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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND
SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO
COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT
OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS
RESOLUTION 8 (XXIII)**

**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.

[30 June 2005]

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

The international human rights regime consists of international and domestic norms and standards, on the one hand, and of practical promotion efforts by intergovernmental organizations (IGOs), non-governmental organizations (NGOs), and sovereign state policies, on the other. The main sources of continuing violations are hypothesized to be political regime type and political leadership, political cultures and national identities, economic structures and interests, and civil and international military conflict.

Democracy and a progress towards full democratization are usually associated with greater progress towards respect for human rights. In contrast authoritarian regimes are more likely to employ various kinds of human rights abuses to forestall challenges to their political power.

Democratization involves free expression, freedom of press and freedom of association for political purposes and organizations, as well as free and fair elections to the positions of real power. A free political process usually incorporates an array of legal and institutional human rights protections and facilitates mobilization for human rights improvements through the political process.

The process of democratization is stalled if the 'will of the people' which forms the 'basis of the authority of government' and which is 'expressed in periodic and genuine elections', is enslaved or debilitated through adverse distribution and control of the people. In such situations the desire to participate in a 'procedural' and a 'substantive' democracy does not go far enough.

One such case under discussion are the people of the State of Jammu and Kashmir. They are divided between Indian and Pakistani controls under three administrations. The three legislatures on either side of Line Of Control at Srinagar, Muzaffarabad and Gilgit fail to pass the test of an electoral democracy as a mandate for the three Kashmiri governments.

For over 128 years since 1877 and more so for the last 58 years since October 1947 the people of Jammu and Kashmir have been asserting and arguing in favour of their inherent dignity and of the equal and inalienable rights of freedom, justice and peace. The three divided people are increasingly becoming restless in respect of the behaviours of two sovereign states of India and Pakistan. People have continued to express their concerns and have put up challenges in regard to the legitimacy of the state actions on the basis of prior consultation, dialogue and agreement regarding the broad spread of social and political matters.

International Community, through the United Nations, has a road map in respect of their unsettled right of self-determination, it guarantees their freedom of travel, sets out a test of 'Principality' for leadership, has a model for a representative government at Srinagar, a model of administration as a local authority for Azad Kashmir– putting it under the control of judicial officers and has a model of administration for Northern Areas (Gilgit and Baltistan) as well.

To keep peace along the ceasefire line between India and Pakistan in the State of Jammu and Kashmir UN has a Peace Mission – UNMOGIP since January 1949. It consists of 44 military observers, 24 international civilian personnel and 46 local staff. Belgium, Chile, Croatia,

Denmark, Finland, Italy, Republic of Korea, Sweden and Uruguay contribute military observers for UNMOGIP.

India has an agreement with the people of Jammu and Kashmir stipulating to protect 'life', 'property' and 'dignity' of the people of the state living on either side of LOC. Pakistan maintains that it is committed to provide a 'political', 'diplomatic' and a 'moral' support to the Rights Movement of the people of Jammu and Kashmir.

The three Kashmiri governments at Srinagar, Muzaffarabad and Gilgit have either constitutional or other documentary arrangements in place to promote the collective welfare of all the people.

Yet we see that the two controls of India and Pakistan have turned repressive and against the common interests of the people of Jammu and Kashmir. People have been sandwiched between a proxy politics and a proxy war. In just last 15 years a generation has been killed in the Valley. Government violates national and international law related to the protection of [human rights](#). Volent opposition commit [human rights abuses](#). *Civil society has endured an unprecedented violation and abuse of human rights.*

The immediate rights such as right to life, freedom of opinion, freedom of association, right to fair trial, freedom of information, freedom from fear and right to free travel between the three parts of Jammu and Kashmir have either been violated to the core or do not exist at all.

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, yet India and Pakistan have failed in their pledge in this regard in Kashmir. Both countries have accrued a common and shared culpability for sending a generation to grave in the last 15 years and for committing violation of human rights and fundamental freedoms in the three administrations under their respective controls. The nature and scope of these violations however varies in accordance with the content and substance of the institutions and their independence in these areas.

Pakistan has developed a serious interest in the water resources embedded in Jammu and Kashmir. She has exploited these Kashmiri resources on either side of LOC and has reneged on its pledge given to the UN in respect of water resources at Mangla Dam. It has used these waters against the wishes of the people of Kashmir to advance the common welfare of her people in Pakistan. The Rights Question has been used as a political weapon against India and to manage her interests against India.

In this regard Abid Zaman 34 years old businessman from Birmingham, married with five children and Mirza Siddiq a veteran political activist from Mirpur, under the auspices of Anti Mangla Dam Extension Action Committee started a hunger strike at 14.25 pm on 28 June 2005 outside the Chinese Embassy in London in protest against Chinese involvement to construct extension to Mangla dam in the disputed territory. Pakistan and China are occupying parts of Jammu Kashmir along with India. The campaign is lead by a well known Kashmiri activist Najib Afsar.

As India and Pakistan in particular and other nations in general are moving on a path to secure and promote peace and security – the people of Jammu and Kashmir are subjected to new denials and their sufferings are incremented every hour. Although the various regions of the State are rich in natural resources, water in abundance, fauna and flora at its best, lush green valleys, rivers, glaciers, forests and a hospitable climate, yet the state is

underdeveloped, the common man and woman are very poor, there is either no electricity or it is rationed, unemployment of educated youth, doctors, engineers, poor health, bad roads add upon the miseries of a violence infested civil society.

It has taken India 58 years to consider a railway-link for Jammu and Kashmir and has taken 58 years to India and Pakistan to allow a restrained bus service between Srinagar and Muzaffarabad, the two capital seats of the two Kashmiri administrations. India and Pakistan continue to keep the people divided and continue to disallow a full freedom of travel a right guaranteed in UN Resolutions on Kashmir.

It is important that the issue of Kashmir be depoliticised and is looked at afresh – as a humanitarian issue of a people, controlled by five governments, subjected to four constitutions and an Agreement, and hosted by a UN package. It is an issue of five generations of refugees living in Azad Kashmir and Pakistan. It is an issue of loss of home by Kashmiri Pandits and of a civil society that is in the grip of mistrust.

It is an issue of rehabilitation of a traumatised civil society, one which has indulged for the last 15 years in killing its own sons and daughters over and above the daily loss of life on the streets of Kashmir. India has failed in her duty to protect ‘life’, ‘property’ and ‘dignity’ of the people, Pakistan has maintained a fake semblance that it was offering a ‘political’, ‘diplomatic’ and a ‘moral’ support to the Rights Movement and UN has failed to unfreeze its package on Kashmir.

The civil society in Kashmir is overwhelmed by violence and a political culture which is private, undemocratic, non-transparent and unaccountable. Common man and woman are dispossessed of their right to make decisions and mandate others to act on their behalf. There is an urgent need to rekindle their faith in human dignity and ability to lay the foundations of a better tomorrow.

The two proxies of India and Pakistan have harmed the plural fabric of the social life and the people have remained far remote from the benefits of development and an industrial base. People are land locked and the circle of violence has zeroed in to disable them. A ‘social reconstruction’ at a massive scale is the need of the hour. There is a need that we help these unfortunate but brave people to modify their political and social institutions and practices to reflect them better.

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