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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 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.

[17 August 2017]

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

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Indian Administered Jammu and Kashmir - plight of prisoners

The State of Jammu and Kashmir is divided into three administrations. People are forced to live as divided and distributed people in these three administrations. A UN brokered cease fire line temporarily divides the land and separates the families. One administration is on the Indian side of cease fire line and two administrations fall on the Pakistani side of cease fire line.

Over 2.5 million Kashmiri Muslims have been forced out of their homes from Indian administered part of Kashmir and they live in various provinces of Pakistan. These refugees are represented in the Legislature of Azad Kashmir, through 12 elected seats. They also vote in the Provincial and National Assembly of Pakistan. Kashmiri Diaspora is also represented in the Legislative Assembly of Azad Kashmir.

Azad Kashmir on the Pakistani side of cease fire line is an autonomous administration and shares a Constitutional arrangement with the Government of Pakistan “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.”

People living in the three administrations of Kashmir have a shared desire to go through a UN supervised Plebiscite on their right of self-determination. The Government of Jammu and Kashmir on the Indian side of cease fire line has been outsourced the work on self-determination by the United Nations.

It is worrying that the Indian army granted a temporary admission by the Government of Jammu and Kashmir to perform 4 duties in 1947 and subjected to 3 restraints on its number, behaviour and location by UN in 1948 are operating under protective laws, to avoid accountability. These forces have remained involved in the death of a generation, massive abuse of human rights and remain at war with the people.

Human Rights situation in the Indian administered part of Jammu and Kashmir, has further degenerated from the point described in Resolution E/CN.4/Sub.2/1997/L.21 dated 15 August 1997, moved at 49th session of Sub Commission. Resolution L.21 could be reproduced today verbatim to describe Indian imperialism towards people and their territories, harsh military suppression of dissent combined with sweeping special emergency powers, reactionary penal laws, double standards of enunciating human rights and rule of law, unwillingness and a degree of inability to undertake real reform.

The situation is so grave that the President of Azad Kashmir Hon Sardar Masood Khan in his joint press conference with the visiting delegation from Great Britain and Northern Ireland, has accused the Chief Minister of Indian administered Jammu and Kashmir as a ‘facilitator’ in the deaths, violation of human rights and abuse of power by Indian forces. President of Azad Kashmir’s comment is based on the fact that, Indian forces have been granted temporary admission by the State Government, they are a subordinate force and were to act as a supplement to the State forces. These forces have breached the terms of their temporary admission and have violated the UN restraints placed on them. These forces have outlived their usefulness and are now engaged in a war. They blind, disable and kill people who subscribe their faith in the right of self-determination.

Human Rights Council has a duty to check, “if governments do what they agreed on at the United Nations.” In regard to Indian administered Jammu and Kashmir, para 12 of UN Security Council resolution of 21 April 1948 has charged the Government of India and Government of the State with a duty, “The Government of India should themselves and through the Government of the State declare and make known that all subjects of the State of Jammu and Kashmir, regardless of creed, caste or party, will be safe and free in expressing their views and in voting on the question of

accession of the State and that there will be freedom of press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit.”

Human Rights Council has a duty to check whether Government of India has honoured its obligations slated in para 13 of UN Security Council resolution of 21 April 1948. Accordingly, “The Government of India should use and should ensure that the Government of the State also use their best endeavours to effect the withdrawal from the State of all Indian nationals other than those who are normally resident therein or who on or since 15 August 1947 have entered it for a lawful purpose.”

Human Rights Council has a duty to check on the compliance of para 14 of the UN Security Council resolution of 21 April 1948. It states that, “Government of India should ensure that the Government of the State releases all political prisoners and take all possible steps so that:

- (a) All citizens of the State who have left it on account of disturbances are invited, and are free, to return to their homes and to exercise their rights as such citizens;
- (b) There is no victimization;
- (c) Minorities in all parts of the State are accorded adequate protection.

We find that Indian Government is taking away Kashmiri prisoners and lodges them in various prisons throughout India. Kashmiri political prisoners, most of them according to family members have been implicated in false cases are presently in the jails of Rajasthan, Varanasi, Bengaluru, Gujarat and other jails of India.

One such notorious prison is the Tihar jail in Delhi. There are 19 people who have been serving life imprisonment. These include Showkat Ahmad Khan from Nishat, Javed Ahmed Khan (Nowpora), Muhammad Ayub Mir (Hazratbal), Ghulam Qadir Bhat (Dooru), Muhammad Shafi Khan, Raj Din Khan, Shabir Ahmad Malik, Muhammad Amin Dar, Noor Muhammad Tantry, Feroz Ahmad Bhat, Parvez Ahmed Mir, Sheikh Samiullah and Ali Muhammad Sheikh (two brothers), Mushtaq Ahmed Kaloo, Muhammad Amin Wani, Javed Ahmed Wani, Shabir Ahmad Najar, Gulzar Ahmad Wani and Muhammad Ishaq Paul (Shopian).

Mohammad Hussain Fazili, 42 resident of Buhpora downtown Srinagar was arrested in November 2005 and released on 16 February 2017 after 12 years by a court from Tihar jail in Delhi, has said that in captivity:

“We were forced to suck each other private parts and forced to urinate in each other’s mouth. We were forced to drink urine and eat human waste along with bread. Rats were put in their trousers. As if it was not enough, he said, pigs were let loose to lick their mouth and face. At the same time, cops used to push water and bread into our mouth. We thought since we were Kashmiris and Muslims, it was the only reason for facing such torture”.

“I was 30 years old and my family was preparing for my marriage when I was arrested. Today I am 43-years old. I neither saw my parents nor my siblings during 12 years of imprisonment in Tihar Jail. Due to financial constraints, my family could not afford to visit me in Tihar jail. Despite facing severe hardships, his family members managed to pay his lawyers fee. I lost 12 years of my life in the jail. Who is going to return me these 12 years during which I could not see my parents and siblings a single time. He is shocked after seeing his mother Fatima in miserable health condition. I had never thought that my imprisonment would have had such an impact on my parents. I am mentally and physically disturbed after seeing condition of my mother, who has suffered brain haemorrhage during my detention period and one side of her body has been paralysed. He said all the cases of Kashmiris lodged in jails outside State should be investigated fairly to save lives of innocents jailed in fabricated cases.”

(Mohammad Hussain Fazili’s Press Statement published on 20 February 2017)

At a time when Government of India has refused the request from UN High Commissioner for Human Rights to give unhindered access to a UN team into the State and has refused the request made by Independent Permanent Human Rights Commission (IPHRC) of OIC, to visit the State to investigate the reports of massive violations of human rights, people in the Valley of Kashmir are left at the mercy of Indian forces. Indian army is operating outside the terms of reference agreed at the time of granting them temporary admission, they are dishonouring the ‘good behaviour reference’ given by the Kashmiri leader at the UN Security Council and violate the UN restraints.

The situation helps Indian forces to operate above law and against the will of the people. It is an occupation and the Council has to find ways to, see that 'people understand their rights' and that 'people can use their rights.' Council has to help these people whose rights have been taken away. JKCHR respectfully recommends that the Council invites the Chair or a member of All Party Parliamentary Group on Kashmir in the British Parliament or Hon President or Prime Minister of Azad Kashmir to give an account of the Human Rights situation in the Indian administered part of Kashmir.
