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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 and the International Convention for the Protection of All Persons from Enforced Disappearances

India's human rights record has long been scarred by human rights abuses, with a particular lack of justice in Indian Administered Kashmir, and 2011 has yet again proven that insufficient measures have been taken to ameliorate them. The Jammu and Kashmir State Human Rights Commission (SHRC) reported that thousands of Kashmiris have disappeared in the years since the start of the conflict over two decades ago. A recent commission investigation led by an 11 person police team has identified 38 mass graves in the north of Kashmir, filled with as many as 2,730 bodies, 574 of which have already been identified as locals. Only 17 of these have been returned to families for burial.

It is widely believed that many, if not all, of these individuals were earlier classified as disappeared persons. A fair investigation - including the prosecution of those responsible - into the situation requires the full co-operation of the army and federal para-military forces, and authorities which previously insisted that the mass graves were for unidentified militants.

Human Rights Watch and Amnesty International both identified the Armed Forces Special Powers Act (AFSPA) as a fundamental problem in the continuing lack of justice served in the country. The act, which was applied in Indian Administered Kashmir from 1990, stipulates that army receive legal immunity for their actions – no prosecution, law suits or other legal proceedings can be initiated against them. Perpetrators responsible for the disappearances of individuals, who then often end up executed or tortured and in mass graves, can hide behind the act, allowing them to live freely despite their crimes. Coupled with the lack of any investigation by the Indian Government the AFSPA is allowing murder, torture, and disappearance on a large scale throughout Indian Administered Kashmir.

Disappearances and mass graves

The government of Jammu and Kashmir has confirmed that a total of 3,744 persons have gone missing since 1990, but even this figure is said to be a gross underestimate by the Association of Parents of Displaced Persons (APDP). Their estimate says the number is closer to 8,000 and that the justification used by the government proclaiming that many of these disappearances are actually the result of Kashmiris going across the border to Pakistan to train as militants is faulted. The recently discovered mass graves stand as a confirmation that the missing persons are not just missing, but many of them have likely been executed by authorities. The International Human Rights Association of American Minorities (IHRAAM), and other well respected international NGOs, suggest that this is just the tip of the iceberg and more unmarked mass graves can be found in other parts of Jammu and Kashmir when the Indian Government allows an investigation.

Human rights organisations, IHRAAM among them, call for investigations into the matter stating that the disappearances and executions violate fundamental human rights. Amnesty International further insists that the government of Jammu and Kashmir must provide adequate safety for the witnesses that came forward with information and those working on the most recent investigation, ensuring that they are neither pressured nor intimidated by officials or those working for the interest of the government.

Until these matters are resolved – meaning until the bodies in mass graves are identified, families are compensated accordingly, and the responsible individuals held accountable – the crime continues in the eyes of international law. With officials using the AFSPA as a

shield, the only suitable solution seems to be the creation of an independent and transparent authority to allow family members of disappeared persons to provide information that would also have the jurisdiction to call in individuals from the security forces for questioning. As of yet, however, such requests have been unmet and none of those thought to be responsible for the events leading up to the creation of mass graves have been brought to justice.

Fighting for justice

As a signatory of the International Convention for the Protection of All Persons from Enforced Disappearances, India is obliged to react to the accusations and the discovery of mass graves, bringing those responsible in front of a court and ensuring that they answer for the disappearances and executions. Without conducting an investigation according to the UN Model Protocol into the identity of the bodies found in mass graves, including the use of available forensic tools and DNA testing, the only option is to assume that the Indian government is intentionally looking the other way out of fear that the human rights violations of their authorities will be uncovered.

Apart from the need for a comprehensive investigation, IHRAAM must emphasise that those from the Indian army responsible for the atrocities cannot use AFSPA as a way to avoid facing punishment for their human rights violations. The first step toward this has been taken by the Indian Supreme Court when on 4 February 2012 it ruled that members of the army could not use the act to avoid prosecution for the killing of five villagers in Kashmir in March 2000. Yet this is insufficient when considering that the number of crimes goes far beyond this one instance. Instead, the need for obtaining special permission for the prosecution of army officers should altogether be abolished as this merely serves to prolong the already long route toward justice in the country. Even in this instance, the Supreme Court only ruled that action can be taken against those responsible after an eight year struggle that began in November 2004 after a series of protests across Indian Administered Kashmir.

Mass graves filled with bodies of disappeared persons are a time sensitive issue that cannot and should not endure such a lengthy process. Families of those who have gone missing are left on edge, wondering what fate their loved ones met. Prompt action is necessary not just for them, but also for India to take the necessary steps toward improving its human rights record.

By bringing justice and holding those in the armed forces responsible for the creation of mass graves – from disappearance to execution to cover ups – the risk of the acts repeating themselves is minimised. It is IHRAAM's belief that for as long as perpetrators can run free, without fear of persecution, such human rights violations will continue. The lack of punishment serves as an encouraging factor and continues the circle of atrocities. The problem must be tackled from several sides and legal action is a critical one, requiring the co-operation of authorities and the full reconsideration of the AFSPA.
