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HUMAN RIGHTS COUNCIL
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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.

[19 February 2009]

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

Enforced or Involuntary Disappearances is a phenomena with which the United Nations thematic mechanism is confronted with globally. As a result of the development of international law, especially with respect to the definition of enforced disappearance, the Working Group on Enforced or Involuntary Disappearances adopted, during its eighty first session, a general comment to provide a construction of the definition of enforced disappearance that is most conducive to the protection of all persons from enforced disappearance. It is abundantly clear that enforced disappearances occur when the act in question is perpetuated by state actors or by private individuals or organized groups acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the government. The general comment also stresses that any act of enforced disappearance has the consequence of placing the persons subjected thereto outside the protection of law. It is gratifying to note that the general comment considers a detention, followed by an extrajudicial execution as an enforced disappearance proper as long as such detention or deprivation of liberty was carried out by governmental agents of whatever branch or level, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the government. And subsequent to the detention or even after the execution was carried out, state officials refuse to disclose the fate or whereabouts of the persons concerned or refuse to acknowledge the act having been perpetrated at all. On the strength of this definition, it can be broadly stated that the Working Group's mandate is humanitarian. It serves as a channel of communication between family members of victims of disappearance and governments. The primary task of the Working Group is to assist families in determining the fate or whereabouts of their family members who are reportedly disappeared.

It is under this mandate the Working Group transmitted 390 cases of disappeared persons to the government of India between 2007 – 08. This included eight newly reported cases. Two newly reported cases occurred in 2001 and 2002. The first case concerns **Manzoor Ahmed Dar**, who was reportedly arrested at his home by military officers. The second case concerns **Manzoor Ahmed Wani**, who was reportedly stopped near a Battalion Camp and was taken away by military officers. Six reported disappearances took place in Kashmir between 2003 and 2005. Three of these cases concerned **Saif-U-Dir Khatana**, **Amin Wani Mohammed** and **Ghulam Mohammed**, who were arrested by the Indian Armed Operations Group and the Indian Armed Forces. Another case concerned **Fayaz Ahmad Najar**, who was arrested by the 43rd Battalion of the Border Security Force. The last case concerned **Naseer Ahmed Sheikh**, a shopkeeper who was arrested by the Police Security Forces. On 14 June 2007, the Working Group sent a prompt intervention letter to the Government of India regarding the family members of an alleged victim of enforced disappearance, who have faced threats and violence from the army for taking his case to the courts. No response was received from the government regarding this letter. The working group in its report on India has indicated that 331 cases remain outstanding and has reminded the Government of India to investigate the outstanding cases, and to protect the rights of families to justice and to participate in the investigation.

In May 2008 at its plenary session the 27 countries European Parliament overwhelmingly passed an urgency resolution on nameless and mass graves discovered in the Indian Administered Kashmir. The resolution called upon the Government of India to urgently ensure the independent and impartial investigation into all suspected sites of mass graves in Jammu and Kashmir, and as an immediate first step to secure the grave sites in order to preserve the evidence.

The urgency resolution came about on account of the report which was endorsed by the Amnesty International and advocated by the Kashmir Centre.EU through the All Party Group for Kashmir in the European Parliament. The urgency resolution having noted that hundreds of unidentified graves have been discovered since 2006 in Jammu and Kashmir and at least 940 bodies have reportedly been found in 18 villages in the Uri district alone; and that according to human rights organizations - it cannot be excluded that the grave sites contain the remains of victims of unlawful killings, enforced disappearances, torture and other abuses which occurred in the context of armed conflict persisting in Jammu and Kashmir since 1989; and association of families of victims estimate that the number of persons having gone missing since 1989 exceeds 8000; and allegations of human rights violations continue despite the Government of India's commitment in September 2005 to not tolerate human rights violations in Jammu and Kashmir any longer. Therefore, paragraph 5 of the urgency resolution calls on the Indian Government "*... to investigate all allegations of enforced disappearances; urges to assign a civilian prosecutor's office with the jurisdiction for all cases in which military, security or law enforcement agents are suspected of being involved, and to create a single public database of all persons that have gone missing and of all bodies who have been recovered; calls on EU Member States to facilitate and support all possible cooperation between the Indian and Pakistan Governments in relation to this investigation;*" and in paragraph 7, it strongly condemns "*... unlawful killings, enforced disappearances, torture, rape and other human rights abuses which have occurred in Jammu and Kashmir since the beginning of the armed conflict in 1989; insists that the families of the victims are being granted full reparations*".

The urgency resolution calls on all governments (including the Government of India) to ratify and implement the UN Convention for the Protection of All Persons from Enforced Disappearance without reservations, including declarations pursuant to Articles 31 and 32 to recognize the competence of the Committee on enforced Disappearances, and to ratify the Rome Statute of the International Criminal Court. As it is a matter of general knowledge that the Government of India does not allow UN special rapporteurs to enter and visit the Indian administered Kashmir, the urgency resolution paragraph 10 - "*Calls for full access to be granted to both sides of the Line of Control for the UN Special Rapporteurs under the terms of reference of the UN Special Procedures, notably the Special Rapporteur on Torture, on Extrajudicial, Summary or Arbitrary Executions and the UN Working Group on Enforced or Involuntary Disappearances*".

Following the urgency resolution, the Subcommittee on Human Rights (European Parliament) convened a rare hearing on the nameless and mass graves. Opening the hearing the Chairwoman Helen Flautre (MEP) of the Subcommittee said that the urgency resolution makes it absolutely clear that an independent investigation must be undertaken and the evidence preserved and she proceeded the hearing on this basis. At the invitation of the chair Mrs. Rensje Teerink, Deputy Head of Unit, Relex, Unit India, Bhutan and Nepal said that the Commission considers the mass graves as a worrying development and declared that India is silent on this. She further said that the Commission Delegation in New Delhi is further investigating this matter, in close cooperation with French Presidency and the Member States' embassies in the Indian Capital. The Presidency has contacted the resident Commissioner of the Indian-administered Kashmir in New Delhi and has expressed the EU's concerns over the situation. A number of MEPs intervened. Concluding the hearing Ms. Flautre declared that the Subcommittee will monitor the urgency resolution with the European Commission.

IHRAAMs partner, International Council For Human Rights, has submitted over 300 cases on disappearances that occurred in the Indian Administered Kashmir to the Working Group but expresses its anguish at the utter lack of response from the government of India in discovering the fate or whereabouts of those who have disappeared. The Working Group is urged to remind the government of India its obligation to cooperate and respond properly and swiftly; and to hold urgently the independent and impartial investigation into all suspected sites of mass graves in Jammu and Kashmir.
