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Human rights situations that require the Council's attention

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.

[03 February 2020]

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



Jammu and Kashmir–Human Rights Council has a higher burden of responsibility

June 2018 and July 2019 reports on the Human rights situation in Jammu and Kashmir done by the High Commissioner for Human Rights and the May 2019 report done by the United Nations (UN) Secretary General on Children and armed conflict, the recommendations made therein, to India and Pakistan, in respect of improving the human rights situations in the respective parts under their administration, had raised hopes for people living on both sides of cease fire line and the Kashmiri diaspora, that the human rights situation would be addressed without further delay or deterioration.

The Indian administered Kashmir continues to present a challenge to India, Pakistan and the United Nations. Enjoyment of a full regime of human rights, in particular those rights specifically guaranteed in UN Security Council resolution 47 of 21 April 1948 and ‘rights and dignity’ and ‘security and self-determination’ appreciated by the UN Security Council, in respect of the people of Jammu and Kashmir, have suffered a serious setback after the Government of India imposed a curfew on 05 August and decided to disturb the status of the part under its administration on 31 October 2019.

Government of India was required to consider 17 and Government of Pakistan was required to consider 7 recommendations. Both Governments were asked to “Fully respect the right of self-determination of the people of Kashmir as protected under international law.” The most important recommendation made was to “establish a commission of inquiry to conduct a comprehensive independent international investigation into allegations of human rights violations in Kashmir.” It is unfortunate to state that Government of India, as opposed to its traditions of secularism, democracy and rule of law, turned its back on all the 17 recommendations and against the establishment of a commission of inquiry. Government of India refused the invitation requests of the 20 mandates that made such requests and in particular failed to accept the request of the Working Group on Enforced or Involuntary Disappearances and facilitate its visit to India, including to Jammu and Kashmir.

China has highlighted the peculiar feature, that is, agreement between India and Pakistan, on the Kashmir Dispute before coming to UN Security Council. The peculiar feature has remained undisputed. “From the very beginning, the Council began with an agreement between two parties. In fact, before the two parties directly concerned ever appeared before the Security Council, the two parties agreed that the plebiscite should be the answer. What did the Council do? The Council tried to build a solution on this prior agreement that the two parties had before they came to this Council. So the idea of a plebiscite was not imposed by the Council on the two parties.”

Kashmir is not a bilateral or a territorial issue between India and Pakistan. Prime Minister of India Jawaharlal Nehru gave his letter dated 22 December 1947 in person in Delhi to Prime Minister of Pakistan Liaquat Ali Khan and proposed that India would make a reference to UN on the question of Kashmir.

Human Rights Council has to ensure that the three UN reports are translated into a desired compliance and the people of Kashmir, in particular, faced with an army which has far exceeded the 700,000 personnel referred in OHCHR reports, after 5 August 2019, are protected as required under UN Security Council resolution 47 of 21 April 1948, stipulating restraints on the behaviour, number and location of these forces. The present strength of Indian security forces in Indian administered Kashmir is around 900,000.

A member nation of United Nations cannot afford to walk away from her pledges and from her Charter obligations on the question of “Rights and Dignity” and “Security and Self-Determination” of the people of Jammu and Kashmir. At the 533rd Meeting of UN Security Council held on 01 March 1951, Indian representative has said, “I have thought it desirable to give this picture of general conditions based on one of the latest reports of the Kashmir Government in order to show that, in spite of the difficulties created by the tribal and Pakistan invasions, the present regime in Kashmir has been functioning with credit during the last three years. My intention also is to emphasize the human aspect of the problem. The people of Kashmir are not mere chattels to be disposed of according to a rigid formula; their future must be decided in their own interests and in accordance with their own desires. The

population of the State is gradually settling down to some measure of peace and order. Any neutral visitor to Kashmir - and there are many such during the tourist season - can satisfy himself as to the facts of the situation.”

India and Pakistan need encouragement by Human Rights Council to be partners in ensuring respect for human rights, peace and prosperity. Kashmir is a litmus test for their historical wisdom. Both need to respect the UN template on Kashmir. France at the “539th meeting of the UN Security Council held on 30 March 1951 has rightly pointed out that, “Resolutions of 13 August 1948 and 5 January 1949, to which we must always return because they won the express agreement of both India and Pakistan. If the parties are unable to reach agreement on the plan submitted to them, provision is made for arbitration, and, to make assurance doubly sure, arbitration is to be carried out by an arbitrator or panel of arbitrators appointed not by a political body but by the President of the International Court of Justice.” Arbitration has been supported by China, the United States of America and the United Kingdom of Great Britain and Northern Ireland (UK). UK has said “Since there is disagreement by the parties on this, arbitration, provides the only suitable and perhaps the only possible means of determination.”

Consent of the people is the basis of any legitimacy of governance. Government of India has to yield to “The ultimate objective of a fair and impartial plebiscite under the auspices of the United Nations”. A UN supervised plebiscite has been written into solemn agreements by the two Governments and endorsed by the UN Security Council. These agreements have been affirmed and reaffirmed by the two governments many times.

India and Pakistan shall have to return to Resolutions of 13 August 1948 and 5 January 1949, because these two resolutions have won the express agreement of both India and Pakistan. An important feature, which we need to highlight is the “positive duty” of the Security Council, pointed out in respect of Jammu and Kashmir Situation in February 1957. United States of America was the first UN Security Council member to address the question of a “Positive Duty of the Security Council”. United States of America at the 768th meeting of the UN Security Council held on 15 February 1957 pointed out that 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.”

Jammu and Kashmir fractured into three administrations and its people distributed and divided on either side of the cease fire line, supervised by UNMOGIP, are a special situation and a special case for the Human Rights Council. Para 12 and 14 of UN Security Council resolution 47 of 21 April 1948, guarantee a lawful entry and exit to all citizens and a return in safety and dignity, to all displaced people. Unfortunately, distributed and divided families have not been able to enjoy the regime of rights, specifically assured in UN Security Council resolutions. Use of military force in the Indian administered part of Kashmir, has no merit and is no solution.

OHCHR reports have highlighted the obligation of India to international human rights law and have demanded an urgent repeal of Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 and in the interim “to immediately remove the requirement for prior central government permission to prosecute security forces personnel accused of human rights violations in civilian courts.” Human Rights Council is the custodian of the rights regimes all over the world. It has to follow upon the recommendations, namely, ‘investigate all deaths that have occurred in the context of security operations in Jammu and Kashmir following the guidelines laid down by the Supreme Court of India’ and “provide reparations and rehabilitation to all individuals injured and the family of those killed in the context of security operations.”

Human Rights Council has a higher burden of responsibility, to reconcile the Human Rights situations described in 2018 and 2019 OHCHR reports and the situation that has developed after 5 August and 31 October 2019 actions taken by the Government of India. Any change in the demography or any other action in regard to the territorial status of the State under Indian administration would be in violation of the right of self-determination and the principles laid down in UN Security Council resolution of 30 March 1951.