



General Assembly

Distr.: General
9 June 2021

English only

Human Rights Council

Forty-seventh session

21 June–9 July 2021

Agenda item 3

**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 2021]

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



Indian Administered Jammu and Kashmir – re-orient priorities and help the people

To influence the human rights situations the Council has to re-set its compass, re-orient its priorities and help the people who have been severely hit by the violation of human rights.

Para 33 of OHCHR report of June 2018 explains the UN interest in Jammu and Kashmir. OHCHR reports of June 2018, July 2019 and the UN Secretary General's report of May 2019 have documented the respective standards of human rights regimes on either side of cease fire line in Jammu and Kashmir.

Paras 12 and 14 of UN Security Council Resolution 47 dated 21 April 1948 remain attendant and specific on the promotion and protection of Human Rights in the Indian administered part of Jammu and Kashmir. In fact Resolution 47 of Security Council remains a compass in the promotion and protection of human rights in the Indian administered part of Kashmir.

On 5 August 2019 Government of India decided to confer upon itself power and rights in regards to the part of the State of Jammu and Kashmir mandated to its 'sacred trust', to which it is not entitled. It has deprived people of the territory of rights which they have been guaranteed. The terms of the provisional instrument of accession of 26 October 1947 and the UN template on Kashmir first created on 6 January 1948 (S/636) make Indian action unlawful and without any merit.

Indian action is a breach of the terms of the Instrument of Accession and under the UN template on Kashmir India has "loaded upon itself a very grave offence against the other party (in this case Pakistan), against the United Nations and against the right of the people of Jammu and Kashmir to self-determination". Indian action of 5 August 2019 in Kashmir has consequences at home, in the neighbourhood and at the international level.

On their way to the right to equality and self-determination as agreed at the UN Security Council, the people of Indian administered part of Jammu and Kashmir, have been stripped of "all human rights, civil, political, social and cultural rights, including the right to development" on 5 August 2019.

Jammu and Kashmir Government in the Indian administered part of the State in its "The State Autonomy Committee" report published in July 2000 has argued that Jammu and Kashmir has temporarily surrendered three subjects to Indian control, there is no merger with the Union of India and ergo the State is autonomous and any incursions made into its autonomous status were unlawful and needed correction. The findings of this report published in July 2000 have already been settled in UN Security Council Resolution 91 of 30 March 1951.

The second school of politics established under a title of "All Parties Hurriyat Conference argues that the provisional accession has been surrendered at the UN Security Council for a UN supervised vote. It seeks a solution according to UN Resolutions. This school and its supporters have been lodged in various prisons in India.

The trust deficit between Government of India and its constituency in its administered part of Kashmir hit a first time low in the last 73 years when on 4 August 2019 eighteen leaders of 7 political parties met in Srinagar at the Gupkar Residence of Dr. Farooq Abdullah, President Jammu Kashmir National Conference (JKNC) to "deliberate upon the prevailing political situation, triggered by massive deployment of security forces, advisories issued, midway abandonment of Amarnath Yatra and forced removal of tourists from the Valley."

The meeting was attended by 18 leaders from 7 political parties, namely NC, PDP, JKPC, Congress, CPIM, PUF and ANC. The two members of Parliament elected from NC also attended the meeting. After deliberations the parties adopted a "Gupkar Declaration", which carried the following three demands:

1. "That all the parties would be united in their resolve to protect and defend identity, autonomy and special status of the JK State against all attacks and onslaughts whatsoever

2. The modification, abrogation of articles 35A, 370, trifurcation of the State or unconstitutional delimitation would be an aggression against the people of Jammu, Kashmir and Ladakh

3. That the parties participating in the meeting resolved to seek audience with the President and Prime Minister of India and the leaders of other political parties to apprise them of the current situation and make an appeal to them to safeguard the legitimate interests of the people of State with regard to constitutional guarantees given to the State under the constitution of our country

They will also apprise them of the unwholesome consequences bound to follow the unconstitutional violation, if any, of these guarantees

The representatives of the political parties resolved to remain together and stand united in their struggle for safeguarding the identity, autonomy and special status of the State.” (Gupkar Declaration 4 August 2019).

Indian Government as anticipated in item 2 of the Gupkar Declaration, committed an “aggression against the people of Jammu, Kashmir and Ladakh” and placed leaders under detention and the State under a curfew – longest ever witnessed in the history of Kashmir. Gupkar Declaration is a new political dissent against Indian control. It is for the first time that pro-India leadership, which has served Indian interests and co-operated with New Delhi, to control the popular dissent through punishment, has been subjected to punishment and loss of liberty.

Human Rights Council has at hand a situation far different to what it has known from the June 2018 and July 2019 reports of the High Commissioner. Human Rights Council has to consider the alert expressed in para 40 of OHCHR report of June 2018 in respect of the presence of 500,000 to 700,000 Indian troops that have made Kashmir “one of the most militarised zones in the world” against the increase in the number of these forces on 5 August 2019 to around 900,000. The current strength of Indian forces is a violation of United Nations Security Council Resolution of 21 April 1948. Equipped with Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 these 900,000 military personnel remain the cause of violation of all the human rights specifically highlighted in the resolution.

The UN Security Council Resolution sets out three principles according to which the minimum strength of Indian forces have to be stationed in Jammu and Kashmir. These principles are:

- (1) That the presence of troops should not afford any intimidation or appearance of intimidation to the inhabitants of the State,
- (2) That as small a number as possible should be retained in forward areas,
- (3) That any reserve of troops which may be included in the total strength should be located within their present Base area.

The Human Rights Council needs to consider the fact that the Government of India had requested for a total number of 21,000 soldiers in Kashmir and had assured the UN Security Council, that “this force will have no supporting arms such as armour or artillery”. (608th UN Security Council Meeting held on 8 December 1952).

India and Pakistan have agreed to ensure and respect Kashmir specific human rights listed in para 12 and 14 of UN Security Council Resolution of 21 April 1948. Para 12 guarantees that “All subjects of the State of Jammu and Kashmir, regardless of creed, caste or party, will be safe and free in expressing their views and in voting on the question of the accession of the State and that there will be freedom of the Press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit”. Para 14 directs that, “The Government of India should ensure that the Government of the State release all political prisoners and take all possible steps so that:

- (a) All citizens of the State who have left it on account of disturbances are invited, and are free to return to their homes and to exercise their rights as such citizens;
- (b) There is no victimization;

c) Minorities in all parts of the State are accorded adequate protection.

Human Rights Council has a responsibility to consider whether Indian Government is complying with this UN template on rights and is allowing the people to exercise these rights. Indian Government's decision to disturb the autonomous status of the part of Jammu and Kashmir under its administration is a violation of the UN template on Kashmir, in particular it has violated the UN SC resolution of 30 March 1951.

In the light of the recommendations made in the two OHCHR reports to correct and improve the human rights situations in the Indian administered Kashmir and statements submitted by NGOs and statements made by the delegates during the various sessions of the Council, it is highly imperative that the Council considers the fact that the UN SC has accepted a "Positive Duty" in Kashmir. Therefore, positive actions under article 99 of the Charter are required to safeguard the human rights – that is, "rights and dignity" and "security and self-determination" in all parts of Kashmir.
