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Human rights situations that require the Council's attention

Written statement* submitted by the 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.

[1 June 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Jammu and Kashmir**

Peace is the goal of law. Should violence be used sometimes to maintain peace remains an unresolved question? International law is premised on the idea that all political communities have a strong interest in peace and in the protection of basic human rights, and that the interests of the members are greater than what divides them. These are the guiding ideas behind the founding of the United Nations and fifty years later the International Criminal Court. We have shared interests in peace and in the protection of basic human rights of all humans in all political communities.

State can no more treat its people as it pleases. However, State should have substantial and important powers within the scope of its right to political self-determination. A legitimate State must be a democracy, because only a democratic government is consistent with a state's right to govern its territory, and impose duties of compliance on insiders and of non-interference on outsiders. Political self-determination and democracy go hand in hand. The right of political self-determination is an irreducibly collective moral right held by legitimate states and groups that are willing and able to become legitimate states.

The first function of the legal organization of the community is the preservation of peace. The fundamental precept is that 'there shall be no violence'. But this primordial duty of law is abandoned and the reign of force is sanctioned as soon as it is admitted that the law may require violence for the purpose of enforcing the law's proscriptions. The territory of the State of Jammu and Kashmir has remained infested with violence for the last 22 years. There has been the death of a generation, and the people and the habitat have suffered in a manner never witnessed in the history of Kashmir in 144 years from 1846 to 1990.

The distribution of the territory into three administrations, the distribution of the people and the human rights situation in these administrations require Council's attention. The human rights situation would not have deteriorated and violence would not have been authored from across the border, if Kashmiri leadership had the will to challenge its own ignorance of UN jurisprudence on Kashmir and address the subject in equity and in good faith. It has to own its share of blame in the non-discharge of these UN resolutions or in allowing a situation where genuine doubts have started surfacing on the merits of Kashmir case.

UN Resolutions are not only about Kashmir. In fact on 1 January 1948 under article 35 India has gone to UN Security Council about a situation "whose continuance is likely to endanger the maintenance of international peace and security". Under UN Security Council Resolution S/651 of 17 January 1948 the two parties have "affirmed their intention to conform to the Charter". The parties have to take "immediately all measures within their power (including Public appeals to their people) calculated to improve the situation and to refrain from making any statements and from permitting any acts which might aggravate the situation". At the same time the Resolution has asked "each of those Governments to inform the Council immediately of any material change in the situation which occurs or appears to either of them to be about to occur while the matter is under consideration by the Council and consult with the Council thereon".

The first and foremost question would be, that if Kashmiri leadership, academics, lawyers, journalists and the civil society as a whole had studied the Indian application made to the UN on 1 January 1948, made under article 35 and had further understood the scope of the article 35 under sub sections (1), (2) and (3) a serious thought would have gone into the

** MWA – Muslim Women's Aid – UK, an NGO without consultative status, also shares the views expressed in this statement.

merits of supporting any kind of armed struggle in Kashmir. The immediate impact of this armed struggle has been the death of a generation and as a consequence the human deficit has killed the right of self-determination for some time to come. On a vote basis (loss of numericals) 'Plebiscite' is not realisable for a long time to come and the only way out is to keep the principle of self-determination alive.

The earlier claim that the armed constituent of Rights Movement in Kashmir was indigenous has lost its merit. The constituency of support at various forums of UN expanded through resolutions, debates, statements written and oral gradually was harmed by a non-Kashmiri character. UN work on Kashmir has turned into a disappointing mess and the Kashmiri voices (more than one) raised during the various sessions of Human Rights Council have become dull and a proxy.

Although the Government of Pakistan (or elements in the Government in charge of Kashmir) had failed to raise the issue of Kashmir at the 6760th meeting of the Security Council, held on 25 April 2012, in connection with the Council's consideration of the item entitled "Threats to international peace and security", the UN Secretary General during his April visit of India, highlighted peaceful settlement of the Kashmir dispute and stated that "will" of Kashmiri people must be respected while finding any resolution. He said "I hope this issue (Kashmir) is addressed peacefully without violence and respecting wills of the people there."

United Nations supports the principle of equality of the people of Kashmir and the UN jurisprudence of Kashmir case embeds free will of the people. It is time that the agenda of violence in Kashmir is replaced by a genuine effort to enforce the UN mechanism in all the three administrations.

UN Resolutions are not only about the question of 'peace and security' and the question of 'self-determination' of the people of Kashmir, but UN resolutions are about establishing three Kashmiri Governments at Srinagar, Muzaffarabad and Gilgit, about the character of these Governments, about the rights of Minorities, about the five generations of refugees, about the role of Jammu & Kashmir Government (Indian administered), role of Azad Jammu and Kashmir Government (Pakistan administered), about the number, behaviour and location of Indian army, about the limits to Pakistani presence in Azad Jammu and Kashmir, Gilgit and Baltistan and about the full regime of Human Rights of all the People of Jammu and Kashmir.

Human Rights Council could create a mechanism and arrange to educate the people and leadership of Kashmir in regard to the importance of the office of UN Secretary General in their case. Under article 97 of the UN Charter he is not only the chief administrative officer of the UN but article 99 provides him a legal basis to take actions on his own initiative (political activity) in the maintenance of international peace and security. Article 99 provides him a freedom of activity while as article 98 strictly assigns him duties. UN Charter vests in him a political role and Kashmiri leaders have failed to invoke this role of the UN Secretary General.

Under article 99 UN Secretary General has the right to bring to the attention of UN Security Council any matter which in his opinion may threaten the maintenance of international peace and security. Taking into consideration the power of the SG to draw up the provisional agenda and to participate in the meetings of the SC, the status of the SG comes quite close to that of a 16th member of the SC, without voting or veto rights. Secretary General's right of initiative covers 'any matter', whereas the right of initiative of the member states is limited to 'any dispute or situation'. It would be fair to say that, the examination of UN resolutions on Kashmir has not received due attention. No one seems to have touched the substantive issues or rights involved in these resolutions.

Human Rights Council could create a mechanism and arrange to educate the people living under three administration of Jammu and Kashmir on either side of cease fire line supervised by UNMOGIP about the need to abandon violence and about their shared interests in peace and in the protection of basic human rights of all humans in all political communities. Government of Pakistan currently administering the territories called Azad Jammu and Kashmir and Gilgit and Baltistan, has to be encouraged to respect the principle of equality of people in the territories under its administration. It has to be asked to discharge its Charter obligations and the responsibilities assumed under UNCIP resolutions in Azad Jammu and Kashmir Constitution Act 1974.

Government of Pakistan has to take measures, which remain guided by its obligation, to assist the administration “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 in accordance with the freely expressed will of the people of the State through the democratic method of free and fair plebiscite under the auspices of the United Nations as envisaged in the UNCIP Resolutions adopted from time to time”.

In an attempt to promote respect for human rights, the international society should examine the political set ups in all the three administrations of Kashmir and ascertain whether they are legitimate and on behalf of the free will of the people.
