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Human rights situations that require the Council's attention

Written statement* submitted by the Jammu and Kashmir Council for Human Rights (JKCHR), a non-governmental organizations 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.

[8 February 2010**]

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

** This statement was printed late and out of numbered sequence due to a technical problem.

Friendly relations among nations based on respect for the principle of equal rights and self determination of peoples and measures to strengthen universal peace remain the principal interest of all member nations of UN and of all civilised communities of the world. Equality amongst peoples is the inescapable criterion to assure a full regime of human rights, which in turn increments a process of life into a quality of life for the citizens living in a geographical habitat. The purposes and the principles of the United Nations at the San Francisco Conference in 1945 tailored a uniform code of conduct in the interests of universal peace and security. We find that the 'Peoples of the United Nations' over the last 65 years have continued to broaden the constituency of basic wisdom of UN Charter.

To achieve the basic purposes and principles of the United Nations all member nations have set out as a collective to remove irritants which impede the realisation of universal peace and security. Out of many such situations The State of Jammu and Kashmir, as defined in article 4 of Jammu and Kashmir Constitution has been addressed in terms of its geography and people in UN Security Council Resolution of 30 March 1951. Security Council Resolution 91 (1951) embeds in it a caution that any constituent assembly from the three administrations of Kashmir would be deemed to have been elected from only a part of the whole territory of Jammu and Kashmir. It reminded the Governments and authorities concerned of the principle embodied in its resolutions 47 (1948) of 21 April 1948, 51 (1948) of 3 June 1948 and 80 (1950) of 14 March 1950 and the UNCIP resolutions of 13 August 1948 and 5 January 1949, that the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations.

All the three administrations of the State, namely, Jammu and Kashmir, Azad Kashmir and Gilgit and Baltistan have been duly addressed in the UN mechanism on Kashmir. In accordance with report of the UN representative for India and Pakistan titled S/1791 submitted on 15 September 1950 it was proposed that "political agents appointed by the United Nations should administer the territory (Gilgit and Baltistan) instead of the present assistant political agents". Although the Government of Pakistan has assumed responsibilities in Azad Kashmir in accordance with its 'responsibilities under UNCIP resolutions', it violated this principle in its administrative behaviour in Gilgit and Baltistan. On 28 April 1949 Government of Pakistan through a written agreement with the Government in Azad Kashmir and a political party secured the administrative control of Gilgit and Baltistan.

None of the three signatories of Karachi Agreement of 1949 had any authority, direct or indirect from the people or leadership of Gilgit and Baltistan to ink this agreement which surrendered them under an undemocratic and colonial control of the political agents appointed by various Governments of Pakistan. All Governments in Pakistan have accrued a liability of all manners for denying the full regime of Human Rights, a freely elected popular legislature, an independent judiciary and other rights to which the people of Gilgit and Baltistan remain entitled as State Subjects.

A new political set up has been introduced in the area under Gilgit-Baltistan Empowerment and Self-Governance Order 2009 signed by the President of Pakistan on 7 September 2009. The Azad Jammu & Kashmir Interim Constitution Act, 1974 does not recognise the President of Pakistan for any such authority in respect of Gilgit and Baltistan or any other territory of Jammu and Kashmir. He is a non State Subject as well. Gilgit-Baltistan Empowerment and Self-Governance Order 2009 is a violation of the Trust Obligations assumed under UNCIP responsibilities by the Government of Pakistan as envisaged in the Constitution Act 1974.

Gilgit-Baltistan Empowerment and Self-Governance Order 2009 has caused a political role for non State Subjects which is a violation of the State Subject Law of 20 April 1927. There is no input from the two other Governments of Kashmir and the Order has violated the pledges given by the Government of Pakistan before the High Court and Supreme Court of Azad Jammu & Kashmir. The Empowerment and Self-Governance Order has breached the principles laid down in the UN Security Council Resolution of 30 March 1951.

Government of Azad Jammu & Kashmir and the Government of Pakistan have failed in their duties assumed under UNCIP Resolutions to “provide for the better Government and administration of Azad Jammu & Kashmir until such time as the status of Jammu & Kashmir is determined in accordance with the freely expressed will of the people of the State through the democratic method of free and fair plebiscite under the auspices of the United Nations as envisaged in the UNCIP Resolutions adopted from time to time.”

Human Rights Council has to address its urgent consideration to all human rights and in particular those which are specifically identified in the UN Security Council Resolution of 21 April 1948. These rights and guarantees include the withdrawal of non State Subjects from these territories, release of all political prisoners, return and rehabilitation of all State Subjects who have left the State on account of disturbances, that there is no victimization, and to provide adequate protection to minorities in all parts of the State.

Human Rights Council has to address its concern and examine the status of the priorities laid down in the UN Security Council Resolution of 21 April 1948, that “all subjects of the State of Jammu and Kashmir, regardless of creed, caste or party, will be safe and free in expressing their views and in voting....and that there will be freedom of the press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit”.

Human Rights Council has to address the special circumstances of the people and geography of Gilgit which are in the North West of Kashmir and on the slopes of the Roof of the World at the point where three Empires of Russia, China and Britain meet. Council has to make a rapid appreciation of the situation in Gilgit and Baltistan. If we fail to negotiate a partnership of guidance in Gilgit-Baltistan Empowerment and Self-Governance Order 2009 in accordance with UNCIP Resolutions on Kashmir, the people and the geography would be placed at the mercy of abuse, bribery, corruption, malpractices and inefficiency of officialdom. We have to spare the happy land and simple folk of Gilgit and Baltistan from the horrors of being a pawn between the warring interests of the Government of Jammu and Kashmir, Government of India and the Governments of Azad Kashmir, Government of Gilgit and the Government of Pakistan.

A special attention shall have to be paid to administrative, political, financial and judicial reforms introduced in Gilgit and Baltistan under Gilgit-Baltistan (Empowerment and Self Governance) Order 2009. An elected Legislative Assembly and elected chief minister in exercise of a free vote is an important step towards democratic political culture. However, the appointment of a non State Subject as a governor by the president of Pakistan (non State Subject) on the advice of the Prime Minister (non State Subject) is a serious departure from State Subject Law. Our duty is obvious. It is to encourage the five Governments, namely Government of India, Government of Pakistan and the three Governments of Kashmir based in Srinagar, Muzaffarabad and Gilgit to explore common ground of public interest and increase the area of maximum benefit of all the State Subjects of the State, the territories of which have been defined in article 4 of the Jammu and Kashmir Constitution and endorsed in UN Security Council Resolution of 30 March 1951.

Since the Council has continued to receive self serving fixed opinions from the Governments and some NGOs and in rare situations an independent input from some other Governments and NGOs, it would be very useful if in consultation with the Security

Council it invites Major General Kim Moon Hwa Chief Military Observer in the United Nations Military Observer Group in India and Pakistan (UNMOGIP) to present an independent overview of the Human Rights Situation either in Private or in Public. General Hwa is a distinguished soldier and has a long history of service on either side of cease fire line in Kashmir. He has served as Deputy Chief Military Observer for the mission from 1995 to 1997. Major General Kim has an extensive and distinguished military career since joining the Army of the Republic of Korea in 1976. His input would be a reliable compass in understanding the various pointers of Human Rights needs.
