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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.

[18 February 2009]

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

Human rights and arbitrary deprivation of nationality

JKCHR appreciates Resolution 7/10, of the Council which urges the appropriate mechanisms of the Council and the appropriate United Nations treaty bodies and encourages the Office of the United Nations High Commissioner for Refugees to continue to collect information on the issue of human rights and arbitrary deprivation of nationality from all relevant sources and to take account of such information, together with any recommendations thereon, in their reports and activities conducted within their respective mandates.

The resolution embeds a special hope for those people whose rights including the question of nationality suffer from the flawed or discriminatory administrative behaviour of members nations of UN. One such people, who are continually subjected to a flawed and discriminatory administrative treatment in respect of rights including the question of nationality are the people of the State of Jammu and Kashmir.

These people are currently distributed and forced to live under an administrative control of five Governments (Indian, Pakistani and three Kashmiri governments), restraints of five constitutions (Indian, Pakistani, two Kashmiri and one Agreement), repression of two armies and repressive surveillance of a frightening network of intelligence agencies. A large number of these people are settled in various parts of the world as a strong Diaspora and a significant flow continues to avoid persecution and seek asylum in various member nations of the UN. In many instances the phenomenon of persecution and their identity has been used as a means of human trafficking of other people by criminal elements.

Dr. Frank Graham, the UNCIP's representative on Kashmir in his address to the UN Security Council in January 1952 described these people "...They are a people of legend, song and story, associated with snow-capped mountains, beautiful valleys and life-giving waters. The valleys are set like gems in the midst of mountains which surround the land and the people and which look down upon them from untold ages of history and from the highest majesty of this earth. These people, Moslems, Hindus, Sikhs and Christians, as farmers, craftsmen and artists, small shopkeepers, boatmen, bearers and other workers in areas now on both sides of the cease fire line have, through centuries, been victims of exploitations and conflict. The recognition of the rights and dignity, the security and self-determination of these historic people under the auspices of the United Nations, might well become a challenging example of the progressive values of self-determination to the dependent peoples of the earth. The people of Jammu and Kashmir through a free and impartial plebiscite would signal through the darkness of these times a ray of hope that not by bullets but by ballots, not through conflict of armies but through co-operation of peoples, is the enduring way of people to determine their destiny and way of life".

These disputed and distributed people are recognised by the Constitution of Pakistan under article 257. This shall take effect after the holding of a free and fair plebiscite in Kashmir. Until that they shall be recognised as State Subjects. Their recognition in India is envisaged in the jurisprudence of the provisional Instrument of Accession and is explained in the Indian statement made at the UN Security Council on 15 January 1948. Here too they shall continue to be recognised as State Subjects.

The legal status of these people distributed in the three administrations on either side of cease fire line or living as a strong Diaspora outside in various countries or pending a decision on their

asylum claims outside India and Pakistan dates back to 20 April 1927. This law differentiates the people of Kashmir from an Indian or a Pakistani citizen. At the same time this law has continued to barricade out a non Kashmiri, in particular an Indian or a Pakistani citizen, from acquiring a citizenship of Kashmir. It is a just and fair stipulation and cancels out any scope of abuse of vote by a non Kashmiri at the time of a UN supervised Plebiscite.

However, during the past 19 years the law is being abused and non Kashmiris have been encouraged to settle down in the three administrations of Kashmir. The abuse of this State Subject Law is on an increase in Gilgit and Baltistan, currently administered by the Government of Pakistan. At the same time the Government of Azad Kashmir under the administrative influence of the Government of Pakistan, is refusing to recognise and register the displaced and refugees as State Subjects, which sets out the national status of a Kashmiri.

It is important that due cognizance is taken in regard to over 2 million refugees living in Azad Kashmir and various parts of Pakistan, whether they have been duly recognised as State Subjects or not. This Council needs to address the situation of a vast majority of Kashmiris displaced and made refugees after 1990 who are unlawfully refused registration and issuance of an identity card by the Azad Kashmir Government which is currently being supervised by the Government of Pakistan 'in the discharge of its responsibilities under UNCIP resolution'.

The issue of human rights and arbitrary deprivation of nationality in respect of those citizens of the disputed State of Jammu and Kashmir who for fear of persecution on the basis of their "expressed political opinion" remain subjects of pending asylum applications in various member nations of the United Nations needs a special attention under the Resolution 7/10, of the Council. There is an urgent need to make the issue of human rights and arbitrary deprivation of nationality of these people subject of a special and enduring consideration of the Council.

Human Rights Council has to ensure that an independent and credible institution of the administration of justice to determine the issue of human rights and arbitrary deprivation of nationality of people living as a distributed people under the three administrations of Jammu and Kashmir, including a constant flow of refugees, remain in place and are fully encouraged, to complement the spirit of Resolution 7/10. The constituency of benefit of this resolution should encompass the disputed people of Kashmir, identified under UNCIP resolutions, and others living as a Diaspora easily identifiable under State Subject Law of 20 April 1927.

It would enhance the merits of the jurisprudence of Council Resolution 7/10, if adequate finances are floated by the UN bodies and a due demand of a specific share is placed on the available financial resources of the three Kashmiri Governments at Srinagar, Muzaffarabad, Gilgit and the two sovereign Governments at Delhi and Islamabad as a reparation for those families whose members have either fled the habitat for fear of persecution, or are refused registration, have no national status and who remain currently subjects of a political asylum consideration in a foreign country. The five generations of displaced people and refugees need to be brought within the brackets of Council Resolution 7/10 and their life as a process and as a quality needs to be thoroughly examined.

Council Resolution 7/10 should be used to seek full reparation and satisfactory compensation for families and individuals who have been denied recognition and have suffered for want of a national status in any part of Jammu and Kashmir. UN member nations have accrued a direct

liability towards the people who are continually subjected to a flawed and discriminatory administrative treatment in respect of rights including the question of nationality in the State of Jammu and Kashmir.
