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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.

[8 June 2012]

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

Freedom of speech in Jammu and Kashmir*

Freedom of speech has become a critical aspect of human rights, one which is fundamentally woven into the construction of modern democracies. Citizens of any state that wishes to be considered a free one must be allowed to express and expand their views according to their own belief system. The right is universally accepted as integral, but this has not meant that it is universally and indiscriminately applied to the realities of contemporary countries. While some state governments apply restrictions to freedom of speech for instances that stir up hatred or may encourage harm onto citizens – as is the case of the illegality of inciting racial hatred in a number of countries, other countries do not permit individuals or groups to make any statements that are contradictory to the official policies. The latter is applicable to one of the largest states in the world – India.

India's complex relationship with human rights is made all the more difficult when considering Jammu and Kashmir, where the voices of opposition to India's occupation of the area have been stifled through a variety of oppressive mechanisms ranging from arbitrary detention to torture to deaths. Journalists, who are often the target of such attacks, are threatened – or worse - for publishing works or just pursuing research that is not supportive of India's role in the territory, critical of laws such as the Armed Forces Special Powers Act (AFSPA) or the Public Safety Act (PSA), or too honest about the strategies used by the armed forces in the territory.

The International Human Rights Association of American Minorities (IHRAAM) believes that there is legitimate concern regarding the impingement of this basic freedom in the country, particularly in the clear lack of understanding on the part of Indian authorities that being a journalist is a profession, not a criminal act.

The freedom of expression is granted in the Indian constitution as one that is not limited to borders or certain individuals. However, it has become clear that because the freedom of the press is not specified, the line between what is acceptable is heavily blurred. This leaves the authorities total and unaccountable reign to decide what is considered to be defamation, contempt of court or indecent in the written word. Reporters Without Borders, an international organisation that supports the freedom of expression and speech throughout the world, has also shown through its ranking system that India's press freedom is far below satisfactory levels and has consistently become worse. Currently, India is ranked 122 in the world and when combined with its score of 38.75 on the press freedom index, which dropped from 29.33 in 2009, it is clear that freedom of speech is moving further and further out of reach.

The fear of speaking out is not, however, limited to professionals. Teenagers and average citizens have also seen their rights diminish in the context of expression. Bans on the use of text messaging and the internet have consistently been instituted for the last 12 years and each time tensions in Jammu and Kashmir rise, citizens can expect to feel the repercussions in their everyday communication. In the aftermath of the Arab Spring, Facebook – the social media platform that has commonly been associated with giving protestors a voice in oppressive regimes – has been restricted in the territory for what the government explained to be security reasons.

IHRAAM does not believe that there is a genuine security risk in permitting citizens access to the technology – both text messaging and the internet – and that the Indian government is

* International Council for Human Rights, an NGO without consultative status, also shares the views expressed in this statement.

merely using this scaremongering rhetoric to assert its dominant role, while simultaneously limiting the freedom of speech and, indirectly, the freedom of assembly. For citizens these are merely new media that allow them to stay in touch with one another and the world. Restricting their use is nothing short of instilling a regime of terror.

Internet bans and the freedom of speech

The Nielsen Company, a global market and advertising research agency, has reported that approximately 30 million Indians are online, with two-thirds of them spending some time on social networking sites, including Facebook. The allowance to use the internet has faced restrictions across India, but has experienced significant hurdles in Jammu and Kashmir. IHRAAM believes that this is evidence of the different, more overbearing, laws that apply in the territory and their intention is simple – limiting any voices of opposition. Court officials throughout the country have made it clear that they will show no hesitation in inflicting strict censorship of any content that is deemed to be inappropriate or indecent, failing, however, to clearly define what would fall into this category.

Frank La Rue, the United Nations special rapporteur for the right to freedom of expression has made it clear that the use of excessive control of what citizens may or may not view on the internet is an infringement of this basic right and cannot be justified. The use of the internet has helped to stir up discussion and bring into question the status quo, allowing people to make strides toward the creation of a more democratic process. Yet the Indian crackdown on the use of Facebook, Twitter or other social media, has taken the ability of the people of Kashmir to exercise their right to freedom of speech and freedom of expression. Censorship of pages that are accessible in Jammu and Kashmir further limits the spread of information, both domestically and internationally.

IHRAAM finds the measures isolating and greatly limiting, a hindrance to intellectual debate and the progress toward a peaceful resolution of the conflict. Restricting this forum for free political discussion seems to be the result of the Indian government's fear that with quick and inexpensive means of spreading information, they may be held accountable for their various human rights infringements in the territory as the public becomes more and more aware of their occurrences.

Persecution of journalists

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) has condemned the killing of journalists in any country and in any context. It is a fundamental part of the organisations charter to protect the freedom of expression and the freedom of press, but India has refused to subscribe to this message. A proposed plan by UNESCO that would protect journalists from violence, torture and death, while permitting them to pursue their profession was rejected in the country and restrictions on media coverage, particularly of judicial proceedings, have been increased.

Though the regulations apply throughout India, it is journalists that report on the situation in Jammu and Kashmir that are especially vulnerable. Any criticism or questioning of the tactics being used is treated like a crime, albeit rather than formal punishment journalists are subject to gruesome beatings and threats made on their life and the lives of their families. The lack of funding or blatant harassment of newspapers in Jammu and Kashmir has grown worse since 2010, particularly for those publications that reported on the protests occurring during the summer months. The justification was that the editorial line of the newspapers was in conflict with policy and hostile to India – the punishment for not expressing blind agreement was silencing.

IHRAAM recommends that swift action is taken to protect media freedom and in cases where professionals from the sector are attacked, judicial hearings are pursued. The regime of terror that has been inflicted upon the media jeopardises freedom, but also shuts down the opportunity for open discussion in and beyond Jammu and Kashmir. While UNESCO lists journalists killed for pursuing their profession, the situation goes far beyond the official statistics and without pressure from the international community, the Indian government will not budge on its stance of cracking down on citizens for expressing their displeasure with the situation in Jammu and Kashmir or other violations occurring as a result of government action.
