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

**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 2009]

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

It is 19th year of JKCHR appearance at the UN forum on Human Rights, now the Human Rights Council. JKCHR has continued to defend and highlight the Human Rights of all people. It includes the NGO's address to the Plenary and Main Committee of UN World Conference on Human Rights in Vienna in June 1993 on behalf of Unrepresented Peoples and Nations of the world. We have persevered in this work at all international forums.

JKCHR has continued to conserve its immediate interest in the Promotion and Protection of all human rights of the people of Kashmir distributed under three administrations on either side of cease fire line supervised by UNMOGIP. The NGO reported the first killings in Srinagar, Kashmir that took place on 8/9 January 1990 on the morning of 10 January 1990 to UN. To our surprise the NGO was informed by the UN office in Geneva stating "We have been in contact with several informed sources, in particular Amnesty International, which so far have not been able to corroborate the allegations made". Fortunately UN forum realised the defect in its source of information and accepted the overbearing strength of evidence tendered by JKCHR which had a local presence.

The UN level of information on the subject, despite the regular presence of an UNMOGIP office in Srinagar, was as disturbing as the second news to the people of Kashmir, that Government of Pakistan (or any member nation of UN) had not agitated the rights case of the people of Kashmir at the UN Security Council from 5 November 1965 until August 1996, for about 30 years and 9 months.

In the last 19 years the quality of life and peaceful living habitat of the people of Kashmir, as a result of a militant movement, an unreliable, undemocratic and non transparent political culture has been severely damaged. Kashmir has witnessed the death of a generation. India and Pakistan have accrued a shared liability for failing to promote and protect human rights and for failing to protect life in Kashmir. Both India and Pakistan have failed to discharge their obligations as party to the Kashmir dispute and to honour their respective obligations under UNCIP resolutions.

The culture of politics adopted to advance the Rights Movement in Kashmir merits the attention of Human Rights Council. It has to help the people of Kashmir and seriously involve India and Pakistan in a phased manner, first to work for internal self-determination as a minimalist standard and then for the maximalist standard of self-determination which is in dispute. It involves the exercise of a vote in an election and ensure that popular will constitutes the authority to govern. Election of a free legislature through a free vote should be encouraged in all the three administrations controlled by India and Pakistan.

In 1975, the Final Act of the Conference on Security and Cooperation in Europe (Helsinki Declaration) has confirmed the expansion of the beneficiaries of self-determination beyond colonised peoples. The agreement of 35 independent states that they recognised the right of self-determination to their peoples implies that 'peoples' living in independent states are also entitled to the right. It was in this context that the Crees of Quebec argued that "We do not want to secede from Canada; but if Quebec becomes a separate state, we will insist on our right of self-determination, our right to choose which, if any, state we determine to associate with".

Kashmiri right of self determination involves self-determination as a 'right' and as a 'principle'. As a 'right' it is inalienable and has been endorsed by the UN. But until it is realised we have to enjoy it as a 'principle', that is, empowerment in all walks of life within our territories. The latter

is the ‘internal-self determination’. It increments the realisation of a final quest for self-determination, which relates to the political status of the people.

Free and fair elections enable us the ‘internal-self determination’. One can challenge the process of elections and not elections as a right. Internal Self-Determination and Self-Determination are not the same. The first complements the latter. Elections assure Internal Self-Determination and the process in the case of Kashmir if not on its own but could be used to lead us to Self-Determination.

There is an existing UN mechanism in regard to Kashmiris right of self-determination. UN mechanism on Kashmir is protected by the 1993 Vienna Declaration and Programme of Action which has referred to self-determination in Article 2. After a verbatim restatement of Article 1 of the International Covenants, the Declaration affirmed the right of the peoples to take legitimate action, in accordance with the UN Charter, to realise their right of self-determination.

Kashmiri’s need not start militancy in Kashmir. The leaders should have sensitised world interest on the implementation of UN mechanism on Kashmir. It embedded a use of international force against India and Pakistan for any non compliance in this regard. It would have been international community against India or Pakistan.

It is on this inherent worry that India and Pakistan want to step away from UN mechanism. In the absence of a UN mechanism the people of Kashmir, are as helpless as they were in 1846 when they were sold lock stock and barrel without any domestic resistance. They were more than happy if Maharaja would allow them freedom of religion and a few jobs.

India has a bilateral agreement, that is, Instrument of Accession with the Government of Kashmir. This agreement is based on the principle that Indian army is sub-ordinate and supplemental to State administration to protect ‘life’, ‘property’ and ‘dignity’ of the people of Kashmir.

Kashmiri people could use the instrument of election (internal self-determination) and ask the state Government to question the ability of the Government of India in the discharge of its 3 contractual obligations. State government can unilaterally threaten to pull out of this bilateral agreement. And to be legally perfect it could take the Instrument of Accession to either High Court of Srinagar or the Supreme Court of India as an immediate and domestic remedy.

In addition to the Instrument of Accession the complaint of India against Pakistan at the UN SC has created a higher burden of responsibility and unavoidable (unless we allow her) legal duties in regard to right of self-determination of the people of Kashmir.

Indian complaint sets out Indian case as follows:

- (a) India has maintained – “It is with a heavy sense of responsibility that India invokes the good offices of the Security Council in finding a solution. The report under Article 35 of the Charter has been made to the Council after a great deal of hesitation and with the deepest regret.”
- (b) India has committed during the defence of her complaint at the UN – “The question of the future status of Kashmir vis a vis her neighbours and the world at large, and a future 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.”

There is no evidence that Kashmiri leaders of any opinion have ever since they entered into a bilateral agreement with Pakistan in August 1948 and with India in October 1948 pleaded their case of self determination on the basis of available national and international mechanisms.

Kashmiris could use the internal self-determination, achieved as a result of elections, as one human right and link it with the maximal demand of another right of self-determination in dispute at the UN.

Human Rights Council could encourage India and Pakistan to take urgent steps in bringing together the resources of the three Kashmiri Governments based at Srinagar, Muzaffarabad and Gilgit and use the natural resources embedded in the disputed habitat of Kashmir to enhance the quality of life of the Kashmiri people.

Pakistan should be encouraged to honour her pledge made at the UN Security Council on 3 October 1957 in respect of the use of Kashmiri waters at Mangla Dam to strengthen the economy of Azad Kashmir and pay towards the cost of rebuilding of life and habitat in other two administrations of Kashmir. The embedded natural resources of Kashmir are ‘trust properties’ and Pakistan has continued to earn from Kashmir properties spread all over Pakistan.

Unemployment, gender deficit in decision making, use of drugs and impacts of the conflict on mental health of the people need to be addressed as priorities. India and Pakistan need to be helped to repair the life and habitat of Kashmir. They need to empower common people and in building the institutions, to administer cheap and accessible justice and provide better opportunities and facilities in health and education.
