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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 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.

[13 February 2011]

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

United Nations Secretary General Ban Ki-moon during his Cyril Foster Lecture at Oxford United Kingdom on 2 February 2011 on "Human Protection and the 21st Century United Nations" expounded a vision that "The founders of the United Nations understood that sovereignty confers responsibility, a responsibility to ensure protection of human beings from want, from war, and from repression," and "When that responsibility is not discharged, the international community is morally obliged to consider its duty to act in the service of human protection."

In regard to protests in Egypt he pointed out that the protests reflect the great frustration of the Egyptian people about the lack of change over the past few decades. This discontent calls for bold reforms, not repression. He said that the United Nations has been warning about the democracy deficit and other challenges in the Arab world through successive Human Development Reports dating back to 2002. The world is delighted to note that the instrument of non-violence and moral force of the people of Egypt have bent the arc of history towards justice.

Mr. Ban has made the "responsibility to protect" a hallmark of his tenure, most recently telling a seminar on genocide prevention in December that prevention is a global responsibility – when States fail to protect their populations, the international community must act. Secretary General said at the Cyril Foster Lecture that "My doctrine envisages that our efforts to prevent these awful crimes rest on three pillars: first, state responsibility; second, international responsibility to help states to succeed; and third, timely and decisive response should national authorities manifestly fail to protect, including under Chapter VII, if the Security Council deems such steps necessary."

In the same manner two sovereign States India and Pakistan and the member nations of United Nations have taken upon a trust obligation in regard to the fundamental rights, habitat and people of Kashmir, in particular right of self-determination of the people of the State of Jammu and Kashmir. United Nations has a mechanism on ascertaining the free will of the people under a mechanism structured by the United Nations. A non-implementation of the agreed mechanism in all the three parts of the State namely Jammu and Kashmir, Azad Jammu and Kashmir and Gilgit and Baltistan has continued to distribute the people and territory, defined in article 4 of the Jammu and Kashmir Constitution.

India has committed itself at the UN Security Council in regard to its obligations to the people of Kashmir in the manner that "The question of the future status of Kashmir vis-à-vis her neighbours and the world at large and a further question, namely, whether she should withdraw from her accession to India, and either accede to Pakistan or remain independent, with a right to claim admission as a member of the United Nations – all this we have recognised to be a matter for unfettered decision by the people of Kashmir, after normal life is restored to them".

Pakistan has committed itself under UN resolutions to a mechanism and has further committed in Azad Jammu and Kashmir Interim Constitution Act 1974 in the manner that "Whereas the future status of the Jammu and Kashmir is yet to be determined in accordance with the freely expressed will of the people of the State through the democratic method of free and fair plebiscite under the auspices of the United Nations as envisaged in the UNCIP Resolutions adopted from time to time" and "Whereas it is necessary to provide for the better Government and administration of Azad Jammu and Kashmir until such time as the status of Jammu and Kashmir is determined as aforesaid and for that purpose to repeal and re-enact the Azad Jammu and Kashmir Government Act 1970, with modifications" and "Whereas in the discharge of its responsibilities under the UNCIP Resolutions, the Government of Pakistan has approved the proposed repeal and re-enactment of the said Azad Jammu and Kashmir Government Act 1970 and authorised the President of Azad Jammu and Kashmir to introduce the present Bill in the Legislative Assembly of Azad Jammu and Kashmir for consideration and passage".

We note that the architects of militant struggle in Kashmir acted at variance to an established UN mechanism on Kashmir and caused the death of a generation. People have been through a massive violation of human rights from early 1990. In fact the numerical deficit in the population of Kashmir caused by the death of a generation has killed the right of self-determination. It is not realisable in the near future and has to be kept alive as a principle.

Pakistan on its part as member nation of UN and a sovereign country in control of two administrations of Kashmir at Muzaffarabad and at Gilgit failed to adhere to discharge its trust obligations envisaged in the Azad Jammu and Kashmir Interim Constitution Act 1974 in the 'discharge of its responsibilities under the UNCIP Resolutions'. The Act 1974 remains seriously undemocratic and alien to the people because it has been authored by Pakistan itself without any reference to the people and the President of Azad Jammu and Kashmir has acted as an anaesthetised person for the purposes of introducing the Bill in the Legislative Assembly of Azad Jammu and Kashmir for consideration and passage.

It is high time that in their protection the people of Jammu and Kashmir attract the benefit of the doctrine of UN Secretary General namely, first state responsibility; second, international responsibility to help states to succeed; and third, timely and decisive response. Under this doctrine one needs to examine whether the national authorities in India and Pakistan have manifestly failed to protect these people from an avoidable loss of life, violation of human rights, unemployment, poverty and disease. Chapter VII also assures this benefit of being protected.

Human Rights Council which is addressed through written statements and oral intervention of the sovereign states and NGOs on the life and habitat of the people of Kashmir has to revisit its wisdom and interest in the distributed, divided and controlled people and habitat of Kashmir on the merits of UN mechanism on Kashmir and the recent power of nonviolence and moral force of the Egyptian people which 'bent the arc of history towards justice' and the entire world was privileged to witness history taking place. People of all ages and all faiths in Egypt changed their country and in doing so they changed the world.

The architects of a militant struggle in Kashmir of all manner have served a severe blow to the cause of self-determination of 'all people' in Jammu and Kashmir. The civil society in Kashmir has been communalised and brutalised. Fear and use of violence have been used as instruments in seeking a compliance. The State and non-State actors share the burden of responsibility of the death of a generation. Use of gun and violence has in fact accrued a criminal liability for all parties involved in different manner in Kashmir.

The State and international community have both failed the people of Kashmir and as such there has not been any timely response to assist these people in the exercise of their non-violent means and moral force to bend the arc of history towards their just cause of being counted as equal people in the determination of their right of self-determination. The non interest of the UN and international community and making the mistake of letting the UN mechanism on Kashmir rest in the archives has caused a serious deficit in the 'spirit of unity' of Kashmiri people as one people. Unfortunately these people have been driven into a mistrust of each other and the five displacements since 1947 have given birth to hatred.

People of Kashmir suffer the disadvantages of being subjected to five governments (India, Pakistan, Jammu and Kashmir, Azad Jammu and Kashmir and Gilgit and Baltistan) and five constitutions. These people have not been able to benefit from the advantages of the de facto controls of five governments and five constitutions. Over the years Kashmiri youth seems to have suffered the worst of all manner. They have piled up as unemployed educated employable, unemployable educated, uneducated employable and unemployable uneducated.

JKCHR would urge upon the collective wisdom of Human Rights Council and the NGOs to revisit their interest in Kashmir in the light of the Mr. Ban's Cyril Foster Lecture that "we the peoples" matters every bit as much as the security of states. Human protection addresses more immediate threats to the survival of individuals and groups. The UN family should endeavour to see that the people of Kashmir benefit from major initiatives, from climate change to food security and from the activities of the World Health Organization to UNICEF.
