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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.

[30 August 2007]

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

The World Conference on Human Rights under item “Co-operation, development and strengthening of human rights”, paragraph 67 laid a special emphasis that assistance should be given to “the strengthening of the rule of law, the promotion of freedom of expression and the administration of justice, and to the real and effective participation of the people in the decision making processes”.

JKCHR has continued to subscribe its interest in strengthening the “Rule of Law” and has supported the “administration of justice” as an instrument of real change to maximise the take up of the full regime of human rights, more so to remain entitled to equality and dignity. After its (JKCHR’s) election at the UN World Conference on Human Rights in Vienna in June 1993, on behalf of Unrepresented Peoples and Nations, JKCHR addressed the Plenary and the Main Committee on behalf of Unrepresented Peoples and Nations.

President United Nations Correspondents Association in Vienna arranged a Press Briefing for JKCHR Secretary General on Friday 18 June 1993. JKCHR contribution to the proceedings of the World Conference remains embedded in the over-all wisdom of Vienna Declaration and Programme of Action.

JKCHR has submitted its written statement on The Independence of Judges and Lawyers to the 5th Session of Human Rights Council. It has been circulated as document A/HRC/5/NGO/42. We have discussed one specific territory, Azad Kashmir, which is a subject of UN Security Council resolutions and UNCIP resolution of 13 August 1948.

It is important to point out that UN SC resolution of 21 April 1948 and UNCIP resolution of 13 August 1948 have stipulated a special role for the judiciary in regards to “the strengthening of the rule of law, the promotion of freedom of expression and the administration of justice, and to the real and effective participation of the people in the decision making processes”, in Azad Kashmir.

On 14 June 2007 JKCHR has invited the attention of the mandate of Special Rapporteur on the independence of judges and lawyers in respect of rule of law and independence of judiciary in Azad Kashmir, which is one of the three administrations of Kashmir currently under the control of Government of Pakistan.

The areas of complaint made are in the following manner:

1. Azad Kashmir is one of the three administrations of the disputed State of Jammu and Kashmir. In the UNCIP resolutions it is described as ‘Local Authority’ and the UNCIP resolutions have also suggested an administrative set up for the ‘territory’.
2. According to UNCIP resolutions the administrative set up of the territory was to be supervised by the local judiciary and the UN.
3. The other two territories are Jammu and Kashmir and Gilgit and Baltistan.
4. At this point in time the Government of Pakistan has assumed control of the territory, called Azad Kashmir, in accordance with its responsibilities under UNCIP resolutions. The jurisprudence of this claim is a separate issue and may appropriately be referred in respect of the complaint being made by JKCHR.

5. Government of Pakistan as a member nation of UN has a higher burden of responsibility to show that it works to secure and promote the independence of the judiciary in its territory and more so in the disputed territory where it has sought a temporary control under UNCIP resolutions. The duty of the State in respect of judiciary is further incremented by the Consensus Resolution [1998/35](#) of the Commission and the General Assembly resolution 40/32 in respect of the Basic Principles on the Independence of the Judiciary.

6. On 21 October 2006 the President of Azad Kashmir appointed a junior judge Mr. Justice Muhammad Reaz Akhtar Chaudhary as Chief Justice of Azad Kashmir, victimising the most senior judge of the Supreme Court Mr. Justice Manzoor Hussain Gilani. Justice Chaudhary had only a month's services in the Supreme Court at the time of his appointment as CJ.

7. The appointment of CJ has been challenged by 8 Senior Lawyers namely, Sardar Karam Dad Khan, Raja Sajjad Ahmed Khan, Syed Mumtaz Hussain Naqvi, Abdul Qadeer Awan, Syed Mushtaq Hussain Gilani, Waqar Hussain Kazmi, Raja Iqbal Rasheed Minhas and Muhammad Sabir Akbar Khan of Azad Kashmir.

8. President of Azad Kashmir in this regard acts on the advice of AJK Council, an upper house of Azad Kashmir Legislature, which has an inherent potential of being manipulated by the Government of Pakistan. Prime Minister of Pakistan is the Chairman of the Council and has retained a right to nominate five non Kashmiris on a body of 14 members. A further advantage is retained by inducting another Pakistani, the minister for Kashmir Affairs and Northern Areas (Gilgit and Baltistan) as an ex officio member of the Council. The balance of power is retained by the Prime Minister of Pakistan as Chairman of the Council and through a numerical authority on the 14 member Council.

9. Lawyers of Azad Kashmir have filed a Writ Petition under section 44 of the Azad Jammu and Kashmir Interim Constitution Act 1974 against a gross interference of the two executives (Pakistani and Azad Kashmiri) in the independence of judiciary in Azad Kashmir. Article 42(8) of the constitution sets out the qualifications for a CJ as "The most senior judge of the other judges". In this case the seniority of the newly appointed CJ in the Supreme Court is that of a month.

10. The Lawyers have maintained and I concur with their prayer as an Advocate of Supreme Court that the appointment of CJ on 21 October 2006 is at variance with constitutional norms, judgements of the Supreme Court of Pakistan, constitutional conventions and the practice.

11. The situation has adversely affected the Independence of Judiciary and the confidence of the people in the rule of law and good governance.

12. It has been reliably reported that the administration has used police to intimidate the lawyers and other unlawful means to remove the writ petition from the offices of the Registrar of the High Court at Muzaffarabad. Character and credibility of the Supreme

Court has suffered a dip because High Court premises could not be invaded to remove the papers regarding the writ petition without a green signal from the CJ of the Supreme Court or without a green signal from the higher authorities in the administration.

13. It is argued by the lawyers in their petition that the junior judge prior to his appointment in the Supreme Court, discharged his duties as acting chief election commissioner, to assist a 'political party' to return to power. In this case the general allegation in the writ petition is that Prime Minister of Pakistan and Minister for Kashmir Affairs, both citizens of Pakistan, were personally involved to engineer the election 2006 results in Azad Kashmir. This would not have been possible if Justice Manzoor Hussain Gilani had continued as chief election commissioner. He is known for his character, judicial wisdom and his duty to fairness. Elections 2006 have been condemned by various political parties and the press as rigged.

14. The appointment of the new junior judge and then his elevation in a month's time as CJ is pregnant with mala fides. It has impaired the dignity and independence of judiciary.

15. The people of the territory are State Subjects and remain a subject of the Right of Self Determination at the UN. An independent judiciary is the first interest of every citizen in the territory and of all citizens in this civilised age. As a member of Bar in Azad Kashmir, the Azad Jammu and Kashmir Legal Practitioners and Bar Council Rules cause a duty for me to "add honour to the judiciary" by defending the independence and integrity of the judiciary.

16. In the present case the judiciary of the territory has a special significance because it has to oversee the following :

- (i) It is a territory which Pakistan has taken control of under UNCIP resolutions
- (ii) The people of the territory have a title to self determination
- (iii) Pakistan as a member nation of UN and under UNCIP resolutions has a duty to honour the right of these people to have an independent judiciary and a free legislature so that they could make an informed choice
- (iv) Pakistan after assuming a control of this territory has a duty to conform to UN principles for the independence of judges and lawyers

17. Security of the 8 lawyers named above and of all others is a matter of utmost concern as well.

Human Rights Council is respectfully requested to take an urgent notice of the situation and as an interim measure send an urgent caution to the Government of Pakistan and the Government in the territory of Azad Kashmir that they remain fully charged with a duty to secure and assure the safety of the lawyers. Meanwhile, I sincerely hope that the Rapporteur shall treat this communication as a formal complaint in respect of the question of 'independence of judges and lawyers' in Azad Kashmir.
