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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.

[28 August 2016]

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

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Human rights situations that require the Council's attention - Jammu and Kashmir

Laws of Humanity were probably first invoked some 125 years ago in 1891 when United States of America invoked the principle of “sic utere tuo ut alterem non laedas” and expressed its concern at the repression of Jews in Russia by drawing the Czar’s attention to the injury it was suffering as a result of the arrival on its territory of the large numbers of Jewish refugees who were attempting to escape persecution. Britain and France invoked laws of humanity in Morocco in 1909.

World has moved on and the member states of the United Nations under article 26 (2) have accepted the “strengthening of respect for human rights and fundamental freedoms”. Article 56 of the UN Charter has created a positive duty of co-operation for the purposes set out in Article 55 of the Charter. The main purpose is “the creation of conditions of stability and wellbeing which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”.

At this point in the civilised phase of history we have created a Human Rights Council to be “responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner”. The work of the Council has to be guided “by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and co-operation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development”.

UN Human Rights Council has inherited from the Human Rights Commission and the UN Security Council a special duty to and concern of the people, who remain a subject at the UN Security Council, pending the exercise of a free vote on their right to equality and self-determination, under the supervision of the United Nations. It is a serious challenge to the sense of priority of the Council and mandate of the Council that as we submit this written statement on 28 August 2016 Indian security forces have placed the unarmed people of the valley in Kashmir (Jammu and Kashmir) under a consecutive 50th day of curfew. One can’t be certain as to how things would have turned out to be on 13 September when Council is holding its 33rd session in Geneva.

It is for the first time after Maharaja of Kashmir imposed a 12 day curfew from 24 September to 5 October in 1931 that we see the people in the Valley are enduring 50th day of curfew. People are forced to live under occupation against their will. Free will is the basis of any government. Kashmir Government an alliance of PDP (People's Democratic Party) and BJP (Bharatiya Janata Party) has lost the free consent of the people and does not have the moral authority to be in office. Sir Albion Banerjee a non-Kashmiri guided by reasons of conscience resigned as Prime Minister in 1929. He refused to head a government which treated Muslims less favourably. We have a case where Muslim men, women, children, elderly and youth are being savaged under the curfew by non-State security apparatus.

Secretary General of the United Nations and High Commissioner for Human Rights have expressed their concern on the violation of human rights and on the unfolding humanitarian and medical tragedy in Kashmir. OHCHR has sought ‘full and unhindered’ access to Kashmir. Government of Pakistan has approached the United Nations. NGOs and Kashmiri leadership have approached the United Nations – High Commissioner for Human Rights, OIC, Commonwealth, His Holiness The Pope, His Holiness IMAM-E-KAABA, His Holiness Dalai Lama and Kashmiri people living in Azad Kashmir, in Pakistan, in India and the diaspora have been organizing peaceful protest to seek world attention to the life under curfew and to the use of pellet guns, to maim, blind and kill.

Indian security forces have violated the four point discipline under which these were granted a temporary admission into the State and which is pending at the UN Security Council for ratification or rejections through the reference of a free vote to be organised under the supervision of United Nations. These security forces have also violated the three point discipline set out for them in UN Security Council Resolution of 21 April 1948. The presence of these force has degenerated into an oppression and these forces are engaged in a war with the unarmed people.

We are faced with a situation which merits a special attention under rule 10 of UN General Assembly Resolution 60/251. JKCHR therefore points out and makes an urgent request as follows:

1. Indian security forces have remained in continued violation of seven restraints contained in the agreement of October 1947 for their entry into Kashmir (pending adjudication at the UN) and the restraints laid down in the UN Resolution of April 1948. These forces have outlived their tenure and purpose. They have gained notoriety for their atrocities and crimes against the people of Kashmir. There is an urgent need to replace them by a neutral force under the supervision of UN or a Kashmiri force comprising of personnel drawn from all the three administrations of Jammu and Kashmir. India and Pakistan as parties to the dispute could also contribute a certain strength to these forces.
2. There is urgent need to terminate the bilateral agreement made with government of India which has allowed the Indian soldier a temporary admission. Human Rights Council needs to appoint a team to investigate the behaviour of law Enforcement Agencies in the State. These agencies have violated the principle of proportionality in the use of firearms as provided in the UN General Assembly Resolution of 17 December 1979 on the Code of Conduct. Firearms have been used against children with a view to disable them, blind them and to kill them. We do not know whether regular reports on the discharge of firearms have been made to the competent authorities. There are reports that the High Court of Jammu and Kashmir (Indian side) and the Supreme Court of India have called for reports on the use of lethal pellets guns.
3. Council needs to consider the infirmity embedded in the representative character of the Government on the Indian side of Kashmir as pointed out in the UN Security Council Resolution of 30 March 1951 and article 48 of the Jammu and Kashmir Constitution. The Government has failed to carry out the work outsourced to it under the UN resolutions on Kashmir and has failed to discharge the pledges made on its behalf at the UN Security Council.
4. Chief Minister by virtue of the chain of command and chair of the integrated security grid is liable for all the crimes and atrocities committed against the people. The elected government has failed to serve the welfare of the people. Chief Minister should be asked to resign.
5. United Nations should proceed to install a Government as provided in Para 6 of UN Resolution of 21 April 1948 and supervise that it works as required by the Resolution, that is, to prepare for the plebiscite. This Government would be legitimate and able to carry the trust of the people living in Azad Kashmir and Gilgit-Baltistan on the Pakistani side of Kashmir and the five generations of the people displaced or deported since 1947 by the Indian administration and its conduit local administration.
6. Government of India wishes to prolong the status quo. It has failed to honour the obligation contained in Para 14 (a) to (c) of UN Security Council Resolution of 21 April 1948.
7. Council has to consider that the present Government (like all other Governments in the past) has failed to assume itself into a form as required by UN. Government of Kashmir on the Indian side does not have a no holds barred freedom to continue to violate the duties outsourced to it by UN and continue with infirmity in its representative character. Council should make recommendations to the UN General Assembly to correct the present situation by involving all political opinions living in Azad Kashmir, Gilgit-Baltistan, 2.5 million refugees and the Kashmiri diaspora.
8. Indian Government has denied OHCHR 'full and unhindered' access to Kashmir. Accepting Indian refusal or a failure is no answer. Indian army can't enjoy a no holds barred freedom to kill an unarmed people and imprison them in their homes. The soldier is now a colonial soldier and is committing war crimes. Council has a higher burden of responsibility to protect the Human Rights of these people. Therefore Council needs to

proceed as provided under rule 10 of the UN General Assembly Resolution 60/251 to address the human rights situation in Indian administered Kashmir.

9. There is an urgent need to reinstate the visa requirement (Permit System) for an Indian citizen into the State. Permit System was unlawfully rescinded by the Prime Minister of J & K on 31 March 1959.

Kashmir is a major regional conflict and a potential threat to International peace. In the interim Council has a duty to intervene and remove the threat to the human rights of the people.
