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**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

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.

[29 August 2015]

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



The role of prevention in the promotion and protection of human rights in Jammu and Kashmir

JKCHR wishes to congratulate the High Commissioner for Human Rights for the comprehensive Annual Report presented to the 30th session of the Human Rights Council. The broad spread of over 26 titles and 31 paras, serves the constituency of human rights around the globe. In the best interests of enlarging the constituency of the promotion and protection of human rights, JKCHR would wish to make an input in regard to a situation left out in the report, which has landed at the door of the United Nations, when the organization was only three years old and had fifty-seven members. Kashmir dispute, that is, respect for the principle of equal rights and self-determination of Kashmiri people, landed on the UN's doorsteps in January 1948. The report of the High Commissioner consequent to resolution 24/16 incorporates a broad spread of information, except that no contribution has been received from India and Pakistan or from any of their national human rights institutions, civil society group or a relevant intergovernmental body.

Right to life precedes any other human right. We would have prevented the death of a generation (targeted Muslim youth) in the Indian administered part of Kashmir, if UN Security Council and UN General Assembly had followed upon the jurisprudence of UN Security Council Resolutions on carrying out a free and fair referendum to resolve the Kashmiri people's title to self-determination. The preventive steps would have helped to secure the promotion and protection of human rights in the habitat and people would not have suffered the unprecedented violations of human rights, witnessed first time in 169 years of the Rights Movement (1846-2015).

Although Kashmir dispute and the human rights situation here, has continued to form a substantial part of conflict literature, one finds that the annual reports of the UN Secretary General under article 98(2) to the General Assembly and the High Commissioner for Human Rights for some time have skipped the subject. These reports have not been inclusive of all the 'peoples' referred in the Preamble of the UN Charter. Therefore, United Nations and its bodies owe an explanation to a generation killed in the Indian administered part of Jammu and Kashmir.

We need to establish 'conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained and to promote social progress and better standards of life in larger freedom,' without abdicating our interest in all people around the world. One such people that became an immediate interest of the United Nations in 1948 are the people of Jammu and Kashmir.

United Nations has subscribed its interest in these people and in the peace of the region through its supervision of the cease fire line by UNMOGIP. It is unfortunate that the cease fire line has not been calm for some time and the exchange of fire between Indian and Pakistani security forces, has cost human lives and other losses. It has disturbed the daily regime of life on either side. Indian security forces are engaged in a war against the Muslims of the Valley of Kashmir and Kashmiri youth remains their target group.

There is a resurgence of radical Hinduism in India. It has spilled over into Kashmir – the disputed State. Richard M Eaton in his book 'India's Islamic Traditions, 711-1750' writes, "Today, Indian Hindus and Muslims see themselves as distinct religious communities, essentially two separate nations occupying the same ground. Hindu nationalist historians have projected this vision of separateness into the past, stating that Indian Muslims of the middle ages were a community totally different from and implacably opposed to, the Hindu majority on religious grounds. Moreover, Indian Muslims are defined as a social group that is not indigenous, but of a foreign origin to the subcontinent. This implies that Muslims do not belong in India and have no real rights there. Secular Indian historians have decried this interpretation as a misrepresentation, a reading of the past that modern communal biases distort".

While the Council is due to consider the OHCHR study A/HRC/30/20 on the role of prevention in the promotion and protection of human rights, a case study of the failure by the UN in not taking any further steps to the deployment of UNMOGIP on the cease fire line of Kashmir, assumes immediacy. People of Jammu and Kashmir have been addressed as among the Unrepresented Peoples and Nations of the World at the Plenary and Main Committee of UN World Conference on Human Rights in Vienna.

If we need to benefit all people without any discrimination from the preventive measures, it would be job half-done if we ignore the people of Jammu and Kashmir. There is an urgent need that the Council recommends to the UN General Assembly and the Security Council of a need to revisit the UN mechanism put in place to resolve the Kashmir dispute and in between protect the fundamental rights of the people there.

The first and foremost step would be to audit the work outsourced to Jammu and Kashmir Government based at Srinagar in regard to setting up a representative provisional government under the supervision of the United Nations and to prepare for a free and fair referendum under the auspices of the United Nations. United Nations has to see the extent to which the Srinagar Government has made any genuine efforts in honouring the guidance and cautions made in the UN SC Resolution of 21 April 1948 and UN SC Resolution of 30 March 1951.

It is important to ascertain whether the Srinagar Government has lived up to its statement made at the 241st Meeting of the UN Security Council on 5 February by Sheikh Mohammad Abdullah, that, “There need be no fear, since the Indian Army is there, that this army will interfere in the exercise of a free vote. After all, a Commission of the Security Council will be there in order to watch. The Indian Army does not have to go into every village. It will be stationed at certain strategic points, so that in the event of danger from any border, the army will be there to protect that border. The army is there to curb disorders anywhere in the State; that is all. The army will not be in each and every village in order to watch each and every vote.”

It is equally important to examine the antecedents of the Srinagar Government and query it in regard to its statement made at the UN Security Council, that, “It is not at all disputed that we must have a plebiscite and that the accession must be ratified by the people of Kashmir, freely and without any pressure on this or that side. That much I conceded; there is no dispute about that. The dispute arises when it is suggested that, in order to have the free vote, the administration must be changed. To that suggestion we say, “No”. I do not know what course future events will take. However, I may assure the Security Council that, if I am asked to conduct the administration of this State, it will be my duty to make the administration absolutely impartial. It will be my duty to request my brothers, who are in a different camp at this time, to come to lend me support. After all, they are my own kith and kin”. UN SC Official Records Third Year Nos 16-23 241st - 260th meetings 5 February – 2 March 1948.

United Nations and its affiliate and sub-ordinate bodies failed to discharge their agreed duties beyond the supervision of cease fire line by UNMOGIP. It failed to encourage the Srinagar Government to set up the provisional representative Government and set up an administration for conducting a UN supervised Plebiscite, in consultation with the other two Governments at Muzaffarabad and Gilgit and the Government of Pakistan. United Nations on its part failed to ensure respect for the preventive measures for the promotion and protection of human rights described in the UN Resolution of 21 April 1948, by ascribing restraints on the number, behaviour and location of Indian security forces, provisionally admitted into Kashmir.

It is high time that the Council takes on board to recommend strict compliance of duties outsourced to the Kashmir Government at Srinagar and restraints placed on the Indian security forces, as a preventive measure to promote and protect human rights in Kashmir. JKCHR strongly urges upon the Council to make a recommendation to the UN Secretary General that he should use his good offices under article 99 of the UN Charter and “bring to the attention of the Security Council” the question of human rights situation in Kashmir, which is threatening the maintenance of international peace and security. Genuine interest of the UN Secretary General and UN High Commissioner for Human Rights in the promotion and protection of the human rights of the people of Kashmir should be incorporated in their annual reports for the General Assembly and the HR Council respectively.