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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.

[28 January 2020]

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

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## The crime of genocide & The Indian Administered Jammu and Kashmir Scenario

### Introduction

Genocide was first recognised as a crime under international law in 1946 by the United Nations General Assembly (A/RES/96-I ([https://undocs.org/en/A/RES/96\(I\)](https://undocs.org/en/A/RES/96(I)))). It was codified as an independent crime in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Convention).

The Convention has been ratified by 152 states (as of January 2020). The International Court of Justice (ICJ) has repeatedly stated that the Convention is peremptory international law (*ius cogens*) and that it embodies principles that are part of customary international law. This means that whether or not States have ratified the Convention, they are all bound as a matter of law by the norm of *jus cogens* that genocide is a crime prohibited under international law.

Article II of the Convention defines the crime of Genocide - *acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group*, bracketing it into five categories.

Pursuant to doctrinal debate and jurisprudence, 'intent' is the crucial element that must be established. To constitute genocide, there must be a proven intent on the part of perpetrators to physically destroy a national, ethnical, racial or religious group, in whole or in part. It is the special intent, or *dolus specialis*, that makes the crime of genocide so unique. In addition, case law has associated intent with the existence of a governmental or organizational plan policy to embark on genocide.

Importantly, the victims of genocide are deliberately targeted – not randomly – because of their real or perceived membership of one of the four groups protected under the Convention.

### The Jammu & Kashmir Scenario

Kashmiris, in the state of Jammu & Kashmir (J&K), administrated India, is a distinct national/ethnic/religious group, in particular the Kashmiri Muslims, as being recognised in the UN Report 2019.<sup>1</sup> Pursuant to the definition of the Convention, Kashmiris are subjected to genocide by the perpetrators who have perceived the victims as members of the Kashmiri group, with the intent to destroy, in whole or in part, by committing such genocide crimes as described in Article II of the Convention.

#### **Killing members of the group – Extra-judicial killings, summary or arbitrary executions!**

International human rights groups have accused Indian armed forces (military, para-military and J&K police force) of using excessive force that leads to unlawful killings.<sup>2</sup> Hundreds of thousands of Kashmiris have been killed during the period 1990-2019. In recent years, the civil society groups estimate that 130 to 145 Kashmiris were killed by the Indian forces between July 2016 to March 2018.<sup>3</sup> These killings resulted from the use of pellet guns, bullets, tear gas shells, inhaling chemical shell fumes and shooting by unidentified gunmen.<sup>4</sup> Amnesty International, Human Rights Watch and the International Commission of Jurists all

<sup>1</sup> UN Report of 8 July 2019 – "Targeting of Kashmiri Muslims", Page 29  
[https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport\\_8July2019.pdf](https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf)

<sup>2</sup> UN Report of 14 June 2018, paragraph 63, Page 17  
<https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

<sup>3</sup> JKCC – "Human Rights Review 2016", Page 5 – JKCC – "Human Rights Review 2017," Page 7

<sup>4</sup> UN Report 14 June 2018, paragraph 65, Page 17  
<https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

claim that there were over 90 fatalities of Kashmiris in 2016.<sup>5</sup> During 2018, it is claimed that 160 Kashmiris were killed, the Kashmir valley accounted for 122 and the four districts of South Kashmir recorded 85 killings.<sup>6</sup> The first half of 2019 (January–June 2019) continued with killings of Kashmiris. The first six months record 163 Kashmiris killings (including what is termed as “*militants*”). Among the civilians killed, 9 were minors<sup>7</sup> and 12 were women.<sup>8</sup> All the killings were at the hands of Indian armed forces. The second half of 2019 (July–December) records 64 killings of Kashmiris.<sup>9</sup>

These figures (95,475 killings since January 1989 to December 2019)<sup>10</sup> corroborate the argument that there is a systematic pattern in place with intent to destroy in whole or in part the Kashmiris.

#### **Causing seriously bodily or mental harm to members of the group**

There has long been persistent claims seriously bodily harm of Kashmiris who have been subjected to torture or inhuman or degrading treatment or punishment. Such bodily injuries are caused from lethal weapons including pellet shotguns. Besides, injuries through torture and other mistreatment occur at the detention and interrogation centres operated by the Indian armed forces and the intelligence agencies.<sup>11</sup> Such injuries are caused by beatings, electric shocks, water boardings, sexual abuse and iron rollers run from toe to neck;<sup>12</sup> the International Committee for the Red Cross reported these injuries in 852 cases.<sup>13</sup>

One of the most dangerous weapons used against Kashmiris is the pellet-firing shotgun, which is a 12-gauge pump-action shotgun that fires metal pellets. According to information received by the State Human Rights Commission from 10 districts of the Kashmir Valley, metal pellets seriously injured 1,726 Kashmiris in 2016.<sup>14</sup> The Government of India has introduced the policy of “*operation all out*” that has been on-going since 2017. This operation has led to severe injuries including 1253 Kashmiris blinded by the metal pellets up to the end of 2018.<sup>15</sup> One such example being 1 April 2018, the use of pellet shotguns reportedly injured 40 Kashmiris including 35 hits in the eyes.<sup>16</sup>

This is the planned policy of India executed through their armed forces and intelligence agencies directing the perpetrators to embark on the crime of genocide on Kashmiris.

#### **Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part**

Clearly the above incidents evidence such conditions of life upon Kashmiris to bring about their physical destruction. Besides, there are random arbitrary arrests and detentions of Kashmiris (including children) under the draconian law known as the Public Safety Act<sup>17</sup> (PSA). Human rights groups have warned the authorities that minors are being arrested under

<sup>5</sup> Human Rights Watch, International Commission Jurists and Amnesty International – “Cease wrongful Detention in Jammu & Kashmir”

<sup>6</sup> UN Report of 8 July 2019, Paragraph 61 and 63, Page 13  
[https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport\\_8July2019.pdf](https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf)

<sup>7</sup> JKCC – “Six Monthly HR Review”, Page 2

<sup>8</sup> KMS – “January-June 2019 calendar reports” <http://kmsnews.org/news/>

<sup>9</sup> KMS – “July-December 2019 calendar reports” <http://kmsnews.org/news/>

<sup>10</sup> KMS – HR Violations January 1989 to 31 December 2019 <http://kmsnews.org/news/>

<sup>11</sup> ICHR – “Kashmir Report 2012 – Human Rights in Flames”, Page 57

<sup>12</sup> ICHR – “Kashmir Report 2012 – Human Rights in Flames”, Page 58

<sup>13</sup> ICHR – “Kashmir Report 2012 – Human Rights in Flames”, Page 58

<sup>14</sup> UN Report of 14 June 2018, Paragraph 80, Page 22  
<https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

<sup>15</sup> UN Report of 8 July 2019, Paragraph 78, Page 16  
[https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport\\_8July2019.pdf](https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf)

<sup>16</sup> UN Report of 14 June 2018, Paragraph 85, Page 24  
<https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

<sup>17</sup> UN Report of 14 June 2018, Paragraph 88, Page 25  
<https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

the PSA in 2016 & 2017.<sup>18</sup> Several Kashmiri leaders detained under the PSA in 2018 and 2019 continue to be imprisoned and 40 of them transferred to prisons outside Jammu & Kashmir.<sup>19</sup> The aim is the physical destruction of the Kashmiris.

Civil society in Kashmir claims over 8,000 Kashmiris having disappeared since 1989.<sup>20</sup> Impunity for enforced or involuntary disappearances in Kashmir continues. On 24 October 2017, State Human Rights Commission directed the government to undertake investigation into 2080 unnamed graves in Poonch and Rajouri of the Jammu division.<sup>21</sup> Cases of enforced disappearances continue to be reported until the end of 2019.

In February 2018, The Support Group for Justice for Kunan Poshpora survivors filed a petition before the State Human Rights Commission, urging the investigation into all cases of alleged sexual assault by Indian armed forces upon Kashmiri women.<sup>22</sup> This vicious act is undertaken to ensure physical destruction of Kashmiri women.

A media investigation claimed that schools and colleges were closed for 60% of the working days between 2016 and 2017.<sup>23</sup> The situation in 2018 and in 2019 was such that practically no schools & colleges were open since the abrogation of the Indian Constitutional guarantee to J&K. In addition, the government reports confirm the military use of schools by the Indian armed forces.<sup>24</sup> All this endangers lives of children and teachers which is in line with deliberately inflicting on Kashmiris conditions of life calculated to bring about its physical destruction in whole or in part.

#### **Imposing measure intended to prevent births within the group!**

Human rights groups claim days-long curfews and communication blockade have major impact on Kashmiris and their access to medical care<sup>25</sup> particularly on pregnant women. According to civil society reports around 200 ambulances were damaged by Indian armed forces and in some cases by protestors.<sup>26</sup> The Doctors Association of Kashmir documented several instances of doctors, paramedics and ambulances drivers being obstructed, prevented and physically assaulted by Indian armed forces.<sup>27</sup>

All these measures are underway in Indian administrated Jammu & Kashmir to prevent births within Kashmiris.

#### **To punish the crime of genocide – punishing *Genocidaires!***

Article I of the Convention makes it absolutely clear – “...undertake to prevent and to punish” genocide. Of course genocidaires (perpetrators of the crime of genocide) must be punished before a court of law. The genocidaires need to be identified. An international peoples tribunal has produced a list of around 500 alleged perpetrators, belonging to Indian

<sup>18</sup> Human Rights Watch, International Commission of Jurists and Amnesty International – “Cease Wrongful Detention in Jammu & Kashmir”

<sup>19</sup> UN Report of 8 July 2019, Paragraphs 84 and 85, Page 18

[https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport\\_8July2019.pdf](https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf)

<sup>20</sup> JKCC – “Human Rights Review 2016”, Page 5

<sup>21</sup> Press Trust of India, 4 November 2017 – “Complete DNA profiling of bodies in unmarked graves: SHRC”

<sup>22</sup> UN Report of 14 June 2018, Paragraph 126, Page 35

<https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

<sup>23</sup> India spend, 30 May 2017 – “Since July 2016, Kashmir Schools and Colleges have been shut on 60% working days”

<sup>24</sup> UN Report of 14 June 2018, Paragraph 126, Page 35

<sup>25</sup> Physician for Human Rights – “Blind to Justice”, Page 13, Amnesty International – “Losing Sight in Kashmir”

<sup>26</sup> JKCC – “Human Rights Review 2016” Page 16

<sup>27</sup> UN Report of 14 June 2018, Paragraph 104, Page 29

<https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

armed forces - including Rastriya Rifles, Border Security Force and Centre Reserve Police Force and J&K Police Force.<sup>28</sup>

### **Conclusion**

IHRAAM addresses the international community and calls for an international commission of inquiry on the killings perpetrated against the Kashmiris of J&K. IHRAAM also calls for the prosecution under the Convention and under universal jurisdiction of the alleged perpetrators of the crime of genocide in the Indian administrated J&K, who have acted or act at the behest India. The Chief Prosecutor of the International Criminal Court Fatou Bensouda should open a formal investigation under articles 6 and 7 of the Statute of Rome.

In addition to the duty to punish, the Convention stipulates one other major obligation for all its member States – The “*duty to prevent genocide*”; and “*the responsibility to protect*”; IHRAAM calls upon the United Nations General Assembly, the Human Rights Council and the Office of the High Commissioner for Human Rights to prevent genocide of Kashmiris.

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<sup>28</sup> International Peoples Tribunal For Human Rights and Justice/Association of Parents of Disappeared Persons – “Alleged PERPETRATORS – Stories of Impunity in Jammu and Kashmir”; Pages 218 to 226

