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**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

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.



Plight of Prisoners and Change of Demography - Indian Administered Jammu and Kashmir

Human Rights Council has to help people whose rights are taken away. The work of NGOs takes Human Rights Council closer to the grievances of these people.

The 46th session of the Council received updates on seven situations. Although Para 22 of the OHCHR report of June 2018 has duly expressed that “There remains an urgent need to redress past and ongoing human rights violations and to deliver justice for all people in Kashmir who have been suffering seven decades of conflict”, the report has skipped an update.

The special status of the State and Section 10 of Public Safety Act would not allow a Kashmiri State Subject to be removed from the jurisdiction of the State and be lodged anywhere in a prison in India. The Governor an appointee of the New Delhi Government, in the absence of an elected Government, carried out an amendment in the law on 13 July 2018, allowing the removal of a Kashmiri to a prison outside the State. The change in law created difficulties of means and distance for families to visit their loved ones in various prisons in India. In addition the Kashmiri prisoners were exposed to hostile climate and hostile attitudes of prison authorities.

The Council needs to know that the abuse of human rights in Kashmir (Indian administered), graduated into the use of “One of most dangerous weapons, the pellet firing shotgun, which is a 12-gauge pump-action shotgun that fires metal pellets”. (Para 79 of OHCHR Report June 2018). “The pellet-firing shotgun was first used in Kashmir during mass protests in 2010; is not known to have been used against protesters anywhere else in India”. Para 80 of OHCHR report of June 2018 has carried full details on the use of these pellet-firing shot guns and how eyes of the victim are the target.

Indian authorities have turned a new page in their policy of using the prisons as an instrument to cause harm and even death to these prisoners. Covid Pandemic provides the handy cover to conceal the crime of deliberate neglect in their duty to care. The death in the prison of senior Kashmiri leader Mohammad Ashraf Sehrai, chairman of Tehreek-e-Hurriyat - a constituent of All Party Hurriyat Conference on 5 May 2021 has shocked every human soul in and outside Kashmir. India and its satellite authority in Kashmir may have a reason to heave a sigh of relief – it has no grace. Ashraf Sehrai was in the care of jail authorities.

Tihar jail in Delhi is full of Kashmiri leaders, political activists and others for their dissenting political views and for their demand to have a UN supervised referendum in the State. Covid restrictions, hot climate, lack of medical care, difficulty in travel for visiting families and the hostility of the jail authorities have caused grave concern to prisoner’s families. It is for the first time that three Kashmiri Muslim women have been taken prisoners and are lodged outside the State in Delhi prison. JKCHR has submitted the details of Kashmiris prisoners in its written statements NGO 52, NGO 113, NGO 138 and NGO 113 submitted at the 36th, 37th, 39th and 41st session of the Council.

The Legal Forum for Kashmir based in Islamabad conducted a Webinar on ‘Kashmiri Political Prisoners under India’s COVID Tsunami’ on 3rd May 2021. The LFOVK is chaired by Justice Ali Nawaz Chowhan, a leading jurist who was a judge for the Yugoslavia tribunal. Nasir Qadri a research scholar is the Executive Director. Participation of such groups in the work of the OHCHR and Council has to be encouraged in the interests of the mandate.

The death of Mohammad Ashraf Sehrai during detention and reports of neglect on the part of jail authorities, make it a special situation for the Council, to seek full assurance from the Government of India that these prisoners are: (a) returned to Kashmir and (b) are provided full medical care. Para 14 of UN SC Resolution 47 of 21 April 1948 places Government of India under an obligation for the release of these prisoners. It is clear that Indian authorities cannot take Kashmiris as prisoners.

The question is, whether Jammu and Kashmir is a “situation” that merits the attention of the Human Rights Council or not? Who are these people and what is the role of UN Human Rights Council towards them in this situation?

In Para 43 of the minutes of UN Security Council meeting 533 held on 01 March 1951, India has explained that, “There is a tendency in certain quarters to assume that this is just a dispute between India and Pakistan, and that the views of the lawful government of Kashmir need not be considered. This is a mistaken assumption. As I have already said, the authority of the Government of India over the Government of Kashmir is limited to certain subjects; outside that sphere, it can only advise and cannot impose any decision.”

Kashmir is a “situation” that needs the attention of the Council. The June 2018 report on the “Situation of Human Rights in Kashmir” has made 17 recommendations to the Indian authorities, to improve the situation in its administered part of Jammu and Kashmir. Government of India is required to carry out 13 duties under the Security Council resolution 47 of 21 April 1948.

Human Rights Council checks “if all people can use their rights” and checks “what governments do to protect the rights of people in their countries.” The Council needs to know that Kashmiris studying, working in offices, as street vendors and businessmen in various parts of India have either been chased out by RSS people or have decided to return out of fear.

They are being treated like criminals and have been lodged in all kinds of accommodations, like, go-downs, closed schools or colleges or any deserted place in the urban or rural areas. The youth coming back to their homes are interned and imprisoned. Quarantine centres, in fact, are the closed Police Stations. On their release, these people would be joining their families, already broken under extreme inhumane living restraints.

The Council needs to know that Indian government has stripped the people living on its side, of rights preserved for the last 92 years. New Domicile laws have been introduced and the residency laws are being used as weapon to change the demography and precipitate an exodus of Kashmiri Muslims. The Status of Kashmiris has been gradually degraded from State-Subjects of a Princely State, into permanent residents of an autonomous State within the Indian Union and now they shall be ‘domiciles’ of a Union Territory.

It is a violation of UN Security Council Resolution of 30 March 1951, a violation of the protection guaranteed in The Constitution of Jammu and Kashmir adopted on 17 November 1956 and a violation of the law of return passed by Jammu and Kashmir Assembly in 1982/83.

The Domicile Laws are an instrument to phase out the protection that has been available for the past 92 years (from 20 April 1927) to local residents. New categories have been created on the basis of 15 years residence, 10 years’ service in state-employment or 10 years stay for education for any non-Kashmiri (non-State) to be eligible as a resident of the disputed State. Non- Kashmiris (non-State subjects) have been made eligible for jobs in the disputed State. It would change the demography and prejudice a free and secure Plebiscite under UN supervision.

Corporates are encouraged to move into the disputed State. The process has been started by giving them state-owned land and the process is facilitated by the Government run from New Delhi. Near Vaishno Devi in Jammu, 100 acres of land have been allotted for the construction of a replica of Tirupati Mandir.

Thousands of acres have been ear marked as Special Economic Zones where Indian companies will not be taxed much and will be given incentives to set up business. The status of the Jammu and Kashmir State properties spread all over India is at risk and these may be possessed and illegally sold to non-State people.

Indian army temporarily admitted into Kashmir has 4 lakh Kanal of land (50,000+acres) under its illegal occupation. Kashmir is a conflict zone. Therefore common Indians would not be prepared to move, under the protection of new Domicile Laws. It would be the Indian Army personnel and Administrative Service Officers, who would want a holiday home in Kashmir.

The Council needs to consider the risk that, in a few years' time the situation would precipitate the Kashmiri Muslim Exodus and common Indians will start moving in with their families. This is being done to administer a 'demographic change' in the Muslim majority Kashmir. 2.5 million Kashmiri Muslims are living as refugees (five generation) in the four provinces of Pakistan. UN template has protected their return and take part in the referendum.
