



# General Assembly

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## Human Rights Council

### Nineteenth session

Agenda item 3

**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]

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

## **The public safety act and India's arbitrary detentions**

Maintaining the safety of citizens is legally required to be a priority in all states and should not be reserved for a select few but is required to be applied equally to the whole of the population. Criminals and those suspected of criminal acts are legally entitled to be treated with due process that maintains international human rights standards and norms, follows a set standard, is transparent, and is inline with a states treaty obligations. Under the Jammu and Kashmir Public Safety Act, 1978 it is precisely this sense of security that is taken away from all civilians in the state. Individuals who are detained on suspicion of a crime – a suspicion that has often been based on fiction or assumptions rather than facts – are stripped of basic rights and left at the mercy of their captors, in this case endorsed, and codified, by the Indian state and the legislation enacted by them.

The on-going dispute over the region of Kashmir has further muddled the waters between what is fair and lawful and what is simply unjust. Alongside individuals who are actually suspected of having committed a criminal act there are, protestors, human rights activists, journalists, dissidents, and lawyers who all regularly come under attack by the Indian state. Their crime is not the incision of violence or aggression, yet they are oft accused of threatening the maintenance of public order and the security of the state. Allowing for the arrest and detention of individuals on such a vague basis brings into question the Indian state's support for human rights and adherence to international law.

Apart from the arbitrary nature of such detentions – of which there have been between tens of thousands in recent years – the treatment of detainees is also subpar and below accepted international standards. Individuals are not permitted to contact their lawyers or family and when their detention order is close to expiring, many are issued a new one to avoid allowing them to walk free. This often leads to a succession of detention orders that can easily outlast the two year maximum stipulated in the Public Safety Act, leaving some in police custody for years on end without ever having seen a proper arrest warrant or description of their 'crime.'

### **'Unofficial interrogation' under the PSA**

Civilians stopped and detained on the basis of the PSA are usually not charged with a specific crime, nor are they permitted to make a court appearance to respond to the allegations against them. They are taken in for questioning – an unofficial interrogation – to assess whether their acts may be harmful to the state. Such 'preventative' detentions are especially detrimental to the development of freedom of expression as many of those stopped are teenagers and children partaking in protests.

In direct conflict with the International Covenant on Civil and Political Rights (ICCPR), which India has been a part of since 1979, the detentions avoid the defining of specific crime and the prosecution of suspects in a timely and fair trial in a court of law. Pressure from human rights organisations has not guaranteed a response en masse, and though individuals have been released from custody after international intervention, the problem has hardly ceased and is widely seen as an endemic problem within the police and armed forces stationed in Indian Administered Kashmir.

The International Human Rights Association of American Minorities (IHRAAM) finds that the Indian judiciary system must be held accountable for the arbitrary detentions made in Indian Administered Kashmir. Those who are currently in custody should either be released or, where appropriate, charged with a clearly defined offense and tried in a court of law.

The PSA itself should also be reconsidered. Points proclaiming that the State is freely permitted to make changes to the detention orders and crimes are classified as anything that is prejudicial against the state, have given the government, and therefore the arresting officer, sweeping powers to arrest, detain and interrogate whilst also furnishing them with impunity should they break the already illegal laws such as the PSA.

Section 19, point 2 states that: “There shall be no bar to making of a fresh order of detention against a person on the same facts as an earlier order of detention made against such person in any case where the earlier order of detention or its continuance is not legal on account of any technical defect and/or the earlier order of detention has been revoked by reason of any apprehension, or for avoiding any challenge that such order or its continuance is not legal on account of any technical defect. Provided that in computing the maximum period for which a person against whom such a fresh order of detention has been issued may be detained, the period during which such person was under detention under the earlier order of detention shall be excluded.”

Even in this one point, the State is given the ability to freely and often unreasonably change the mandate of a detention and thereby excusing itself from the two year limit of detentions stipulated earlier in the same act. (PSA, Section 18, Point 1) It disallows for the development of open justice, whereby all citizens would be guaranteed a lawful process and maintenance of their human rights. IHRAAM insists that this puts India in direct violation of its international obligations and since the statement of the Indian Supreme Court describing the PSA as a lawless law has not solicited a worthy reaction, the State must reconsider the parameters of the PSA or repeal the act altogether.

### **Arbitrary detention of children and teenagers**

As street protests have risen in both frequency and number in Indian Administered Kashmir over the last few years, an increasing number of young people have participated in them. This has led to more and more arbitrary detentions of minors, who are subject to the same mistreatment and even torture as their adult counterparts. Though their cases tend to gain more international attention and provoke harsh reactions by various non-governmental organisations, the authorities have found it relatively easy to get around the appeals made for their release. In many instances, young detainees are released from prison, but instead of being handed over to their families, they are promptly arrested under a new order of detention – continuing the practice of what Amnesty International refer to as the revolving door of the arbitrary detentions.

Children and teenagers are especially vulnerable as they are generally considered to be responsible for violence during street protests and throwing rocks at police officials. Though IHRAAM does not suggest that such actions should be dismissed altogether, the excessive force used to detain the suspected culprits does not fit the punishment that they are subject to. Furthermore, because so many of the protestors are masked, it is unclear if the detainees are the actual culprits or just bystanders who happened to be in the wrong place at the wrong time. In the latter case, those who have been detained unjustly are not permitted to pursue legal action or reimbursement for their mistreatment as officials are protected from such steps by the PSA.

The attention given to these cases by human rights organisations, highlighting the obligation of India to adhere to international law, led the Jammu and Kashmir High Court to rule that the government should create courts and homes for minors accused of crimes, rather than placing them in police custody with adults. Yet despite the ruling, taken in June 2010, no such action has yet been taken. In fact, the Juvenile Justice (Care and Protection of Children) Act, 2000 already outlined such mechanisms for minors and despite being considered a step in the right direction, particularly since the introduction of progressive

amendments in 2006, it has still not resulted in the actual enforcement of special mechanisms to protect the integrity and human rights of children and youth. This necessitates the need for additional pressure to be placed on the Indian government to adequately satisfy their promises, putting special emphasis on ensuring that all citizens are guaranteed their right to due process and giving particular attention to the cases of minors, an especially vulnerable group.

IHRAAM calls upon the Human Rights Council, and its subsidiary mandates and mechanisms, to immediately call for the quashing of the PSA. The PSA is in direct contradiction to numerous international human rights treaties to which India is a signatory and they should be held to account accordingly.

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