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Human rights situations that require the Council's attention

Written statement* submitted by Community Human Rights and Advocacy Centre (CHRAC), 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.

[18 August 2020]

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

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The human rights violations in Indian Administered Kashmir are massive and systematic that require the Council's attention

Enactment of inhumane laws

The Government of India has enacted a series of obscure laws on Jammu and Kashmir which not only facilitates the human right violations but gives protection to Indian military against any case, suit or prosecution in any court of law. This process had drastically increased human right violations there. Under Jammu and Kashmir Public Safety Act, people are arbitrarily held in detention not on the grounds that they have committed any offence under law, but purely on the purported presumption that they may in future commit acts that are harmful to the maintenance of public order or to the security of the state. The period of detention is twelve months in the case of a person acting in any manner prejudicial to the maintenance of public order and two years in the case of a person acting in any manner prejudicial to the security of the State. Persons detained under the Public Safety Act were primarily kept in detention centers within the state of Indian Administered Kashmir. This restriction in section 10 was omitted by the Governor's Act No. 1 of 1990. As a result, persons detained under this Act, are now taken to any places of detention outside the state of Jammu and Kashmir where they usually face torture. The Government of India had deliberately amended this provision, with the object to deprive the detainees, the right to defend and to consult the lawyer of his choice. Moreover, the transfer of a detainee to jails outside the state also blocks the legal remedy to the poor detainees who could not afford to reach the jails of different states of India which are thousands of miles away and to engage the lawyer of their choice. It is very expensive, time consuming and impossible for old family members and relatives. It takes months together to locate a detainee. Moreover, it is by no means certain that they will be able to see their detained person after reaching such jails. The jail authority usually denies the presence of the detainee, when relatives or family members make such requests. Sometimes the jail authorities also give false information regarding the detention centre where the particular detainee stands lodged.

Under the Armed Forces Special Powers (Jammu and Kashmir) Act, amongst other things, the Act authorizes armed forces of India to "fire upon or otherwise use force, even to the cause of death against any person" without fire orders. This has effectively revoked non-derogable protection against deprivation of life. The International Covenant on Civil and Political Rights (ICCPR) expressly prohibits derogation from the right to life under any circumstances. Thus even during times of emergency or war no one shall be deprived of his life. Confessional statement before a police officer has been declared a valid confession. It has given rise to torture practices in Indian jails.

Human rights defenders face reprisal by Indian Government for cooperating with United Nations (UN) procedures. Human rights defenders are labeled as insurgents and facilitators of anti-national elements. This is an attempt to discredit their work and justify their targeting.

The Indian government scrapped a 70-year-old law of the Indian Constitution on 5 August last year, Article 370, which guaranteed the region autonomy in its internal affairs. The government also struck down another crucial legal protection, Article 35A, which forbade Indians from becoming domiciled in Indian Administered Kashmir and barred them from settling in the region. The Indian authorities imposed severe restrictions on people's movement – ailing medical patients and school going children included and blocked communication completely in Indian administered Kashmir, halting cell phone and internet service.

Twelve months after Article 370 was scrapped, Kashmir is still under an "undeclared state of emergency". Restrictions remain in place, particularly on high-speed internet access. This means Kashmiris can only access the internet through obsolete 2G technology. It takes time to open websites and play videos, including on social media. People cannot get updates on Covid-19 pandemic. Doctors, according to the news media, are not able to deal with the coronavirus due to non-availability of 4G internet and lack of significant information

available online. In April - May 2020, the Supreme Court of India heard a batch of writ petitions challenging the ban on 4G internet services.

The policy is undemocratic and goes against the constitutional guarantee of freedom of expression. This new policy was intended to justify cases filed under anti-terror and other laws and keep up pressure on journalists by frequently questioning them. These rules did not exist in any Indian state. Filing cases against and summoning journalists to police stations is to harass the journalists and hinder their work of journalism. The purported aim of such a policy is to eliminate any media house that refuses to toe the government line. 26-year-old photojournalist Masrat Zehra faced charges under the anti-terror law, the Unlawful Activities Prevention Act (UAPA), 1967, on 18 April for posts on social media which the Government declares “anti-national”. She posted photos and comments of her work in April, it scared many in the media in Kashmir.

On 21 April, the Indian police filed first information reports against journalist and author Gowhar Geelani for indulging in activities that was declared by State as unlawful and “glorifying terrorism in Kashmir” through social media posts. The Hindu’s Kashmir correspondent Peerzada Ashiq was also involved in publishing news regarding atrocities by forces.

Extrajudicial killings of Kashmiris and staged encounters by Indian forces in Indian administered Jammu and Kashmir have become the order of the day. These crimes are being perpetrated with complete impunity, under the cover of draconian laws. During Covid-19 pandemic, the armed forces razed nearly two dozen houses at Nawakadal in the heart of Srinagar in an operation, leaving the families homeless in the middle of the pandemic.

In Indian administered Jammu and Kashmir, Kashmiri detainees have been lodged in overcrowded prisons with lack of sanitation and health care. The Central Jail there has become COVID-19 epicenter as 35 fresh cases were reported in Srinagar Central Jail. The life of Kashmiri detainees are at very high risk as there is neither social distancing or medicine or mask given to detainees.

Following the abrogation of Article 370, the government of India carried out a massive crackdown on people in the urban and rural areas of Kashmir. Many were tortured heavily – subjected to waterboarding and electric shocks to their genitals by the Indian army. This has happened frequently in areas of South Kashmir such as Shopian, Pulwama and Kulgam, to discourage people from speaking out against the Government’s action and the human right abuses. In the capital city of Srinagar, which has a population of around 1.2 million people, the police illegally detained more than 500 children under the age of 18. A large number of these children have been tortured and abused inside the police stations. Amnesty International India released a report in October 2019 documenting what it referred to as “a clear pattern” of security personnel using excessive force and intimidation to minimize reporting of the situation.

The UN Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR), to which India is a state party has stated that in cases of human rights violations by security forces, investigations should be carried out by civilian authorities in order to ensure independence. This has also been affirmed by the UN Special Rapporteur on the independence of judges and lawyers. The Supreme Court of India has also criticized the military justice system and recommended reforms on a number of occasions. Military law experts in India have acknowledged inherent defects within the Indian military justice system, particularly its lack of independence.