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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 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).

Transparency, accountability and performance more than ever before form the benchmark for authority, legitimacy and good governance. Democracy is recognised as the primary vehicle for the fulfilment of individual and collective aspirations. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, underpin domestic and international peace and security.

The Constitutional history of the people of Jammu and Kashmir dates back to 22nd April 1934 when an enactment provided for the establishment of the Legislative Assembly (Parliament) and laid down the Legislative, Executive and Judicial Powers of Maharaja of Kashmir. It was the result of a rights movement launched for a 'Responsible Government' in 1932. The Jammu and Kashmir Constitution Act 1939 was promulgated on 7 September 1939. The Act consisted of 78 Sections and 5 Schedules.

The human rights regime in the two administrations of Jammu and Kashmir (excluding Gilgit and Baltistan), is regulated by two constitutions, namely, The Constitution of Jammu and Kashmir and The Azad Jammu and Kashmir Interim Constitution Act 1974.

Although 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', yet it does not allow lawful freedom of entry and exit to and from Azad Kashmir. The Government of Jammu and Kashmir on the Indian side violates, what it has set out to protect under the Constitution.

The violation takes place under the very observant eye of UN and is a violation of paragraph 12 of UN Security Council Resolution of 21 April 1948 (S/726) under which the 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".

The Legislature of Jammu and Kashmir State has continued to remain incomplete and wanting on the Constitutional requirement of sizing it up in accordance with article 48 of the Constitution. Therefore, many matters of a State character decided so far, may not be lawful for want of this substantive Constitutional merit. The constitution of State Legislature continues to remain incomplete, as long as the requirement under article 48 in regard to the "area of the State under the occupation of Pakistan ceases to be so occupied and the people residing in that area elect their representatives", is not fulfilled.

In comparison to the Constitution of Jammu and Kashmir, The Azad Jammu and Kashmir Interim Constitution Act 1974, regulating life and human rights regime on the Pakistani side of Kashmir, stipulates that "the future status of the Jammu and Kashmir is yet to be determined in accordance with the freely expressed will of the people of the State through the democratic method of free and fair plebiscite under the auspices of the United Nations as envisaged in the UNCIP Resolutions adopted from time to time".

Yet at the same time the Constitution under article 4(7)(2) takes away a fundamental right to freedom of association. According to this article "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 the State's accession to Pakistan".

Article 4(7)(2) of The Azad Jammu and Kashmir Interim Constitution Act 1974 has been used in the same manner in Azad Kashmir as the Law of Blasphemy is abused in Pakistan.

The first law in Azad Kashmir does not serve any lawful purpose in the regime of rights and the second law in Pakistan does not serve the spirit or principles of Islamic law. It is the politician with a vested interest in Azad Kashmir and a 'Maulvi' with a vested interest in Pakistan who remain as the two marked beneficiaries of these two vestiges of discrimination.

Article 4(7)(2) of The Azad Jammu and Kashmir Interim Constitution Act 1974 does not allow the freedom of choice in the expression of a political will in an election. It violates UN principles of taking part and expressing a free will in a periodic and genuine election. It brings the statement of the Government of Pakistan that it is acting in Azad Kashmir "in the discharge of its responsibilities under the UNCIP Resolution", into disrepute.

Government of Pakistan through the introduction of this curb on the freedom of expression and association or through an abetment in the introduction of this constitutional refrain on the people of Kashmir, has acted against article 257 of the Constitution of Pakistan. Article 257 of the Constitution of Pakistan relates to the State of Jammu and Kashmir.

It 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". This signifies that there will be no automatic merger of the territories of the State with Pakistan and the conditions under which other States acceded to Pakistan will not necessarily apply to the State, if the people of the State are not in favour of such application. The terms of instrument of accession will be determined by mutual agreement. Accession has to be a voluntary act of the citizens of Kashmir.

Pakistan is a staunch supporter of right of self determination of the people of Kashmir. As a member nation of UN, the support of the Government of Pakistan of Article 4(7)(2) of The Azad Jammu and Kashmir Interim Constitution Act 1974 is repugnant to its UN Charter obligations to "equal rights and right of self-determination".

It is interesting to point out that Government of Pakistan has challenged the Kashmir Government's 27 October 1947 Instrument of Accession with the Government of India at the UN as a fraud and against the wishes of the people and at the same time has continued to live with its denying the same people a freedom of free choice in the election of their representatives in Azad Kashmir. The agreement of government of Pakistan with the government of Azad Kashmir in regard to the people of Gilgit and Baltistan is also of suspect vires because it has been negotiated without any knowledge of or reference to the people and their leadership in Gilgit and Baltistan.

Article 4(7)(2) of The Azad Jammu and Kashmir Interim Constitution Act 1974 has encouraged a negative exercise of free choice and a proxy politics in Azad Kashmir. Participation in local elections and voting has to be a free choice. Unfortunately voting in Azad Kashmir is not a free choice. Electoral choice is very similar to other choices that we make in our daily lives.

The geography of a human rights regime should not have a politically motivated geography. It has to be in accordance with article 4 of the Constitution of Jammu and Kashmir, which defines the territory of the State. The constitutional history of Pakistan

started on 29 February 1956 and the constitutional history of Kashmir has started on 22 April 1934. The constitutional history of the people of Jammu and Kashmir is creditably 22 year older.

It is therefore, a tragedy that a people who should be the beneficiaries of what is civilised and best in India and Pakistan and what is set as a basic standard by the United Nations, are still denied constitutional freedoms within their own defined territories and are made to live under a rigorous regime of five Governments, namely Government of Jammu and Kashmir, Government of Azad Jammu and Kashmir, Government of Gilgit and Baltistan, Government of India and Government of Pakistan and five constitutions, namely, The Constitution of Jammu and Kashmir, The Azad Jammu and Kashmir Interim Constitution Act 1974, Agreement of Gilgit and Baltistan, Constitution of India and the Constitution of Pakistan.

It is the result of Article 4(7)(2) of The Azad Jammu and Kashmir Interim Constitution Act 1974, that over a period of time a surrogate culture of 'human rights defenders' has been sponsored by the State. The rights regime and the jurisprudence of Kashmir case envisaged under UNCIP Resolutions, has suffered a serious setback when a surrogate culture of 'human rights defenders' changed their horses mid stream and yielded to sell a four point formula of a military dictator, General Pervez Musharraf.

Human Rights Council has a rich archive of debates on Kashmir. It could use that information to make a mature judgement in the cause of Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. JKCHR would always, as before, volunteer to increment the constituency of wisdom on the jurisprudence of rights regime in the three administrations of Jammu and Kashmir.
