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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.

[31 May 2017]

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

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Indian Administered Jammu and Kashmir – using civilians as human shield

It is 27 years and 4 months since JKCHR reported the first killings between the night of 8 and 9 January 1990 by Indian security forces in Srinagar, Indian administered Kashmir to Centre for Human Rights in Geneva and 24 years since the NGO addressed the Plenary and Main Committee of the UN World Conference on Human Rights in Vienna in June 1993 on behalf of Unrepresented Peoples and Nations of the World. A formal complaint against India was lodged under procedure 1503 for her gross and systematic violation of human rights during our meeting at the United Nations on 6 July 1990.

JKCHR has been making consistent efforts to alert the Commission for Human Rights, Sub Commission and now the Human Rights Council on the manner in which an army which had a provisional interim role to defend the territory, protect life, honour and property in Kashmir, one which had to follow a UN specified discipline, has remained involved in the death of a generation. It has used gang rape as a weapon to humiliate and humble a people engaged in challenging the Indian rule and demanding the holding of a UN supervised referendum. We have been reporting this Council that these forces are involved in custodial killings, involuntary disappearances, degrading and inhuman treatment, torture and in the use of lethal weapons, like pellet guns to blind, disable and kill. The human rights abuse has now graduated into a sinister practice of using the civilians as a human shield.

The presence of UNMOGIP and the guarantee given by the United Nations Security Council in para 12 of its Resolution 47(1948) of 21 April 1948, that “The Government of India should themselves and through the Government of the State declare and make known 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 on the question of the accession of the State 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”, has not helped the people living in the Indian administered part of Kashmir.

The death of a generation is deliberate act of war against the civilians, to create a number deficit and influence the outcome of any future UN supervised referendum. Indian Army chief, General Bipin Rawat has shocked every Kashmiri living in the three administrations of Jammu and Kashmir and as a Diaspora that the engagement of Indian forces in Kashmir “is a proxy war and it is played in a dirty way”. Challenge to Indian rule has continued ever since India landed its forces in Indian administered Jammu and Kashmir and the merits of the interim presence became a subject of a UN supervised vote. However, Indian army and its forces have been killing the Kashmiri youth, under one or the other pretext. The common and convenient practice is to stage fake encounters and kill them in cold blood.

Indian Government has followed a policy of raising the bogie of infiltration and taking the Kashmiri youth out of circulation. Home ministry of India has put in a new 15 point plan to overhaul the intelligence and police management, in particular revive the police’s counter insurgency unit SOG (Special Operation Group) “as it was done in 2002” to disable the three decade old Kashmiri resistance and silence the dissent. The plan is being considered for final approval by the National Security Advisor (NSA).

Former chief of Indian intelligence service Research & Analysis Wing (R&AW) A S Dulat writes at page 232 in his book titled Kashmir – The Vajpayee Years, “Yet the AFSPA is linked to the bigger question of how much power the army is wielding, and the movement in Kashmir has provided the army with an opportunity to expand its presence in J & K. Though the army justifies its heavy deployment by periodically raising the bogie of infiltration, it is not restricted to the border; many Kashmiris feel the army has turned the entire Valley into a cantonment”.

On May 25, Union Defence Minister Arun Jaitley said that army officers should be allowed to take a decision on how to deal with a situation in a “war-like zone”. This was followed by the army chief’s statement about “a dirty war” that army officers on the ground are better able to assess, as the army chief himself is “away from the battlefield”.

Indian army does not have any mandate except a conditional presence during the interim period leading up to a UN supervised vote of the people of Indian administered Jammu and Kashmir. The role is connected with the efforts of the State Government to put in place the arrangements for a UN prescribed and a UN supervised referendum. It is unfortunate that Indian army should chose to violate the fundamentals of its presence in Kashmir and declare a war on the people and the principles of UN Charter.

Killing Burhan Wani, Sabzar Ahmad Bhat, Faizan a Class 10 student in Tral and others, placing the people of Kashmir under curfew for a length of time never witnessed in the history of Kashmir, disabling all communication, telephone and internet, placing the political leaders under house arrests, stopping participation in Friday prayers and denying the right to assemble are matters for an urgent consideration of the Council.

Indian Hindus are using Amarnath pilgrimage as a project to integrate the state of Jammu and Kashmir with the Union of India. There are many yatras that take place in India, but Amarnath is the most militarised one. Over 30,000 armed forces escort buses in which yatris come from Jammu. The number of yatris has quadrupled in the past twenty years. In the mid-1980s the number was a few thousand; in 1997 it reached one-lakh twenty-thousand; and the number crossed five lakh in 2015. Hindu nationalists use the yatra to assert their numerical power over Kashmir. As against this influx India has continued to refuse the return of Kashmiri Muslim refugees to their homes in safety and dignity, as provided in the UN Resolution of 21 April 1948.

Srinagar Government has failed to put in place a provisional Government specified by the UN and has failed to carry out the duties outsourced to it under UNCIP Resolution on the preparation of a free and fair UN supervised referendum. Indian security forces, designated to provide assistance in maintaining law and order, in the preparation and conduct of Kashmir referendum, have lost the merit of their presence in the State. These security forces have outlived their purpose and have rendered themselves into an occupation force.

Pakistan as a member nation of the UN and as a party to the Kashmir dispute, has a higher burden of responsibility under UNCIP resolutions to protect life, honour and property of the people of Kashmir and assist the civil society in advancing the case of the right of self-determination. There is a humanitarian and medical crisis in Kashmir. India has denied the UN High Commissioner for Human Rights entry to verify the allegations and claims of human rights abuse. A UN supervised vote on the future of the State was agreed by India and Pakistan. Belgium, China, United Kingdom of Great Britain and Northern Ireland and United States of America in particular have remained the authors of UN Security Council resolutions on a UN supervised referendum.

Indian security forces need to be stopped and international community has to be updated on the continued wave of human rights abuses in Kashmir. Communal forces sitting in the Government and administration in Delhi have reduced the Kashmiri Muslim to a process of life. They have robbed the Kashmiri men, women and children of their habitat, honour and dignity.

JKCHR wishes to update the Council that Indian efforts to sell peace in Kashmir received all support from various schools of opinion in Kashmir, Pakistan and in the Kashmiri Diaspora. Unfortunately the present Government and its elements have betrayed the peace efforts initiated by Prime Ministers Narasimha Rao and Atal Bihari Vajpayee. The former offered 'sky as the limit' and the latter offered a dialogue outside Indian constitution. He declared and extended three times a unilateral cease fire to give peace a chance as a mark of respect for the month of Ramadan. It is unfortunate that the present Government in India has chosen to send dead bodies of sons to their parents and at the same time is refusing them to grieve, by imposing curfew.

There is an urgent need to consider alerting the International Criminal Court on these War Crimes. Since India with a primary competency is unwilling or unable to investigate or prosecute these crimes at issue, there is merit in invoking the Principle of complementarity - which grants jurisdiction to the ICC. ICC prosecutor has the mandate to open, investigate and prosecute the most serious crimes, namely war crimes, crimes against humanity, and genocide.
