

PRESS NOTE: FOR IMMEDIATE RELEASE

Srinagar, September 26, 2011

**INTERNATIONAL PEOPLE'S TRIBUNAL ON
HUMAN RIGHTS AND JUSTICE IN INDIAN-ADMINISTERED KASHMIR (IPTK)**

www.kashmirprocess.org

**To: Honourable Members
Jammu and Kashmir Legislative Assembly
Government of Jammu and Kashmir**

From:

Dr. Angana Chatterji, Convener IPTK and Professor, Anthropology, California Institute of Integral Studies
Advocate Parvez Imroz, Convener IPTK and Founder, Jammu and Kashmir Coalition of Civil Society
Gautam Navlakha, Convener IPTK and Editorial Consultant, Economic and Political Weekly
Zahir-Ud-Din, Convener IPTK and Vice-President, Jammu and Kashmir Coalition of Civil Society
Advocate Mihir Desai, Legal Counsel IPTK and Lawyer, Mumbai High Court and Supreme Court of India
Khurram Parvez, Liaison IPTK and Programme Coordinator, Jammu and Kashmir Coalition of Civil Society

Re.: Unknown and Unmarked Graves of Kashmir: Investigation, Prosecution, and Reparation

We appeal to the Members of the Jammu and Kashmir State Legislative Assembly to address the following urgent issues in light of the findings put forward by the State Human Rights Commission of Jammu and Kashmir (SHRC) pertaining to unknown and unmarked graves.

Note: SHRC investigated unmarked graves in Bandipora, Baramulla, Kupwara, and Handwara districts across 38 graveyards and verified 2,156 unidentified bodies in unidentified graves, as documented in its report of July 2011.

Note: SHRC's report acknowledges and corroborates the research documented in the report, *BURIED EVIDENCE*, released by the International People's Tribunal on Human Rights and Justice in December 2009. Based on investigative research conducted between November 2006-November 2009, *BURIED EVIDENCE* had documented 2,700 unknown, unmarked, and mass graves, containing 2,943+ bodies, across 55 villages (in 62 sites within these villages) in Bandipora, Baramulla, and Kupwara districts of Kashmir. Of these, 2,373 were unidentified and unnamed graves. See <http://www.kashmirprocess.org/reports/graves/toc.html>

Investigation, Prosecution, and Reparation:

1. We ask that the matter of unknown, unmarked, and mass graves be subjected to a rigorous, independent, and impartial investigation. We ask that the story of these graves, and the legal and institutional histories of the graveyards, be investigated in their entirety to hold particular officers and offices that acted in violation of the law actionable.
2. We request that a three-tier process for Investigation, Prosecution, and Reparation be instituted.
3. We request that an Independent Commission of Inquiry be constituted to oversee the process of investigations into unknown and unmarked graves in Kashmir. This

commission should be co-chaired by two credible retired justices of the Supreme Court of India. Further, recognizing the urgent need for such a body, a timeframe must be set for its constitution.

4. We request that the Independent Commission of Inquiry be assisted by a relevant panel of international experts on unknown and mass graves, including those with backgrounds in forensic and cultural anthropology and human rights law. Further, the Commission of Inquiry should appointment independent observers to the process and draw on the local knowledge of impacted communities.
5. We ask that the following United Nations Special Rapporteurs be permitted and invited to visit Jammu and Kashmir: (1) Enforced or Involuntary Disappearances, (2) Arbitrary Detentions, (3) Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, (4) Violence Against Women, Its Causes and Consequences, and (5) Extrajudicial, Summary, or Arbitrary Executions.
6. We request that the investigation commissioned by the SHRC be extended to include each site of unknown and unmarked graves documented by IPTK in north Kashmir, and beyond, to all twenty districts in Jammu and Kashmir. In particular, we ask that investigations take place in Anantnag, Budgam, Ganderbal, Kulgam, Pulwama, Shopian, and Srinagar districts in Kashmir province and in Doda, Poonch, Rajouri, and Reasi districts in Jammu province.

Note: Matters of investigation (and redress) must adhere to the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions [E.S.C. Res. 1989/65, Annex, 1989, U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989)], also see the Minnesota Protocol. Also, given the nature of the issue, and the heightened risks involved in offering testimony, utmost care and caution should be exercised in securing witness protection, following international protocols and standards.

7. We ask that comprehensive forensic examinations of the bodies buried in unmarked graves and mass graves be undertaken, in order to determine the circumstances and timeframe of death. Identifying the circumstances of death, established through forensic examinations, will greatly assist the processes of prosecution.
8. We request that DNA profiles be collected and analyzed by international bodies, as the credibility of forensic science laboratories in India have repeatedly been held in question.
9. We request that the framework for reparation and compensation for the families of the victims of human rights abuses in Jammu and Kashmir not just be individualized, but collectivized, so that communities, neighbourhoods, and villages can heal and break their isolation. We request that SHRC's proposal of either offering relief of Rupees 700,000 to the next of kin or undertaking DNA testing-based investigation be amended, so that both the investigation and provisions of relief are made mandatory. Monetary compensation to the next of kin should not be calculated as *ex gratia* relief, but should be particularized according to the circumstances of death and the affect the death has had on the family. Relief should be calculated based on the complex task of quantifying loss of life and providing psychosocial and economic rehabilitation to family members.

10. We request accountability for the noticeable procedural negligence and misconduct in the work undertaken by the local police. We request that improper investigations undertaken by the police and other state investigating agencies be held accountable, and that these investigating agencies be required to re-examine and ensue new investigations in a comprehensive and ethical manner across all districts of Jammu and Kashmir.
11. We ask that the sites of unknown, unmarked, and mass graves be protected from desecration or destruction. These graveyards are sites of evidence, culture, and history.
12. We ask that, if, in the course of future investigations, it is proven that disappeared persons were killed in fake encounters and buried in unmarked graves, exemplary punishments should be pronounced against those accused to deter future and repeated crimes of the same nature. In instances where non-local persons are killed in alleged "encounter" killings, relevant international human rights and humanitarian law must be applied in matters of redress.
13. We ask that all special laws and provisions of immunity that authorize the military and paramilitary forces to act with impunity in Kashmir be revoked unconditionally. We ask that the Government of Jammu and Kashmir institute a comprehensive ban on practises of torture as defined by international law and humanitarian ethics.

We submit the above recommendations with humility, which, if enacted, we believe would significantly assist in confronting the impunity with which human rights violations have taken place in Jammu and Kashmir.

In Kashmir, between 1989-2011, the actions of the military and paramilitary have resulted in over 8,000 enforced disappearances and 70,000 deaths. Human rights violations in Kashmir are concomitant to the impunity of militarization and state violence, and the dangers militarism imposes on civil society. We caution that, without addressing these structural and prevalent conditions, justice and peace will remain elusive.

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