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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.

[28 January 2024]

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



Disenfranchised People of Indian Administered Jammu and Kashmir

Two written complaints on the Kashmir region by India and Pakistan under article 35 of UN Charter, were lodged at the UN Security Council on 01 January and 15 January 1948. The two countries admitted in their communications that they had failed to settle the dispute through an engagement under article 33 of UN Charter. UN Security Council Resolution of 30 March 1951 has reminded Government of India (by inference also Pakistan) and the National Conference Government in the Kashmir region about the UN template for a UN supervised Plebiscite in the Kashmir region.

Eight countries sitting on the current Human Rights Council, namely, Argentina, Belgium, China, Cuba, France, India, the Kingdom of Netherlands and the United States of America have played an important role in shaping the UN template for a UN supervised vote in the Kashmir region. India has accepted at the 230th meeting of UN Security Council held 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.”

The United States of America has pointed out at the 768th meeting of the UN Security Council held on 15 February 1957 that UN Security Council had a “positive duty” and “unless the parties are able to agree upon some other solution, the solution which was recommended by the Security Council should prevail.” The United States of America has clarified that “The Security Council will always welcome any agreement which the parties themselves can reach on any basis which will settle the dispute, provided of course that, that basis is consistent with the principles of the Charter of the United Nations.”

UN template on the Kashmir region has recognised four components of the rights movement of the people of the Kashmir region, namely, rights, dignity, security and self-determination. The people of the state remain forcibly distributed and are living under three administrations, on both sides of the cease fire line. The two OHCHR reports of 14 June 2018 and 8 July 2019 describe the behaviour of control by India and Pakistan and the situation of human rights in the three habitats.

The two reports have made a long list of recommendations to India and Pakistan in regard to improving the human rights in these habitats. One recommendation made to the Human Rights Council is the constitution of a Commission to investigate the allegations of human rights violations in these areas and the second is made to India and Pakistan, to respect the right of self-determination, as provided under international law.

It is disheartening to point out that the freedom of expression to elect local representatives, in all the three administrations has not been without a concern. The people living in the Indian administered Jammu and Kashmir, do not have an elected government for the last six years. They have been disenfranchised since June 2018, when the elected Assembly was dissolved and people were placed under a direct rule from Delhi. The Electoral College was disbanded and replaced by the appointment of a non-State person by the Government of India.

A people who should have been preparing for a UN supervised Plebiscite, under the guidance of a UN appointed Plebiscite Administrator, has been placed under the authority of a Governor appointed by the Government of India. In utter disregard of UN template on the Kashmir region, and a written pledge made to the people of the Kashmir region in October 1947, Government of India took an action on 5th August 2019 and abrogated Article 370 which provided a special status to Indian-Administered Jammu and Kashmir. Special rights of the people under article 35A were also taken away.

Indian action of 5 August 2019 has created a domestic crisis in the previously existing interim arrangement of relationship between Delhi and the state until there was a UN supervised Plebiscite. Supreme Court of India has endorsed the Government action of 5 August 2019. The basis of a temporary admission for Indian forces on 27 October 1947 into the Kashmir region was that these forces would “help State forces to defend the territory and protect the lives, property and honour of the people.” Accordingly, these forces are a supplement and a sub-ordinate force.

UN Security Council has remained seized of the matter from 6 January 1948. Therefore, Indian Supreme Court does not have the competence, to overrun or override the UN template on the Kashmir region. Supreme Court of India cannot suspend the jurisprudence of the free consent of the people, which is the basis for any legitimate governance. It can't overrun the jurisprudence of article 103 of the UN Charter. Article 103 of the Charter reads, "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

Indian Administered Jammu and Kashmir has been disenfranchised since 2018. There is no elected assembly and people's participation in the election of their representatives has been, substituted by the rule of an appointed non-State person from Delhi. UN described "people of legend" have been subjected to a new kind of colonial control. Over 900,000 armed forces and the judiciary have been used as instruments of control. Indian forces in addition to terms of reference set out in the agreement of October 1947, remain under a UN Security Council restraint, on their number, behaviour and location.

Jammu and Kashmir Council for Human Rights (JKCHR) has welcomed the domestic part of Indian Supreme Court's decision. It includes directives of Supreme Court of India, directing the restoration of statehood of Indian-Administered Jammu and Kashmir "at the earliest" as well as holding the elections to the assembly by September 30 this year. It also welcomes a directive to establish a Truth-and-Reconciliation Commission specifically tasked with investigating human rights violations in Indian-Administered Jammu and Kashmir during the 1980s.

JKCHR sincerely hopes that Government of India would honour its prayer made at the UN SC on 15 January 1948 to facilitate a UN supervised vote. UN template on the Kashmir region has recognised the rights, the dignity, the security and the self-determination of "these historic people of Jammu and Kashmir." Supreme Court of India could not adjudicate against the jurisprudence of UN SC Resolution of 30 March 1951.

Without prejudice to the domestic jurisdiction of Supreme Court of India, JKCHR wishes to point out that Indian-Administered Jammu and Kashmir is a subject under article 1 (2) of UN Charter and parties have to return to Resolutions of 13 August 1948 and 5 January 1949. Consent of the people is the basis for any governance. It includes the consent of all Kashmiris, living on both sides of CFL, in India, in Pakistan and those living as a Diaspora in various member nations of the UN.

Human Right Council has to address the common recommendation made in the two reports of High Commissioner for Human Rights, and establish "a commission of inquiry to conduct a comprehensive independent international investigation into allegations of human rights violations in Kashmir." The Council has been listening to oral statements made by various schools of interest here on the violations of human rights in Indian administered Jammu and Kashmir and Pakistan administered Azad Kashmir and Gilgit-Baltistan. There is a cause for concern.

Visits to these three administrations and contacting the Kashmiri Diaspora, on behalf of the Council are matters overdue for action. UNCIP delegation visited Pakistan administered Azad Kashmir in September 1948 and UN Secretary General accompanied by a high level delegation, visited Indian administered Jammu and Kashmir in March 1959. UN Security Council has heard directly from Sheikh Mohammad Abdullah, head of the Kashmir region administration in February 1948. UNCIP has received a written aide-memoire from Sardar Ibrahim Khan, President "Azad Kashmir Government" on 8 July 1948.

UNCIP delegation's visit of September 1948, Secretary General's visit of March 1959, address by Sheikh Abdullah in February 1948 and the aide-memoire sent by Sardar Ibrahim Khan in July 1948, are the only direct Kashmiri contacts with the UN Security Council. Appearance by Kashmiris at the Human Rights Council, is structurally flawed. These voices are opposed to each other and run the risk of rendering themselves as proxies, for India and Pakistan.

JKCHR has remained a witness to these statements from January 1990. They end as a tit for tat – the content is not rooted in the title of the people of Indian-Administered Jammu and Kashmir to self-determination. All statements remain in favour of the respective claims of India or Pakistan. In fact the Indian and Pakistani claims are a consequence, of the title of the people to self-determination.

India has surrendered Indian-Administered Jammu and Kashmir Accession at the UN Security Council for a UN supervised vote. Human Rights Council should take cognizance of the Charter obligations of India and Pakistan and the obligations accepted in the UN template on the Kashmir region. The two countries should respect the title of the people and seek their respective interests as a consequence of this title.
