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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.

[25 May 2018]

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

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Rights and dignity, security and self-determination of People of Jammu and Kashmir

Jammu and Kashmir Council for Human Rights (JKCHR) presents its compliments to all members of the Council and wishes it a successful session. The situation, (habitat and people) of Jammu and Indian Administered Kashmir is known to the United Nations and its sub-ordinate bodies since January 1948. UN Representative on Kashmir Dr. P. Graham in his report submitted at the 570th meeting of UN Security Council on 17 January 1952 has described these people, "They are a people of legend, song and story, associated with snow-capped mountains, beautiful valleys and life-giving waters. ..These people, Moslems, Hindus, Sikhs and Christians." He added that the people of Jammu and Kashmir, are worthy of the right of their own self-determination through a free, secure, and impartial plebiscite.

Graham has presented four elements of Kashmir case namely, the rights and dignity, the security and the self-determination of these historic people. He has identified that these people "have been, through the centuries, the victims of exploitation and conflict". Today we see that the people of Indian administered part of Kashmir have fallen on hard times. The failure to uphold the three important elements of rights, dignity and the security, has remained a historic error of judgement. It has resulted into the death of a generation since 1990 and there is a daily loss of life. India and Pakistan have once again reverted to old ways of invoking the enemy image of each other and both are equipped nuclear States.

Pakistan has remained home for five generations of Kashmiri refugees displaced from Indian administered Kashmir. These five generations of refugees, people living in Azad Kashmir and the Kashmiri diaspora spread all over the world are extremely concerned on the engagement of Indian army and other forces with the defenceless people on the Indian side of cease fire line. We are 70 years late in getting the people their self-determination through a free, secure, and impartial plebiscite. They are denied the other three promised components of self-determination, namely, rights, dignity and security.

Kashmiri youth suspected of fighting Indian rule in the state have been profiled into 5 categories, namely, A++, followed by A+, A, B and C categories. Reward money for killing a youth in each category has been enhanced since February 2016. The highest paid category is A++, followed by A+, A, B and C categories. Indian army has been conducting demographic and psychographic profiling of Kashmiris. It is to identify those who oppose the Indian rule and have them killed. Why does India need to go with its killing instinct in Kashmir? The answer is provided by Quebec referendum.

There is a confusion on the ownership of the Kashmir case. If one reads the UN package on Kashmir, there is hardly any confusion. The jurisprudence of Kashmir case is either misunderstood or we misdirect ourselves. According to United Nations Kashmir continues to remain as "the greatest and gravest single issues in international affairs". UN has defined the Kashmir case and has put in place an operational regime. It recognises that Kashmir have rights, integrity, security and self-determination. There has to be a free, secure, and impartial plebiscite.

According to Pakistani proposal we should have had a Plebiscite in the spring of 1948, that is in 3 months by March, April and May 1948 or according to British proposal, a Plebiscite should have been held from May 1948 to October 1948. The dispute is not on the principle of self-determination but on the procedure and process. Principle of equality of people and self-determination has been agreed by India and Pakistan and endorsed by the UN Security Council. Therefore history and dates are the Kashmir case.

What is the status of a fair and impartial plebiscite? United Kingdom at the 606 meeting of the UN Security Council on 6 November 1952 has concluded that "The ultimate objective of a fair and impartial plebiscite under the auspices of the United Nations has, after all, been written into solemn agreements by the two Governments and endorsed by this Security Council. These agreements have been affirmed and reaffirmed by the two governments many times during the last three and a half years... the will of the people of Kashmir and Jammu in this question of accession could be ascertained without any insuperable difficulty."

What is the status of disagreement? The disagreement on referendum in Kashmir has not been correctly understood and it is being interpreted to prejudice the merits of Kashmir case. Netherlands at the 566th meeting of UN Security Council held on 10 November 1951 has made an important statement on the question of disagreement. Netherlands representative in the Security Council has stated, “The lack of agreement therefore, does not concern this right of self-determination. It concerns the ways and means and procedures to establish the conditions for a fair expression of the will of the people of the State of Jammu and Kashmir who want to make their choice free from any kind of fear or intimidation.”

India holds key to peace and prosperity in the region by honouring its UN Charter obligations as a member nation and specific obligations caused by UN Security Council Resolutions and UNCIP Resolutions as a party to the Kashmir dispute.

What is the status of accession today? India has surrendered the State’s conditional accession at the UN SC on 15 January 1948 for a UN supervised vote. There is no accession with India at this point. The “Grave Emergency” pleaded by Maharaja of Kashmir on 26th October 1947 and the “Grave Situation” pleaded by Pandit Nehru in his telegram of 26th October addressed to Prime Minister of Britain and in the telegram of 28 October 1947 addressed to Prime Minister of Pakistan or the later representation made to the United Nations, the UN brokered cease fire of 01 January 1949, has reversed the situation pleaded by India from 26 October 1947 to 1st January 1948.

Indian Government has justified the landing of its troops in Srinagar, on the basis that there “exists a grave emergency” in Jammu and Kashmir. Today we do not have the Jammu and Kashmir that India wanted to defend on 27 October 1947. Jammu and Kashmir was recognised for the purposes of arranging a plebiscite in collaboration and under the supervision of UN. Jammu and Kashmir was required to set up a provisional government under the supervision of United Nations and it had to be fully representative, including a representation from Azad Kashmir and Gilgit and Baltistan. A UN envisaged Government at Srinagar, had to reflect the presence of Muzaffarabad, Gilgit and carry the trust of Government of Pakistan as a party to the dispute.

Should Indian army be in Kashmir? Indian army has been granted a temporary admission by the Government of Jammu and Kashmir to perform four duties in 1947 as provided in the acceptance letter as:

“Meanwhile in response to your Highness’ appeal for military aid action has been taken today to send troops of the Indian army to Kashmir to help your own forces to defend your territory and to protect the lives, property and honour of your people.”

It is clear that the Indian army has entered as a supplement and a subordinate force to do four jobs in Kashmir. This army has been given a ‘good behaviour certificate’ by Sheikh Abdullah at the UN Security Council and UN has placed three restraints on its number, behaviour and location in its resolution of 21 April 1948.

According to UN Representative on Kashmir, the people “have been, through the centuries, the victims of exploitation and conflict,” but sufferings in the last 25 years, in particular during popular uprising of 1990, 2008, 2009, 2010, 2014, 2015, 2016, 2017 and now in 2018 have no parallel in human history. Indian military is using lethal weapons to kill and blind, uses rape as an instrument of war to humiliate, disappear and kill and bury in unmarked graves. Its crimes are protected by Special Powers. It has no regard for the 7 restraints placed on its entry and presence in Kashmir.

Although Indian Government claims to have a temporary accession with the State made on 27 October 1947, yet up until 31 March 1959 Indian citizens were required an entry permit (a visa) to enter the State. It is unfortunate and equally unlawful that Prime Minister of Kashmir elected from only a part of the territory and under the caution of 30 March 1951 UN Security Council Resolution, rescinded the restriction of Entry Permit. Indian Government since then has played the Arab camel with the people of Kashmir. The Council has to step in to see that Indian army is reduced to bilateral and UN restraints without any delay.