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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.

[4 February 2022]

* Issued as received, in the language of submission only. The views expressed in the present document do not necessarily reflect the views of the United Nations or its officials.



Children and armed conflict – Indian Administered Jammu and Kashmir

JKCHR welcomes the Report of the Special Representative of the Secretary-General for Children and Armed Conflict submitted under agenda item 3 of the 49th Session of Human Rights Council.

In Para 19 of the Report the Special Representative has very rightly stated that “The creation of the mandate of the Special Representative of the Secretary-General for Children and Armed Conflict by the General Assembly 25 years ago was a critical milestone for the protection of conflict-affected children and highlighted the need to prioritize this issue on the international agenda to ensure sustainable development and maintain global peace and security.”

After this admission, one should not find that the present report falls short of the broad spread of the interest maintained by the UN Secretary General in his report A/72/865-S/2018/465 of 16 May 2018 by expanding his mandate to “Situations not on the agenda of the Security Council or other situations” and covering India in paras 217, 218, 219, 220 and 221.

In the ‘Annual Report of the Secretary-General on Children and Armed Conflict’, which was released on 30 July 2019 the Secretary General felt that Indian Administered Jammu and Kashmir was a situation of an armed conflict and the threat to peace and security. He felt that the children continued to be affected by incidents of violence between armed groups and the Government. The template set out by the Secretary General to cover children of Indian Administered Jammu and Kashmir under “Situations not on the agenda of the Security Council or other situations” has not been followed in the present report. It would not be a good news for the children in Indian Administered Jammu and Kashmir.

JKCHR supports the recommendations made in the Report and sincerely hopes that the Special Representative would find ways to repair the lapse.

We find that the Report has missed out on another important source, that is, the June 2018 report compiled by the Office of the United Nations High Commissioner for Human Rights. Paras 90 and 91 deal with the protection of the rights of minors in Indian Administered Jammu and Kashmir.

In the present report the Special Representative of the Secretary-General for Children and Armed Conflict explores challenges in ending and preventing grave violations and in strengthening the protection of children affected by armed conflict. A contact or a communication with JKCHR would have helped the Special Representative to know more about the children in Indian Administered Jammu and Kashmir, that is in addition to what, has been covered in the Para 217 and 281 in the report of the UN Secretary General or in Paras 90 and 91 in the report of the Office of the United Nations High Commissioner for Human Rights.

An important area where children and women become daily victims is the unidentified cease-fire-line. At certain places the division is in the shape of a rivulet, a river, a stream or a common piece of land, inhabited by the members of a divided family.

The cease fire line separates the two soldiers of India and Pakistan. It does envisage any restraint on the freedom of movement of the civilian population. Para 12 of the UN Security Council Resolution 47 guarantees the “freedom of lawful entry and exit.” Unfortunately the two armies act beyond their Terms of Reference and enforce an unlawful regime of arrest of children and women or a citizen who strays across the stream or beyond a point in the pasture where the animals graze.

The following two examples would be sufficient to state that Special Representative of the Secretary-General for Children and Armed Conflict, has to find ways to include the issue of Kashmiri children in the report:

Case Number 1

On 25 November 2021 A.A. son of Muhammad Banaras a 14 years old, 9th Grade student of village Tetrinote (a village on the border) in Poonch Azad Kashmir, Pakistan administered Kashmir, went to board his grandmother on a bus at 11 am. He did not return to his grandparents' house till sunset, who have raised him after the death of both of his parents. There was no report of missing person until after a few days a news item by an Indian wire service revealed that he had strayed across the unmarked line of control and had been detained by the Indian army on the other side of the divide.

Civil Society and the general public have been running a social media campaign and making appeals for his release on the Twitter. The divided families and social activists have been campaigning for the last three months for his repatriation. The army has handed him over to the Police for further action.

14 years old, 9th Grade student A.A. could have been repatriated in minutes by allowing him a supervised walk back into his village. Or the Police could have handed him over to UNMOGIP on the Indian side of the cease-fire-line and he could have been transported across the bridge into Muzaffarabad, the capital of Azad Kashmir, Pakistan Administered Kashmir.

Case Number 2

Najam-u-Saqib s/o Mohammad Azhar Joo, a resident of Chilaa Bandi, Muzaffarabad (Pakistan administered), date of birth 03.05.2000 an engineering student at the Neelum Institute of Technical, Professional and Educational College, Muzaffarabad, on 5 February 2018 walked across through the River Kishan Ganga into village Keran, in District Kupwara, to meet his grandparents. His parents had been displaced during the civil unrest and uprising of 1990. The Joo family currently lives at Chilaa Bandi, Muzaffarabad in Azad Kashmir, Pakistan Administered Kashmir.

Najam-u-Saqib was arrested by Keran Police from his grandparents' house and lodged in Kot Bhalwal Jail Jammu. It was an emotional cross over by a State Subject, from one part of the State into the other. Unfortunately as part of police aggressive and cruel methods to gain recognition and promotion, he was charged under Public Safety Act (PSA).

Public Safety Act and its abuse is discussed under the title "Administrative detention", in Paras 57, 58, 59, 60, 61 and 62 in the June 2018 report of the Office of the United Nations High Commissioner for Human Rights. Najam-u-Saqib was transferred to District Jail Jhajjar in Haryana, outside Indian Administered Jammu and Kashmir, in India.

On 29 January he was brought under before the Additional Special Magistrate Kralpora on a Production Warrant to answer the charges. He was sentenced for "commission of the offence under section 2 of Egress and Internal Movements Control Ordinance" to "sentence of a simple imprisonment of one year and a fine of Rupees one thousand "under section 3 of Egress and Internal Movements Control Ordinance. The Magistrate ordered that "In case of non-payment of the fine the accused shall undergo further imprisonment of four months." The judge ordered that "The period of 14 days undergone by the accused in custody during the period of investigation of the case shall be set off against the term of imprisonment of one year imposed upon the accused.

It is important to point out that the Court has ordered that, "Further it is directed that since the accused is a resident of Pakistan Occupied Kashmir, after the period of detention is over the concerned authorities of Government shall deport the accused to Chilaa Bandi – Muzaffarabad P. O. K under the rules applicable."

The family of Najam-u-Saqib living in Keran Indian Administered Kashmir has paid the fine of Rupees one thousand and he has served the one year sentence as well. He should have been released on 14 January 2022 but he remains under unlawful detention.

The armed conflict in Indian Administered Jammu and Kashmir has continued and so has the daily loss of life. However, the children in the conflict zone of Indian Administered Jammu

and Kashmir are severely affected as detailed in the report of UN Secretary General and the two report of the Office of the United Nations High Commissioner for Human Rights.

The children living along the cease-fire-line remain vulnerable to severe violence and abuse of human rights after their unintentional cross over from the unmarked line-of-control. It is a specific phenomenon in Indian Administered Jammu and Kashmir and the Special Representative of UN Secretary General shall have to cover it by re-instating the consideration of "Situations not on the agenda of the Security Council or other situations."

The present report shall have to make up for the non-inclusion of children affected by conflict in Indian Administered Jammu and Kashmir. JKCHR sincerely hopes that the Special Representative of the Secretary-General for Children and Armed Conflict, would intervene and seek the early repatriation of A.A. and Najam-u-Saqib.

Special Representative should ask India and Pakistan to give the details of such arrested children and negotiate a mechanism for their prompt repatriation. There is a need to establish a separate mechanism between the two administrations on either side of cease fire line and the UN Human Rights Council to address the best interests of the children involved.
