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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 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.

[22 August 2013]

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

Promotion and protection of all human rights - Jammu and Kashmir

It was by a letter dated 1 January 1948 (document S/628) that Government of India under article 35 of the Charter, drew the attention of the UN Security Council to a situation in Jammu and Kashmir. The Security Council admitted this question to its agenda at its 226th meeting on 6 January 1948. On 6 January 1948 the President of the Security Council addressed identical telegrams to the Prime Ministers of India and Pakistan appealing them “to refrain from any step incompatible with the Charter and liable to result in an aggravation of the situation, thereby rendering more difficult any action by the Security Council.”

Government of Pakistan in its reply of 8 January 1948 and the Government of India in her reply of 9 January 1948 respectively expressed their devotion to the principles of the Charter and assured the Security Council that they would not take any measure which would be contrary to the Charter.

Under the proposal of 6 January 1948, the two parties were to seek a solution by negotiation under the auspices of the Council, co-operate with each other and with the Council in developing proposals and to this end, to apply a set of principles which, in the opinion of the Council, should among others, constitute the basis of a just settlement. One of the principles addressed the question of the rights of the people. It stated that , “After acts of violence and hostility have ceased, all citizens of the Jammu and Kashmir State, who had left on account of the recent disturbances, shall be invited and be free to return to their homes and exercise all their rights without any restrictions on legitimate political activity. There shall be no victimization. All political prisoners should be released.” The proposal pressed for an “interim administration which will command confidence and respect of the people of the State of Jammu and Kashmir, must be established.” [Document S/667 dated 10 January 1948].

Paragraph 12, 13 and 14 of UN Security Council Resolution 47 (1948) of 21 April 1948 dealt in further detail the full regime of human rights, including an adequate protection of Minorities in all parts of the State. The negotiated settlement could not be carried through and the people were distributed under three administrations and families divided. In the last 65 years the divided and respectively administered people of Jammu and Kashmir have been through disturbing spill over impact of worsening relations between India and Pakistan. Good neighbourly relations and growing trust between these two countries has left its mark on the process and quality of life of the people of the State.

There is a general dissatisfaction in regard to the promotion and protection of human rights in the three administrative units of Jammu and Kashmir. Valley of Kashmir administered by India became a centre stage of a proxy war in early 1990 and in a few years’ time, the people suffered the death of a generation, Kashmiri Pandits experienced loss of home and people and habitat were badly hurt. Youth of Kashmir became fragmented into militants, surrendered militants, taken out of circulation and a subject of control and surveillance.

International Criminal Court (ICC) decision on 14 March 2012 in the case of Thomas Lubanga Dyilo for War Crimes of enlisting child soldiers in Lturi has a direct relevance to the situation in Jammu and Kashmir. The authors of militancy appear to have attracted charges of war crimes for the enlistment and conscription of children under the age of 15 years and using children to participate actively in hostilities. There could be two different arguments on the justness of the militant struggle but there would be only one argument if we have used children under the age of 15 years of age. Jammu and Kashmir is subject of a UN mechanism and the two countries have agreed to a ‘Pacific Settlement’. Therefore, the

induction of a militant struggle in the Valley in 1989 remains at variance with the UN mechanism. The authors of militancy may further be blamed for having caused a situation which has killed a generation in Kashmir and with it has killed the right of self-determination.

It is a settled argument that no State can treat its people as it pleases. However, it is agreed that all States should have substantial and important powers within the scope of their right to political self-determination. The State itself has to be a legitimate State, that is, it must be a democracy, because only a democratic government is consistent with a state's right to govern its territory, and impose duties of compliance on insiders and of non-interference on outsiders. Again the right to political self-determination is an irreducibly collective moral right held by legitimate states and groups that are willing and able to become legitimate states. Jill's coup against Jack's democracy can't work. No matter how enlightened and effective a monarch Jill is, her political rule violates Jack's autonomy.

Therefore, the State has to be in the dock to explain as to whether the Indian soldier has kept to his call of duty to defend the 'territory', protect 'lives', 'property' and 'honour' of the people and has discharged the international obligations set out in the UN Security Council Resolution of 21 April 1948, namely:

- That the presence of troops should not afford any intimidation or appearance of intimidation to the inhabitants of the State;
- That as small a number as possible should be retained in forward areas;
- That any reserve of troops which may be included in the total strength should be located within their present base area.

In addition to this a Global Social Democracy movement of responsibility towards each other and how to meet this responsibility is under way. It has started creating a Global Civic Friendship. International Criminal Court is an important means to seek redress under International Justice.

The threat of the Principle of Complementarity has various consequences for a country. First, it allays fears that the ICC may encroach upon the sovereignty of nations. Second, the mere existence of the ICC's potential jurisdiction over certain crimes can act as an incentive for nations to incorporate those crimes into their domestic laws and so become vigilant in investigating alleged violations. Third, in the event that domestic courts do not adjudicate a matter within the ICC's jurisdiction, the ICC itself will be able to, thereby both ensuring that serious crimes do not go unpunished and that a measure of retribution sanctioned by the international community is meted out against the perpetrators of heinous acts.

The ICC rules of evidence, witness protection, testimony, and trial have been specially tailored to fit the crimes within the Court's jurisdiction. Additionally, the ICC's punitive guidelines make provision for both restorative and compensatory measures, and institutional support will be further provided through the Victims and Witnesses Unit. These schemes are expected to yield positive results for law enforcement, victims, and the communities in which crimes are perpetrated.

ICC prosecutor has the mandate to investigate and prosecute the most serious crimes, namely war crimes, crimes against humanity, and genocide. So far The Prosecutor has decided to open investigations in four situations (the Democratic Republic of the Congo; Northern Uganda; Darfur, the Sudan; and the Central African Republic). The situation in Darfur, the Sudan, was referred by the United Nations Security Council. "The Office of the Prosecutor (OTP) is also analysing situations on three continents including in countries such as Colombia and Afghanistan.

Indian Government seems to have got around the question of complementarity by allowing 304 cases to be registered against its security forces in Kashmir. Out of these, 230 cases have already been moved in different courts in the State. Kashmiris may argue that it is not enough and much more needs to be done. It may be justifiably argued that many others in Pakistan, Pakistan administered Jammu and Kashmir, Indian administered Jammu and Kashmir and some other parts of the world may have a case to answer under the jurisdiction of ICC. After 14 March 2012 when ICC pronounced the guilt of Mr. Lubanga every citizen around the world woke up to his duty to Global Civic Friendship to work to enhance the constituency of ICC and seek to put universality of justice high on the agenda.

Jammu and Kashmir makes an exceptional case for appraising the promotion and protection of human rights. During the two decades from 1989 to 2009 Kashmir has lost tens of thousands of people, property worth billions of dollars and much more. The disputed Himalayan Valley has lost over 1,500 working days (more than four years) in shutdown calls in the past 20 years, dealing a crippling blow to its ailing economy. The tourism industry of the scenic Valley is frequently disrupted by strikes and violent protests. According to the Kashmir Chamber of Commerce and Industry, the region loses 100 million rupees for every day of shutdown.

People have to be encouraged to revisit the rationale behind endless strikes.
