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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.

[30 August 2007]

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

International consensus around Promotion and protection of all human rights without doubt embeds in it that ‘human rights abuses within state borders, even perpetrated by governments against its own people, are no longer matters solely within the purview of domestic affairs’. Former UN Secretary General Kofi Annan incremented this understanding and added that a State’s legitimacy is tied to proper treatment of its citizens and an offending state can no longer hide behind a mantle of sovereignty alone. Ideas and thoughts have continued to move the world and its civil society. Kofi Annan’s statement in the context of international interventions in Kosovo and East Timor that “State sovereignty, in its most basic sense, is being redefined...States are now widely understood to be instruments at the service of their peoples and not vice versa...[while] individual sovereignty – by which I mean fundamental freedom of each individual, enshrined in the Charter of the United Nations and subsequent treaties – has been enhanced by a renewed and spreading consciousness of individual rights”.

The concept of a common humanity and its broad spread has remained at the centre of human rights struggle for equality and liberty. It has been voiced by William Wordsworth way back in the eighteenth century in 1836. His comment on his times: “Earth is sick; And Heaven is weary, with the hollow words; Which states and Kingdoms utter when they talk; Of truth and justice”, take different form and are voiced by different people in various human habitats around the world.

It is common knowledge that Right of Self Determination of the people of Jammu and Kashmir remains an associate principle of UN Charter. It presupposes a need to empower the civil society in all the three administrations of Kashmir, namely Jammu and Kashmir, Azad Kashmir and Gilgit and Baltistan. Self-determination rests on the jurisprudence of living adult numericals. A case for self determination needs a habitat which is free from (a) violence and (b) supplanted, private, commercialized, undemocratic, non-transparent and unaccountable political culture.

Rights Movement of the people of Jammu and Kashmir is 129 year old. The sovereign claims of India and Pakistan too have graduated and are 59 year old. Unfortunately the Indian and Pakistani investment is so heavy that we are not prepared to revisit the full circle of wisdom and understand the jurisprudence of these two separate obligations on India and Pakistan and the international community.

Therefore, the primary issue – whether to position ourselves in the best interests of the people of Kashmir or to act to advantage the embedded sovereign reflexes of India and Pakistan has not been settled. Kashmir is not a dispute. The two sovereign claims of India and Pakistan have made it a dispute. It embeds the Right of Self Determination of a people distributed against their will and held apart unlawfully by India and Pakistan in three administrations, subjected to a gruesome administrative control of 5 governments and restraints of 5 constitutions (one being an agreement of suspect vires).

There is a basic need to differentiate between the three important variables embedded in self-determination of the people of Jammu and Kashmir:

- (a) a title of the Kashmiri people to self-determination
- (b) and the two respective claims of India and Pakistan

As a sovereign and one people, Kashmiris negotiated a Stand Still Agreement with the Government of Pakistan on 15 August 1947. It failed. As a sovereign and one people

they negotiated another bilateral agreement with the Government of India on 26 October 1947. It is disputed and it subsists.

Under this bilateral agreement the Government of India has undertaken to protect 'life', 'property' and 'dignity' of the people of Jammu and Kashmir. This obligation extends to Azad Kashmir and to Northern Areas as well.

At a time when India has failed to honour its obligations under its bilateral agreement of 26 October 1947 and Pakistan has failed to honour its "trust obligations" under UNCIP resolutions the ceiling of responsibility of every man and woman to interfere in every activity that is done in their name in any administration of Jammu and Kashmir, in India and Pakistan or abroad is raised to the highest.

There is a 'common duty to interfere'. Our first and foremost interest is to question India and Pakistan in regards to their shared responsibility in causing the death of a generation and in causing an unprecedented violation of human rights ever witnessed during the 129 year old history of our Rights Movement. It is time to remind them that 'peace and security' are their obligations as member nations of UN.

It is admitted that a solution on the basis of 'one size fits all' is not possible. We have to reconcile a Kashmiri Rights Movement with the two rival claims of India and Pakistan. How we position our wisdom we have to discharge our duty to fairness.

While we reconcile the three interests, that is, Indian, Pakistani and Kashmiri, it is important that we examine the inequities and the injustices faced by the people of Kashmir.

Future belongs to Peace. We welcome a forward movement on peace and reconciliation between India and Pakistan. But we cannot sit put to be 'short listed' and 'negotiated'. We have a role in regards to our 'life', 'property' and 'dignity' due to us today and towards one that we wish to leave for our many tomorrows?

This is a moot question. A dialogue on Kashmir has its discipline and jurisprudence. It is not a free-style with no-holds-barred. India has to follow a discipline under the bilateral agreement of 26 October 1947 and other international commitments; Pakistan has to follow a constitutional discipline under article 257 of its Constitution and trust obligations under UNCIP Resolutions. Post 1990 political schools in Kashmir (APHC and others) have set a political discipline for themselves and they have to follow that.

Common man and woman and the various schools of opinion in Jammu and Kashmir in general and the Valley in particular have been muted and driven away from a rightful concern and contribution that is necessary for an expressed, transparent, democratic and accountable political culture. Respect for life on the streets of Kashmir and security in their homes has lost its meaning.

We have to consider and audit the benefits of the Indian promise that it would protect 'life', 'property' and 'dignity' of the people of Kashmir and the Pakistan's claim that it offers 'political', 'diplomatic' and 'moral' support to the people and politics of Kashmir. Indian Government has failed to live upto its stipulation of October 1947 bilateral agreement with the Government of Kashmir to protect 'life', 'property' and 'honour' of the people of Jammu and Kashmir. It has failed to discharge its obligations under UNCIP resolutions as a member nation of UN.

Pakistan has continued to claim that it is offering 'political' 'diplomatic' and 'moral' support to the Rights Movement of the people in Jammu and Kashmir. It entails that the Rights Movement in Kashmir should have been positioned in the best interests of the

people, should be more mature in judgment and there should have been no room for any loss of life.

The loss of a generation in Kashmir, the ailing civil society, debilitated at all levels, suspecting, distrusting and unsure of its future, raises many questions in respect of the substantive truth of Pakistan's 'political' 'diplomatic' and 'moral' support. The practice to propose and dispose political leaders and now the rush to arm and disarm militant component of Rights Movement raises many other questions in regards to Pakistan's claims and embedded interests in Kashmiri Rights Movement.

Kashmir is tragically hit by a Tsunami of misunderstood jurisprudence of 129 years old Rights Movement, proxy politics, proxy war and mismanaged aspirations of the people. Life in Kashmir is hostage to a single agenda item of politics and life with a peaceful environment and life with all the embedded variables that make it qualitative has been neglected.

India withheld its institutional fairness and experimented a proxy politics in Jammu and Kashmir in the last 57 years. It failed to reach to the common man and woman and erred to manage the situation through undemocratic and unpopular means. There is an awakening in the Indian civil society and in the Indian administration to correct its mistakes.

Unfortunately Government of Pakistan has started what India is preparing to give up in Kashmir. The short listing of Kashmiri politicians by Pakistan is a new kind of 'Proxy Politics' in the 21st century. Indian Government has reconciled itself to allow the transfer of a 'free vote' in Jammu and Kashmir and Pakistan has yet to acknowledge the right of a 'free vote' in Azad Kashmir. Pakistan remains unwilling to address the grievances of the people living in two administrations of its control.

We owe something to others and it entails that we should have an ability to handle what we owe to others. Nothing is more common, indeed, than to think of an ethical attitude as one that presupposes the existence of other's rights. An informed and active citizenry has a crucial role to play in monitoring state behaviour. Human Rights Council has to support civil society institutions to use human rights as a civilizing force against repressive governments.
