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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, 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.

[14 May 2013]

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

Prisoner's Rights: Jammu and Kashmir*

More than 170 governments at the UN World Conference on Human Rights in Vienna in June 1993 chose human dignity as the value that generated human rights and stressed the need for human beings to be central to any consideration of the protection of human rights. The Declaration and Programme of Action accords foundational quality to human dignity.

The rights of civil and military prisoners are governed by both national and international law. International conventions include the International Covenant on Civil and Political Rights, the United Nations' Minimum Rules for the Treatment of Prisoners, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of Persons with Disabilities.

India and Pakistan remain responsible to ensure foundational quality to human dignity to prisoners held in their respective prisons and more so when the prisoners are either of Indian or Pakistani nationality or any other prisoner. India and Pakistan have the citizens of the State of Jammu and Kashmir, in particular from the territories under their respective administrations as prisoners in their various prisons.

It is unfortunate that two correctional institutions situated at Kot Lakhpat in Lahore (Pakistan) and Kot Balwal in Jammu & Kashmir (Indian administered) failed in their duty to protect two prisoners. 49 year old Sarabjit Singh of village Bhikhiwind, Punjab, (India) on a death row in Kot Lakhpat jail in Lahore died on 2 May 2013. He was attacked by fellow prisoners and succumbed to his injuries. Singh had been in prison for the last 23 years. The jail authorities at Kot Balwal jail in Jammu erred to allow a revenge attack on 52 year old Sannaulah Ranjay of village Daluwali, Sialkot (Pakistan). He succumbed to his injuries and died on 9 May 2013. Ranjay had been in prison for the last 17 years.

In a civilized society the system of justice allows people to engage in mediated combat with each other via words and representations in courts. India and Pakistan are two nuclear countries and as such carry a higher burden of responsibilities.

Regardless of the merits of Sarabjit Singh and Sannaulah Ranjay cases, they were killed while held in the two jails of Pakistan and India. In the current political mistrust between the two countries, it entails a bad news for other prisoners held in both countries.

The integrity of these two trials during the vitiated circumstances in 1990/1991 could not be regarded fair and impartial. The courts in India and Pakistan at that point had not graduated in holding the scales of justice and failed to assure their independence and impartiality as we find them today. The press and public would not have remained as interested in the rights of these prisoners as much as we find them today.

The atmosphere of trust between India and Pakistan in 1990 was at its low and arrests of innocent people living near the border were a routine. There is no convincing evidence that Sarabjit Singh and Sannaulah Ranjay would have received proper legal defence during their trials.

Although Sarabjit Singh and Sannaulah Ranjay were subject to a loss of liberty in accordance with law, they continued their right to retain their physical integrity. They had to be treated with all dignity and should not have suffered any degrading and inhuman treatment. The manner in which items used to brutalise and kill them, were available to

* Muslim Women's Aid (MWA) UK, an NGO without consultative status, also shares the views expressed in this statement.

other inmates in the prison, mean that both prisoners were subjected to torture, cruel, inhuman and degrading treatment.

Every individual who is deprived of his liberty has the right... to humane treatment during the time he is in custody. In this case Sarabjit Singh and Sannaulah Ranjay were entitled to be treated with humanity and with respect for the inherent dignity of the human person.

The events and circumstances which have conditioned the expression of this senseless violence in Kot Lakhpat and Kot Balwal jails entail a potential for chain killings in the future. A dangerous example of revenge killing and failure of a correctional institution to remain responsible for the physical integrity of a prisoner, has to be looked into in the best interests of other prisoners held in prisons in both the countries.

It would be a great disservice to the full regime of human rights and in particular prisoner's rights, if we make an unwise effort and draw any parallel between the manner in which States have behaved in the cases of Afzal Guru (a Kashmiri held in Tihar jail in Delhi), Sarabjit Singh and Sannaulah Ranjay. We need to highlight the basic human right to a fair trial, in civil and criminal matters and that all other rights depend upon the proper administration of justice. The character of the tribunal, in terms of its independence and impartiality is the litmus test. A judge must not be subject to the control or influence of the executive or the legislature.

Although there is a UN mechanism to resolve the question of right of self-determination of the people of Kashmir, Kashmiri youth were encouraged to take up arms in early 1990s against the world's third largest army. The militancy in Kashmir Valley has come to an end and Pakistan put has an official end to this support in 2006. Till then, "India and Pakistan fought each other in the valley by manipulating the lives of others. Everything that happened here involved acts of ventriloquism, with traitors, proxies and informers deployed by both sides, and civilians becoming the casualties."

A large number of Kashmiri youth came under a cloud of suspicion and a large number was taken out of circulation and held in various prisons in India. It is for the first time in the history of Kashmir from 1846-1990 that a generation was killed from 1990-2006. A large number is disabled. Some have been tagged as renegades, some as surrendered militants, some are stranded in Pakistan administered Kashmir (AJK) or in Pakistan trying to settle down and others are trying hard to return and benefit from the rehabilitation policy of the State government.

A large number of Kashmiri prisoners are in various prisons in India and if the mood levels in India and Pakistan are disturbed by the treatment of each other's prisoners, it would have a direct impact on the quality of treatment of Kashmiri prisoners as well. The manner of politics of our leaders has made Kashmiri youth less attractive as a proxy for Pakistan and a suspect in various parts of India. He is seen limping between devil and the deep sea. It is important that we encourage the two countries to live up to the pledge made by 170 countries at the UN World Conference on Human Rights in Vienna in June 1993, that human dignity was the foundational quality of the full regime of human rights.

Defence of the rights of prisoners is an important issue. The Council needs to consider a mechanism to encourage lawyers in India and Pakistan, who offer their quality services to poor prisoners in these prisons. A recent commendable example is the order dated 06 May 2013 of Judge S Ravindra Bhat and Judge S P Garg of Delhi High Court who set aside an earlier conviction dated 27.8.2009 and 19.9.2009 of various terms, the highest of which is life imprisonment, of two Kashmiri prisoners namely Mohammad Iqbal Jan & Musthaq Ahmed Kaloo and ordered their immediate release. The prisoners were defended by the distinguished human rights defender, Prof. Bhim Singh a senior advocate Supreme Court of India. He was assisted by Gaurav Kumar Bansal and B.S. Billowria, advocates.

UN Human Rights Council should also consider financial support to the STATE LEGAL AID COMMITTEE. Such noble individuals need to be encouraged and invited to these sessions to observe the debates under relevant agenda items and asked to make their inputs as well. Prof. Bhim Singh has remained an active participant and contributor to the debates during the UN World Conference on Human Rights in Vienna in June 1993. He remains a lead person who has encouraged good friendly relations between India and Pakistan and has been promoting the peace constituency in Jammu and Kashmir.
