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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 (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.

[22 August 2013]

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

Cease fire line - Jammu and Kashmir

India and Pakistan have petitioned the UN Security Council under articles 35 and 34 of the Charter in January 1948. Under article 11 and 12 both have accepted an obligation of “Pacific Settlement” of the dispute of Jammu and Kashmir. The question of “equality” and right to “self-determination” of the people of Jammu and Kashmir has continued to remain on the UN Security Council Agenda.

UNMOGIP has continued to supervise the cease fire in the State of Jammu and Kashmir, the ceasefire between India and Pakistan since January 1949. India and Pakistan failed to reduce the number of their armies on either side of the cease fire line as hoped by the UN Security Council. Pakistan failed to abide by clause A 1 of Part II of the UNCIP Resolution of 13 August 1948 and India has also failed to abide by Para 2 (a) (b) and (c) (i) to (iii) of UN Security Council Resolution of 21 April 1948 in regard to the behaviour, number, and location of their forces in the area.

UNMOGIP supervised cease fire line in the presence of these two armies has hit the quality of life in the habitat and continues to affect the freedom of travel of the people. The induction of a full scale militancy in the Indian administered part of Jammu and Kashmir in early 1990s has rocked the foundations of life, caused the death of a generation and has put people through massive violations of human rights. The response of Indian army and the powers in particular The Armed Forces Special Powers Act (**AFSPA**) has taken the Indian army incredibly far away from its principle duties of defending the “territory”, protection of “life”, “property” and “honour” listed in the Instrument of Accession (a provisional bilateral agreement with the Government of Jammu and Kashmir) dated 27 October 1947.

The mistrust between the two armies has spilled over into the people living on either side of the cease fire line. It has created a special situation and there is a desperate need to address it. The powers exercised by the two armies remain at the core of the denial of many rights to the people who are a subject of consideration at the UN Security Council since 01 January 1948. It has remained a recurring practice that the two armies sandwich the Kashmiri people in their tit for tat military actions against each other.

The months of July and August 2013 in particular have been full of unfortunate events on either side of cease fire line. On 30 July 2013 Indian army is alleged to have abducted four civilians including an elderly man and a teenager and allegedly killed them as ‘terrorists’. In fact the four were local residents of the border village Neelum Valley. Indian army is under a bilateral agreement to protect the ‘lives’ of the people of the State. The four local residents namely, Zaafran son of Ghulam Sarwar, Shahzaman son of Mohammad Younas, Wajid Akbar son of Ali Akbar and Faisal Iqbal, son of Sher Zaman — went missing on July 29, when they had gone to collect a medicinal plant — Tripatra or Barseem (Red Clove) — along the unmarked dividing line. It turned out later that they had been killed by the Indian army on the other side of the cease fire line.

FIR registered in a police station in the Indian administered territory on July 30 on behalf of the 56-Rashtriya Rifles, disclosed that the four were killed by the army near Katwar Post late on the preceding night as “unidentified Pakistani intruders”. The four local residents could not be labelled as “Pakistani intruders.”

Civil society activists held a candle-light protest in Muzaffarabad on the evening of 16 August 2012 against these killings and urged Islamabad to use its offices for the recovery of their bodies. The protest in Muzaffarabad was organized through the social networking site, by members of a group, namely AJK Civil Society Forum. It began at the Central Press Club and culminated on the main road outside, where the demonstrators lined up at the

pavement and lighted candles. They were holding placards seeking an end to killing of innocent Kashmiris.

Tariq Naqash a prominent local journalist whose parents have migrated from the Indian administered Kashmir reports that residents in the border area on the Pakistan administered side of Kashmir allege that Indian military often whisks away civilians as they graze cattle, cut fodder or pick fuel wood or medicinal plants along the cease fire line. There are confirmed reports that in September 2007, three men went missing from Dhakki and Chaknar hamlets of Neelum Valley and their relatives alleged that they were kidnapped by the Indian troops from this side of the cease fire line and one Manzoor Ahmed, was “picked up and taken across by the Indian troops near Tejian village in 2009.

In the same manner as a tit for tat five Indian soldiers were killed in the Poonch sector of Jammu and Kashmir (Indian administered) on the night between 6 and 7 August 2013. The Indian and Pakistan versions on the unfortunate incident of killing remain wide apart. The two incidents of July and August on either side of UNMOGIP supervised cease fire line have aggravated a commonly carried sense of mistrust on either side between the armies and which spills over into the two people.

The loss of life in any manner on either side of cease fire line is highly regrettable. It is important to point out that the victims on either side are the civilians of the State currently administered by India and Pakistan on their respective sides. India and Pakistan need to enhance the constituency of peace for the welfare of their people. As member nations of UN they have submitted themselves under articles 11 and 12 of the UN Charter to the “Pacific Settlement” of the Kashmir dispute. China in its resolution at the UN Security Council during the debates on Jammu and Kashmir has also presented the concept of “Maximum Agreement and Margin of Some Disagreement.”

The State of Jammu and Kashmir has entered into a Stand Still Agreement with Pakistan in August 1947 and into an Accession with India in October 1947 as a Sovereign State. The position is duly stated at the UN in the respective petitions of India and Pakistan made under articles 35 and 34 of the Charter. The situation in Jammu and Kashmir has locked India and Pakistan into invoking the enemy image against each other. The two countries need to be encouraged to revert back to UN mechanism on the resolution of the question of ‘equality’ and right of ‘self-determination’ of the people of Jammu and Kashmir. It will help India and Pakistan to unlock their human resource and war material, otherwise locked to respond to an inherent threat. These freed resources could be diverted to development, health, education, for peace projects and in the elimination of hunger and disease.

Unlike the people living in India and Pakistan, the people of Jammu and Kashmir distributed on either side of cease fire line, have to endure a life under the restraints of five governments (3 Kashmiri governments and two of India and Pakistan), five constitutions ((3 Kashmiri and two of India and Pakistan), a broad spread of surveillance and a disturbing mistrust. The respective visible and invisible controls of India and Pakistan have divided the communities. The conflict habitat breeds vested interests and people take fixed positions to harm each other. They become easy prey to be used as proxies and the phenomenon of acting as proxies for India and Pakistan has been discussed in detail by non-Kashmiri analysts.

India and Pakistan have to be encouraged to turn to the report presented by Dr. P Graham as UN Representative to UN Security Council, where he has stated “The plebiscite would keep the promise made to the people of Jammu and Kashmir, who are worthy of the right of their own self-determination through a free, secure and impartial plebiscite. They are a people of legend, song and story, associated with snow-capped mountains, beautiful valleys and life-giving waters.” The two armies need to be educated on the restraints placed on their behavior, number and location in bilateral agreements and UN Resolutions.

UN report identifies the people of Jammu and Kashmir as, “These people, Moslems, Hindus, Sikhs and Christians, as farmers, craftsmen and artists, small shopkeepers, boatmen, bearers and other workers in areas now on both sides of the cease fire line have, through the centuries, been the victims of exploitation and conflict. The recognition of the rights and dignity, the security and self-determination of these historic people, under the auspices of the United Nations, might well become a challenging example of the progressive values of self-determination to the dependent peoples of the earth.”

The special situation in Jammu and Kashmir has to be resolved not by bullets but by ballots, not through conflict of armies but through co-operation of peoples.
