Abdul Bari Naik from Kulgam a 40-year-old assistant professor of geography had regularly attended official duties, including running a Covid-19 quarantine facility, a job which involved close coordination with the police. His family maintains that he had been arrested because of his activism that had exposed corruption and illegal sand mining in the area. Naik's bail application was still pending before a local court, when the termination orders were served on him.

The termination orders cited Article 311(2) (C) of the Constitution and said the Lieutenant Governor was satisfied that "in the interest of the security of the State, it is not expedient to hold an enquiry". No further explanation or misconduct on the part of the terminated employees was given.

New Delhi through its appointee in Jammu and Kashmir has set upon a witch hunt of Muslim employees working in various disciplines in the State. As part of a programme to change the demography in Kashmir, the administration has decided to broaden the scope of "adverse police reports" against Kashmiri Muslims working in various sectors in the State. A circular has been issued on 31 July 2021 by the Criminal Investigation Department (Special Branch) in Kashmir and it aims to broaden the net of victimization. It reads:

"All Field Units of CID SB-Kashmir to ensure that during verification related to passport, service and any other verification related to Government service/Schemes, the subject's involvement in law and order, stone pelting cases and other crime prejudicial to the security of the State be specifically looked into and the same must be corroborated from local police station records. Also digital evidence like CCTV footage, photographs, videos and audio clips, quadcopter images available in the records of the police, security forces and security agencies be also referred. Any subject found involved in any such cases must be denied the security clearance".

Police has been generating "adverse reports" against Kashmiri Muslims in the past and a new update advised in the Circular would turn the State into a "police run prison". Kashmiri Muslim officer's working in the State would be made subjects of these adverse reports and would be transferred outside Kashmir to other States of India.

It would be a punishment introduced for the first time in the history of the State since it became a subject of discussion at the UN Security Council in January 1948 and will create a permanent pool of unemployment.

In addition it is worrying that youth of Jammu and Kashmir have been profiled (Written Statement submitted to the Working Group on the use of mercenaries as a means of violating

human rights and impeding the exercise of the right of peoples to self-determination for consideration on 21 July 2016) by the police into five categories. There are financial rewards against the killing of a youth under any one of these categories.

The latest announcement made by the police that Kashmiri students going to Pakistan for studies either disappear on their return or are found having undergone military training, has made families nervous and insecure.

Government of Jammu and Kashmir had temporarily allowed Indian security forces into Kashmir to defend the territory, protect life, honour and property. A sub-ordinate army which had to be withdrawn after law and order had been restored, has turned turtle. It does not follow the three principles set out in the UN Security Council resolution of 21 April 1948 and have wronged the civilian character of the habitat.
