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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 & 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.

[9 February 2012]

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

Rights of peoples, specific groups and individuals**

Internally displaced persons

The contribution of the Human Rights Council through the mandate of the Special Rapporteur on the human rights of internally displaced persons based on the Guiding Principles on Internal Displacement (Guiding Principles) and international human rights standards is reflected in the document A/HRC/19/54. An estimated 27.5 million people in the world today remain displaced within their own countries due to armed conflict, generalized violence and human rights violations. Vulnerable categories of women, children and the elderly, particularly remain at risk of a number of protection concerns, including abuse, exploitation, and sexual violence by their hosts.

The account of the activities of the mandate provided in the Report of the Special Rapporteur on the human rights of internally displaced persons remains as a standard guidance in providing assistance and protection to these people. There is however, a fundamental concern, as to whether the mandate is inclusive and equitable to all such people living under various other well documented situations.

One such situation has been recognised in the UN Security Resolution 47 (1948) of 21 April 1948. It is an irony that United Nations addressed the plight of people internally displaced in Jammu and Kashmir in 1948. There have been three other displacements in 1965, 1971 and in 1990. The flow of displacements continues unabated in one or the other manner across the cease fire line supervised by UNMOGIP. People from two major faiths, Muslims and Hindus have suffered internal displacement or a displacement beyond the borders of the State of Jammu and Kashmir. In addition to being internally displaced within the various administrations of Jammu and Kashmir under the respective administrations of India and Pakistan, these people have landed as refugees in the sovereign territories of India and Pakistan.

The Muslim population was displaced in 1948, 1965, 1971 and in 1990 from the Indian administered part of Jammu and Kashmir into the Pakistani administered part of Jammu and Kashmir. The Hindu population on the contrary has been displaced only on two occasions, that is, in 1948 and 1990. Para 14 (a) of UN Resolution of 21 April 1948 provide that “All citizens of the State who have left on account of disturbances are invited, and are free, to return to their homes and to exercise their rights as such citizens. Para 14 (b) and (c) assures that there ‘is no victimization’ and that ‘Minorities in all parts of the State are accorded adequate protection’.

We see that at a time when United Nations through its subordinate organs has over the last sixty years developed an institutional support base for protecting the human rights of refugees, internally displaced people, returnees, stateless people and asylum seekers seems to have ignored to address the Rights of peoples, and specific groups and individuals first recognised in N Resolution of 21 April 1948.

Although the Kashmiri administration on the Pakistan side, named as a Local Authority in UN Resolutions has been set up to discharge its obligations in accordance with UNCIP Resolutions, it has not been constituted as required under UNCIP Resolutions. The administration over the years has gone cold on its UNCIP obligations and the displaced people; in particular those of 1990 have been discriminated for their rights as State

** The MWA – Muslim Women’s Aid, an NGO without consultative status, also shares the views expressed in this statement.

Subjects. The failure of Pakistan to execute a militant struggle in Jammu and Kashmir and the subsequent decisions by the Government to withdraw from any support to earlier sponsored militant groups in Kashmir, has added a new number of stranded youth to the civilian displaced people in the Pakistani administered part of Kashmir. This group seems to have passed its sell by date for all earlier purposes of militancy on the Pakistani side of Kashmir and face a very uncertain and a supervised future on their return to Indian side of Kashmir.

Many of these stranded youth have managed to escape Pakistani administered part of Kashmir and Pakistan to seek settlements in various parts of Europe and in many other countries, seen friendly to the plight of refugees based on the Guiding Principles on Internal Displacement (Guiding Principles) and international human rights standards. It is unfortunate that human traffickers in India and Pakistan have been using the situation in Kashmir as a lucrative trade to smuggle non Kashmiris into Europe and other countries for settlement as refugees. It involves preparation of false Kashmiri documentation for Indian and Pakistani nationals and for economic migrants from various administrations of Jammu and Kashmir. It has caused a serious abuse of UN protection and at the same time many genuine people eligible for asylum and other protection continue to suffer long delays in the settlement of their asylum applications. JKCHR has been helping stranded Kashmiris in 19 countries and has provided assistance to Kashmiri prisoners held in various prisons in the United Kingdom. JKCHR has inscribed its interest in the rehabilitation policy announced by the Government of Jammu and Kashmir on the Indian side.

There is however, a significant civilian population displaced after the start of a militant struggle in Jammu and Kashmir in 1990 and these displaced people are spread in 5 administrative districts in Pakistani administered part of Jammu and Kashmir. Members of this group in fact are the State Subjects under the State Subject Law of 20 April 1927. Under article 4 of Jammu and Kashmir Constitution they are a direct responsibility of the Government of Jammu and Kashmir on the Indian side and under UNCIP responsibilities a direct responsibility of the Jammu and Kashmir Government (locally named as Azad Jammu and Kashmir) on the Pakistani side.

Out of the four displacements, the fourth group of men, women, children and elderly displaced in 1990 are sheltered in camps and they live in inhumane and poor conditions. They are discriminated against and don't seem to have access to various facilities of life. In many cases they have been denied ID Cards (identity) and some have been forced to seek redress in the Courts. Over the years these people have been paraded in front of the international community and civil society as 'exhibits' to highlight a self-serving claim of persecution by the Indian security forces. The exploitation of these people as a propaganda material does not help the case of these internally displaced people. These people have remained outside the mandate of UNHCHR. There is no co-ordinated international action to protect these people and resolve their problems. As political exhibits they have a genuine fear of the local authorities and are not able to exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country.

The fourth generation of internally displaced people of the State of Jammu and Kashmir are not entitled to make use of the Bus Service which started between Srinagar and Muzaffarabad on April 7, 2005. This discrimination of not allowing the fourth batch of displaced people to use the Muzaffarabad -Srinagar bus service is a serious violation of the Constitutional duties of the Government of Azad Jammu and Kashmir under UNCIP Resolutions. It is a violation of the duties assumed in the affairs of Kashmir under UNCIP Resolutions by the Government of Pakistan. In addition to this the restraint placed on the travel of the members of this fourth batch of internally displaced people, violates para 12 of the UN SC Resolution of 21 April 1948. It guarantees the 'freedom of lawful entry and

exit' to all citizens of the State of Jammu and Kashmir distributed on both sides of cease fire line.

It is encouraging to note that The Guiding Principles on Internal Displacement continue to represent an “important international framework for the protection of internally displaced persons”. More encouraging is the fact that The authority of the Guiding Principles has more recently been reaffirmed in General Assembly resolution 66/165, which welcomes their increasing promotion and application, and encourages all relevant actors to make use of them when dealing with situations of internal displacement, including development partners and individual States in the development of domestic legislation and policies.

Unfortunately the attention paid to Internally Displaced by the UN agencies is neither equitable nor inclusive of all situations. The fact that it is not fully inclusive, could be seen from the evidence that the training provided at the Seventh Annual Course on the Law of Internal Displacement in San Remo (7-12 June 2011), which provided training to 21 high-level Government officials working on internal displacement from 14 displacement-affected countries, did not have any participation from the people recognised by UN Security Council Resolution of 21 April 1948.

JKCHR wishes to take this opportunity to remind the Human Rights Council, that the future mandate of the Special Rapporteur on the human rights of internally displaced persons should include a detailed reporting on the needs and protection of all the displaced people on either side of cease fire line in Jammu and Kashmir from 1948. These people have been first identified in the UN SC Resolution of 21 April 1948.
