

PRESS NOTE: FOR IMMEDIATE RELEASE

Srinagar, August 29, 2011

**INTERNATIONAL PEOPLE'S TRIBUNAL ON
HUMAN RIGHTS AND JUSTICE IN INDIAN-ADMINISTERED KASHMIR (IPTK)***www.kashmirprocess.org****together with the*
Association of Parents of Disappeared Persons****Re.: Response to SHRC's Report on Unknown and Unmarked Graves of 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
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and the **Executive Council, Association of Parents of Disappeared Persons****Queries may be directed to:**Khurram Parvez
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We welcome the report of the State Human Rights Commission of Jammu and Kashmir (SHRC) on unmarked graves in north Indian-administered Kashmir (dated July 2011 and recently released), taking *suo moto* cognizance of the matter, and appreciate the courage and labour that this work signifies.

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 (IPTK) in December 2009.

SHRC investigated unmarked graves in Bandipora, Baramulla, Kupwara, and Handwara districts across 38 graveyards and verified 2156 unidentified bodies in unidentified graves.

Based on investigative research conducted between November 2006-November 2009, *BURIED EVIDENCE* had documented 2700 unknown, unmarked, and mass graves, containing 2943+ bodies, across 55 villages (in 62 sites within these villages) in Bandipora, Baramulla, and Kupwara districts of Kashmir. Of these, 2373 were unidentified and unnamed graves. See <http://www.kashmirprocess.org/reports/graves/toc.html>

To respond to the egregious violations of the past and secure justice requires that we acknowledge atrocities that have been committed and address their effects. In the matter of

unknown, unmarked, and unidentified graves in Kashmir, we call for a three-tier process: Investigation, Prosecution, and Reparation.

Investigation and Prosecution: We request that SHRC extend its investigation to include each site 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.

We ask that DNA-based profiles of those buried in the unmarked and unidentified graves be cross-tabulated with those that have been involuntarily disappeared in Kashmir. Further, in addition to the identification of the dead, we ask that comprehensive forensic examinations be conducted to determine the circumstances of death, including incidences of torture.

The Kashmir Police have stated that they have records of 464 unidentified graves. However, it appears that, even in these cases, the Kashmir Police have not maintained photographic, DNA, and other evidence. All unidentified graves that have been listed as holding the bodies of “foreign militants” must be investigated. The police have filed First Information Reports stating these persons as dead from encounter killings. However, these bodies have not been identified based on records or other verifiable evidence. Neither has conclusive evidence been offered to prove that the bodies are of Kashmir’s disappeared.

SHRC has stated that 574 bodies have been identified as locals following their burial. However, the Kashmir Police and Indian Armed Forces had previously claimed these 574 bodies as those of “foreign militants.” This indicts the government’s negligence in identifying unclaimed bodies. Based on the above, the SHRC report evidences that there is every possibility that the 2156 unmarked graves hold the bodies of persons that were involuntarily disappeared. The cases of the 574 bodies also intimate that numerous persons have been killed in fake encounters and secretly buried in unmarked graves to conceal their identity. IPTK’s 2009 report too had documented a list of 49 bodies, all designated by the state as “foreign militants,” 47 of whom, on investigation, proved to have been killed in fake encounters, and none were identified as foreign insurgents.

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.

SHRC has relied on statements from persons who, fearful of reprisal, wish for their testimonies to be placed on record anonymously. 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.

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 be investigated in their entirety: What are the particular legal and institutional histories of the graveyards? How did they come into existence? Per whose order? Did District Magistrates requisition the construction of graveyards, burials, and record keeping? Such historiography would permit holding actionable

particular officers and offices that acted in violation of the law, with arrogance and indifference, and failed to follow the law in burying unidentified bodies. This would disaggregate the amorphous state and enable holding accountable particular institutions of state.

Reparation: The issue of unknown and unmarked graves involves the living as much as the dead. Reparation must both be individualized and collectivized, so that communities, neighbourhoods, and villages can heal and break their isolation. SHRC's either/or proposal of offering a relief of Rupees 700,000 to the next of kin *or* undertaking DNA testing-based investigation should be amended, and both the investigation and provision of relief be made mandatory. Monetary compensation to the next of kin should not be calculated as *ex gratia* relief, but should be particularized according to the individual circumstances of death, and the affect the death has had on the family, and relief should be calculated based on the complex task of quantifying loss of life and providing psychosocial and economic rehabilitation to family members.

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 India ratify the International Convention for the Protection of All Persons from Enforced Disappearance, to which it has been a signatory since February 2007, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which it has been a signatory since October 1997. 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.

In Kashmir, between 1989-2011, the actions of the military and paramilitary have resulted in over 8,000 enforced disappearances and 70,000 deaths. We ask that human rights violations in Kashmir be recognized as resulting from, and 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.

In calling for conflict resolution in South Asia's nuclear zone, we recognize the precarious cross-border conditions between India, Pakistan, and Afghanistan, and condemn the violent actions of misogynist state and non-state groups operating in the region.

We gratefully acknowledge the collectives/organizations that have endorsed the above statement:

1. Asian Federation Against Involuntary Disappearances (AFAD), Philippines.
2. Asian Human Rights Commission (AHRC).
3. Families Of the Disappeared (FOD), Sri Lanka.
4. KontraS (The Commission for "the Disappeared" and Victims of Violence), Indonesia.
5. Latin American Federation of Associations for Relatives of the Detained Disappeared (FEDEFAM), Venezuela.
6. Odhikar, Bangladesh.
7. Andhra Pradesh Civil Liberties Committee (APCLC), Andhra Pradesh.
8. Association for Democratic Rights (AFDR), Punjab.
9. Association for Protection of Democratic Rights (APDR), West Bengal.
10. Bandi Mukti Morcha, West Bengal.
11. Campaign for Peace & Democracy (CPDM), Manipur.
12. Committee for Protection of Democratic Rights (CPDR), Mumbai.

13. Coordination for Human Rights (COHR), Manipur.
14. Human Rights Forum (HRF), Andhra Pradesh.
15. Jammu and Kashmir Right to Information Movement, Jammu and Kashmir.
16. Kashmir Pandit Sangharsh Samiti (KPSS), Jammu and Kashmir.
17. Lokshahi Hakk Sangathana (LHS), Maharashtra.
18. Manab Adhikar Sangram Samiti (MASS), Assam.
19. Naga Peoples' Movement for Human Rights, Nagaland.
20. Organization for the Protection of Democratic Rights (OPDR), Andhra Pradesh.
21. Peoples Democratic Forum (PDF), Karnataka.
22. Peoples Union For Civil Liberties (PUCL), Chhattisgarh.
23. Peoples Union for Human Rights (PUHR), Haryana.
24. Peoples Union For Civil Liberties (PUCL), Jharkhand.
25. Peoples Union For Civil Liberties (PUCL), Nagpur.
26. Peoples Union For Civil Liberties (PUCL), Rajasthan.
27. Peoples Union For Civil Liberties (PUCL), Tamil Nadu.
28. Peoples Union For Democratic Rights (PUDR), Delhi.
29. Valley Citizens' Council, Jammu and Kashmir.