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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 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 2022]

* Issued as received, in the language of submission only. The views expressed in the present document do not necessarily reflect the views of the United Nations or its officials.



Terrorism and human rights Indian Administered Jammu and Kashmir

Under resolution 45/11 the High Commissioner shall be reporting to the Council on the “negative impact of terrorism on the enjoyment of all human rights and fundamental freedoms and on alleged violations of human rights and fundamental freedoms while countering terrorism and violent extremism conducive to terrorism.” We look forward to her specialised examination and survey of various situations afflicted with the curse of terrorism and the consequences of the efforts made to counter this terrorism.

If United Nations had kept its course to secure Rights and Dignity and Security and Self Determination, through a free, secure and impartial Plebiscite, the people and habitat of the Indian Administered Jammu and Kashmir would have been saved from the “negative impact on the enjoyment of all human rights and fundamental freedoms”.

High Commissioner’s June 2018 report on the Human Rights Situation in Kashmir has discussed in great detail the negative impact of the activities of Indian Security Forces and the negative impact of the activities of Armed Groups on the enjoyment of “all human rights and fundamental freedoms”.

The report has raised a broad-spread of issues, namely, Lack of access to justice and impunity, Military courts and tribunals impeding access to justice, Administrative detention, Excessive use of force, Killings perpetrated in 2018, Use of pellet shotgun, Arbitrary arrests and detention including of children, Torture, Enforced disappearances, Violation of the right to health, Restrictions on the right to freedom of expression, Reprisals against human rights defenders and restrictions on journalists, Violation of the right to education, Sexual violence and the use of minor children by Security Forces for spying (Report of UN Secretary General).

It is important to point out, as the report also highlights, that all armed groups bear a responsibility for their conduct under international law and the “State retains the obligation to uphold international human rights law in relation to all persons in their territory and subject to their jurisdiction. This includes the obligation to exercise due diligence and to do everything in their capacity to protect all such persons from threats to the enjoyment of their human rights posed by non-State actors, including de facto authorities and armed groups. State must seek to hold the individual perpetrators of human rights violations accountable and guarantee the rights of victims, including the right to an effective remedy and reparation.”

We sincerely hope that The High Commissioner has examined the Indian Administered Jammu and Kashmir as a case for her report to the Council. An examination of the situation of the Indian Administered Jammu and Kashmir, has its clue in the UN Security debates, in particular 239th meeting and 241st meeting held on 03 February and 05 February 1948 respectively.

India made a statement at the 239th meeting held on 03 February 1948 and duly recognised the insurgents (opposition). The representative of India said at the 239th meeting that “the two parties interested in the Kashmir question are Pakistan and the insurgents in Kashmir. Therefore, we have to satisfy these two parties. What the Security Council does must seem fair to these two parties.”

The United Kingdom of Great Britain and Northern Ireland representative Noel Baker responded to this statement at the 241st meeting of UN Security Council on 05 February 1948 and said “What the Security Council does must seem fair to these two parties. It must also seem fair to The Government of Pakistan, to the insurgents, to the tribesmen, to the Government of India, to the other inhabitants of Jammu and Kashmir, and to the outside world.

Noel Baker, the United Kingdom of Great Britain and Northern Ireland representative to the UN Security Council at the 241st meeting of Security Council held on 5 February, continued to say that, “It is my conviction that raids and incidents will continue to occur until the question of Kashmir has been disposed of by the Security Council...And, so long as fear dominates the minds of the peoples in that area of the Punjab and of Kashmir, incidents will continue and the situation will remain extremely grave.”

Noel Baker had made a serious point in regard to the killing of ‘insurgents’ and said, “We want a real total stoppage now, without further bloodshed, without more killing of the insurgents, whose votes, after all, we want in the plebiscite when it comes, our aim being to secure a responsible government, as the representative of India has stated. We must get such a scheme. The question is how to do it.”

A plebiscite under UN template is the only way forward to inspire confidence in everybody, including those who are now fighting. UN template has identified six interest groups, namely, Pakistan, insurgents, tribesmen, Government of India, other inhabitants of the Indian Administered Jammu and Kashmir and the outside world. The insurgents and tribesmen are distinguishable. Insurgent are indigenous and are duly recognised as an interest group.

It has been duly argued at the 773 meeting of the Security Council held on 20 February 1957 that “pending the holding of a plebiscite, neither India nor Pakistan can claim sovereignty over the State of Jammu and Kashmir.” It was argued by the Philippines that “In the view of both the Council and the Commission, neither India nor Pakistan can bring into question the sovereignty of the State of Jammu and Kashmir. This position is crystal clear in the assurances given by the Commission to the Governments of India and Pakistan and which forms the basis of their acceptance of the resolutions of 13 August 1948 and 5 January 1949.

Jammu and Kashmir Council for Human Rights subscribes to the firm belief that a return to UN template on Kashmir, in particular, as argued by France at the 539th meeting of UN Security Council held on 30 March 1951, 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 International Court of Justice,” is the only exit ramp to escape from the curse of terrorism and counter terrorism, that impact the enjoyment of all human rights and fundamental freedoms in the Indian Administered Jammu and Kashmir.

Under these circumstances, it does not serve the cause of human rights and fundamental freedoms, if Government of India reneges on her agreements with the People of Kashmir, Government of Pakistan and on the obligations under UN template on Jammu and Kashmir, and decides to round up all dissent in India Administered Kashmir and lodge them in Tihar Jail in Delhi.

Shabbir Shah and Yasin Malik are well known for their advocacy of the right of self determination of the people. They are in jail and face charges related to terrorism. Yasin Malik has been in Jail since 2019 and the court has convicted him under various Sections of Indian Penal Code. It is unfortunate that political dissent should be silenced in this manner.

Yasin Malik stands for a secular and independent “State of Jammu and Kashmir”. This stand is in line with the prayer made on 15 January 1948 at the UN Security Council by Government of India. Yasin Malik did not have a proper legal defence and has continued to highlight the unfairness in the court proceedings. The process of trial needs to be looked into.

Shabir Shah has spent most of his life in Indian jails. He advocates a resolution of Kashmir issue as provided in the UN template. We are concerned about his failing health. The Council should intervene and seek a health check of Shabir Shah and seek his immediate return to the normal habitat in Srinagar.

There are other prisoners from India Administered Kashmir held in Tihar. The three female prisoners Asiya Andrabi 62, Nahida Nasreen 56 and Fehmeeda Sofi 34 are reported to have been lodged in Tihar Jail’s Punishment Ward since July 2020. The three females have families and holding them far remote from Kashmir, under hostile climate is inhumane.

Section 18 of Indian Penal Code states that “India” means the territory of India excluding the Indian Administered Jammu and Kashmir. All these prisoners are State Subjects (Kashmiris) and the State has its own Penal Code, called, Ranbir Penal Code. All of these are associated with “snow-capped mountains, beautiful valleys and life giving waters” and their removal from the Habitat of Kashmir to frying heat of New Delhi, in itself is a severe punishment and inhumane.

Jammu and Kashmir Council for Human Rights (JKCHR) would strongly urge the Council to consider the fact that these prisoners are State Subjects and the issue is pending a UN supervised vote. Their removal from their natural habitat of Kashmir is unlawful. Council should intervene and request Government of India to return these prisoners back to their normal habitat. We strongly urge India to keep to her obligations in India Administered Kashmir.
