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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 World Muslim Congress, a non-governmental organization in general 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 May 2021]

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

Right to Health and Situation of Indian Administered Jammu and Kashmir

Under humanitarian law, the civilian population, in general, is protected from dangers arising from military operations. However, some groups among the population, such as children, women, the elderly, persons with disabilities and displaced people, have specific needs and are entitled to special attention. Civilians can also expect, under humanitarian law, adequate care and respect.

One of the most important principles underlying humanitarian law is that of distinction between the civilian population and combatants, and between civilian objects and military objectives (Article 48 of Protocol I, Article 13 par. 2 of Protocol II). Attacks must be limited to military objectives, i.e., those objects which, by their nature, location, purpose or use, make an effective contribution to military action, and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

Basic needs and resources of the people have to be respected in time of armed conflict and starvation of civilians as a method of warfare is prohibited. In order to avoid prejudicing the health or survival of the population, humanitarian law stipulates that care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. In many conflicts, widespread pillaging of civilian property occurs, and the destruction of crops, drinking water installations and irrigation works places the population under prolonged hardship.

Geneva Convention relative to the Protection of Civilian Persons in Time of War states:

Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict.

States which are Parties to a conflict shall provide all civilian hospitals with certificates showing that they are civilian hospitals and that the buildings which they occupy are not used for any purpose which would deprive these hospitals of protection in accordance with Article 19.

(Article 3 common to the four Geneva Conventions, Article 27 of the Fourth Geneva Convention, Article 4 of Protocol II). Military and civilian medical personnel and medical units or transports shall be respected and protected in all circumstances.

In situations of armed conflict, States, including the occupying powers, have, first and foremost the responsibility for protecting and assisting the populations under their control, and should organize and carry out necessary relief actions. In addition, if civilians are suffering hardship because supplies essential to their survival and well-being are lacking, the warring parties should support and facilitate relief actions undertaken by humanitarian and impartial organizations (Articles 23, 59, 60 of the Fourth Geneva Convention, Article 70 of Protocol I, Article 18 paragraph 2 of Protocol II).

Kashmir Situation

In Indian Administered Kashmir, regular armies, as well as paramilitary and intelligence agencies, continue to subject the civilian population to countless, unspeakable acts of violence. Widespread murders, “ethnic cleansing “, rape, torture and hostage-taking are commonly recorded violations. Military operations are sometimes conducted on the basis that no mercy will be shown

Healthcare in Kashmir has received a double blow over the past year and a half. First, after August 5, 2019, when the Centre stripped Jammu and Kashmir of special status and split it into two Union Territories. Healthcare suffered as the Valley saw restrictions on movement and months of communication blockade. Just as internet services were being restored – the

Valley still does not have 4G internet – Kashmir was hit by the pandemic and a new lockdown.

As a result, healthcare professionals in J&K are fighting COVID-19 without a full library of resources. Iqbal Saleem, a professor of surgery, wrote, “this is so frustrating. Trying to download the guidelines for intensive care management…24 MBs and one hour. Still not able to do so.” The low-speed 2G internet stops health workers in the region from accessing current information, public health guidelines, and research on the coronavirus, as well as accurate updates on transmission in the region.

Telemedicine and online video consultations are not possible which further jeopardizes patient care and additionally limits the capacity of the region’s already understaffed and weak healthcare system. A 2018 audit of healthcare facilities in J&K found a doctor-patient ratio of one doctor for every 3,866 people, far below the World Health Organization recommended minimum of 1:1000. The audit also reported that the infrastructure was “barely sufficient” to handle the patient flows¾and that was pre-pandemic.

In the absence of reliable internet connectivity, information about closures, shutdowns, and COVID-19-related restrictions has been conveyed via print newspapers, radio, and limited SMS or messaging capabilities. Campaigns designed for social media or video communication are simply inaccessible to download. As a result, the lack of available, rapid, and reliable information creates a space for misinformation, such as fake UNICEF memos, to spread.

In the Kashmir Valley, frequent shutdowns and internet blockade has had a negative over on health care for the last three decades. 2010, 2016 and 2019 witnessed the worst kind of unrest in Indian administered Jammu & Kashmir.

Health care workers are exposed to difficult work conditions during times of turmoil and conflict. More than any other health care workers, ambulance drivers are exposed to difficulties because they must work outside the relative safety of the hospital premises. This risk is magnified when the streets are the theater of the turmoil.

After August 5, 2019 lock down and communication blocked and later on COVID lockdown, access to healthcare facilities became tenuous for health care professionals as well as for patients, as it was nearly impossible for private and public transportation vehicles to utilize the roads. Ambulances took on an added responsibility of trying to maintain a link between the patients, hospitals, and healthcare professionals. In addition to their routine emergency duties, the ambulances were required to ferry staff, medical equipment, and other material on a daily basis. During this period, the ambulance drivers faced substantial difficulties frequent checks and stops enforced by the police and paramilitary personnel. Few reports have highlighted the difficulties and challenging circumstances faced by ambulance drivers during this period.

Physicians for Human Rights (PHR) report revealed that Indian security forces deliberately obstructed access to urgent medical care for protesters, and harassed medical workers attempting to treat protesters, including by preventing doctors from reaching the hospitals where they work. PHR report documents obstructions to accessing medical care for those injured by police actions during protests.

Limited Access to Medicines and Poor Health Facilities after 5th August

There are around 2,000-3,000 Srinagar-based distributors supplying drugs to all ten districts of the Valley, which has a population of over 7.2 million. However, only 500 of the distributors have a wide reach. “The problem is that the supply-link between the drug stores, stockiest and depots has been broken due to the communications shut down, clamp down and curfew

Restricted Health Access

- Communication between patients, doctors, hospitals, and pharmacies was cut off in August 2019: ambulances could not be called, surgeries were cancelled, and specialists, such as gynecologists or oncologists could not be contacted (HRW 30/08/2019).
- An inability to process online or telephone orders of medicine, of which 90% of Jammu and Kashmir's supply is imported from India, resulted in shortages of insulin, cancer medication, and baby.
- In September, free medical treatment for Kashmiris living below the poverty line was suspended by the government because of the inability to process online claims (India Spend 06/09/2019). Roadblocks, suspension of public transport, and a near 24-hour curfew restricted travel to hospitals and pharmacies.
- Mental health was significantly affected by the lockdown. Already considered a crisis in the Kashmir Valley with 46% of the adult population experiencing mental distress, treatment came to a halt after August 2019. Nearly all mental health Centre's are concentrated in Srinagar, which became inaccessible for rural communities when roadblocks and security restrictions ramped up.
- The health sector continues to have medicine shortages caused by the lockdown, resulting in a continuation of poor health services across the region. The situation is further aggravated by the COVID-19 pandemic, which Kashmir health officials say cannot be responded to adequately with the current internet slowdown.
- Downloading health documents, including research on the virus, recommendations for prevention and treatment, and watching international news broadcasts is not possible with 2G internet.
- Additionally, the delays in treatments that occurred during the lockdown period are likely to be further delayed now that hospitals must focus on COVID-19 patients, which could have negative effects on those with chronic disease or underlying medical conditions.
- The isolation and insecurity caused by the lockdown resulted in a surge of patients seeking help for mental health disorders, including anxiety, Post Traumatic Stress Disorder (PTSD) and depression. For patients seeking treatment, movement restrictions, now related to COVID-19, and the ongoing internet slowdown, continue to limit access to health facilities.
- Video counselling is not available with 2G internet and health facilities remain difficult to access, especially for rural communities, raising concerns of undiagnosed trauma and worsening mental health conditions for patients.
- Health capacity in Kashmir is low, with a doctor-patient ratio of 1:3,800 compared to the national average of 1:2,000. Additionally, there are only 207 medical specialists in Kashmir, the majority in Srinagar. In rural Kashmir, no district hospital has an intensive care unit (ICU), and there are extreme shortages of specialists such as gynecologists, oncologists, or cardiologists.

The Right to Health in International Law

In 2016 the UN Security Council adopted Resolution 2286, condemning attacks on medical personnel working on conflict zones and demanding that all armed parties in those zones comply with international humanitarian and human rights law. The resolution works in addition to the Geneva Conventions and its Additional Protocols, which prohibit attacks on health facilities and workers.

India has ratified the International Covenant on Economic, Social and Cultural Rights. Article 12 of the Covenant states that parties to the Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

General Comment 14 of the Committee on Economic, Social and Cultural rights states that, as a part of this right, functioning public health and health-care facilities, goods and services, as well as programs. The Special Rapporteur on the right to health issued a report on the right to health in conflict situations. The report stated that States are under the obligation to ensure that health facilities are not harmed as a consequence of conflict. The report also noted that blockades, long or indeterminate curfews and roadblocks restricted the movement of people and transport, and negatively affected access to and delivery of essential health-care services in conflict-affected areas. The Rapporteur recommended that States should ensure that movement restrictions for people in conflict areas are legitimate and essential, and provide exceptions for access to health facilities, goods and services which can be exercised with minimal delays.