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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.

[23 August 2011]

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

Promotion and protection of human rights in the context of peaceful protests**

The Special Session of Human Rights Council held on 22 August 2011 at Palais des Nations in Geneva on "The situation of human rights in the Syrian Arab Republic" at the request sent by the delegation of the European Union and Poland is a significant move.

It has highlighted the role and duty of international community towards the Promotion and Protection of Human Rights in particular where people wish to use peaceful protest as a right to interfere in matters that impact their lives and lives of their future generations. Mr. Juan Méndez, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment spoke on behalf of the heads of various Council bodies and made a substantive statement that "If we are serious about combatting human rights violations, we should not turn a blind eye to these egregious acts. We believe that those bearing the highest responsibility for such violations should be referred to the highest instances to be prosecuted and judged."

Human Rights Council has the privilege of receiving written contributions from NGOs and listening to their oral statements as well. In this manner the Human Rights Council has been receiving representations from all geographies and communities of the world where Human Rights situations or any violation of a human rights or any noncompliance of UN Charter obligations remains a matter of concern. One such situation where the Human Rights Council has been receiving written statements, listening to oral statements and its chairpersons and other members have been receiving delegations has been the situation in Jammu and Kashmir. It is unfortunate that the Council after its early robust interest in the human rights situation in Kashmir gradually lost focus and the situation turned into a tit for tat between two or three polarised opinions expressed on the human rights situation in Kashmir.

Human Rights Council has failed to address itself in regard to the loss of life in Kashmir, in the course of a militant, political and later peaceful people's protests in 2008 and in 2010. People of Kashmir who remain a subject of UN mechanism for the peaceful resolution of their right to self-determination were encouraged to use a violent militant struggle in 1990. The decision was at variance with the UNCIP resolutions on Kashmir, which embeds a peaceful resolution through a Plebiscite under the auspices of the United Nations. Indian security forces who were bound to protect life, honour and property under a bilateral agreement reached with the Government of Kashmir and were subject to a restraint under UN resolutions on their number, behaviour and location, became engaged with the local militant (part sponsored) resistance movement and the conflict has resulted in the death of a generation since 1990.

Pakistan as a member nation of UN and party to the dispute has assumed control in one administration of Kashmir, namely Azad Jammu and Kashmir, to discharge its responsibilities under UNCIP resolutions. Pakistan did not agitate the peaceful resolution of Kashmir dispute at the UN from November 1965 to August 1996. Its political, diplomatic and moral support of the right of self-determination may have been a commendable contribution in regard to its Charter obligations but its support of any manner of the militancy in Kashmir has caused death, destruction and massive violations of human rights in Kashmir. It encouraged the Indian security forces to violate their obligations for the

** Muslim Women's Aid, an NGO without consultative status, also shares the views expressed in this statement

protection of life, honour and property and stand at variance to UN restraints on their number, behaviour and the location.

Human Rights Council needs to address the graduation of the Rights Movement in Kashmir from a peaceful and successful period between 1987-1947, 1947-1990 and its sudden shift to a militant movement in 1990, a shift which is at variance to UN mechanism on Kashmir and at war with the peaceful traditions of the people of Kashmir. A non interest or in some cases a lack of interest by the Human Rights Commission and the Human Rights Council in the ability of the people of Kashmir to promote and protect their rights through peaceful protests has encouraged many NGOs and others making representations to the Council to act as reflexes of the sovereign interests of Delhi or Islamabad. The polarisation has encouraged a commercial interest in the human rights situation of Kashmir.

There is a deliberate effort to create hypes around the question of violation of human rights in Kashmir. European Union, Commonwealth and OIC have all been making their respective concerns known on the subject. It is unfortunate that these forums have been manipulated by Pakistan through their operatives working around these institutions and the issue has not been addressed in accordance with its jurisprudence of UN mechanism on Kashmir but it has been done in a controlled manner to increment sovereign interests or to satisfy the domestic compulsions.

Human Rights Council needs to build on its resolve made at the special session convened to address "The situation of human rights in the Syrian Arab Republic" and reach out to other such people, as the people of Jammu and Kashmir, who have been through a difficult period of violence. These people have gradually started empowering themselves by taking part in their local elections to elect their representatives and take part in running the day to day affairs of their life, which constitute, the internal self-determination. These people need support and guidance to know that taking part in elections is also a basic human right and that the UN Resolutions have made it clear that no elections in any part of Kashmir would be a substitute for the manner in which the question of self-determination has to be decided under UNCIP resolutions.

Human Rights Council has to address the universality of character embedded in the rights situation in Kashmir and has to be extremely cautious while it addresses the opinions fashioned to advance the bilateral interests of India and Pakistan.

After a long period of enduring multiple violence the people of Kashmir have expressed their interest through local elections to seek empowerment denied to them for many years since 1990 or through the rigging of these elections over a period of time. This expression of a peaceful protest became more manifest in the peaceful protests of 2008, 2009 and 2010. Unfortunately there was a heavy loss of life in 2011. One hundred and twenty one youth were killed from 11 June 2010 to 15 Nov 2010.

Human Rights Council would be making a valuable contribution to the cause of human rights if after Syria it takes a robust interest in the new phase where the people of Kashmir have been using peaceful protests to highlight respect for their basic human rights and to highlight their desire to see the peaceful resolution of their right of self-determination in accordance with the UN mechanism on Kashmir.

The arrest of Dr. G. N Fai an American national of Kashmiri origin (State Subject) in USA (who has been a regular face at these sessions) on a criminal complaint comprising of 131 paragraphs and spread over 44 pages filed by a Special Agent, Federal Bureau of Investigation warrants that the Human Rights Council revisits its wisdom of receiving the written and oral statements from various NGOs on Kashmir.

There is an urgent need that Human Rights Council takes a pro-active interest in receiving these statements and Kashmiri delegations, ensuring that these are not a tit for tat on behalf

of any one or the other Government but a genuine concern expressed by these NGOs in the best interests of all the people of Kashmir and are meant to assist the Council on various variables embedded in the rights situation in Kashmir. JKCHR may not agree with the understanding of the rights regime and jurisprudence of self-determination in the manner advocated by Dr. G. N Fai at the various sessions of the Human Rights Council but we shall have to defend the basic rights of any State Subject, including him to the last letter.

JKCHR has continued to assist the UN mechanism from Vienna UN World Conference on Human Rights and has had the privilege to address the Plenary and Main Committee on behalf of Unrepresented Peoples and Nations. It has made significant contribution to 'Evaluation of the present state of the protection of women's rights' at the World Conference. This NGO has continued to contribute to Inter-Sessional Meetings at the UN in New York and to the UN human Rights system ever since January 1990.

We have remained on the side of the best interests of the people of Jammu and Kashmir distributed under three administrations on both sides of cease fire line. JKCHR Secretary General has been meeting the UNMOGIP chiefs during his visits to Kashmiri administrations on either side of the cease fire line. JKCHR is prepared to assist the Council in its urgently needed interest in the Promotion and Protection of Human Rights in the context of Peaceful Protests in any administration of Kashmir.
