



# General Assembly

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## Human Rights Council

Forty-seventh session

21 June–9 July 2021

Agenda item 2

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

### **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.

[21 May 2021]

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



## **Annual Reports should keep their course – Indian Administered Jammu and Kashmir**

Jammu and Kashmir Council for Human Rights (JKCHR) congratulates the High Commissioner for Human Rights and the Office of the High Commissioner for the Annual report presented under agenda item 2 of the 46th Session. The broad spread of the report has advanced the sense of duty to the cause of the promotion and protection of Human Rights all over the world. It has however, not kept its course and has skipped the habitat and people of Jammu and Kashmir.

United Nations has known these people for the last 73 years and has defined them as “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...on both sides of the cease- fire line, have been, through the centuries, the victims of exploitation and conflict.” (Para 60, 570 Meeting of UN SC 17 January 1952).

United Nations has recognised “the rights and dignity, the security and the self-determination of these historic people” and the 17th recommendation (q) made to the authorities of India and 7th recommendation (g) made to the Government of Pakistan in the OHCHR report of June 2018 has urged the two sides to “Fully respect the right of self-determination of the people of Kashmir as protected under international law.”

OHCHR Annual Reports should keep their course and the people of Kashmir should not be disappointed in not finding the consequences to the recommendations made in the two OHCHR reports of June 2018 and July 2019. The situation in Jammu and Kashmir today is not the same as the two reports of June 2018 and July 2019 have reported. Therefore, skipping it in the Annual Report in 2021 is a weakness and not a strength of the mandate.

The present report of the High Commissioner, has failed to report in regard to any progress in particular on the 17th and 7th recommendations made to India and Pakistan respectively in the two reports of June 2018 and July 2019. The main recommendation made to the Human Rights Council to “Consider the findings” and “consider the possible establishment of a commission of inquiry to conduct a comprehensive independent international investigation into allegations of human rights violations in Kashmir”, should have a consequence to restore the faith of the common man and woman that international institutions were listening and working.

The Annual Report could not detach itself from taking into account and not recommend to seek a consequence to “the wide range of ongoing serious violations and patterns of impunity in Indian-Administered Kashmir” highlighted in the two OHCHR reports.

The concerns in the Pakistan-Administered Kashmir have been identified as of “Constitutional and legal structures”. There was a need to engage Pakistan-Administered Kashmir (Azad Kashmir) and Government of Pakistan on these concerns. The Report does not make any reference to any such effort. Engagement with Pakistan would have been easy and fruitful. Government of Pakistan has assumed duties in Azad Kashmir (Pakistan administered Kashmir) to discharge its responsibilities under UNCIP Resolutions. Pakistan has not denied access to OHCHR or a UN Special Rapporteur. UNCIP has been meeting the authorities in Azad Kashmir in September 1948.

The abuse of human rights in Indian-Administered Kashmir, has a purpose and a pattern to quell the dissent and change the demography of the State. The pattern of abuse of human rights in the Indian-Administered Kashmir is covered under 13 chapters and spreads over in 91 paragraphs in the OHCHR reports. A silence on the 17 recommendations and on the latest military action of 5 August 2019, using around 900,000 troops by Government of India, is an affront to the UN cognizance in para 40 of the June 2018 report, which has expressed a serious concern on the presence of 500,000 to 700,000 Indian troops.

Human Rights concerns are not a one off interest or a one off policy reflex. The two OHCHR reports of June 2018 and July 2019 are two serious steps after the UN Secretary General Dag Hammarskjöld’s visit to Srinagar in March 1959. He was accompanied by Lieut. General Robert H Nimo, Chief of the UNMOGIP to assess the political and

economic conditions of these people. These reports are a continuation of Resolutions L.40 (E/CN.4/1994/L.40) and L.21 (E/CN.4/Sub.2/1997/L.21) tabled at the Human Rights Commission and Sub Commission in February 1994 and in August 1997. JKCHR was involved in resourcing the two Resolutions.

The High Commissioner's Office found a way around the denial of access to Kashmir on either side of the cease fire line (Line of Control) and used the 'remote monitoring' of the human rights situation. The Government of India has again refused access to OHCHR, refused to engage with Special Rapporteurs and has dismissed the findings of these two reports.

The response of Indian authorities does not have any merit because Para 28 of the June 2018 report states that "The report largely draws on information that is mostly available in the public domain, some of which was obtained by various parties in India through the Right to Information Act, and also reflects the findings of research and monitoring carried out by local, national and international non-governmental organizations (NGOs) and human rights defenders. Wherever possible, OHCHR has used official documents and statements, such as Parliamentary questions, court orders and police reports".

The two reports have used a "reasonable grounds" standard of proof. OHCHR has succeeded to seek results by using "remote monitoring" and "reasonable grounds" standard of proof. It is a great success. However, the Annual Report presented at the 46th session does not have any results and consequences to the recommendations made in the reports, to report to the Council. It would have been a heartening progress.

After 59 years the two OHCHR reports are a leap forward in the cause of promotion and protection of human rights in Kashmir. The High Commissioner and the Council need to consider to recommend an action of the manner that the UN Secretary General took under article 99 in March 1959 and visited Kashmir. These were the times when Indian citizens, required an Entry Permit (VISA) to visit Indian administered part of Jammu and Kashmir. The entry permit requirement was unlawfully rescinded by the Prime Minister of Kashmir (elected from only a part) on 31 March 1959.

OHCHR has to provide a strong leadership in the field of promotion and protection of Human Rights. Silence or selective, or a onetime consideration of a situation are no option. We cannot abandon the merits of the two OHCHR reports and turn our backs on the people that these two reports have talked about and on the people that became a subject of the United Nations in January 1948.

We need to engage the erring State and remind her of her obligations under articles 3, 4, 5 and 6 of the UN Charter. These articles describe the manner in which a country could seek membership of the United Nations and the organization could suspend a country from the exercise of the rights and privileges of membership or for a persistent violation of the Principles contained in the Charter, could be expelled from the UN by the General Assembly upon the recommendation of the Security Council. The interpretation of membership and expulsion is explicit and simple. We do not call for a "reprimand or an expulsion".

India has a lot to contribute at the Human Rights Council and in the democratisation of the UN bodies. Unfortunately it has not acted as required of it in the two OHCHR reports or in the UN Security Council Resolutions on Kashmir. India has to pass the qualification test under rule 143 of Rules of Procedure of the General Assembly to be in the Security Council.

JKCHR proposes that OHCHR organise a conference or a meeting, physical or a webinar of NGOs working on the promotion and protection of Human Rights in all parts of Jammu and Kashmir. In view of their 8 and 9 January 1948 (respectively) written assurance given to the UN SC in regard to the situation in Jammu and Kashmir, it should invite the representatives of the Government of Pakistan and Government of India. It should invite representatives of three Kashmiri Governments based at Srinagar, Muzaffarabad and Gilgit and discuss ways and means to address the 17th and 7th recommendations of the June 2018 and July 2019 OHCHR reports.

Council needs to focus on the recommendation 17 made to India and recommendation 7 made to Pakistan to “Fully respect the right of self-determination of the people of Kashmir as protected under international law”. India as a candidate of Asia Pacific sits in the Security Council as a non-permanent member and sits on the Human Rights Council. It has a higher burden of responsibility under the Charter.

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