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Committee on Government Reform
Subcommittee on Human rights and wellness

*“Decades of Terror:
Exploring Human Rights Abuses in Kashmir and the Disputed Territories”*

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*Testimony
Given by*

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Mr. Chairman and distinguished Members of the Subcommittee:

I am grateful for the opportunity to share my views on the state of human rights in the disputed territory of Kashmir.

At the outset, I welcome the peace initiative between India and Pakistan that was signed by Prime Minister Vajpayee of India and President Musharraf of Pakistan, which include negotiations over Kashmir. I believe in the universality of human rights, the universality of human aspirations, and the universality of peace and prosperity.

The people of Kashmir equally share a vision of peace and stability between India and Pakistan, and of progress and prosperity for their people. That is why they believe that Kashmir conflict has to be resolved through peaceful negotiations and not through military means. They favor negotiations between these two neighboring countries. They believe that durable peace and development of harmonious relations and friendly cooperation will serve the vital interests of the peoples of the two countries and enabling them to devote their energies for a better future.

I also welcome the initiative to the extent it seeks to lift a heavy financial and military burden from the necks of the people of both Pakistan and India. At present, both rivals expend staggering sums on maintenance of troops and the acquisition of weapons, including nuclear warheads and delivery vehicles. Neither is a signatory to the Nuclear Non-Proliferation Treaty. Proposals for a missile-free and nuclear-free zone in South Asia have shipwrecked on India's ambition to become South Asia's hegemonic power.

Much to my chagrin in light of the warming of diplomacy between India and Pakistan and incipient dialogue between India and Kashmiri leaders, the state of human rights in the disputed territory is chilling. Indeed, it shocks the conscience. Human rights violations against Kashmiris cast doubt on India's professed desire to resolve the Kashmiri nightmare. They estrange, not unify. They embitter, not reconcile. They polarize, not moderate.

Mr. Chairman, A massive campaign of brutal suppression has been launched by Indian Army since January 1990. Various estimates are given of the death toll of civilians so far. Making due concession for unintended exaggerations, the figure runs into tens of thousands. Countless individuals have been maimed and thousands of women molested and assaulted. Despite a faint murmur of protest in international press, India has felt no pressure whatsoever to desist from its semi-genocidal campaign. Not a word of condemnation has been uttered at the United Nations; not even a call on India to cease and desist from committing its atrocities. This is not merely a case of passivity and inaction; in practical effect, it amounts to an abetment and inducement of murderous tyranny.

Human rights violations in Kashmir are systematic, deliberate, and officially sanctioned. Far from seeking to rectify its atrocious human rights record, India has legalized its state-

sponsored terrorism in Kashmir. It has given its occupation forces powers to shoot to kill and the license to abuse the people of Kashmir in whatever ways they like in order to suppress the popular movement for basic human rights and human dignity.

All available evidence of India's military activities in Kashmir indicates one thing: that the Indian Government is systematically targeting innocent people of Kashmir for death. They beat up the elderly, rape women, defile young girls, raze villages, destroy families and murder young boys. These tactics have no military purpose whatsoever. There only imaginable purpose is to terrorize a people into submission.

The abuses are so extensive as to extend beyond those directly affected, reaching every men, women and child in the Valley of Kashmir. The civilians live under the constant threat of abuse. The overwhelming presence of 700,000 Indian military and paramilitary forces serves as a constant reminder to Kashmiris that they are not free people but a people subjugated and enslaved against their will. Harinder Baweja, an Indian Hindu Journalist of "India Today" said it well, that everywhere there is pain in Kashmir. There is darkness everywhere. Kashmir has lost its magic.

Mr. Chairman, The constant disturbances in Kashmir have changed the entire life pattern of the inhabitants particularly that of the women and children. The entire concept of childhood has undergone a radical change in the Valley. Schools have been converted to army camps. The children do not attend kindergarten and they do not play with toys, the way normally children do. Neither are they brought up under the care of their parents in a free atmosphere. The memories and recollection of their childhood consist of an atmosphere of terror, dissatisfaction, anxiety, unrest, insecurity and uncertainty.

It is gravely sinful for any nation to remain silent or passive over frightful human rights violations anywhere in the world, including Kashmir. Edmund Burke wrote that all that is necessary for the triumph of evil is for good men and women to do nothing. Bishop Desmond Tutu lectured that, "Apathy in the face of systematic human rights violations is immoral. One either supports justice and freedom or one supports injustice and bondage." The Reverend Martin Luther King, Jr. sermonized in a parallel way about the encumbrance to achieving authentic freedom for blacks in the United States: "The Negro's great stumbling block is not the White Citizen's Councilor or the Ku Klux Klanner, but the white moderate who is more devoted to 'order' than to justice...who paternalistically believes he can set the timetable for another man's freedom."

Indiscriminate killings:

The best estimate of extrajudicial killings in Kashmir since 1989 approaches a staggering 80,000. That number dwarfs the killings in Northern Ireland, Palestine, Bosnia, and Kosovo which have brought the world to tears and revulsion.

Killings in Kashmir have become so commonplace that they are reported like car accidents in the United States. Illustrative is a February 19, 2004, news report by the Kashmir Media Service from Srinagar: "In occupied Kashmir, the Indian troops killed 8

more Kashmiri youth in fake encounters. According to Kashmir Media Service, of those killed, four were shot dead in Kokernag and Bijbehra areas of Islamabad district.”

My cousin, Shabir Siddique, operated 200 educational schools in Kashmir. He was a scholar and not a soldier. He was moderate and not militant. He and eighteen Kashmiri youths were abducted, sealed in a house in Hazratbal, Srinagar, and were burnt alive by the Indian military. Shabir's two sons and daughter still ask today, shaking with grief, what was Daddy's crime? The silence from India speaks volumes of guilt.

Mr. Balraj Puri, a prominent Kashmiri Hindu leader was quoted in Daily Kashmir Times to have said “on February 8, 2004 five civilians were killed near Bandipore, North of Kashmir who were reportedly being used as human shield by the army in an encounter with the militants. The popular reaction was sharper and its reverberations were felt much wider than in case of such incidents earlier.”

Torture:

Torture is a universal crime and creates a cause of action for damages under the United States Alien Tort Claims Act. Torture with impunity, nonetheless, is widespread in Kashmir.

The State Department Human Rights Report recounts a chilling portrait of torture in Kashmir: “The law prohibits torture, and confessions extracted by force generally are inadmissible in court; however, authorities often used torture during interrogations. In other instances, authorities tortured detainees to extort money and sometimes as summary punishment.

“The U.N. Special Rapporteur on Torture reported that the security forces systematically tortured persons in Jammu and Kashmir to coerce confessions to militant activity, to reveal information about suspected militants, or to inflict punishment for suspected support or sympathy with militants. Information was not made public regarding any instances of action taken against security force personnel in Jammu and Kashmir for acts of terror.

“The U.N. Special Rapporteur on Torture noted that methods of torture included beating, rape, crushing the leg muscles with a wooden roller, burning with heated objects, and electric shocks. Because many alleged torture victims died in custody, and others were afraid to speak out, there were few firsthand accounts, although marks of torture often were found on the bodies of the deceased detainees.”

On February 23, 2004, the Daily Greater Kashmir News Service reported that the people of Narastan, Tral staged a massive demonstration to protest the torture death of a shopkeeper in the custody of Indian soldiers.

Custodial Disappearances:

Kashmiris disappear into a dark Gulag as regularly as the sun rises in the east and sets in the west. According to the Association of Parents of Disappeared Persons, since 1989, approximately 8,000-10,000 Kashmiris have disappeared into a black hole. Even Muzaffar Hussain Baig, Minister of Finance and Law in Indian-held Kashmir, confessed before the legislature that 3,931 persons had disappeared since 1990. These numbers are horrifying, like the more notorious missing in Argentina regularly denounced by the grandmothers of Plaza de Mayo.

Rape:

Rape, a war crime recognized under international law and the Hague Tribunal, is a staple of India's massive military and paramilitary forces in Kashmir. It is employed to humiliate, degrade, and ostracize the victims. According to the 2002 State Department's Human Rights Reports: There was a pattern of rape by paramilitary personnel in Jammu and Kashmir and the northeast as a means of instilling fear in noncombatants in insurgency-affected areas, but it was not included in the National Human Rights Commission statistics because it involved military forces. According to an NGO in Kashmir, there were "200 rapes by paramilitary personnel in 2000."

Mubeena Begum, a newly married bride from Badasgam, Anantnag, was traveling to her husband's home by bus on the wedding day. The Indian army interdicted the bus, emptied it from the guests, killed her husband, and raped the bride.

A pregnant young woman, Zarifa Bano of Kunun Pushpora, Kupwara, was raped by four Indian soldiers, and she gave birth to a baby with broken leg two weeks later.

Arbitrary Arrests or Detentions:

India has authorized a police state reminiscent of the Gestapo in Kashmir. The Prevention of Terrorism Act, the Jammu and Kashmir Public Safety Act, the Armed Forces Special Powers Act and the Disturbed Areas Act are illustrative. Generally speaking, the law empowers the military and police in Kashmir to arrest, detain, search, wiretap, try, and punish without material restraints. The POTA permits summary trials, coerced confessions, and a presumption of non-bail before trial. Approximately 1,000 Kashmiris remained in police custody under an emergency powers law.

Ms. Arundhati Roy, an internationally known human rights activist, spoke against POTA at a seminar in New Delhi on September 25, 2003. She said that recently, a young Kashmiri friend was talking to me about life in Kashmir. He spoke of having to live with the endless killing, the mounting 'disappearances', the whispering, the fear, the unresolved rumours, the insane disconnection between what is actually happening, what Kashmiris know is happening and what the rest of us are told is happening in Kashmir. He said, "Kashmir used to be a business. Now it's a mental asylum."

Ms. Roy continued that each time there is a so-called 'terrorist strike', the Government rushes in, eager to assign culpability with little or no investigation. The burning of the Sabarmati Express in Godhra, the December 13th attack on the Parliament building, or the massacre of Sikhs by so called 'terrorists' in Chittisinghpura [Kashmir] are only a few, high profile examples. In each of these cases, the evidence that eventually surfaced raised very disturbing questions and so was immediately put into cold storage. Take the case of Godhra: as soon as it happened the Home Minister announced it was an ISI plot. The VHP says it was the work of a Muslim mob throwing petrol bombs. Serious questions remain unanswered. There is endless conjecture. Everybody believes what they want to believe, but the incident is used to cynically and systematically whip up communal frenzy.

Roy said that today in Jammu and Kashmir and many North Eastern States the Armed Forces Special Powers Act allows not just officers but even Junior Commissioned Officers and Non-Commissioned Officers of the army to use force on (and even kill) any person on suspicion of disturbing public order or carrying a weapon. On suspicion of! Nobody who lives in India can harbour any illusions about what that leads to. The documentation of instances of torture, disappearances, custodial deaths, rape and gang-rape (by security forces) is enough to make your blood run cold. The fact that despite all this India retains its reputation as a legitimate democracy in the international community and amongst its own middle class is a triumph.

Freedom of Speech, Press, and Association:

Freedom to speak, write, or organize around self-determination or criticism of the Indian government for millions Kashmiris is chimerical. The freedom of expression outrage can be appreciated by remembering that self-determination was a centerpiece of President Woodrow Wilson's 14-points and is the signature of two United Nations Security Council resolutions supported by both India and Pakistan calling for Kashmir to be resolved via self-determination.

Under the Official Secrets Act, the Government may censor stories or suppress criticism of its politics. For example, on June 9, 2002, Syed Iftikhar Gilani, the New Delhi bureau chief of the Kashmir Times, was imprisoned for allegedly possessing classified information. Gilani retorted that the only proof was a 1995 public document that referred to human rights abuses committed by Indian security forces in Kashmir. Under the Passports Act, the Government may deny passports to applicants who "may or are likely to engage outside India in activities prejudicial to the sovereignty and integrity of India." Accordingly, Kashmiri champions of self-determination, Syed Ali Geelani, Mohammad Yasin Malik, Shabir Ahmed Shah and Mirwaiz Umar Farooq were denied passports to attend Kashmir conference at Brussels in April 2004.

Human Rights Vigilance:

Human rights monitors are denied open access to Kashmir, which contributes to a climate of abuse. As sunshine is the best disinfectant, darkness is the worst cleansing agent.

Human rights monitors in Kashmir are constricted in the places they can visit because of fear of retribution by security forces and countermilitants. Monitors, including lawyers and journalists, are occasionally attacked or killed. Exemplary is the still unsolved assassination of acclaimed Kashmir human rights giant Jalil Andrabi in 1996. As the Chairman of the Kashmir Commission of Jurists, Jalil Andrabi was about to embark by air to attend a session of the United Nations Commission on Human Rights, Geneva. But in an instant, he was car jacked by the Indian Border Security Forces and his corpse left floating in the Jehlum river. Mr. Andrabi's body was mutilated beyond recognition. His assassination was meant as a horrifying message to human rights defenders in Kashmir.

Kashmir's Unique Characteristics:

The most baffling phenomenon regarding this situation is that

1. It has been allowed to arise and to persist in a state which, under international law, does not belong to any Member state of the United Nations and whose status is yet to be decided by the people of that land. It is interesting to note that when the Kashmir dispute erupted in 1947-48, the United States upheld the stand that the future status of Kashmir must be decided by the will of the people of the territory and that their wishes must be ascertained under the supervision and control of the United Nations. The U.S. was a principal sponsor of the resolution which was adopted by the Security Council on 21 April 1948 and which was based on that unchallenged principle.

Pandit Jawaharlal Nehru, the first Prime Minister of India, on 2nd January 1952 said: "We have taken the issue to the United Nations and given our word of honour. We cannot go back on it. We have left the question of final solution to the people of Kashmir."

2. It represents Government's repression not of a secessionist or separatist movement but of an uprising against foreign occupation, an occupation that was expected to end under determinations made by the United Nations. The Kashmiris are not and cannot be called separatists because they cannot secede from a country to which they have never acceded to in the first place.
3. It has been met with studied unconcern by the United Nations. This has given a sense of total impunity to India. It has also created the impression that the United Nations is invidiously selective about the application of the principles of human rights and democracy. There is a glaring contrast between the outcry over the massacre in Tiannanman Square, on the one side, and the official silence (barring

some faint murmurs of disapproval) over the killing and maiming of a vastly greater number of civilians in Kashmir and the systematic violation of the 1949 Geneva Convention.

The Post 9/11 War:

The post-9/11 war against global terrorism has complicated the Kashmiri equation. That good war has been hijacked by many nations to crush freedom struggles. Cooperating with the United States in sharing intelligence and prosecuting genuine terrorists has been made contingent on silence by United States over human rights abuses and slaughter of human rights defenders. India declares itself the world's most populous democracy and offers support to America in pursuing terrorists. In exchange, the United States remains silent when India kills innocent Kashmiris who crave self-determination and its achievement through peaceful protest.

While condemning terrorism unambiguously, the Office of the High Commissioner said that "the suggestion that human rights violations are permissible in certain circumstances is wrong. The essence of human rights is that human life and dignity must not be compromised." Secretary-General Kofi Annan stated at a special meeting of the Security Council's Counter-Terrorism Committee, on 6 March 2003, "Our responses to terrorism should be to uphold the human rights that terrorists aim to destroy."

Recommendations:

The following is urgent to jump start progress on human rights and peace in Kashmir:

- i. India must repeal all of its draconian laws that violate human rights in Kashmir;
- ii. Military hostilities must cease immediately in Kashmir, and a scheduled withdrawal of security forces should commence;
- iii. All political prisoners must be released;
- iv. Rehabilitation relief for the victims of the war in Kashmir, particularly women should be provided;
- v. The conditions that will enable the return of all exiles and refugees since 1947 should be created;
- vi. Agreement should be reached for complete transparency in all confidence-building measures;
- vii. Restoring the freedom of speech, assembly and demonstrations;
- viii. Freedom of movement without either passports or visas from India or Pakistan by Kashmiris traveling across the cease-fire line should be permitted;
- ix. India should cease construction and dismantle any fence intended to make the cease-fire line a permanent international boundary;
- x. Kashmiris should be authorized to undertake free travel abroad to engage in peaceful advocacy favoring self-determination;
- xi. Providing facilities for an intra-Kashmiri dialogue embracing both sides of the cease-fire line.

Conclusion:

I believe that peace and justice in Kashmir are achievable only if pragmatic, realistic and tangible strategy is established to help set a stage to put the Kashmir issue on the road to a settlement. Since, we are concerned at this time with setting a stage for settlement rather than the shape the settlement will take, we believe it is both untimely and harmful to indulge in controversies about the most desirable solution of the Kashmir problem. Any attempt to do so at this point of time amounts to playing into hands of those who would prefer to maintain a status quo that is intolerable to the people of Kashmir.

I also believe that any future negotiations between India and Pakistan can be meaningful and successful if all parties concerned – Governments of India and Pakistan and Kashmiri leadership – announce a cease-fire that must be followed by negotiations. Negotiations cannot and should not be carried out at a time when parties are trying to kill each other. Kashmir must be demilitarized.

Negotiations should be initiated simultaneously at all four different levels, including:

- (a) an intra-Kashmir dialogue between the leadership of All Parties Hurriyet Conference, Dogras, Buddhists, Sikhs, and Pandits;
- (b) talks between the government of India and Pakistan;
- (c) talks between the Government of India and the Kashmiri leadership, it needs to be expanded;
- (d) finally tripartite talks between India, Pakistan, and genuine leadership of the people of Kashmir.

The reason that talks must be tripartite is that the dispute primarily involves three parties-India, Pakistan, and the people of Kashmir. But the primary and principal party is the people of Kashmir, because it is ultimately their future, the future of 13 million people of Kashmir that is at stake.