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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
IN ANY PART OF THE WORLD, INCLUDING

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.

[3 February 2003]

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

The issues of “Sovereignty in the name of the People”, “Free Will of the People”, “Democracy”, “Rule of Law” and “Human Rights” stand out to distinguish our civilization and in this regard each geographical region representing various forms of governments has its finger at different markings on the scale used by the Human Rights Machinery to measure the compliance. The common conscience of the civilized people around the world would have turned upside down to read that even today a State of the size, pride and responsibility like USA was contemplating a “no-holds-barred approach” and try ‘new truth serums’ on a British citizen Richard Reid [aka shoe bomber] a 28 year convert to Islam in the course of interrogation.

It would have meant bending the constitutional rules, which forbid the use of ‘truth drug’. However, it is more intriguing to point that in order to legitimize this ‘controversial interrogation method’ the Harvard Prof. Alan Dershowitz, a constitutional lawyer proposed a new system of “truth serum warrants” with suspects granted immunity from prosecution after being injected with drugs.

UN Human Rights Machinery and the civil society groups called NGOs have a difficult role than ever before to play in the defence of human rights. It is generally said that world has changed after September 11, 2001. But the most important question that we have to ask ourselves is, has the world changed for a better tomorrow?

The situation in Asia and Middle East points to a culture of impunity. US in particular and the Western democracies in general, need to construct more reliable and an enduring habitat, based on a sense of justice and fairness, an *ex aequo et bono* dispensation of the human rights case, support of rule of law, equality of opportunity based on the pro-active regard of the less competitive members of the community at home and beyond their borders.

International institutions like the governments have a broad duty, in the dangerous days ahead to deflect and mitigate the wilder lunges of the world super power. Politicians more than the rest of us are tested by the unexpected. Their policy details and the reach of their character makes them singular.

“We the Peoples of the United Nations”, have a duty to consider the questions of retaliation, vengeance and justice with a due consideration that what is done now would well determine the circumstances under which our children are forced to live in future. We need to do the right things and surely not those that are bitterly regretting in 10 years time.

US faith in Democracy, Rule of Law, Justice and Human Rights remained the illuminations that helped to light the darker streets of repression and denial of human rights in many parts of the world. Unfortunately US seems to have changed its horses midstream and its renewed trust in military, market and machine is too dangerous.

Justice and the Rule of Law is a civilization’s most potent weapon. Where the law is set against the law, democracy goes down to defeat. The right pursuit is an unrelenting pursuit of the guilty through the courts and courts only. It should be restrained and consistent with the international law. The fewer civilians killed

anywhere the better.

Peace and the respect for human rights is the only way forward. The US poise for a war against Iraq, is likely to spell a disaster for the Charter Principles. US is not threatened in any existential sense by Iraq. The danger in describing this as a 'war' is that discussions of the options will be based on assumptions and concepts that are inappropriate leading to wrong policies. The 'war of civilizations' is one such dangerous assumption.

There is a need that the Western democracies and US move on a hard-nosed diplomatic coercion to isolate these sources and painstaking investigation, to apportion the blame, because the burden of proof has to be very high. A collective long term pursuit of such individuals, groups and their havens on the one hand and on the other a simultaneous reassessment of US policies and priorities in Central Asia and Middle East are important steps. A focused and law based approach is essential in relation to a policy on terrorism.

India and Pakistan are also locked in an unending game of mistrust – threatening peace and security on the one hand and on the other adding to poverty, hunger, disease, death, impoverishment, underdevelopment, fall in the standards of living and violation of human rights of three peoples.

Although India and Pakistan emerged as two sovereign States on the basis of the sovereignty of the will of their respective peoples, yet we find that they have failed to address the issue of the people of Kashmir under the Principles of the UN Charter.

The people of Jammu and Kashmir under the administrative control of three governments at Srinagar, Muzaffarabad and Gilgit, have a much less impressive and qualitative life than the life of the people in Pakistan and India. They live as a divided people and are denied a right to a family re-union, family visits are subjected to rigorous scrutiny of respective intelligence services and administrations, free lawful entry and exit as guaranteed by the UNCIP resolutions is not complied with by the two governments, a dissent and an expression of a dissent sets in action a process of discrimination and victimization and the record of human rights under the three controls merits a serious attention.

The question of the violation of human rights by the security forces in the Indian controlled Kashmir has been used excessively for exacting a political mileage and as a consequence the victim has been deprived of a 'just relief'. There has been a massive violation of human rights and in addition to security forces, the militants too have committed serious violations of human rights. The killing of common man and woman as alleged 'informers' is a heinous crime.

JKCHR has advocated the case of human rights in Kashmir as far back as in May 1986 when it submitted its first written paper titled "The Abuse of Power in Kashmir" at an international conference at the Inter University Centre in Dubrovnik, former Yugoslavia. The NGO raised the question of first killings in Kashmir by the security forces in a telegram sent to Human Rights Centre in Geneva on 10 January 1990. It was the first communication received by the Centre. JKCHR pioneered the medical

and humanitarian relief for the refugees in camps in December 1990 and sponsored witnesses to give testimony at the Sub Commission in 1993.

The NGO continued to raise awareness around the case of Human Rights and its participatory work at UN Headquarters in New York during the UN Annual Conference on “Regional Conflicts: Threats to World Peace and Progress” in September 1992, during World Conference on Human Rights in Vienna in June 1993 and networking with other NGOs has animated the concern of many other international NGOs on the question of Human Rights in Kashmir.

On balance we should not nudge pass the human rights movement in the other two parts of Kashmir – Azad Kashmir and Gilgit and Baltistan. The jurisprudence of the violation of human rights in Pakistani administered areas may vary from the violations in the Indian administered part. But a violation and if committed on a systematic basis should attract a similar consideration in all parts. It is unfortunate that the question of the violation of human rights in Jammu and Kashmir is not being raised to ameliorate the suffering of the victims but is used as a sovereign chagrin by one country against the other.

It is therefore important that the Commission addresses itself to (a) the history of violations of human rights in all the three parts of Jammu and Kashmir prior to the start of a militant movement in Kashmir and (b) the history of post 1990 violations committed by the Indian security forces. And if we fail to give a meaning to the sufferings of the common men and women living under the administrative controls of India and Pakistan, we shall be misdirecting our efforts in the cause of human rights.

Although the government of Kashmir at Srinagar on the Indian side has a duty under its Constitution of 1956 to work for the welfare of the people of the State on either side of the line of control and the government of Kashmir at Muzaffarabad on the Pakistani side too has a duty under its Constitution of 1974 to ensure the welfare of the people of the State on either side of the line of control, yet in practice the two government are used to syphon the chagrin of the two sovereign countries and betray the ‘peoples interests’.

The non-compliance by the two governments of the Constitutional duties and the division of the people of Kashmir merit the consideration of the Commission, participating Governments and NGOs. The Commission need to consider an arrangement acceptable to India and Pakistan, so that the people of Jammu and Kashmir distributed under the three controls have an opportunity to meet and short list their grievances, for a negotiated and peaceful settlement of their future.

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