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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.

[13 February 2009]

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

United Nations Charter embeds its authority in the sovereignty of the people. International human rights regime consists of those international norms, processes and international arrangements, as well as the activities of domestic and international pressure groups that are directly related to promoting respect for human rights. The evaluation of UN human rights regime has, remained at the top of the international community's human rights agenda during the World Conference on Human Rights in Vienna in June 1993.

Unrepresented Peoples and Nations were duly represented at the Conference. The sovereignty of the people of Jammu and Kashmir was first pleaded at the UN Security Council on 5 February 1948 by the great Kashmiri leader Sheikh Abdullah, aka lion of Kashmir. Indian representative also made a valuable argument in favour of matters that came within the ambit of internal sovereignty of the State, while dispensing the arrangements for holding a plebiscite.

It is unfortunate that the maturity of debate on the sovereignty of the people of Kashmir at the UN failed to address the difference between sovereignty of the people and the sovereignty of Maharaja, the ruler. There is equally an embedded failure of not resolving the differences between the title of the people of Kashmir to self determination and the two rival claims of India and Pakistan.

Since the administrative and governing regime in Jammu and Kashmir (Indian administered) was not established in accordance to item 6 of UN Security Council Resolution of 21 April 1948 and the administrative and governing regimes in Azad Kashmir and Gilgit and Baltistan (Pakistan administered) were not established in accordance to UNCIP Resolution Part II Section A (3) of 13 August 1948, these unresolved issues have impacted the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development badly in these areas.

Five generations approximately 2.5 million of internally displaced and refugees have been disadvantaged in Azad Kashmir and Gilgit and Baltistan. These people carry a common legal identity as State Subjects. Unfortunately, their status as State Subjects has either been prejudiced by secret administrative instructions or through unfair constitutional arrangements, which remain at war with the responsibility undertaken by the Government of Pakistan in the administration of these territories, as defined under article 4 of the Constitution of Jammu and Kashmir (Indian administered) and referred in the preamble of Azad Jammu and Kashmir Interim Constitution Act 1974 (Pakistan administered).

The local administration has been following an undeclared secret policy of refusing to issue identity cards to a majority of State Subjects who have been internally displaced/or made refugees after 1990. They are forced to live on a minor monthly subsistence allowance and some are forced to make their own way to live for another day. The non issue of ID cards restrains them from a freedom of movement and an opportunity to seek a living in Azad Kashmir or outside the area.

The area which according to UN resolutions was to be administered by “local authorities, that is, existing District Magistrates or sub-ordinate officers, according to the law and custom of the State as they existed before the dispute arose” is being administered through a shared arrangement between the Government of Azad Kashmir and the officials of the Government of Pakistan.

Internally displaced and refugee population of 2.5 million have been disabled in their legislative share in the Azad Kashmir assembly. Their previous share in equity has been reduced to 12 seats in a house of 49 seats. Geographical spread of these internally displaced/refugees and their unimpressive economic position has anaesthetised their will to take effective part in the exercise of their free vote in the election of these 12 members in the legislative assembly. A new culture of ghost and bogus voters has been introduced under a secret blessing of the Government of Pakistan and their subcontracted political agents in Azad Kashmir to undo the rudimentary voting influence of these 2.5 million people and override it by a bogus electoral list.

In addition to the crippling influence of a bogus electoral register maintained by the two administrations, these refugees are adversely influenced by a negative constitutional restraint under article 4 (7) (2) which sets a bar on the freedom of expression and assembly. According to this bar “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”. This stipulation is a violation of the declaration made by the Government of Pakistan that it has assumed responsibilities in the area ‘in the discharge of its responsibilities under the UNCIP Resolutions’. A regime of repression has continually targeted members of this specific group who have dared to assert their freedom of expression.

The history of repression of members of this ‘specific group’ dates back to the arrest, detention, and torture of Khawaja Sona Ullah Bhat editor weekly Kashmir published from Muzaffarabad (Pakistan administered) and his four colleagues in March 1957. Khawaja Sona Ullah Bhat, who was defending his published opinions in the Court was unlawfully picked up in the middle of night and handed over to Pakistan army. The group was eventually questioned, tortured and deported back to Indian administered Kashmir.

Khawaja Sona Ullah Bhat has a legendary place in the history of journalism and has been continually publishing daily Aftab from Srinagar since 1957. A large number from these refugees has been secretly black listed and rendered ineligible for any Government jobs. Many such profiled victims were rendered ineligible for holding a passport and they died without realising their dream to visit their homes once in their life. This secret profiling has continued to have a cascading effect from grandfather to father and from father to grandsons and granddaughters.

Arrest and imprisonment of late K H Khurshid, ex President, chief justice High Court Azad Kashmir late Justice Mohammad Yousuf Saraf, late Mir Abdul Aziz editor weekly Insaf, late Manzar Masud, speaker assembly, charge of subversion brought against Syed Nazir Gilani, Field Officer in Pakistan Red Cross, on the basis of a published article and subsequent booking under Martial Law Regulation 13 and 53, prescribing 5 years imprisonment and 15 lashes and a death sentence, the current victimisation of justice Syed Manzoor Gilani, judge Supreme Court, in

violating his right to be elevated as the chief justice of AJK Supreme Court, and the practice of secretly black listing a large number from these displaced people and refugees continues to violate the basic human rights guaranteed under the UNCIP mechanism and under a standard rights regime.

It is unfortunate that even though, in addition to UNCIP Resolutions, under article 4 and 48 of the Constitution of Jammu and Kashmir and the chief minister of Jammu and Kashmir remains under oath to guarantee the rights of these 2.5 million displaced/refugees who are the citizens of the State, yet there has never been a concerted effort to repair the continuous injury caused to this specific group of people.

It is therefore very important that Human Rights Council takes cognizance of the plight of the denied rights of these people and charges the Human Rights Council Advisory Committee with an enduring responsibility to examine the jurisprudence of the rights of these people specifically safeguarded under UNCIP mechanism, under the Indian control in accordance with its bilateral agreement of accession with the Government of Jammu and Kashmir and under the assumption of control by the Government of Pakistan in the discharge of its responsibilities under UNCIP Resolutions in Azad Kashmir & Gilgit and Baltistan.

In the meantime a specific budget requires to be created under the supervision of UN GA on the basis of credible evidence tendered by various NGOs before Human Rights Council to conduct a survey of life and living habitat of the people internally displaced and made refugees since 1947. They need to be tracked down in the two administrations under the control of Pakistan and others living in various parts of Pakistan. A mechanism of grievance and complaints procedure needs to be established and UNMOGIP offices situated on either side of cease fire line could be designated with an extra budget to receive these complaints.

Human Rights Council should ask the Government of Azad Kashmir and the Government of Pakistan to disclose the number of internally displaced people or refugees held in various detention centres known and unknown, in Azad Kashmir, Gilgit and Baltistan and in various Parts of Pakistan.

A special fund needs to be set to rehabilitate the members of this specific group who have been profiled by the secret services of Azad Kashmir and Pakistan and black listed, denying them a just opportunity of an honourable living. Cost of this reparation and rehabilitation needs to be met against the income that Government of Pakistan is earning from the use of natural resources of Kashmir and from the income received from Kashmir properties spread in various parts of Pakistan. A Compensation Fund needs to be created with principal deductions made from aid given to Pakistan by member nations of UN, for the overall reparation and compensation to members of this specific group who have unlawfully suffered by the profiling and victimisation of the policies of the Government of Pakistan.
