



# General Assembly

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## Human Rights Council

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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 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.

[22 August 2019]

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



## **The annexation of Indian Administered Jammu and Kashmir and its implications**

In light of the Government of India's actions to unilaterally annex the Disputed Territory of Jammu and Kashmir on 5 August 2019, by revoking Articles 370 and 35A and amending Article 367 of the Constitution of India by Presidential Order C.O.272, thereby creating a grave risk of a humanitarian catastrophe for the Kashmiri people, we call on the UN Human Rights Council and Member States to take immediate action to prevail upon India to reverse their illegal occupation and protect the human rights of the Kashmiri people.

Article 370 allowed Jammu and Kashmir a certain amount of autonomy - its own constitution, a separate flag and the freedom to make laws, though foreign affairs defense and communications remained the preserve of the central government. Article 35A granted special status to Jammu and Kashmir State providing permanent residents with rights to property and government jobs. The provisions also protected its citizenship law, which did not allow outsiders to settle in or own land in the disputed territory. Article 367 is an interpretative Article which defines how the relevant Articles should be interpreted.

The relevant Articles were incorporated in the Indian Constitution to ensure a level of autonomy for the State of Jammu and Kashmir. No changes could be made without the consent of the constituent Assembly of Jammu and Kashmir. To nullify these Articles and their implications and protection of the people of Kashmir, Presidential Order C.O. 272 made the following changes to the Indian Constitution through Article 367 paving the way for the annexation:

- All references to the 'Government of Jammu & Kashmir' would henceforth be construed as references to the 'Governor of Jammu & Kashmir';
- All references to the 'Constituent Assembly of Jammu & Kashmir' shall be construed as references to the 'Legislative Assembly of Jammu & Kashmir';
- The Constitution Application to Jammu & Kashmir) Order 1954 was superseded with immediate effect.

It is clear from these points that the Government of India were attempting to seek legal cover as it did not have legal authority to take the steps to abrogate Article 370 and other Articles as there was no Constituent Assembly of Jammu & Kashmir to approve it, having been dissolved by the Governor on 21 November 2018 and replaced with President's Rule.

The Presidential Order abrogating Article 370 is in violation of the UN Security Council Resolutions and other bilateral agreements between Delhi and the Kashmir Government, and between the Governments of India and Pakistan, which is a party to the Kashmir dispute. Pakistan assumed responsibilities under UNCIP Resolutions in Azad Kashmir. It entered into a Stand Still Agreement with the Government of Kashmir on 15 August 1947 which predates the Indian Agreement of 27 October 1947. It also violates the terms of the Simla Agreement of 1972. India has now severed all UN and other Agreements related to the parties involved in the Kashmir dispute through their illegal actions.

Numerous Indian and international legal experts are of the opinion that the Presidential Order is unconstitutional and in breach of international law. However, this has not deterred the Government of India in its actions to totally subjugate the will and rights of the people of Jammu and Kashmir. The actions of the Government of India are also in violation of the UN Security Council Resolution of 30 January 1951, and the terms of agreement of 27 October 1947, made between the Governor General of India and Maharaja of Kashmir which stated that, "as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the State's accession should be settled by a reference to the people".

On 15 January 1948, India surrendered this provisional accession at the UN Security Council for a UN supervised vote of the people of Jammu and Kashmir. The character of the accession has changed since 15 January 1948, being clarified in paragraph 45 of the Minutes of the 773<sup>rd</sup> Meeting of the UN Security Council, 20 February 1957. To date, there

has been no 'reference to the people'. Any hope the people of Jammu and Kashmir have for this have now been extinguished by the actions of the Government of India.

There is no people's representation in Indian administered Jammu and Kashmir since it was placed under Governor's Rule. As there was no Constituent Assembly of Jammu and Kashmir and Legislative Assembly, then the President's Order is legally null and void as no Assembly was consulted. A Governor cannot legally assume authority of Constituent/Legislative Assembly to remove the entire Constitution of Jammu and Kashmir.

Jammu and Kashmir have long since been under Indian occupation, typified by the more than 700,000 Indian troops stationed there, making it one of the most militarized zones in the world. The people have suffered grave human rights abuses by the occupying forces for more than 70 years. The August 2019 illegal annexing of Jammu and Kashmir further deprives the Kashmiris of their rights and leaves them at the mercy of a Government determined to change the demographics to dilute and crush the Muslim population by creating a Hindu colonial-settler situation. This is not dissimilar to what has been seen in Palestine with devastating consequences. With Hindu nationalism and extremism, and attacks on Muslims, on the rise across India, the spectre of ethnic cleansing of Muslims in Jammu and Kashmir is a serious concern.

State sponsored violence continues to crush the will of the people has been a constant feature of life for the people. Thousands have died, been critically injured, or disappeared. The population of Jammu and Kashmir have long been subjected to brutal human rights abuses, committed by the Indian Armed Forces with total impunity from prosecution. According to the UN Human Rights Council Report on Situation of Human Rights in Kashmir, June, 2018. The Armed Forces Special Powers Act (AFSPA) 1990, and the Jammu and Kashmir Public Safety Act (PSA) 1978, have "created structures that impede the normal course of law, impede accountability and jeopardise the right to remedy for victims of human rights violations". To this day, there have been no legal prosecutions against the perpetrators of these abuses. The illegal annexation of Jammu and Kashmir shows an even great disregard for human rights and international laws and the human rights of Kashmiris.

In light of India's total disregard for international laws, UN Resolutions, and the UN Human Rights Reports on Human Rights Violations in Kashmir, fears for the future and safety of Kashmiris are well founded. It cannot be stated too strongly that Kashmiris are in great peril. To date, India has rejected all calls for talks between India and the people of Jammu and Kashmir, Pakistan on Kashmir, and offers of mediate between the parties by a third country, including an offer by the President of the United States of America. The aim of such mediation was to bring peace to the region and ensure the rights of Kashmiris were protected. Such offers were rejected by India. The Presidential Order to annex Jammu and Kashmir as a Union Territory of India means all external parties are now excluded from any negotiations or mediation, rendering the people deprived of their rights including the right to self-determination, and their safety and security.

Failure by the UN Human Rights Council and the Member States to instigate the independent, international committee of inquiry into the grave human rights abuses in Jammu and Kashmir has left the people dangerously exposed to a lifetime of subjugation and abuse at the hands of the Indian State. The people of Jammu and Kashmir plead for urgent action on this.

We call on the UN Human Rights Council and the Member States to take all immediate action to protect the people of Jammu and Kashmir, and to call on the Government of India to revoke the annexing of Jammu and Kashmir as a matter of urgency. Failure by the United Nations and Member States to act will have devastating consequences for peace and security not only in Jammu and Kashmir, but the entire region. The Kashmiri people deserve the protection and intervention of the United Nations to provide them with peace and security, and to retain the right to self-determination.