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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 International Human Rights Association of American Minorities (IHRAAM), a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2012]

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

India's record of torture in official custody

The use of excessive force in India has plagued the country's human rights record for decades. Police officials have used real and rubber bullets during protests, participated in beatings, used electric shocks and water boarding in their attempt to solicit information, and engaged in acts of sexual abuse. In Indian Administered Kashmir, such brutalities continue unabated and at a level higher than even the most troubled parts of India. The International Committee for the Red Cross reported ill-treatment in 852 cases from the 1,491 examined and even this may be an underestimation as prisoners and ex-prisoners may not be willing to come forward due to fear of the possible repercussions.

Despite denial from Indian authorities that such grotesque actions were routinely used to pressure detainees to provide testimony – real or otherwise, consistent evidence proves that brute force is still common practice. Degrading, humiliating, and abusive treatment has even been documented in video clips. Amnesty International raised its objections to the actions undertaken by authorities in Indian Administered Kashmir when such a video was released in the autumn of 2010. The clip showed a small group of naked young men being herded into a police station by officials after they were accused of throwing stones at security forces, a situation that locals say tends to repeat itself on a regular basis. The involved authorities dismissed the clip as baseless and taken out of context, while legal action has been taken against the distributor of the video.

The focus placed on the individual, or individuals, who made the video public rather than the perpetrators, is worrisome for the International Human Rights Association of American Minorities (IHRAAM). The emphasis should instead be placed on eliminating such acts of humiliation and torture, not stress the publicising of it. Those who have participated in this and similar infringements on human rights must be brought to court and subject to a just trial, free from corruption and bribery; a scenario that is all but impossible in Indian Administered Kashmir.

As a signatory of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, India is obliged to take measures to prevent the use of torture and excessive force. Yet even though the country signed the Convention in October 1997, it has still not been ratified and instances of torture continue. Until the Indian government provides clear definitions of torture and provisions on how to deal with such instances, it remains in limbo and continues infringing on basic human rights.

Torture while in custody

The National Human Rights Commission (NHRC) continues to receive reports of abuse cases sustained by detained individuals, annually totalling well over a thousand instances. Annually, nearly one hundred of these result in 'unnatural' deaths for those held in judicial custody. To add to the problem, claims of secret detention centres are consistently reported to the Asian Centre for Human Rights (ACHR), three of which are said to be in Indian Administered Kashmir. These undercover institutions may explain how the NHRC managed to get away with registering only six official deaths in police custody in Indian Administered Kashmir since 2000.

The majority of confirmed deaths in police custody occur within 48 hours from the time the detainee was first taken in, leading to the assumption that these were the result of torture inflicted upon them by officials. Such allegations are often confirmed by family members who receive the bodies of their loved ones with clear injuries that could only be the result of beatings or other forms of torture. The Indian government conveniently ignores such

accusations, much in the same way it has dodged questioning into the matter by international human rights organisations.

The lack of appropriate retributions and prevention mechanisms for instances of torture in police custody, create the illusion that the government is comfortable turning a blind eye. The culture of torture thus becomes endemic to the judicial and police systems of India, a matter that cannot be resolved until the Indian government admits to its past and present crimes, firmly resolving to improve the situation in the future.

Ratification of the UN's Torture Bill

The enactment of the Prevention of Torture Bill, 2010 has not done enough to curb instances of torture and excessive force. Though considered by Indian authorities as a step toward the ratification of the UN's Torture Convention, the Bill does not provide a comprehensive definition of what constitutes torture and suggests that excessive force would still be acceptable in some situations, without actually specifying what these situations may be.

Section 3 states:

“Whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, intentionally does any act for the purposes to obtain from him or a third person such information or a confession which causes grievous hurt to any person or danger to life, limb or health (whether mental or physical) of any person, is said to inflict torture provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by an act, which is inflicted in accordance with any procedure established by law or justified by law.”

The Bill serves as a justification for the Indian government to not pursue torture perpetrators when it is not convenient for them and allows officials to hide from justice. IHRAAM finds such exceptions to be unacceptable and in complete infringement of the stipulations of the Torture Convention and international norms. Clear cut definitions must be made to ensure that victims and perpetrators see justice served.

A secondary problem with the Bill is the deadline for reporting torture offences while in police or judicial custody. Though many detainees remain trapped in the system for many years, the cut-off date for providing an official complaint is six months from the incident as stipulated in Section 5:

“Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court shall take cognisance of an offence under this Act unless the complaint is made within six months from the date on which the offence is alleged to have been committed.”

Such exceptions are a dangerous step backward as they create the possibility for loopholes that can help perpetrators escape facing trial and sustaining punishment for their crimes of torture on prisoners. IHRAAM finds that the Bill has not advanced the pursuit of human rights in India, nor has it reduced the incidence of torture in Indian Held Kashmir. In order for India to take concrete action toward the ratification of the Torture Convention, it will have to create a new anti-torture bill that leaves no room for perpetrators to be able to escape due justice – a move which has not yet been taken.