



# General Assembly

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## Human Rights Council

### Twenty-first 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 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.

[11 September 2012]

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

## **Children and the conflict in Indian administered Kashmir**

The rights of minors are protected in a myriad of international agreements, declarations and conventions, including the Convention on the Rights of the Child, the Standard Minimum Rules for the Administration of Juvenile Justice, the Guidelines for the Prevention of Juvenile Delinquency and the Rules for the Protection of Juveniles Deprived of their Liberty, among others. Maintaining the safety of citizens under the age of 18, both those who are free and those incarcerated, should be universally applied. Specifically when examining minors accused of criminal offenses, it is of the utmost importance to ensure that they are treated in accordance with international standards on human rights, including a due process that maintains a standard and transparent procedure on juvenile detention. Minors accused of a crime must be treated as innocent until proven guilty and whenever possible, detention should be avoided. This sense of security and protection of basic rights has not been granted to the minors of Indian Administered Kashmir. Individuals who are detained on suspicion of a crime – a suspicion that is often based on vague facts or the result of minor offenses – are stripped of basic rights, their dignity and safety. They are subject to the whims of the authorities, authorities that, in many cases, show a complete disregard for the existing procedures and rights.

Even though under Indian law individuals cannot be charged as adults until the age of 18, in Indian Administered Kashmir the juvenile justice laws provide an amendment that deems male youths over the age of 16 as adults and the age of criminality throughout the whole of India is alarming low – set at age seven. These standards are far from recommendations made on the international level, which are intended to ensure adherence to human rights. The result for Indian Administered Kashmir specifically, implies that an array of protestors, students, activists and minors who are simply in the wrong place at the wrong time can face undue process and harsh treatment while being held pre-trial and in detention.

In many cases, the legality of youth detentions are debated and not reported to the appropriate authorities. Minors are not given the details of why they have been taken into police custody, they are not immediately permitted to contact their families or their legal representation and, all too often, they are subject to torture intended to illicit a false confession.

### **Detention of youths under the PSA**

Despite assurances made to the international community and the United Nations, the Indian government has repeatedly tolerated infringements of the human rights of juveniles subject to criminal detention in Indian Administered Kashmir. Under the Public Safety Act (PSA), youths under the age of 18 have been held in police custody without adherence to international standards and under the questionable exceptions provided for under the act. In 2011, Amnesty International reported on the multiple arrests of Murtaza Manzoor, initially detained at the age of seventeen for pelting stones. Held in police custody three times, Manzoor was not afforded basic guarantees like access to a fair trial and, according to Amnesty, the youth never received official charges of a recognisable criminal offense.

The Convention on the Rights of the Child proclaims that the detention of minors should only occur as a last resort, but as the case of Manzoor exemplifies, teens are regularly held for a disproportionately long time, often detained on multiple occasions on the basis of the same – or similar – accusation. Justified as measures of security, any act that is perceived to be in disaccord with the Indian government's policies can result in a detention. Individuals are taken in for questioning or what is essentially an unofficial interrogation and later moved between administrative detention centres and police stations, buying the authorities time and further muddying the facts of a case.

Despite their commonality, such actions are in direct conflict with article 9, paragraph 1 of the International Covenant on Civil and Political Rights, which prohibits arbitrary arrest, detention and imprisonment of minors. They are also contradictory to the right to prompt access to legal representation and other relevant assistance as stipulated in the same paragraph. Further in the case of Manzoor, his parents were not given appropriate notification of his detention – yet another infringement of the rights set out by international agreements.

The International Human Rights Association of American Minorities (IHRAAM) would also like to underscore the fact that children detained by police authorities in Indian Administered Kashmir are not held in prisons with appropriate and separate facilities for children. This violates article 37 of the Convention on the Rights of the Child, which provides that detained children will be held in conditions that take into account their specific needs and maintain a distinction between accused and convicted persons.

IHRAAM insists that cases like that of Manzoor cannot continue to occur and India must take appropriate measures to ensure that youth are protected through a comprehensive legal framework that would provide for the assurance of justice including avoidance of detentions whenever possible and when this is not the case, the provision of conditions that follow international standards, such as comprehensive information as to the charges, the right to legal representation and a fair and timely trial.

### **Physical violence and torture of youths**

International norms and standards establish the protection of the well-being of individuals held in custody, paying special attention to vulnerable groups, among them minors. Detainees must be protected from all forms of mental and physical violence, including sexual abuse, and any infringements of this basic right must be promptly investigated. IHRAAM insists that those responsible cannot avoid prosecution, nor can the Indian government continue to turn a blind eye to these offenses.

Due to the murky legal status of children held in custody, they are especially likely to suffer infringements on their physical and mental safety as officials attempt to gain false testimonies and admissions. Seventeen year old, Mushtaq Saleem Beigh, who has been detained in Indian Administered Kashmir since 19 May 2012 was subject to the typical proceedings of being shifted from police custody to a detention facility to a sub-jail. Accused of involvement in a grenade attack on the local police station, no formal report as to the accusation has been issued to date. Additionally Beigh was prevented from seeing his family until he was moved to the Baramulla sub-jail, at which point his family reports there were clear signs of torture. The boy was in such a state that he was unable to walk – the result of a police interrogation.

Amnesty International has issued an urgent action request demanding that Indian government authorities immediately end the detention of Beigh, unless evidence allowing for issuing of charges for a recognisable crime can be issued, and even then should be afforded a fair trial that follows the standards set out by the UN Convention on the Rights of the Child. IHRAAM further presses for the need to find those responsible for the encountered abuse and bringing them to trial in order to set a precedent, making it clear that torture cannot and will not be tolerated. The Indian government must prevent such occurrences from happening and provide all personnel with training that is in accord with the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Indian government must respond to the pressure to adequately protect children, putting special emphasis on the situation of youths in Indian Administered Kashmir, and provide for due process and prosecution of any individuals responsible for torture.