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**HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S
ATTENTION**

**Written statement* submitted by 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.

[25 August 2008]

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

JKCHR welcomes the decision of the UN Secretary General Ban Ki-moon to convene a symposium on supporting victims of terrorism – the first of its kind at the United Nations – in September in New York. The one day forum would seek to help Member States to stand as one to support the victims of terrorism and to encourage civil society's involvement in a global campaign against the scourge, as laid out in the General Assembly's 2006 Global Counter-Terrorism Strategy.

It is hoped that national systems of assistance would be created to address the needs of victims and their families. Member States will have the opportunity to share their experiences, while victims can express their needs and views. It is victim welfare centric.

Since the focus has been shifted from politics to “solely on the victims and how states, international organizations and civil society can better address their needs,” it is important to identify specific situations where the question of ‘equal rights and self-determination’ has resulted in a massive violation of human rights, and off loaded a generations of victims and families unable to cope with ever growing deprivation and neglect.

One such specific situation where the Human Rights Council can play a well informed role and help in seeking a constructive engagement with governments and civil society in support of victims, are the people of the State of Jammu and Kashmir, currently distributed under three administrations on either side of cease fire line, under the respective controls of India and Pakistan.

People in the Valley on the Indian side of Kashmir in particular have lived through a culture of multiple violence inflicted on them from January 1990 to date. Violence has encouraged a political culture which is undemocratic, non transparent and unaccountable. Right of Self Determination has been used by a section of political opinion and a section of militants to advance the sovereign interests of India or Pakistan and in return have incremented their private gains in the supermarket of corruption.

People of Kashmir a subject of ‘equal rights and self-determination’ on the UN SC agenda since 6 January 1948, after experimenting multiple violence in the last sixteen years, seem to have turned their backs on the plural character of civil society and over the period of a month have added a communal and divisive psychology to the jurisprudence of ‘self-determination’ as envisaged in UNCIP Resolutions on Kashmir.

The same people living in the two provinces of Kashmir and Jammu have embarked upon a new form of grudge against each other, to an extent of endangering the lives of each other, which are a basic human right and fundamentally important as a numerical, in the count for a future ‘Plebiscite’, as defined in UN mechanism on Kashmir.

On the one hand article 4 of the Constitution of Jammu and Kashmir defines that the territory of the State ‘comprises all the territories which on the fifteenth day of August 1947, were under the sovereignty or suzerainty of the Ruler of the State’, and on the other the State forces had to resort to an unlawful use of fire arms on people who were in a peaceful march from Srinagar to Muzaffarabad on 11 August 2008. It ended in bloodshed near Bonyar, Uri and in the killing of a Kashmiri politician Sheikh Abdul Aziz.

The authorities on the Pakistani side of Kashmir also used unlawful force to stop ‘Kashmir Chalo’ movement launched in June 1958 by Kashmiri refugees living in Pakistan and Azad Kashmir and again during cross the cease fire line effort by Kashmiris in February 1992.

February 1992 march was fiercely resisted by the Pakistan army and there was a loss of life, near the now line of control.

As a rule UN has set out “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”. Under Principle 7, “Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.” Peaceful marchers from Srinagar to Muzaffarabad were making a lawful point against a blockade enforced by other Kashmiris living in Jammu province.

Under paragraph 12 of UN Security Council Resolution of 21 April 1948 (S/726) Government of India has been charged with a duty of itself and through it of the Government of the State to ensure “...that there will be freedom of the press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit”.

People living in Jammu and in particular the Hindus have a cause based on land first allocated to a Shrine and later revoked in view of difficulties under State Subject Law of April 1927, which does not allow a non State Subject any land rights in any part of Jammu and Kashmir. State Government could have acted in equity and in accordance with law and the just sentiments of the Hindu Kashmiris, by constituting the Shrine Board comprising of State Subject members, of course Hindu Kashmiris.

It is unfortunate that the Rights Movement, dating back to October 1877 and recognised by the UN SC since 6 January 1948, has been converted into a super-market of private interests. The politician and the militant has cascaded from the juridical heights of the case of ‘equal rights and self-determination’ to pitching one province against the other and poisoning one community against the other. Muslims and Hindus are roller skating in mistrust.

The September UN symposium on supporting victims of terrorism is likely to take guidance from 13 universal anti-terrorism conventions and three protocols identifying acts of terrorism, as benchmarks for selecting participants at the symposium, and invitations will be made based on consultations with victims’ groups, civil society and Member States.

JKCHR recommends that due consideration needs to be given to the complex situation of violence/terrorism in all the three administrations of Jammu and Kashmir. More so, it remains a fit case in the context of UN mechanism on Kashmir. Therefore, we urge upon the Human Rights Council, which has a wealth of information available to it, in its past debates on Kashmir, to assure that political opinions of all shades, militant leadership, civil society representatives, NGOs, lawyers, journalists, victims, religious leaders and trade groups be considered for participation in the one day UN forum in New York.

UN could conduct a follow up meeting between the various opinions coming from all the three administrations of Jammu and Kashmir and the Kashmiri Diaspora living in various countries of the world. Their views on the UN mechanism on Kashmir could be queried and the conduct of the political and militant leadership could be tested in accordance with the jurisprudence of Kashmir case, as embodied in the principle of ‘equal rights and self determination’. UNMOGIP representative could also be invited to make an independent input based on their experience since 1949.

The occasion with the representation from Jammu and Kashmir could be used to query the non representation of women, that is, gender deficit in the political discipline of Kashmir and the various participating opinions could be engaged on the test of ‘Principality’ set in

the UN resolutions for leadership in Kashmir. This would cause the beginning of an end to proxy politics conducted in Kashmir and would introduce a realisation that a leadership has to be for the best interests of its people and fully accountable.

A debate around rights and obligations of various non –state entities could be helpful, to sensitise a responsible behaviour that they cannot shield themselves from becoming liable towards other subjects of international law on account of their activities.

It is important to point out that the bench mark to be used for such invitations has an embedded risk of being abused in the case of Kashmir. It should be ensured that the two Governments of India and Pakistan do not prevail and ensure a representation which has been acting as a paid reflex of their interests. There should be a fair balance among the participants and an emphasis should be laid on the best interests of the victims interests.

A group of victims currently stranded are the youth who had participated in armed resistance or had crossed the cease-fire-line for fear of being taken out of circulation by the Indian security forces/or state forces during the early days of militancy in Kashmir and are now stranded either in Azad Kashmir or in Pakistan. The sponsorship of interest of Pakistan in these people has lost its moorings and these people are exposed to an uncertain future. India, Pakistan and the United Nations have a burden of responsibility towards this group.

Kashmiri Pandits who for a number of reasons, predominantly on the question of lack of security were forced to leave their home are another major group of victims of violence as it surfaced in the Valley. Kashmiri Muslims too have suffered a displacement.

A representation of these two victim groups fits in the bench mark set for the participants in the UN forum. JKCHR wishes to volunteer to co-sponsor with the UN an intra-victim dialogue between the victims from the two major communities in Kashmir at its Community Centre at Naranthal (Jalsharee), Baramulla, where the victims can express their needs and views.

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