



## ASIAN-EURASIAN HUMAN RIGHTS FORUM

( Regd. No S. 38641 of 25 January 2001, (Affiliated to African Commission for Health and Human Rights Promoters, NGO with UN ECOSOC status)

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Dr. K.N. Pandita  
General Secretary

**New Delhi, March 11, 2008**

Madam Meena Sur  
Program Officer  
NGO Section/DESA

Subject: AEHRF Application for ECOSOC

Reference: Your office letters of January 29, 2007 and March 03, 2008

Dear Madam,

Kindly refer to your letters cited above. I have been authorized by my NGO (Asian-Eurasian-Human Rights Forum) to submit our reply to three fresh questions put to us by the NGO Committee while discussing our application in its January 2008 session. Our answer to the questions is as follows:

Answer to Question NO. 1:

With regard to Honorable Committee desiring us to elaborate further on human rights aspects of Kashmir issue, we submit that our organization monitors from time to time reports of national and international media in this context just as we do in other cases as well. We document and also refer to the views and perceptions of various human rights organizations and

activists with fair credibility when they reflect on human rights situation in a region under study including that of Jammu and Kashmir. For example, recently on March 7, 2008, Madam Asma Jehangir, the United Nations Rapporteur on Freedom of Religion and Faith, who is also Pakistan National Human Rights Commission Chairperson, was on an official visit to Srinagar --- the capital of the part of Jammu and Kashmir State with India. There she met with the leaders and representatives of a number of political parties/groups/organizations including especially the dissidents, for free exchange of views. We noted from local press clippings that in reply to a reporter's question, she said that "participation in elections was a fundamental democratic right of every individual. Preventing people from participating in elections --- which is known as anti-election campaign among the separatist circles in Kashmir --- was, according to her, a violation of human rights." <sup>1</sup> As human rights promoters, we naturally feel interested in observing how the democratic process of giving the people a representative government proceeds in the region.

Likewise, we have also taken note of press reports describing some dissident leaders of Kashmir valley presenting to her their story of human rights violations committed by the security forces. Not only that, we have also taken into account the action taken and punishment pronounced recently by competent institutions/authorities in the Indian part of the State of Jammu and Kashmir for human rights violators by the security personnel. However, owing to non-transparency syndrome we have not been able to obtain information on replication of this action in such segments of that society as are engaged in armed conflict.

As regards second part of Question No 1 --- relating to UN Resolution on self-determination --- the Honorable Committee could have made our job easier if it had referred to any specific resolution lurking in its mind.

UN General Assembly Resolutions on the right of self-determination are essentially based on the UN Charter that reaffirms faith in fundamental human rights, in the dignity and the worth of human person, in the equal rights of men and women and of nations large and small.

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<sup>1</sup> *The Daily Excelsior*, Jammu, March 8, 2008 page 1. *Kashmir Times*, Jammu, 8 March 2008.

With this in mind, we find that the UN General Assembly has a history of adopting resolutions on self-determination from time to time. These are generally country or situation specific. For example General Assembly Resolution 3485 of 12 Dec 1975 on self-determination is specific to East Timor; Resolution 48/49 of 10 December 1993 is Western Sahara specific; Resolution 1514 (XV) of 14 December 1960 pertains to granting independence to colonial countries and peoples, Resolution 3379 of 10 November 1975 is on Israel and Resolution 3236 on Palestine. The common denominator in these resolutions is General Assembly's strong recommendation that external actors should desist from obstructing civil societies in enjoying the fruits of the right of self-determination.

Nevertheless the absence of a resolution on a specific country or situation does not either dissolve or diminish the importance of a situation that does exist and cannot be underestimated

Scratching the roots of the jurisprudence of self-determination, we are led to a phenomenon that essentially deals with the liberation of colonized people from colonial rule.

The features of colonial rule and of the denial of the rights of colonized people are well established in the law books of the United Nations and its subsidiaries besides the International Court of Law. Therefore the subject falls outside the ambit of our present discourse. Suffice to say that when a people have secured and exercised the right of electing their representatives through free and fair elections to constitute a legitimate government, their status changes from colonized to sovereign people and their right to self-determination stands vindicated.

The issue of self-determination is often seen by experts as a controversial one; it has generated important academic debates at the UN. NGOs like ours that stumble on the subject while pursuing their official assignments want to wriggle out of confusion generated by conflicting views on the subject of self-determination. Since the Committee has desired us "to elaborate further" on the subject, our NGO cannot but reproduce an excerpt from a relevant UN General Assembly's Declaration on the occasion of the Fiftieth Anniversary of the UN: (GA Res. 50/C of November 1995). It says:

“While the right to self-determination is embodied in several treaties and is held to form part of customary international law, it is difficult to deduce practical applications of the theory not only in itself but weighed against other principles such as the territorial integrity of sovereign states. This prevents self-determination being considered as a right to authorize or encourage any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principles of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory”.

Answer to Q. 2:

In our reply we did not say “line of control”. What we have exactly said and can be verified from the document is as this: “ Sensing great risk to the right to life, many of the affected religious minority **groups on either side of the line** were circumstantially forced to leave their native places ....” We were speaking in the context of the situation that arose in the sub-continent in the aftermath of partition in August 1947. Partition of the sub-continent meant creation of two dominions. Obviously a line on the ground divided their physical geography when they became independent and sovereign states. The “line” in our reply actually refers to the line drawn on the basis of Radcliff Award that demarcated the new boundary between the two states in 1947. We have not used the word “control” at all in the text of our reply.

Q 3:

We don't think with the Committee that we have “often referred to our programs in Kashmir”. It is the Honorable Committee which brought in the Kashmir issue while discussing our application in some of its previous sessions and tried to link us to a political/territorial dispute, a subject that falls outside the ambit of our NGO's Statutes... We are not Kashmir centric and we don't like to get involved in political scramble. There are other regions in Eurasia and Central Asia as well where civil society is interested in providing space to NGOs including ours for creative and collaborative work.

However, in one of our submissions to the Honorable Committee made by way of answer to one of its questions, we did refer to the humanitarian aid

and assistance we were able to provide to the earthquake stricken victims of the border area of Poonch in Jammu region two years or more ago. We wanted to help the sufferers. Our volunteers collected blankets and woolen from donors and distributed these among the needy as some other NGOs also too did.

We hope this will satisfy the Honorable Committee. We also hope that the May 2008 session of the Committee, which will hear our case for the 19<sup>th</sup> time in a row, will close this nine year old dissection exercise and let the UN inch forward in its vision of registering support from institutions of civil society.

K.N. Pandita  
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Asian-Eurasian Human Rights Forum