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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.

[26 May 2016]

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

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development - Jammu and Kashmir

The thirty –second session of Human Rights Council among other subjects would be considering under Civil and political rights, reports from mandate holder Maina Kiai on freedom of peaceful assembly and association, mandate holder David Kaye on Freedom of opinion and expression, mandate holder Monica Pinto on Independence of judges and lawyers and mandate holder Christof Heyns on Extrajudicial, summary or arbitrary executions.

In this context JKCHR would like to flag an experience with a new narrative being shaped by young Kashmiri boys and girls on either side of the cease fire line and in particular youth that has faced oppression and loss of home, when their parents had to leave homes for a well-founded fear of persecution in the Indian controlled part of Jammu and Kashmir. At a seminar organised by Institute of Strategic Studies, Islamabad and KFF on “Human Rights, Youth and the Issue of Jammu and Kashmir” a young female participant Ms. Shaista Safi of Youth Forum for Kashmir stated that in Kashmir one comes to know about a violation first and the knowledge that the individual has a human right follows.

Post 1990 generation in Kashmir has witnessed, has heard or has continuously read about the death of over 70,000 Kashmiri Muslims of all ages – mainly youth, disappearance of nearly 8,000 Kashmiris in Indian dungeons and torture centres, about 6,000 lying deep in the unmarked burial sites and mass graves in the mountains and hundreds of half-widows. One in every six residents in the Kashmir Valley has been tortured. There are over 20,000 orphans. The displacement of Kashmiri Pandits and the displacement of five generations of Kashmiri Muslims since 1947 makes a sad recount in any human narrative.

Jammu and Kashmir probably remains the only conflict spot, where a peaceful assembly or association in protest of a minor school girls rape by an Indian security personnel, is answered with the use of live ammunition and death of five people. On April 12, 2016 outraged local residents gathered in a town square in north Kashmir to protest against the alleged molestation of a minor school girl by an army man. Within minutes, two men and an old woman were shot upon by the Indian armed forces and police stationed in the garrison town of Handwara, 70 kilometres from Srinagar, the capital city of Kashmir. The men, Nayeem and Iqbal, were killed with shots to the head and abdomen, and the woman, Raja Begum, received a bullet in her head as she tended to her vegetable patch further away. She was later declared brain dead at a hospital in Srinagar.

A fourth victim, Jahangir, part of a protest against the earlier killings, was killed the following day, as a tear gas shell broke open his skull. On April 15, another youngster, 17-year-old Arif, was slain when the army fired on protestors in the border district of Kupwara.

The killing of protesters in Kashmir where India has stationed over half a million troops since the beginning of the armed and mass uprising against its rule in 1989—is nothing new. It’s as if the script for these customary assaults on Kashmiri citizens is written in indelible ink, and those who act upon it chapter and verse have it inscribed upon their bullet proof vests. This kind of brutal violence inflicted upon civilians will not cease, because it’s structural; built into the very architecture of the vast military complex that holds Kashmir for India. At the slightest creak, at the smallest hiss of dissent or protest, that machine opens its many-triggered jaws and consumes human lives.

Government of India has failed to honour its obligations under article 1 (2) of the UN Charter and has failed to honour her duties outsourced to it under UN Security Council Resolutions on the disputed habitat of Jammu and Kashmir. It is using an aggregate of a failed political appeasement and a derided military force to humble the man and woman in Kashmir.

Indian Governments have continued to duck and dive on Kashmir at home and at the international level. Killing instinct of an Indian soldier failed to break the resolve and dissent. It failed to kill enough to influence the Muslim majority character of the State. Prime Minister PV Narasimha Rao stated that “sky was the limit” if the people of Kashmir would negotiate terms of living with Indian union. The offer did not have many takers and its lift off failed. Prime Minister Atal Behari Vajpayee made repeated attempts to engage the Kashmiris and during a public rally in Srinagar in April

2003 wished to resolve all issues confronting Kashmir on three principles of “Insaanīyat” (humanism), “Jamhooriyat” (democracy) and “Kashmiriyat” (Kashmir’s multiculturalism). He initiated a process that nearly resulted in a Kashmir settlement in 2007.

Prime Minister Manmohan Singh came up with the creative idea of convening a roundtable in 2006 which would bring together leaders of all parties to discuss the Kashmir issue. Three roundtables were held, and several working groups sought to offer recommendations on dealing with specific issues, including one on Centre-State relations which took up the issue of autonomy. In his July 2014 visit to the Valley, Prime Minister Narendra Modi spoke about the importance of development and said that he would take the Vajpayee initiatives forward. Subsequently, in the election campaign, he emphasised development as the key issue.

In his November 2015 visit, Modi did invoke Vajpayee’s “Kashmiriyat, Jamhooriyat and Insaanīyat” mantra, but he chose to focus on an economic agenda, promising the state a Rs. 80,000 crore development package, adding egregiously that he needed no advice from anyone in the world, when it came to Kashmir. On one hand, India has maintained an iron hand in ensuring its control over the state. On the other, it has offered Kashmiris a range of policies within which they can feel that there are no constraints to their freedom.

In fact Indian security forces have created a constituency of power and benefit in the Kashmir dispute. Killing remains a core requirement in holding on to their power turf. Ex-chief of RAW (Research and Analysis Wing) has highlighted this embedded interest of the Indian army in the State. He states, “It’s a different thing that nowadays the generals make the army out to be indispensable by offering some theory or another about infiltration and terrorism every six months or so”. [Page 233 Kashmir The Vajpayee Years].

A UN General Assembly Resolution holds that taking part in periodic elections and exercise of a free vote to choose one’s representative is a basic human right. The people of Jammu and Kashmir have never been free to choose their representatives or that the elected people had any authority in matters entrusted to them. Ex-RAW chief at page 205 of his book unravels the secret behaviour of governance in Jammu and Kashmir. He writes, “The IB had a sinister reputation in the Kashmiri mind. Part of it was because since Independence, the IB had basically been running Kashmir, advising the home ministry and reporting directly to the prime minister on whatever happened there.”

26 years early, on July 5, 1990 Armed Forces Special Powers Act (AFSPA) was invoked in Jammu and Kashmir to enforce a military discipline that could operate above law and in the darkness. July this year would complete the 26th anniversary of the controversial law in the state of Jammu and Kashmir. Over the past couple of years a public debate on the removal of the ‘disturbed area’ tag, and thus revocation of AFSPA from parts of J&K, has drifted in to a confrontation between the State political leadership and the Army.

In the past 26 years unprecedented excesses have been committed by the army and the younger generation has been hounded out of a peaceful life. It is a worrying factor that an army which has entered into the State under four terms of reference and is a sub-ordinate force at the command of State has turned the State into its colony. This army has been placed under three restraints on its number, behaviour and location under the UN Security Council Resolution of 21 April 1948.

Army is forcibly occupying 1648 premises in Kashmir and has refused to return these premises to the civilian owners. These include 278 government buildings, 1302 private buildings, 45 hotels, 5 cinemas and 18 industrial units. The army is in unauthorized occupation of 21337 acres of land as well.

The state is disputed and has a constitution of its own, a flag of its own, as well as the nomenclature of “Prime Minister” for its chief minister and “Sadr-e-Riyasat” for its governor, which was changed in 1965. The State has its own Penal Code called Ranbir Penal Code and section 18 of Indian penal code excludes Jammu and Kashmir from the scope of India. *Section 18 of Indian Penal Code reads "India" means the territory of India excluding the State of Jammu and Kashmir.* It is right time that Human Rights Council adds Jammu and Kashmir in the list of its interests and appoints a special rapporteur to examine the human rights in the Indian controlled part of Kashmir.