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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 International Human Rights Association of American Minorities (IHRAAM), a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 August 2020]

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

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“International day of lockdown territories”

Case study: Indian Administered Jammu and Kashmir (IAJ&K)

The “Universal Declaration of Human Rights” (UDHR) is the historic document defining the frame of what is defined as human rights in the modern world. Adopted by the United Nations General Assembly (UNGA) on 10 December 1948, it states in Article 13: "Everyone has the right to freedom of movement and residence within the borders of each state."

Over the years, a host of international conventions were developed on the basis of the UDHR, chief among them, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which were adopted by the UN in 1966 and entered into force in 1976. They reiterate that states are obliged to promote and protect human rights – as stipulated in each covenant – of all persons living under their jurisdiction, and also add two collective rights: that all peoples have the right to self-determination and the right to use their natural resources freely, as they see fit (article 1 common to both Covenants). The General Assembly adopted numerous other conventions relevant to the situation in Jammu & Kashmir, including the International Convention on the Elimination of All forms of Racial Discrimination (1965, in force 1969), the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), and the Convention on the Rights of the Child (1989).

These binding norms of international law – both international humanitarian law and human rights law – are meant to limit states’ discretion as to what they may and may not do, domestically and as to what they must and must not do as occupying powers, so as to ensure a certain measure of human rights protection. Since states are not inclined to relinquish powers, the rules that were ultimately enshrined in the conventions include caveats and exceptions that may be invoked in certain circumstances enumerated in the convention, which allow – in those circumstances – to temporarily suspend the rights protected by the convention. This means that international law is a compromise that only partially protects human rights, and it depends of political will and appropriate enforcement mechanisms to make law meaningful in practice. This entails domestic and international monitoring as well as domestic and international redress possibilities.

Unfortunately, the mechanisms in place today are drawn-out and cumbersome, most address individual cases only, rather than governmental policies. Moreover, political pressure and international power struggles often influence how priorities are set and which cases are selected. Consequently, the extent to which states, abide by international legal provisions largely depends on their commitment and on the international and diplomatic pressure, if any, brought upon them by other states or international institutions.

Contemporary international humanitarian law has clarified and added to the rights and duties of occupying forces, the rights of the populations of occupied territory, and the rules for administering such territory (GIV Arts. 47–78; API Arts. 63, 69, 72–79).

Several recent decisions by international courts have also confirmed that the occupying power is obliged to comply with its human rights obligations in occupied territories in respect of people placed under its effective control as a result of occupation or detention, notably the International Court of Justice (ICJ) Advisory Opinion of 9 July 2004 concerning the Wall built by Israel on Palestinian territory, its implications and consequences. Similarly, the 1996 ICJ Advisory Opinion on Nuclear Weapons held that humanitarian law and human rights law worked hand in hand and that even in periods of armed conflict, the human rights law regime continued in force (paragraph 25). Subsequently the UN Human Rights Committee has reaffirmed in its general comments and concluding observations that the International Covenant on Civil and Political Rights (ICCPR) continues in force during armed conflict, and that certain articles may only be temporarily derogated from as provided for in article 4 ICCPR. These judgements, advisory opinions and decisions confirm that the application of international humanitarian law is complementary to the conventions on human rights in these situations. The European Court of Human Rights (ECHR) has notably passed judgments on

violations of the European Convention committed by European countries in relation to their intervention in Iraq and military occupation of the country (infra Jurisprudence).

According to humanitarian law, occupation falls in the definition of international armed conflict and is regulated as such by the four Geneva Conventions and the Additional Protocol I. The occupying power faces specific obligations where it has an effective control over the territories occupied. These include obligations related to respect human rights, law and order, and in addition, respect for relevant provisions of humanitarian law related to occupation. The basic obligations of the occupying power under international humanitarian law are to maintain law and order and public life in the occupied territory. For the most part, the occupying power must follow the laws that were already in force in that territory (H.IV Art. 43).

In situations where armed resistance is strong enough to prevent the occupying power from efficiently controlling the territory, general provisions of international humanitarian law applicable to international armed conflict continue to apply.

In contravention of the UDHR and international conventions, lockdowns have become a common feature in occupied territories with the intent to disempower, marginalise and to suppress peoples' movements primarily aimed to achieve their inalienable right to self-determination. In simple terms, a lockdown is in fact a top-down unilateral, undemocratic, unconstitutional state enforced requirement imposed to oblige people to stay indoors within the physical confines of their homes where they are to remain against their will and without access to any legal due process. In other words, freedom of movement is fundamentally breached and people are effectively and wilfully prohibited from moving around freely. The most extreme form of lockdown is that which is weaponised and carried out through systemic and relentless political repression. In this specific context, lockdowns assume an entirely distinct function. The intent of this type of lockdown is to explicitly and physically destroy a specifically targeted national, ethnic, cultural, linguistic or religious group in whole or in part or by conducting targeted killings of particular members of said group regardless of gender and age (extra-judicial killings, summary or arbitrary executions), causing serious bodily or mental harm, arbitrary arrests and unlawful detentions, disappearing human rights defenders, destroying the environmental ecological and physical morphology of a people's ancestral homeland and property, erasing a people's historic physical existence, attachment to and memory in order to make an indigenous people disappear and to recreate a new history based on the hegemonic settler colonialist expansionists' design. Lockdowns for political and oppressive purposes is clearly in contravention of international humanitarian law and human rights law. The eviction and/or expulsion of the native population and the implantation of settlers is specifically prohibited in article 49 of the Fourth Geneva Convention of 1949.

In the report by Professor Alfred De Zayas (First Independent Expert on the promotion of a democratic and equitable international order) to the sixty-eighth session of the UN General Assembly (paragraph 69(n)) stated:

“The General Assembly may consider revisiting the reality of self-determination in today's world and refer to the Special Committee on Decolonization and/or other United Nations instances communications by indigenous and unrepresented peoples wherever they reside, inter alia, in Alaska, Australia, Canada, Chile, China, the Dakotas, French Polynesia, Hawaii, Kashmir, the Middle East, the Moluccas, New Caledonia, Northern Africa, Sri Lanka and West Papua, with reference to Chapter XI of the Charter of the United Nations. The General Assembly may also consider amending its rules and procedures to allow for the participation of indigenous and non-represented peoples. Meanwhile, the Assembly should urge States to implement the Declaration on the Rights of Indigenous Peoples. It should ensure that indigenous, non-represented peoples, marginalized and disempowered peoples, and peoples under occupation have a genuine opportunity to participate in decision-making processes...”

He urged the General Assembly to revisit the individual and collective right of self-determination today. Indeed, the realization of the right of self-determination constitutes an important conflict-prevention strategy and it is the responsibility of the United Nations to ensure that the human rights of all peoples, including those living under occupation, are protected and enforced.

This has direct relevance to the situation prevailing in the state of Jammu and Kashmir under the Indian occupation.

The Indian government imposed in the last summer of 2019 a complete lockdown of Indian Administered Jammu and Kashmir (IAJ&K). What happened last year in IAJ&K is incompatible with the UDHR, the ICCPR and numerous other international legal pronouncements, including:

- the UN Security Council (UNSC) resolutions on the State of Jammu and Kashmir; and
- the J&K state's official notification of 1922 imposing total prohibition on "all grants of land for agriculture and house building purposes and grant of houses and other state property shall be made to State Subjects only". This guarantee was extended by India through its constitution via articles 35A and 370 to the people of Jammu and Kashmir following the UNSC resolutions.

However, on 5 August 2019, the Indian government abrogated these articles with the intention to impose a demographic change in the territory. IAJ&K has been placed under siege and totally cut off from rest of the world with the closure of all educational institutions, complete prohibition on freedom of assembly and expression, total shutdown of mobile, internet services and social media and a steep increase in human rights violations.

Like other countries around the globe, the IAJ&K is in the grip of Covid-19. The people of Kashmir are acutely vulnerable to spread of virus due to the fact of its prolonged unrest. This could undoubtedly lead to serious humanitarian consequences in Kashmir.

India as the occupying power is responsible for the fight against coronavirus along with local Kashmiri authorities, and is obliged to intervene wherever local health infrastructure falls short.

Article 56 of the Fourth Geneva Convention particularly applies to this pandemic as it states that the Occupying Power has a duty "to the fullest extent of the means available to it" to ensure and maintain public health and hygiene in Occupied Territory, in particular "prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics". This is an obligation of diligent conduct that includes a number of measures which can be used to fight epidemics by educating the public, providing medical exams and disinfection, distributing medicines, establishing stocks of medical supplies, sending medical teams, and accommodating patients in hospitals.

Organisation of Kashmir Coalition (OKC) with its partners and organisers have launched the "International Day of Lockdown Territories"; this is very much appropriate; undoubtedly, civil society structures, the governments of the world, the UN General Assembly and the intergovernmental organisations to ensure that 5 August is henceforth commemorated as "International Day of Lockdown Territories".
