



# General Assembly

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## Human Rights Council

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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by the Himalayan Research and Cultural Foundation, 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 2012]

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

## **Democracy and human rights in Jammu and Kashmir**

It is universally recognized that democracy provides the avenues to realize the goal of realizing the human rights. Proper functioning of democratic institutions enables the ordinary citizens to exercise their human rights of participation in the governance. It equally empowers them to monitor the enforcement of their human rights in a holistic manner. The claims of the states to democracy which determine the actual state of affairs, are to be quantified by providing concrete evidences to support the claim.

The following appraisal provides the status of the functioning of democracy and human rights in the state of Jammu & Kashmir.

The Jammu and Kashmir (J&K) state government has completed three years in the office and has entered its fourth year. The life of J&K state assembly, unlike the other states of India, is six years. During the last one decade the political landscape of the state has undergone a perceptible transformation which is in tune with the national phenomenon of coalition governments. The coalition era in J&K was introduced in the year 2002 when the assembly elections threw up a new regional political party, Peoples Democratic Party (PDP), which formed the coalition government in alliance with the All India Congress Party. This election projected the yearning of common people to move away from the political and electoral dominance of the traditional political party of the state, National Conference. The 2008 state assembly elections again produced a truncated mandate resulting in the formation of a coalition government in J&K state. This time the coalition partners are the National Conference (28 members) and All India Congress Party (17 members). PDP which won 21 seats followed by Bhartiya Janata Party (11 seats), Panthers Party (3 seats) and others are in the opposition. The special feature of this election was an increase in the voter participation which rose by 17 percent. According to observers this increase took place “despite calls from Kashmiri separatists and Pakistan to boycott the elections”. The turn out in the election ranged between 52 to 69.02 percent and the total percentage remained 60.5 percent of the electorate. The composition of the state assembly provides a representative portrayal of diverse regions of the state in terms of regional, cultural and linguistic diversity.

The coalition politics in the state galvanized the common people and enhanced their urge for greater political participation. Highest point of urge for political participation was witnessed in the Panchayati (rural local bodies) Raj elections during the year 2011. These elections may be described as a watershed in the electoral history of J&K state. That the percentage of participation was something between 80 to 90 percent provided an amazing spectacle for political analysts and even the administrators. This huge public participation stunned the separatist elements and militant outfits like Lashkar-e-Tayyeba (LeT) and Hizbul Mujahideen, which had warned the people not to take part in the panchayat elections. The other surprise of these elections was a large number of educated people, some holding post graduate degrees in Business Administration, Literature and Humanities who contested for the posts of Panchs and Sarpanchas in the rural local bodies. A fairly large number of women contested and won the elections. These local bodies which had remained dormant and immobilized for over three decades, have been empowered by the state government with powers of several departments. But the militants continue to threaten and disrupt the process of peace and development. Recently a terror outfit Al-Qaida Mujahideen issued posters in south Kashmir’s Shopian district criticizing Panchayat Raj institution as un-Islamic and asking all sarpanch and panchayat members to resign within a week and to make their resignations public through newspapers (Times of India 13 August 2012, p.10). Consequently over 20 sarpanch and panches of the area are reported to have resigned.

In order to reinforce transparency, accountability and efficiency in governance the J&K Right to Information Act was passed in the year 2009. This Act is gradually being recognized as a new and assertive institution to bring about transparency and accountability in the state in general and Kashmir in particular. The institution of Right to Information (RTI) has empowered the young and educated activists in monitoring the developmental projects being carried out by the government and identifying the flaws and deficiencies in these activities. The young activists have described the RTI as “the way to healing”. According to them “The RTI has given us hope. Its influence has begun to permeate daily life in J&K.” The optimism goes further as they perceive that “this revolution represents a peaceful alternative to the culture of violence and protests so often identified with Kashmir.” (Times of India 24 August 2010). The J&K RTI Act is in line with the Central RTI Act, 2005 which includes provisions supporting the use of RTI with respect to alleged human rights violations. The activists have started taking recourse to these provisions which has further enhanced the confidence of the people in the institution.

The J&K Human Rights Commission which was established under the J&K Protection of Human Rights Act, 1997 has been asserting its authority in addressing the issues of human rights violations in the state. The Commission has taken up the alleged human rights violation cases which are more than decade long and which the human rights groups have been raising from time to time. According to the Commission reports it received 5,699 complaints since 1997 until 2011 out of which 4,578 cases have been disposed off up to August 2011. (The Milli Gazette 16-29 February 2012).

The UN Council on Human Rights Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns who visited Kashmir in March 2012 met with NGOs and Human Rights activists there. While asking India to repeal the Armed Forces (Special Powers) Act, he acknowledged that (in India) deadly violence had been used by Maoists, insurgents and terrorists. He said that the state has a right to defend itself against such aggression, provided it abides by the international standards. (The Hindu 31 March 2012)

Earlier the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya visited India from 10-21 January 2011 to assess the current situation of human rights defenders in India. The Special Rapporteur, during her visit to India, met with senior officials at the central and states levels and human rights defenders. She travelled to different states including Jammu and Kashmir

(Srinagar and Jammu). According to her report (UN Document A/HRC/19/55/Add.1), the Special Rapporteur noted with satisfaction the comprehensive and progressive legal framework that guarantees human rights and fundamental freedoms in India. However, she stated that the challenges faced by human rights defenders laid mainly in the under implementation of a number of the aforementioned legal instruments, at both central and State levels.

The revival of democratic institutions in the state has provided opportunities toward the democratic participation and protection of human rights. The militant violence had an adverse impact on the democratic and social institutions in the state. Ironically, the violations of human rights at the hands of armed groups have not been documented. The then UN Commission on Human Rights and the then sub-Commission on Human Rights took the initiative of commissioning studies on ‘ Human Rights and Terrorism’ which included the mandate to provide some normative basis to deal with the violations of human rights at the hands of ‘non-state actors’. However, the initiatives did not go beyond some academic reports which have now been consigned to the archives of the Council. The Special Rapporteur on Human Rights defenders, Ms. Sekaggya has underlined in her report that some instances of serious human rights abuses by armed groups against human Rights defenders were reported. The impunity for such violations was reported as a chronic problem. The Special Rapporteur has mentioned some cases of serious human rights

violations in J&K state which according to her were brought to her notice. It may also be mentioned here that some exaggerations have been documented in her report. For instance, a ban on student activism in Kashmir has been mentioned. The report mentions that the students were not allowed to protest a hike in the fee. The Special Rapporteur seems to be unaware that education from the primary up to university level in the J&K state is free and no fee is charged from the students. However, the students have to meet the expenses for their hostels etc. which still is subsidized by the state.

In conclusion, it may be mentioned that post- 1990, especially after the Vienna Conference in 1993 in which a new thrust was brought on the protection of human rights, the new phenomenon of sponsored insurgencies and terrorism was unleashed in different parts of the world. This phenomenon, with its own dynamics of international relations and diplomatic objectives played havoc with the human rights. The new challenges to democracy and democratic functioning are emanating from extremist armed groups who thrive in chaos and instability which need to be addressed by the international community.

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