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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, 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.

[10 February 2013]

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

Jammu and Kashmir*

The question of 'equal rights' and self-determination of the people of the State of Jammu and Kashmir, currently living under three administrations, namely Jammu and Kashmir, Azad Jammu and Kashmir and Gilgit and Baltistan, administered by India and Pakistan on either side of cease fire line is subject of UN Security Council agenda since January 1948. These people remain subject of a control of five governments and restraints of five constitutions.

The promotion and protection of all human rights, civil, political, economic, social and cultural rights in these three administered areas continues to remain a serious issue. At times it appears that the people have a process of life and are denied a quality of life. They have been turned into mere voter citizens and their right to act as vigilant citizens is either not encouraged or denied.

UN Security Council Resolution 91 (1951) of 30 March 1951 addressed to "All Jammu and Kashmir National Conference" points out an infirmity in the legislative capacity of the assembly elected from a part of the whole territory and affirms that the "final disposition of the State of Jammu and Kashmir ...in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations", the caution and affirmation also covers the assemblies of the two territories administered by the Government of Pakistan.

Pakistan as a party to the dispute and as a member nation of UN has been in the lead in its claim of providing a political, diplomatic and moral support to the right of self-determination of the people of Kashmir. In December 1994 it convinced the Islamic Summit in Morocco to resolve that, "the Member States, OIC, and the Islamic Institutions, such as the Islamic Solidarity Fund and philanthropists to mobilize funds and contribute generously towards providing humanitarian assistance to the Kashmiri people."

For the last 19 years 57 Islamic countries, OIC, Islamic Institutions and philanthropists have been contributing towards the humanitarian assistance of the people of Kashmir. Hurriyat leadership has been attending all OIC meets since December 1994 and should be well aware of the level of funds received so far and the manner in which these funds have been handled by the Government of Pakistan and shared with their accredited leadership in Kashmir and many other parts of the world.

The disposal of these contributions has not been transparent and equitable. It is extremely disturbing that boys and girls are travelling a long distance from Kashmir and beg on the streets in various parts of India. Economic deprivation in the valley due to conflict, social norms and dowry are causing serious delays in marriages and couples are forced to abandon new born babies in the hospitals in the Valley.

Government of Pakistan has turned itself over to United Nations to follow a conduct on matters related to the People and territory of Jammu and Kashmir currently under its administration. Article 257 of the Constitution of Islamic Republic of Pakistan states, "When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and that State shall be determined in accordance with the wishes of the people of that State". Pakistan has taken upon a Constitutional dictate on the future of the State, which is referenced in UN Security Council Resolution of 30 March 1951.

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

In its relations with the Azad Kashmir Government and territories administered by it, the Government of Pakistan has turned to the “discharge of its responsibilities under the UNCIP Resolution”. In theory it seems a due regard for its international commitments made at the UN and due regard for the free will and consent of the people administered by it.

However, in practice Pakistan has authored the Constitution for the people of Kashmir living in the territories administered by Pakistan and irritably has 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”. The participatory role and reference to the people of Kashmir is missing.

Government of Pakistan has reneged on its commitment made in article 257 of its Constitution by introducing a restraint on the Freedom of association in Azad Kashmir Interim Constitution Act 1974. In article 7.4.4.7 (2) it restrains the right stating, “No person or political party in Azad Jammu and Kashmir shall be permitted to propagate against, or take part in activities prejudicial or detrimental to, the ideology of State’s accession to Pakistan”.

The restraint is at war with article 257 of the Constitution of Pakistan, transfer of a free will in an election and a violation of the principle embodied in UN Resolution 47 (1948) of 21 April 1948, 51 (1948) of 3 June 1948 and 80 (1950) of 14 March 1950 and the United Nations Commission for India and Pakistan resolutions of 13 August 1948 and 5 January 1949, “that the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations”.

Government of Pakistan has cited UNCIP resolutions in support of its admittance and control in Azad Jammu and Kashmir. Unfortunately it is not in accordance with Part II Section A (3) of 13 August 1948 UNCIP resolution. Under the Constitution Act 1974, which instructs and directs the President of Azad Kashmir, Government of Pakistan has retained for itself considerable authority by introducing other Sections 19 (2), 31 (3) and 56.

Although in Section 11 of the Azad Kashmir Act 1974 there is a reference to a duty in regard to UNCIP resolution, yet this Constitutional duty dating back to a similar Section 8 of Azad Jammu and Kashmir Government Act 1970, has not been allowed to take effect for the last 43 years. JKCHR filed a Public Interest Constitutional Petition Number 122 in December 1992 in the High Court of Azad Kashmir praying that directions be issued to the Government to perform its duties in regard to UNCIP resolutions under Section 11 of the Constitution. It took the NGO 7 years until April 1999 to secure a successful outcome. Government of Azad Kashmir and the Government of Pakistan have failed to abide by the directions of the High Court.

In utter disregard to its admitted duties under UNCIP resolutions Government of Pakistan has introduced Sections 19 (2), 31 (3) and 56 in the Constitution Act 1974 to disable the legislative authority and political freedom to the people of the area. The legislative authority of the people elected by the people has further been eroded by introducing Azad Jammu and Kashmir Council under Section 21 which is an unfair and unlawful means to give an overriding authority to non-State Subjects, namely, the Prime Minister of Pakistan and allowing him to nominate five members from time to time amongst Federal Ministers and Members of Parliament.

The Prime Minister of Pakistan who chairs the Council and his five nominees are always non-State Subjects (Pakistan’s) and are not accountable to any one in Azad Kashmir. In addition to this coercive Constitutional restraint, Section 56 of the Act 1974 empowers the Government of Pakistan to sack a duly elected assembly and government in Azad Kashmir.

The present arrangement between the governments of Azad Kashmir and the government of Pakistan is nowhere near the wisdom of article 257 of the Constitution of Pakistan, which will become operational in accordance with UNCIP resolutions in the future, or Pakistan's declared interest under UNCIP resolutions. The behaviour of civil, political, economic, social and cultural rights remains a private interest and style of the person in power in Pakistan. General Musharraf in violation of Constitutional arrangements with the Government of Azad Kashmir, Constitutional guidance and responsibilities under UNCIP resolutions, introduced a 4 point formula in 2006.

The military ruler used all means to distance from Constitutional and UN Jurisprudence on Kashmir. He encouraged people to sell his 4 point formula and introduced corruption of all kind to enforce his views. Government of Pakistan has also reneged on the terms of Karachi Agreement of 1949 in regard to the control and administration of territories called Gilgit and Baltistan.

Over the years the debate on the Promotion and protection of all human rights, civil, political, economic, social and cultural rights in Jammu and Kashmir in this Council has turned sterile. There is more than one view in regard to all the three people living under three administrations of Jammu and Kashmir. It is unhelpful to reiterate that the strong Kashmiri Diaspora is equally infected in regard to the dignity of the argument tendered. The best interests of all people need to be focused upon and this Council has to play a lead role.
