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Human rights situations that require the Council's attention

Written statement* submitted by the Jammu and Kashmir Council for Human Rights, 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.

[10 February 2013]

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

Jammu and Kashmir*

The constitutional rights of the People and the powers of the State exist in a delicate balance. The balance is disturbed in the favour of State's power in times of national emergency and in favour of the People's liberty in times of tranquillity.

When people fear that their security is threatened, they often are willing to acquiesce in incursions of civil liberties as a perceived trade off to gain a sense of greater personal safety. Conversely, when people feel secure, they are inclined to bridle at even minor constraints on their personal liberties. The situation assumes an exceptionally complex character when a People are forcibly distributed and are controlled by more than one sovereign State. The situation becomes even more frightening when government issues warning to residents to be prepared for a possible nuclear war by building bomb-proof basements and storing food and water.

Maharaja of Jammu and Kashmir agreed to a trade off with the Government of India in October 1947 to secure a sense of greater personal safety, defence of the territory, and to protect the 'lives', 'property' and 'honour' of the people against invaders who had switched off the Mahura Power house on 21 October 1947 and plunged the State into a darkness and indulged in loot, plunder and rape.

This trade off, named as Instrument Accession of 27 October 1947 has featured at the UN Security Council agenda since January 1948, under article 35 of the Charter and has been discussed in details in the context of Indian complaint made to the UN Security Council and the Counter Claim filed by Pakistan.

If the Government of Pakistan had acted in the interests of the people of Kashmir, India had agreed to make a reduction of 75% in the number of its forces present in the State as at the time of the cease fire on 1st June 1949 (UN SC Resolution S/2883 dated 24 November 1952). It would have reduced the total number to a bare minimum of 18,000 soldiers. Pakistan would have had 3,000 to 6,000 armed forces in the Pakistani side of the cease fire line.

United Nations brokered the cease fire on 1st June 1949 (UN SC Resolution S/2883 dated 24 November 1952). It was to carry out the UN supervised plebiscite to allow the people of the State of Jammu and Kashmir to consider to remain with India, accede to Pakistan or remain independent with a right to claim admission as a Member of the United Nations.

It is unfortunate that the People of Jammu and Kashmir continue to be divided and controlled under three administrations on either side of cease fire line. The four people living in these three administrations and the fourth a strong Diaspora spread all over the world have been living under different regimes. The habitat and the people present Human rights situation that requires the Council's attention. The quality of their life and the manner of the enjoyment of human rights has continued to remain influenced by the inter-State relationships' between India and Pakistan. The accountability and responsibility of these two States under general international law, UN Charter and the UN Resolutions on Kashmir is far different to any accountability and responsibility under normal circumstances.

It is unfortunate that India and Pakistan could not resist the temptation to err on either side of the cease fire line (LOC) at the start of 2013. The loss of life and the manner in which the bodies of the soldiers have been treated does not conform to laws of chivalry and rules

* Muslim Women's Aid (MWA) UK, an NGO without consultative status, also shares the views expressed in this statement.

of engagement. A violation of cease fire line could have been corrected in due course but the act to mutilate a fallen soldier's body is unmanly and inhuman. Armies around the world have started giving up the killing instinct and are engaged in peace keeping. The Indian and Pakistani soldier is equally engaged around the globe in promoting and supervising peace. Why does he fail at home, needs a thorough examination?

It is an irony that business has remained as usual between the two countries and the party which has fallen prey to this hostile situation are the people and the interests of the people of Kashmir. Trade and travel across the Line of Control became the first casualty. India would be preparing itself to meet any future challenges from Pakistan across the LOC and inside the Valley of Kashmir and vice versa. It means putting the military, police and security apparatus on a high alert at the cost of general convenience of a common Kashmiri.

The people of the State of Jammu and Kashmir have an on-going dispute with the Government of India in regard to the final say on the bilateral agreement (provisional) made on 26 October 1947, J & K Constitution and the Indian case presented at the UN Security Council in January 1948. It is all a question of law and does not entail any violence against the union of India or the people of Kashmir.

Kashmiri people in fact have been identified as victims of oppression by Lord Hardinge, Secretary to the Government of India in his letter dated 7 January 1848 addressed to Maharaja Gulab Singh. The history of oppression is 165 year old. People of Kashmir endured all this until the Government of Kashmir entered into a Stand Still Agreement with it in August 1947. Pakistan was the first sovereign State to have a diplomatic foothold and share in the running the affairs of Kashmir Government.

It is unfortunate to point out that post 1947 Pakistan has remained one of the main factors in aggravating the sufferings of the people of Kashmir and their ill placed trust in Pakistan has remained a cause of the death of a generation and the death of self-determination.

In regard to post 1990 movement Owen Bennett Jones writes, "Most Kashmiris are sick of conflict and desperate for a peaceful settlement. But for both India and Pakistan the symbolic importance of the Kashmir dispute means that they will inevitably follow their own perceived national interests rather than those of the people of Kashmir. If the Kashmiris had been conducting a straightforward fight for independence in the same way as the Chechens or East Timorese, they would have had a greater chance of success. The tragedy of Kashmir is that the voices of its own people have been drowned out by the Islamists, nationalists and ideologues in both Islamabad and Delhi".

Owen Bennett Jones was a BBC correspondent in Pakistan between 1998 and 2001. Therefore, his understanding of Kashmir movement and of the merits of the political, diplomatic and moral support provided by Pakistan to the people of Kashmir is immediate and direct.

Pakistan discouraged the British Prime Minister from seeking soundings from the President of International Court of Justice on the question of Plebiscite and made a serious error of judgement in calling Sheikh Abdullah a 'paid agent of congress', a 'Quisling' and Kashmiri leaders as 'gangsters' in its letter of 14 May 1947 addressed to British Prime Minister. The same 'paid agent of congress' and 'gangsters' were accorded a historic welcome in May 1964 during their visit to Pakistan.

Kashmir was not raised at the UN from 5 November 1965 to 15 September 1996. It resulted in the deletion of Kashmir as a regular item on UN Security Council agenda in September 1996. Kashmir had continued as a regular item for 48 years from January 1948 to September 1996. It is now a subject of an annual reminder rule.

Pakistan continued to use Kashmir as a theatre for its proxy and this proxy took a physical shape of Kashmir militancy in 1990. It was very late in 2006 that President Musharraf

proposed, “to curb all militant aspects of the struggle for freedom”. By then the people of Kashmir had lost a generation, lost the right of self-determination and had suffered unprecedented loss of ‘life’, ‘property’ and ‘honour’.

Government of India has facilitated Kashmiris at the UN and helped them to set out their case before the world community. India has to revisit its obligations under an Instrument of Accession with the people of Kashmir and its obligations under the terms of accession in respect of all the territories defined in article 4 of J & K Constitution and duly referenced in UN SC Resolution of 30 March 1951.

Pakistan’s counter claim at the UN and her interest in Kashmir in the counter claim is sparse and self-serving. It has to respect the terms of its presence undertaken under UNCIP Resolutions in its part of Kashmir. The lives of the people living under three controls present a Human rights situation that requires the Council’s attention.

India and Pakistan have to be discouraged from fighting each other in Kashmir (Valley) by manipulating the lives of people here. The acts involving proxies on both sides and civilians becoming the casualties need an urgent attention of the Council.
