



# General Assembly

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## Human Rights Council

Twenty-seventh session

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 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.

[24 August 2014]

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

GE.14-14967 (E)



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## **Jammu and Indian-administered Kashmir**

Para 1 of Article 1 of the United Nations Charter sets out the purpose of the Organization, namely to maintain international peace and security and prescribes the means to achieve this 'Purpose'. There are conflict spots in many parts of the world and one of the disputes reported to UN in January 1948 is the dispute on the question of 'equal rights' and right of self-determination of the people of the State of Jammu and Kashmir.

In view of saving the conflict from enlarging between India and Pakistan a reference was made under article 35 of the United Nations Charter to the Security Council by the Government of India on 01 January 1948. It asked the UN Security Council to determine under its supervision in reference to a free vote of the people in Jammu and Kashmir the following question:

"The question of the future status of Kashmir vis-à-vis her neighbours and the world at large and a further question, namely, whether she should withdraw from her accession to India, and either accede to Pakistan or remain independent, with a right to claim admission as a Member of the United Nations – all this we have recognized to be a matter for unfettered decision by the people of Kashmir, after normal life is restored to them." UN SC Document S/Agenda 227

Para 2 of Article 1 of the United Nations Charter envisages, "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace." United Nations evolved a mechanism for the determination of the right of self-determination of the people of Kashmir. The State and its people became victims of the division of the territory and the families. The full regime of human rights was disturbed.

United Nations mechanism identified the freedom of travel in the State, including freedom of lawful entry and exit, non-discrimination on the basis of creed, caste or party, 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.

United Nations mechanism prescribes for the release of all political prisoners and prescribes for taking steps that,

- (a) All citizens of the State who have left 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

The UN Security Council in April 1948 was occupied with the right of return and rights of first generations of refugees (internally displaced from various parts of the State) on either side of the cease fire agreed in January 1949 in the State of Jammu and Kashmir, agreed between India and Pakistan. It should concern United Nations and its member States that over the period of a non-implementation of UN mechanism on Kashmir more people became refugees in 1965, 1971 and 1990.

In between the flow of refugees continued for various reasons, in particular, on account of political victimization. The first displacement of 1947/1948 and the second of 1990 remained common between the three major communities, namely Muslims, Kashmiri Pandits and the Sikhs. It is not only that the first assurance of April 1948 guaranteeing "freedom to return to their homes and to exercise their rights as such citizens," has not been followed upon as slated by the UN Security Council, there have been further additional displacements as well.

Article 48 of the Jammu and Kashmir Constitution (Indian administered Kashmir) has incorporated the question of refugees envisaged in UN Security Council Resolution of 21 April 1948. However, in practice the Government of Jammu and Kashmir (Indian administered) has not been able to honour this Constitutional obligation since its adoption in November 1956. Indian administered Jammu and Kashmir Constitution has not filled the vacancies reserved for refugees. Jammu and Kashmir Government has continued to act in violation of article 4 of the Constitution and has

been failing to respect the right of return of a refugee or the freedom of travel in the State, including freedom of lawful entry and exit of a Kashmiri living on the Pakistani side of the cease fire line.

The Azad Jammu and Kashmir Interim Constitution Act 1974 (Pakistan administered) has also incorporated the question of refugees and has reserved 12 seats in the Legislative assembly. Although these 12 seats are filled from amongst the Kashmiri refugees settled in various provinces of Pakistan, yet they have not been able to advance the responsibilities of the Government of Azad Jammu and Kashmir and the Government of Pakistan undertaken under UNCIP Resolutions as identified in Azad Jammu and Kashmir Interim Constitution Act 1974. Government of Azad Jammu and Kashmir has further failed to appoint a Plebiscite Advisor as provided in Section 8 of Azad Jammu and Kashmir Government Act 1970 and Section 11 of Azad Jammu and Kashmir Interim Constitution Act 1974. Governments at Muzaffarabad have continued to fail in their Constitutional duty for the last 44 years.

It goes without any doubt to point out that India and Pakistan would never succeed to resolve the Kashmir dispute if either of the two or both seek to distance away from the UN mechanism on Kashmir. It is equally important that the three Kashmiri governments at Srinagar, Muzaffarabad and Gilgit (and Kashmiri leadership) need to have a reliable understanding of the jurisprudence of UN Resolutions on Kashmir. There is a difference between the redacted knowledge fed as a propaganda by the parties and the textual truth of the UN mechanism on Kashmir.

The input from J&K Government and Kashmiri leaders on the Indian side of the cease fire line (LOC) is also the same. UN has slated J & K government as “The Lawful Government of Kashmir”. Therefore it is the duty of this Government to address itself in accordance with UN SC resolution S/2017/Rev.1 of 30 March 1951 and article 48 of the Constitution. AJK Government has continued to fail on Section 8 of Azad Jammu and Kashmir Government Act 1970 (last 44 years) and the Government of J & K continues to fail on article 48 since 1956 (last 58 years) and has remained purposely at a distance to see the connection between article 4 of the Constitution and UN SC resolution S/2017/Rev.1 of 30 March 1951.

There is a compelling need that UN mechanism on Kashmir is agitated for the interest of the parties. French contribution at the UN Security Council during the debate on Kashmir represents a lead wisdom. According to this “the organization of a free plebiscite in Jammu and Kashmir would be the most effective and possibly the only means of stopping hostilities in those States, as it would, give the population the assurance that they would be free to decide their own fate. Our main preoccupation, therefore, should be the organization of a plebiscite”.

France has added, “The simplest solution, therefore, would be to set up a provisional government which would hold office while the Plebiscite was being prepared and held, and would later disappear. In my opinion such a provisional government would have to be a coalition government composed of the chiefs of both the National Conference and the Moslem Conference. This government, acting under the authority of the Security Council, would be alone responsible for taking any steps necessary for holding the plebiscite”. France further added that, “The French delegation earnestly hopes that, once the Kashmir dispute has been settled, the solution of other outstanding questions between India and Pakistan will be greatly eased”.

UN Human Rights Council has heard about the deep concern on the Armed Forces Special Powers Act (AFSPA) in the State. Government of Jammu and Kashmir has sought the revocation of these powers. State Government has failed to make out a substantive case on the basis of four duties, namely, “defend the territory” and “to protect the lives, property and honour of people”, laid down for the Indian army in the bilateral agreement and on the basis that it is a subordinate and supplemental army, which is further bound by a discipline under UN Security Council Resolution of 21 April 1948. UN Security Council Resolution of 21 April 1948 in Para 2 (c) (i) to (iii) sets out the restraints on the behaviour, number and location of these Indian forces. These forces have to be in Kashmir in accordance with the following three principles: (i) That the presence of troops should not afford any intimidation or appearance of intimidation to the inhabitants of the State (ii) That as small a number as possible should be retained in forward areas; (iii) That any reserve of troops which may be included in the strength should be located within their present base area.