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Human rights situations that require the Council's attention

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.

[11 February 2019]

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



Analysis of the Office of the United Nations High Commissioner's (OHCHR) Report on the situation of Human Rights in Kashmir.

Undoubtedly a bold initiative by the OHCHR for having undertaken remote monitoring of the human rights situation in Kashmir. Over the years civil society organisations and international human rights organisations have accused Government of India of numerous human rights abuses in Indian Administered Kashmir. India has shut the doors of international community to go in, investigate and report on the situation of Human Rights in Kashmir. From July 2016, the High Commissioner for Human Rights on numerous occasions requested the Government of India that his Office be given unconditional access to Kashmir to assess the Human Rights situations there. India rejected this request.

Nevertheless, there remains an urgent need to address past and ongoing human rights violations and to deliver justice for all people in Kashmir who have been suffering seven decades of conflict. Any resolution to the political situation in Kashmir should entail a commitment to ending the cycles of violence and accountability for past and current human rights violations and abuses committed by all parties and redress for victims. Such a resolution can only be brought about by meaningful dialogue that includes the people of Kashmir. The OHCHR report on Kashmir is a major significant step in the right direction and timely. The methodology undertaken was remote monitoring and that indeed, is commendable.

IHRAAM highlights the Report's weighty human rights violations in India Administered Kashmir which are noted below:

Lack of Justice and Impunity

Impunity for human rights violations and lack of access to justice are key human rights challenges in the state of Jammu and Kashmir. Special laws in force in the state, such as the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (AFSPA) and the Jammu and Kashmir Public Safety Act, 1978 (PSA), have created structures that obstruct the normal course of law, impede accountability and jeopardize the right to remedy for victims of human rights violations.

IHRAAM has repeatedly raised this issue at the UNHRC including during the India UPR.

Excessive Use Of Force

The killing of civilians between 2016 and 2018 raises the question of whether security forces resorted to excessive use of force to respond to protesters, some of whom were throwing rocks. International human rights groups have accused Indian security forces of using excessive force and failing to adhere to applicable national and international standards on the use of force.

IHRAAM joins all the international human rights organisations to ensure to put an end to use of force in Kashmir.

Use Of Pellet-Firing Shotgun

One of most dangerous weapons used against protesters during the unrest in 2016 was the pellet-firing shotgun, which is a 12-gauge pump-action shotgun that fires metal pellets. It was deployed by the Central Reserve Police Force and the Jammu and Kashmir Police against protesters, some of whom were throwing stones. According to human rights organizations, the shotgun cartridges contain 500 to 600 pellets that resemble ball bearings. The ammunition is made of lead alloy that is fired at a high velocity thereby dispersing the metal pellets over a large area. Experts claim that there is no way of adequately controlling

the trajectory of these shotguns beyond a limited range, which makes them inherently inaccurate and indiscriminate. The pellet-firing shotgun was first used in Kashmir during mass protests in 2010; it is not known to have been used against protesters anywhere else in India.

IHRAAM raised this issue in the written statement at the 38th session of UNHRC (see link <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/172/19/PDF/G1817219.pdf?OpenElement>)

Arbitrary Arrests And Detentions, Including Children

A right to information application found that over 1,000 people were detained under the Jammu and Kashmir Public Safety Act between March 2016 and August 2017. It also found that the state Government had not created any rules or standard operating procedures under PSA to guide the authorities while issuing a detention order. Issuing authorities – usually district magistrates or divisional commissioners – thus solely rely on dossiers prepared by the Jammu and Kashmir Police and reportedly do not verify facts. Additional work may be needed to verify this allegation.

Human rights groups had warned Jammu and Kashmir authorities that minors were being arrested under PSA in 2016 and 2017. Opposition parties raised the issue in the Parliament and state assembly, but authorities have regularly denied that minors were being picked up under PSA.

IHRAAM shares the concerns of OHCHR particularly on children.

Torture

As a State party to the International Covenant on Civil and Political Rights, which prohibits torture under any circumstances (Article 7), India is obliged to ensure that no person is “subjected to torture or to cruel, inhuman or degrading treatment or punishment have long been persistent claims of torture by security forces in Kashmir.

IHRAAM applauds OHCHR’s findings on torture.

Enforced Disappearances

Impunity for enforced or involuntary disappearances in Kashmir continues as there has been little movement towards credibly investigating complaints, including into alleged sites of mass graves in the Kashmir Valley and Jammu region.

IHRAAM draws attention to the European Parliament’s resolutions on unmarked and unnamed mass graves.

Reprisals Against Human Rights Defenders And Restrictions On Journalists

Human rights defenders who have tried to bring international attention to the human rights situation in Jammu and Kashmir have faced reprisals while access has been obstructed for some journalists.

OHCHR’s concerns are well-founded!

Sexual Violence

Although this report specifically focuses on events since July 2016, without access, OHCHR was not able to confirm specific claims alleging incidents of sexual violence within this timeframe. However, there were some recent legal developments in past emblematic cases, and impunity for sexual violence remains a key ongoing human rights

concern in Kashmir. Authorities have failed to independently investigate and prosecute allegations of sexual violence by security forces personnel. There is no record of allegations of sexual violence by security forces being prosecuted in a civilian court.

IHRAAM, on the strength of the Report, demands that Kashmiri women and girls should no longer live in a constant state of siege, surveillance and/or humiliation whether in their homes or in public.

The Report recommends the possible establishment of a commission of inquiry but more importantly, it asks the authorities in India:

- (a) Fully respect India's international human rights law obligations in Indian-Administered Kashmir,
- (b) Urgently repeal the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990; and, in the meantime, immediately remove the requirement for prior central government permission to prosecute security forces personnel accused of human rights violations in civilian courts;
- (c) Establish independent, impartial and credible investigations to probe all civilian killings which have occurred since July 2016, as well as obstruction of medical services during the 2016 unrest, arson attacks against schools and incidents of excessive use of force by security forces including serious injuries caused by the use of the pellet-firing shotguns;
- (d) Investigate all deaths that have occurred in the context of security operations in Jammu and Kashmir following the guidelines laid down by the Supreme Court of India;
- (e) Investigate all cases of abuses committed by armed groups in Jammu and Kashmir, including the killings of minority Kashmiri Hindus since the late 1980s;
- (f) Provide reparations and rehabilitation to all individuals injured and the family of those killed in the context of security operations;
- (g) Investigate and prosecute all cases of sexual violence allegedly perpetrated by state and non-state actors, and provide reparations to victims;
- (h) Bring into compliance with international human rights standards all Indian laws and standard operating procedures relating to the use of force by law enforcement and security entities, particularly the use of firearms: immediately order the end of the use of pellet-firing shotguns in Jammu and Kashmir for the purpose of crowd control;
- (i) Amend the Jammu and Kashmir Public Safety Act, 1978 to ensure its compliance with international human rights law;
- (j) Release or, if appropriate, charge under applicable criminal offences all those held under administrative detention and ensure the full respect of standards of due process and fair trial guaranteed under International law;
- (k) Treat any person below the age of 18 who is arrested in a manner consistent with the Convention on the Rights of the Child;
- (l) Investigate all blanket bans or restrictions on access to the Internet and mobile telephone networks that were imposed in 2016, and ensure that such restrictions are not imposed in the future;
- (m) End restrictions on the movement of journalists and arbitrary bans of the publication of newspapers in Jammu and Kashmir.
- (n) Ensure independent, impartial and credible investigations into all unmarked graves in the state of Jammu and Kashmir as directed by the State Human Rights Commission; if necessary, seek assistance from the Government of India and /or the international community. Expand the competence of the Jammu and Kashmir State Human Rights Commission to investigate all

human rights violations and abuses in the state, including those allegedly committed by central security forces;

- (o) Ratify the International Convention for the Protection of all Persons from Enforced Disappearance, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and introduce enabling domestic laws as recommended during India's UPR in 2008, 2012 and 2017;
- (p) In line with its standing invitation to the Special Procedures, accept the invitation requests of the almost 20 mandates that have made such requests; in particular, accept the request of the Working Group on Enforced or Involuntary Disappearances and facilitate its visit to India, including to Jammu and Kashmir;
- (q) Fully respect the right of self-determination of the people of Kashmir as protected under international law.

IHRAAM asks the UNHRC to hold a panel discussion on the Report with the aim to establish an inquiry of commission to conduct a comprehensive independent international investigation into allegation of human rights violations in Kashmir and direct Government of India to comply with the directions as articulated in the Report.
