

**Office of the United Nations High Commissioner
for Human Rights**

**Report on the Situation of Human Rights in Kashmir:
Developments in the Indian State of Jammu and Kashmir from June 2016 to
April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir
and Gilgit-Baltistan**

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Acronyms

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Nongovernmental organizations (NGOs)

United Nations Commission for India and Pakistan (UNCIP)

United Nations Military Observer Group in India and Pakistan (UNMOGIP)

Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (AFSPA)

Jammu and Kashmir Public Safety Act, 1978 (PSA)

Jammu Kashmir Coalition of Civil Society (JKCCS)

Jammu and Kashmir State Human Rights Commission (SHRC)

First Information Report (FIR)

Azad Jammu and Kashmir (AJK)

Gilgit-Baltistan (G-B)

Human Rights Commission of Pakistan (HRCP)

Anti-Terrorism Act, 1997 (ATA)

China-Pakistan Economic Corridor (CPEC)

I. Executive Summary

1. On 8 July 2016, Burhan Wani, the 22-year old leader of the Hizbul Mujahidin, an armed group, was killed by Indian security forces during an armed clash in Bumdoora village in Kokernag area in the Indian state of Jammu and Kashmir. This triggered protests against his killing on a very large and unprecedented scale throughout the Kashmir Valley and in districts of Jammu. Indian security forces responded to protests with force, which led to casualties and a wide range of alleged related human rights violations throughout the summer of 2016 and into 2018. While Indian-Administered Kashmir has experienced waves of protests in the past—in the late 1980s to early 1990s, 2008 and 2010—this current round of protests appears to involve more people than the past, and the profile of protesters has also shifted to include more young, middle-class Kashmiris, including females who do not appear to have been participating in the past. Some of the root causes of the discontent fuelling protesters are addressed in this report.

2. Shortly after the outbreak of violence, the High Commissioner for Human Rights met with the representatives of the Governments of Pakistan and India who had differing narratives about the ongoing events and the general situation in Kashmir. From July 2016, the High Commissioner for Human Rights has on numerous occasions requested the Governments of India and Pakistan that his Office be given unconditional access to Kashmir to assess the human rights situation. India rejected this request, while Pakistan offered access should the Office obtain access to Indian-Administered Kashmir. Without unconditional access to Kashmir on either side of the Line of Control, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has undertaken remote monitoring of the human rights situation. This first report on the situation of human rights in both Indian-Administered Kashmir and Pakistan-Administered Kashmir is based on such monitoring.

3. This report covers both the Indian state of Jammu and Kashmir (consisting of the Kashmir Valley, the Jammu and Ladakh regions) and Pakistan-Administered Kashmir (Azad Jammu and Kashmir and Gilgit-Baltistan). The focus of the report is on the situation of human rights in the Indian state of Jammu and Kashmir from July 2016 to April 2018 over which period allegations of widespread and serious human rights violations were received, notably excessive use of force by Indian security forces that led to numerous civilian casualties.

4. In responding to demonstrations that started in July 2016, Indian security forces used excessive force that led to unlawful killings and a very high number of injuries. Civil society estimates are that 130 to 145 civilians were killed by security forces between mid-July 2016 and end of March 2018, and 16 to 20 civilians were killed by armed groups in the same period. One of most dangerous weapons used against protesters during the unrest in 2016 was the pellet-firing shotgun, which is a 12-gauge pump-action shotgun that fires metal pellets.

5. In the same context, since the late 1980s, a variety of armed groups has been actively operating in the Indian state of Jammu and Kashmir, and there has been documented evidence of these groups committing a wide range of human rights abuses, including kidnappings and killings of civilians and sexual violence. The landscape of armed intervention by groups operating in Indian-Administered Kashmir has shifted over the years. In the 1990s, around a dozen significant armed groups were operating in the region; currently, less than half that number remain active. Despite the Government of Pakistan's assertions of denial of any support to these groups, experts believe that Pakistan's military continues to support their operations across the Line of Control in Indian-Administered Kashmir.

6. Between January 2016 and April 2018, civil society organizations have accused members of armed groups of numerous attacks against civilians, off-duty police personnel and army personnel on leave, including the killing of 16 to 20 civilians.

7. Impunity for human rights violations and lack of access to justice are key human rights challenges in the Indian state of Jammu and Kashmir. Special laws in force in the state, such

as the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (AFSPA) and the Jammu and Kashmir Public Safety Act, 1978 (PSA), have created structures that obstruct the normal course of law, impede accountability and jeopardize the right to remedy for victims of human rights violations.

8. Over 1,000 people were detained under the PSA between March 2016 and August 2017. Human rights groups had warned Jammu and Kashmir authorities that minors were being arrested under the PSA in 2016 and 2017.

9. During the 2016 unrest, there were numerous reports of attacks on, and obstruction of, basic medical services that had a severe impact on the injured and general civilian population in Kashmir. Human rights groups claimed that days-long curfews and communications blockades also had a major impact on people and their access to medical care in Kashmir.

10. The Kashmir region experienced frequent communications blockades during the 2016 unrest as the state Government suspended mobile and internet services on multiple occasions. In 2016, the authorities in Jammu and Kashmir imposed restrictions on freedom of expression, targeting media and journalists.

11. Widespread protests, long periods of curfew and frequent strikes in 2016 and 2017 had a cumulative impact on students and their right to education.

12. Impunity for enforced or involuntary disappearances in Kashmir continues as there has been little movement towards credibly investigating complaints including into alleged sites of mass graves in the Kashmir Valley and Jammu region.

13. Authorities have failed to independently investigate and prosecute allegations of sexual violence by security forces personnel.

14. While the main focus of the report is on the situation of human rights in the Indian state of Jammu and Kashmir from July 2016 to April 2018, the report examines the situation in Pakistan-Administered Kashmir within that timeframe. However, the human rights violations in this area are of a different calibre or magnitude and of a more structural nature.

15. Pakistan's prime minister, the federal minister for Kashmir Affairs and Gilgit-Baltistan and the federal civil service have full control over all government operations in both Azad Jammu and Kashmir (AJK) and Gilgit-Baltistan (G-B). According to an international NGO, federal intelligence agencies are deployed across the two regions and have "considerable powers over local elected representatives and officials". Given such a constitutional relationship with Pakistan, residents of AJK and G-B do not enjoy all the rights and protections available to those under the Pakistan Constitution.

16. The interim constitution of AJK has placed several restrictions on anyone criticizing AJK's accession to Pakistan, in contravention to international standards on the rights to freedoms of expression and opinion, assembly and association.

17. A national NGO found that "hundreds of individuals" had been imprisoned under the Pakistan's Anti-Terrorism Act, 1997 in G-B, and it was being used to target locals who have been raising issues related to the "rights of the people".

18. A national NGO was informed that G-B authorities had forcibly evicted locals in Maqpoon Das area, while the Chief Secretary of G-B had allocated the same land to state authorities for the China Pakistan Economic Corridor. The displaced claimed they had not received compensation or relocation from the authorities. OHCHR has received information that indigenous people in G-B have complained of not being properly informed or consulted on decisions affecting them and their livelihoods.

19. Similar to the Constitution of Pakistan, AJK's Interim Constitution also defines who may be considered to be a Muslim. This definition is used to declare members of the Ahmadiyya community as non-Muslims and is the basis of institutional discrimination against them. Pakistan's blasphemy provisions are also reportedly in force in AJK and G-B.

20. According to figures provided by the Governments of India and Pakistan, ceasefire violations have been increasing between 2016 and April 2018. Increasing civilian casualties and injuries and a large number of people being displaced appear to be the consequence.

21. OHCHR recognizes the complexity of the historical background and political issues that has led to the current situation in Kashmir, which has been divided between India and Pakistan. People on both sides of the Line of Control have been detrimentally impacted and suffer from limitations or denial of a range of human rights.

22. There remains an urgent need to address past and ongoing human rights violations and to deliver justice for all people in Kashmir who have been suffering seven decades of conflict. Any resolution to the political situation in Kashmir should entail a commitment to ending the cycles of violence and accountability for past and current human rights violations and abuses committed by all parties and redress for victims. Such a resolution can only be brought about by meaningful dialogue that includes the people of Kashmir.

II. Introduction

23. On 8 July 2016, Burhan Wani, the 22-year old leader of the Hizbul Mujahidin, an armed group, was killed by Indian security forces during an armed clash in Bumdoora village in Kokernag area in the Indian state of Jammu and Kashmir. This triggered protests against his killing on a very large and unprecedented scale throughout the Kashmir Valley and in districts of Jammu. Indian security forces responded to protests with force, which led to casualties and a wide range of alleged related human rights violations throughout the summer of 2016 and into 2018. While Indian-Administered Kashmir has experienced waves of protests in the past—in the late 1980s to early 1990s, 2008 and 2010—this current round of protests appears to involve more people than the past, and the profile of protesters has also shifted to include more young, middle-class Kashmiris, including females who do not appear to have been participating in the past. Some of the root causes of the discontent fuelling protesters are addressed in this report.

24. Shortly after the outbreak of violence, the High Commissioner for Human Rights met with the representatives of the Governments of Pakistan and India who had differing narratives about the ongoing events and the general situation in Kashmir. From July 2016, the High Commissioner has on numerous occasions requested the Governments of India and Pakistan that his Office be given unconditional access to Kashmir to assess the human rights situation. India rejected this request, while Pakistan offered access should the Office obtain access to Indian-Administered Kashmir. Without unconditional access to Kashmir on either side of the Line of Control, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has undertaken remote monitoring of the human rights situation. This first report on the situation of human rights in both Indian-Administered Kashmir and Pakistan-Administered Kashmir is based on such monitoring.

25. This report covers the Indian state of Jammu and Kashmir (consisting of the Kashmir Valley, the Jammu and Ladakh regions) and Pakistan-Administered Kashmir (Azad Jammu and Kashmir and Gilgit-Baltistan).¹ The focus is the human rights situation in the Indian state

¹ The Jammu and Kashmir region refers to the entire territory of the former princely state before 1947; in shorthand, this region is referred to as Kashmir in the report. There is no specific decision of a UN intergovernmental organ that clarifies which terminology should be used to describe the region of Kashmir. The Secretary-General's reports and letters have used the following terms: Kashmir, Jammu and Kashmir, State of Jammu and Kashmir, Indian administered side of the Line of Control in Jammu and Kashmir, and Pakistan Administered Kashmir. In a statement of 17 August 2016, the Secretary-General referred to Indian-administered Jammu and Kashmir. OHCHR refers in the report to the Indian state of Jammu and Kashmir, Azad Jammu and Kashmir and Gilgit-Baltistan. Where useful for clarity or brevity, OHCHR also uses Pakistan-Administered Kashmir and Indian-Administered Kashmir.

of Jammu and Kashmir from July 2016 to April 2018, due to allegations of widespread and serious human rights violations, notably excessive use of force that led to numerous civilian casualties. Civil society estimates are that 130 to 145 civilians were killed by security forces between mid-July 2016 and end of March 2018, and 16 to 20 civilians killed by armed groups.² The Government of Jammu and Kashmir in 2017 initially said 78 people including 2 police officers were killed in the 2016 unrest but in 2017 revised the figure down to 51 people killed and 9,042 injured between 8 July 2016 and 27 February 2017.³

26. While the report examines the situation in Pakistan-Administered Kashmir within that timeframe, the human rights violations in this area are of a different calibre or magnitude and of a more structural nature.

III. Methodology

27. Without access to Kashmir on either side of the Line of Control, OHCHR has undertaken remote monitoring of the human rights situation. This report is the result of such monitoring, based on the mandate of the High Commissioner for Human Rights, as provided by United Nations General Assembly resolution 48/141. The mandate of the High Commissioner includes the full range of activities aimed at the promotion and protection of human rights, including monitoring and reporting.

28. The report largely draws on information that is mostly available in the public domain, some of which was obtained by various parties in India through the Right to Information Act,⁴ and also reflects the findings of research and monitoring carried out by local, national and international nongovernmental organizations (NGOs) and human rights defenders. Wherever possible, OHCHR has used official documents and statements, such as Parliamentary questions, court orders, and police reports. OHCHR considers the Press Trust of India—India’s largest news agency and managed by an autonomous trust—as a reliable source to quote Indian authorities and official statements. OHCHR conducted a small number of interviews to corroborate information; due to access issues and security concerns of witnesses, it was not possible for OHCHR within the timeframe available for producing this report to use direct witness testimony.

29. As OHCHR was denied access to Kashmir, it was not possible to directly verify allegations. OHCHR bases its findings on its methodology, using a “reasonable grounds” standard of proof. This implies that there are reasonable grounds establishing that an incident or pattern of conduct have occurred whenever OHCHR has obtained a reliable body of information, consistent with other material, based on which a reasonable and ordinarily prudent person would have reason to believe that such an incident or pattern of conduct had occurred.

² Jammu Kashmir Coalition of Civil Society (JKCCS), “Human Rights Review 2016”, p. 5. Available from <http://jkccs.net/wp-content/uploads/2018/03/2016-Human-Rights-Review-JKCCS.pdf>, Human Rights Watch, International Commission of Jurists and Amnesty International, “Cease Wrongful Detention in Jammu and Kashmir”, 2016. Available from <https://www.hrw.org/news/2016/10/15/india-cease-wrongful-detentions-jammu-and-kashmir>. JKCCS, “Annual Human Rights Review 2017”, p 7. Available from <https://jkccs.files.wordpress.com/2017/12/jkccs-annual-human-rights-review-2017.pdf>.

³ Jammu and Kashmir Legislative Assembly, Starred A.Q. No.439, 3 January 2017. Available from http://www.jklegislativeassembly.nic.in/Misc/A.Q%20Reply%202017/Starred/2017-01-03%20439/439%20001_result.pdf. Jammu and Kashmir Legislative Assembly, Unstarred A.Q. No.330, 12 January 2018, Annexure-A. Available from <http://www.jklegislativeassembly.nic.in/replies2018/12jan/UN330.pdf>.

⁴ The right to information (RTI) is a tool that allows Indian citizens to request information from a public authority under the Right to Information Act 2005. It is applicable across India except the state of Jammu and Kashmir where a similar Act - ‘Jammu and Kashmir Right to Information Act 2009’ - is in force.

30. The quantity and quality of information available on Indian-Administered Kashmir contrasts significantly to Pakistan-Administered Kashmir. Despite challenges, NGOs, human rights defenders and journalists are able to operate in the Indian state of Jammu and Kashmir, generating documentation on the ongoing human rights violations there. Restrictions on the freedoms of expression, opinion, peaceful assembly and association in Azad Jammu and Kashmir and Gilgit-Baltistan have limited the ability of observers, including OHCHR, to assess the human rights situation there. Nevertheless, OHCHR used the information that is available to address the human rights violations occurring in Azad Jammu and Kashmir and Gilgit-Baltistan.

31. In assessing the situation of human rights in Kashmir, OHCHR relied chiefly on the binding legal obligations that both India and Pakistan voluntarily assumed as State Parties to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention for the Protection of all Persons from Enforced Disappearance, as well as customary international law.⁵

IV. Background

32. Prior to 1947, under British rule, the Jammu and Kashmir region was one of the largest princely states in the Indian subcontinent. According to the India Independence Act, 1947, the princely states had the right to remain independent or accede to either of the then two new fully sovereign dominions of India and Pakistan.⁶ At the time, Hari Singh, the Hindu ruler of the Muslim-majority kingdom of Jammu and Kashmir, initially chose to remain independent. However, on 26 October 1947, under pressure from invading Pashtun forces, he signed the Instrument of Accession to India.⁷ An armed conflict involving Indian and Pakistani forces followed, which India brought to the attention of the United Nations Security Council on 1 January 1948. Pakistan raised its concerns on the same matter two weeks later.

33. On 20 January 1948, the Security Council through Resolution 39 established the United Nations Commission for India and Pakistan (UNCIP) to investigate the allegations made by the Governments of India and Pakistan and to assist with mediating the dispute.⁸ On 21 April 1948, Security Council Resolution 47 expanded the mandate of the Commission and mandated it to facilitate a “free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan.”⁹ Although Kashmir had been briefly independent between August and October 1947, the resolution did not provide an option for the people of Kashmir to choose independence.

34. Resolution 47 recommended that the Government of Pakistan should secure the withdrawal of tribesmen and Pakistani fighters from the state of Jammu and Kashmir and

⁵ While India has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention for the Protection of all Persons from Enforced Disappearance, it has signed both indicating an intention to be bound by this treaty at a later date, and creating an obligation to refrain in good faith from acts that will defeat the object and purpose of the treaty. Pakistan has not signed the Convention for the Protection of all Persons from Enforced Disappearance.

⁶ Available from http://www.legislation.gov.uk/ukpga/1947/30/pdfs/ukpga_19470030_en.pdf.

⁷ The circumstances of accession, including the order of events, remains disputed and controversial. AG Noorani, *The Kashmir Dispute 1947-2012*, Oxford University Press, 2014.

⁸ Available from http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/39 (1948).

⁹ Available from http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/47 (1948).

prevent any intrusions into the state or aid to those fighting.¹⁰ The plebiscite was to take place after the implementation of various measures foreseen in Resolution 47.

35. A ceasefire line was established in July 1949, and military observers were appointed by the Security Council to monitor it.¹¹ In 1951, UNCIP was terminated, and the United Nations Military Observer Group in India and Pakistan (UNMOGIP) was established. It continued the work of military observers by Security Council Resolution 91.¹²

36. The ceasefire line divided the former princely state, with Pakistan controlling the Muslim-majority western and northern areas of Jammu and Kashmir, called Azad (“free”) Jammu and Kashmir and Gilgit-Baltistan (previously called the Northern Areas) respectively; and India retaining control of the Kashmir Valley with its overwhelmingly Muslim population, the Hindu majority region of Jammu¹³ in the south and Muslim-Buddhist Ladakh in the east. These three areas together constitute the Indian state of Jammu and Kashmir. Part of the territory of the former princely state is under the control of China.¹⁴

37. Although the “India-Pakistan Question” remained on the agenda of the Security Council until 1957, leading to several resolutions, the plebiscite never took place as the requisite conditions of withdrawal of forces was not fulfilled.¹⁵ In 1957, Security Council Resolution 122 noted about the convening of a constituent assembly, as recommended by the General Council of the All Jammu and Kashmir National Conference, “any action that assembly may have taken or might attempt to take to determine the future shape and affiliation of the entire state or any part thereof, or action by the parties concerned in support of any such action by the assembly, would not constitute a disposition of the state in accordance with the principles”¹⁶ established by previous resolutions of the Security Council and UNCIP.¹⁷

¹⁰ The resolution called on the Government of India to reduce its force to the minimum required for the maintenance of law and order, at such time “[w]hen it is established to the satisfaction of the Commission... that the tribesmen are withdrawing and that arrangements for the cessation of the fighting have become effective.” Resolution 47 also stated that the measures indicated in various paragraphs provide full freedom to all subjects of Jammu and Kashmir, regardless of creed, caste, or party, to express their views and to vote on the question of the accession of the State, and that therefore they should co-operate in the maintenance of peace and order. Furthermore, the Security Council recommended that the Government of India should ensure that the Government of the state releases all political prisoners and take all possible steps so that: (a) all citizens of the state who have left it on account of disturbances are invited and are free to return to their homes and to exercise their rights as such citizens; (b) there be no victimization; minorities in all parts of the state be accorded adequate protection. Security Council Resolution 47 (1948), paragraph 1(b) and 14.

¹¹ Security Council Resolution 91. Available from [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/91\(1951\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/91(1951)).

¹² Available from [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/91\(1951\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/91(1951)).

¹³ In the ten districts that comprise the Jammu region, the 2011 Indian census reports that there are 3,364,618 Hindus, 1,799,232 Muslims and 172,635 Sikhs. (Government of India, “Census of India 2011”, p. 39. Available from <http://ecostatjk.nic.in/Digest1314/1%20area%20and%20population.pdf>.)

¹⁴ Following unresolved colonial-era boundary disputes, India and China went to war in 1962, which resulted in China taking control of the largely uninhabited tract of Aksai Chin in the East. As part of a broader boundary agreement, in 1963, Pakistan ceded to China the Shaksgam or Trans-Karakoram tract in the Gilgit-Baltistan area. The agreement includes a provision for renegotiation in case of a change in sovereign authority after the settlement of the Kashmir dispute between Pakistan and India.

¹⁵ Security Council Resolution 98 of 1952 clarified that this should mean 3,000 to 6,000 soldiers remaining on the Pakistani side of the ceasefire line, and 12,000 to 18,000 on the Indian side.

¹⁶ Security Council Resolution 122 (1957). Available from [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/122\(1957\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/122(1957)).

¹⁷ Security Council Resolutions 47 (1948), 51 (1948), 80 (1950), 91 (1951), and the United Nations Commission for India and Pakistan resolution of 13 August 1948 and 5 January 1949.

38. Minor changes to the ceasefire line in Kashmir followed a second war between India and Pakistan in 1965. Following another war in December 1971, it was eventually converted into the Line of Control, based on the December 1971 ceasefire positions, through the 1972 Simla Agreement signed between the Governments of India and Pakistan. The Simla Agreement calls for “the establishment of durable peace in the sub-continent, so that both countries may henceforth devote their resources and energies to the pressing task of advancing the welfare of their peoples” and “resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them.”¹⁸

39. The Government of India has since claimed that the Simla Agreement made all previous Security Council resolutions redundant, while the Government of Pakistan has continued to call for the implementation of these resolutions.¹⁹ The United Nations Secretary-General’s position has been that UNMOGIP can only be terminated by a decision of the Security Council; as such a decision has not been taken, UNMOGIP has continued to operate.²⁰

40. In 1990, India introduced the Armed Forces (Jammu and Kashmir) Special Powers Act (AFSPA)²¹ to manage the armed groups that had emerged by the end of the 1980s over objections to Indian control over Kashmir.²² A large number of Indian security forces were subsequently deployed to Kashmir with allegations of resulting serious human rights violations. Civil society and media often cite the figure of 500,000 to 700,000 troops²³ which would make Kashmir one of the most militarized zones in the world. The allegations of human rights violations include torture and custodial deaths, rape, enforced disappearances and extrajudicial executions. At the same time, armed groups are believed to have been committing significant human rights abuses, including hostage-taking, targeted killings, and

¹⁸ Furthermore, the Simla Agreement notes: “Both Governments agree that their respective Heads will meet again at a mutually convenient time in the future and that, in the meanwhile, the representatives of the two sides will meet to discuss further the modalities and arrangements for the establishment of durable peace and normalization of relations, including the questions of repatriation of prisoners of war and civilian internees, a final settlement of Jammu and Kashmir and the resumption of diplomatic relations.” Available from <http://mea.gov.in/in-focus-article.htm?19005/Simla+Agreement+July+2+1972>.

¹⁹ Parliament of India, Lok Sabha, Unstarred Question no. 3203, 16 March 2016. Available from <http://mea.gov.in/lok-sabha.htm?dtl/26533/question+no3203+kashmir+issue>. And, Parliament of India, Rajya Sabha, Unstarred Question no. 499, 28 April 2016. Available from <http://mea.gov.in/rajya-sabha.htm?dtl/26709/question+no+499+pakistans+high+commissioner+meeting+separatist+leaders+of+kashmir>.

²⁰ UNMOGIP Mandate. Available from <http://www.un.org/en/peacekeeping/missions/unmogip/mandate.shtml>.

²¹ India, Armed Force (Jammu and Kashmir) Special Powers Act, 1990. Available from http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/Armedforces_J&K_Spl.powersact1990.pdf

²² Former armed group leader Muhammad Yasin Malik narrates the emergence of Jammu and Kashmir National Liberation Front on 13 August 1996 and their decision to take up arms against Indian control of Kashmir. (“Amanullah Khan: the legend I knew”, *Muhammad Yasin Malik*, 26 April 2017. Available from <http://www.greaterkashmir.com/news/front-page/amanullah-khan-the-legend-i-knew/247552.html>.

²³ For example, “Do you need 700,000 soldiers to fight 150 militants?": Kashmiri rights activist Khurram Parvez”, *Scroll.in*, 21 June 2016. Available from <https://scroll.in/article/812010/do-you-need-700000-soldiers-to-fight-150-militants-kashmiri-rights-activist-khurram-parvez>. And “Black Day in Kashmir marks 1947 Indian army arrival”, *Al Jazeera*, 27 October 2017. Available from <https://www.aljazeera.com/news/2017/10/day-kashmir-marks-1947-indian-army-arrival-171027122649223.html>.

indiscriminate attacks against civilians.²⁴ In addition to serious human rights violations resulting from the militarization of Kashmir, Kashmiris have also complained of high unemployment, interference with local elections,²⁵ and denial of their right to self-determination.

41. Another war took place between India and Pakistan in 1999, albeit limited to the Line of Control in the Kargil area of Ladakh. Firing across the Line of Control by both sides has continued to today. Ceasefire violations have increased since 2016, causing a significant number of casualties and displacement reported on both sides of the Line of Control. The report addresses the human rights impact of these ceasefire violations.

V. Human rights violations in Indian-Administered Kashmir

A. Lack of access to justice and impunity

42. Impunity for human rights violations and lack of access to justice are key human rights challenges in the state of Jammu and Kashmir. Special laws in force in the state, such as the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (AFSPA)²⁶ and the Jammu and Kashmir Public Safety Act, 1978 (PSA)²⁷, have created structures that obstruct the normal course of law, impede accountability and jeopardize the right to remedy for victims of human rights violations.

43. AFSPA 1990 was passed by the Parliament of India on 10 September 1990 but was “deemed to have come into force” retrospectively from 5 July 1990.²⁸ This act grants broad powers to the security forces operating in Jammu and Kashmir and effectively bestows immunity from prosecution in civilian courts for their conduct by requiring the central government to sanction all prospective prosecutions against such personnel prior to being launched. It is almost identical to the Armed Forces (Special Powers) Act 1958 that is in force in several states of north-east India;²⁹ however, a separate version of the same law had to be enacted specifically for Jammu and Kashmir due to its special status under article 370 of the Indian Constitution.³⁰

44. Section 7 of AFSPA 1990 prohibits the prosecution of security forces personnel unless the Government of India grants a prior permission or “sanction” to prosecute. This gives security forces virtual immunity against prosecution for any human rights violation. In the nearly 28 years that the law has been in force in Jammu and Kashmir, there has not been a single prosecution of armed forces personnel granted by the central government.³¹ In relation

²⁴ Human Rights Watch (HRW), “The human rights crisis in Kashmir”, June 1993. Available from <https://www.hrw.org/sites/default/files/reports/INDIA937.PDF>; HRW, “Everyone Lives in Fear - Patterns of impunity in Jammu and Kashmir”, 11 September 2006. Available from <https://www.hrw.org/sites/default/files/reports/india0906web.pdf>.

²⁵ “Kashmir’s flawed elections”, *BBC*, 14 September 2002. Available from http://news.bbc.co.uk/2/hi/south_asia/2223364.stm.

²⁶ India, Armed Force (Jammu and Kashmir) Special Powers Act, 1990.

²⁷ India, Jammu and Kashmir Public Safety Act, 1978. Available from <http://jkhomes.nic.in/PSA0001.pdf>.

²⁸ Armed Force (Jammu and Kashmir) Special Powers Act, 1990.

²⁹ India, Armed Forces (Special Powers) Act, 1958. Available from <http://lawmin.nic.in/ld/P-ACT/1958/A1958-28.pdf>.

³⁰ Constitution of India, Article 370. Available from - <https://www.india.gov.in/my-government/constitution-india/constitution-india-full-text>.

³¹ On 1 January 2018, the Union Ministry of Defence informed the upper house of the Indian Parliament that it had received 50 requests for sanction for prosecution from the Government of Jammu and Kashmir since AFSPA 1990 came into force. Sanction requests in 47 cases were rejected and are

to this, the Indian authorities claim they follow a policy of “zero tolerance against human rights violations”³² and that military courts appropriately handle any allegations of human rights violations.³³

45. Section 4 of AFSPA 1990 allows any personnel operating under the law to use lethal force not only in cases of self-defence but also against any person contravening laws or orders “prohibiting the assembly of five or more persons”.³⁴ This provision contravenes several international standards on the use of force and related principles of proportionality and necessity³⁵ including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which requires law enforcement officials to use firearms only as a last resort, and to use them with lethal intent only when “strictly unavoidable in order to protect life”.³⁶ According to the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Section 4 grants far-reaching powers to soldiers that violate the right to life and fail to build safeguards against excessive use of force.³⁷ Given the restriction imposed by Section 7 of AFSPA 1990, most cases of alleged excessive use of force have never been independently investigated or prosecuted.³⁸

46. While the Supreme Court of India upheld the constitutional validity of AFSPA in 1997,³⁹ it has since passed orders challenging the restriction as provided in Section 7 that prohibits the prosecution of security forces personnel.⁴⁰ In July 2017, the Supreme Court ordered the Central Bureau of Investigation to investigate alleged extrajudicial killings by security forces in the state of Manipur.⁴¹ However, there has been no such initiative in cases of alleged extrajudicial killings in Jammu and Kashmir.

47. In 2005, the Supreme Court appointed a committee to review AFSPA. The committee stated that the law had become “a symbol of oppression, an object of hate and an instrument

pending in 3 cases (Parliament of India, Rajya Sabha, Unstarred question no. 1463. Available from <http://rajyasabha.nic.in/>).

³² Parliament of India, Lok Sabha, Starred question no 648, 22 May 2012. Available from <http://loksabha.nic.in>.

³³ Commenting on India’s military justice system, Union Minister of State for External Affairs General (retired) V.K. Singh who was then the Chief of Army Staff said, “[T]he meting out of justice under the Army Act is expeditious and stringent” (“104 army men punished for human rights violations in JK: Gen VK Singh”, *Press Trust of India*, 24 October 2010. Available from <http://www.dnaindia.com/india/report-104-armymen-punished-for-human-rights-violations-in-jk-gen-vk-singh-1457257>).

³⁴ Armed Force (Jammu and Kashmir) Special Powers Act, 1990 (Section 4).

³⁵ *Ibid*, p. 6.

³⁶ United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). Available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>.

³⁷ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to India (A/HRC/23/47/Add.1.), 26 April 2013, p. 6.

³⁸ Parliament of India, Rajya Sabha, Unstarred question no. 1463.

³⁹ Supreme Court of India, Naga People’s Movement of Human Rights, etc vs. Union of India (27 November 1997). Available from http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/COHR_IND_UPR_S1_2008anx_Annex%20XXIII_Supreme%20Court%20%20ruling%20on%20AFSPA.pdf.

⁴⁰ The Supreme Court ruled that the armed forces cannot justify excessive use of force under the AFSPA and added that such cases must be “thoroughly investigated”. (Supreme Court of India, Extra Judicial Execution Victim Families Association v. Union of India (14 July 2017), para 1. Available from http://supremecourtindia.nic.in/supremecourt/2012/29000/29000_2012_Judgement_14-Jul-2017.pdf.)

⁴¹ “SC orders CBI probe into Manipur extra-judicial killings”, *Press Trust of India*, 14 July 2017. Available from <http://www.thehindu.com/news/national/supreme-court-order-cbi-probe-into-manipur-extra-judicial-killings/article19276650.ece>;

of discrimination and high-handedness”.⁴² While there has been no official position on this committee’s recommendations, in December 2015 media reports claimed that the Union Ministry of Home Affairs had rejected the committee’s proposals.⁴³ In 2012, a committee, established by the Central Government to review laws against sexual violence, recommended that AFSPA be amended so that cases of sexual violence by members of the armed forces would be brought under the purview of ordinary criminal law.⁴⁴ However, this recommendation has not been implemented. In 2012, in its submission in the context of India’s second Universal Periodic Review (UPR), the National Human Rights Commission of India stated that AFSPA “remains in force in Jammu and Kashmir and the North-Eastern States, conferring an impunity that often leads to the violation of human rights”.⁴⁵ In November 2014, the Vice President of India, Hamid Ansari, recognized there were frequent complaints about the misuse of laws such as AFSPA and that “this reflected poorly on the State and its agents”.⁴⁶

48. International human rights experts and mechanisms, including treaty bodies have repeatedly called for the repeal of AFSPA.⁴⁷ The Human Rights Committee noted that the requirement for the Central Government to sanction prosecutions against personnel operating under the AFSPA “contributes to a climate of impunity and deprives people of remedies,” and recommended that it should “be abolished and that it be left to the courts to decide whether proceedings are vexatious or abusive”.⁴⁸ The Committee urged that “judicial inquiries be mandatory in all cases of death at the hands of the security and armed forces and that the judges in such inquiries, including those under the Commission of Inquiry Act of 1952, be empowered to direct the prosecution of security and armed forces personnel.”⁴⁹

49. During India’s UPR in 2008,⁵⁰ 2012⁵¹ and 2017,⁵² several United Nations Member States recommended that India repeal or revise the AFSPA. In the third cycle of the UPR, the Government of India admitted that concerns had been raised about AFSPA and that there was an “on-going and vibrant political debate” about whether “AFSPA should be repealed

⁴² India, Report of the Committee to review the Armed Forces (Special Powers) Act, 1958, p.75.

Available from <http://notorture.ahrchk.net/profile/india/ArmedForcesAct1958.pdf>.

⁴³ “No decision to repeal AFSPA: Government”, Press Trust of India, 2 December 2015. Available from <https://economictimes.indiatimes.com/news/defence/no-decision-to-repeal-afspa-government/articleshow/50011557.cms>.

⁴⁴ India, Report of the Committee on Amendments to Criminal Law, 23 January 2013, p. 149-151.

Available from

<http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committee%20report.pdf>.

⁴⁵ National Human Rights Commission of India, “Submission to the UN Human Rights Council for India’s Second Universal Periodic Review”, p. 2. Available from

<http://nhrc.nic.in/Documents/Reports/UPR-Final%20Report.pdf>.

⁴⁶ Hamid Ansari, Vice President of India, “Citizens and State Conduct”, Eighth V M Tarkunde

Memorial Lecture, New Delhi, 21 November 2014. Available from

<http://pib.nic.in/newsite/PrintRelease.aspx?relid=111666>.

⁴⁷ CCPR/C/79/Add.81; CEDAW/C/IND/CO/3; CERD/C/IND/CO/19; and E/C.12/IND/CO/5. Three United Nations Special Rapporteurs called for the repeal of AFSPA during country missions to India between 2011 and 2013: Special Rapporteur on the situation of human rights defenders (A/HRC/19/55/Add.1), Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/23/47/Add.1.), Special Rapporteur on Violence against Women, its causes and consequences (A/HRC/26/38/Add.1)

⁴⁸ CCPR/C/79/Add.81, para 21.

⁴⁹ Ibid.

⁵⁰ Report of the Working Group on the Universal Periodic Review, India (A/HRC/8/26), 23 May 2008.

⁵¹ Report of the Working Group on the Universal Periodic Review, India (A/HRC/21/10), 9 July 2012.

⁵² Report of the Working Group on the Universal Periodic Review, India (A/HRC/36/10), 17 July 2017.

or the provision for sanctions should continue”.⁵³ However, in March 2018, Union Minister of State for Home Affairs, Hansraj Gangaram Ahir, told the Parliament that there was no proposal to repeal or amend AFSPA in Jammu and Kashmir.⁵⁴ He added: “[H]owever, a proposal is under consideration to make the Armed Forces (Special Powers) Act, 1958 more operationally effective and humane”.⁵⁵

50. The National Human Rights Commission of India has acknowledged that Section 19 of the Protection of Human Rights Act, 1993 severely restricts its powers to investigate incidents involving armed forces.⁵⁶ The Human Rights Committee also observed that the National Human Rights Commission of India cannot investigate directly complaints against armed forces and that it is subject to a one year statute of limitations preventing investigation of past human rights violations.⁵⁷ The Committee recommended that these restrictions be removed and that the Commission be authorized to investigate all allegations of violations by agents of the State.⁵⁸

B. Military courts and tribunals impeding access to justice

51. The Indian military justice system is based predominantly on three separate acts: the Army Act, 1950; the Air Force Act, 1950; and the Navy Act, 1950. The paramilitary or central police forces under the central government are governed by their own specific acts and rules.⁵⁹ In 2007, the Armed Forces Tribunal was established to deal with “appeals from court martial verdicts and grievances related to conditions of service, including promotions, confirmations and appointments”.⁶⁰

52. According to an international NGO, there are slight variations in the justice systems governing each of the central police forces and that “to some degree the processes are less defined, providing for greater ambiguity in the administration of justice within these security forces.”⁶¹ Additional work may be needed to verify this assertion.

53. In February 2018, the Union Ministry of Home Affairs informed the Parliament that since 1990 the Jammu and Kashmir Government had sought the sanction of the central

⁵³ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, India (A/HRC/WG.6/27/IND/1), 23 February 2017, para 29.

⁵⁴ Parliament of India, Lok Sabha, Unstarred question no 4063, 20 March 2018.

⁵⁵ *Ibid.*

⁵⁶ Comments of the National Human Rights Commission of India on the report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions on his visit to India (A/HRC/23/47/Add.1.). Available from [https://nhri.ohchr.org/EN/IHRS/HumanRightsCouncil/23/ID%20with%20SR%20on%20peaceful%20assembly%20association/Comments%20on%20SR%20EJE%27s%20report%20\(1\).docx?Mobile=1&Source=%2FEN%2FIHRS%2FHumanRightsCouncil%2F23%2F%5FLayouts%2Fmobile%2Fdispform%2Easpx%3FList%3D180b1261%252D28cd%252D41d8%252D82a2%252D8062faae2b29%26View%3D49aa5794%252Db553%252D40a3%252D950d%252D70f3e6181398%26ID%3D11%26CurrentPage%3D1](https://nhri.ohchr.org/EN/IHRS/HumanRightsCouncil/23/ID%20with%20SR%20on%20peaceful%20assembly%20association/Comments%20on%20SR%20EJE%27s%20report%20(1).docx?Mobile=1&Source=%2FEN%2FIHRS%2FHumanRightsCouncil%2F23%2F%5FLayouts%2Fmobile%2Fdispform%2Easpx%3FList%3D180b1261%252D28cd%252D41d8%252D82a2%252D8062faae2b29%26View%3D49aa5794%252Db553%252D40a3%252D950d%252D70f3e6181398%26ID%3D11%26CurrentPage%3D1).

⁵⁷ CCPR/C/79/Add.81, para 22.

⁵⁸ *Ibid.*

⁵⁹ The Central Reserve Police Act (1949) and Rules (1955), the Assam Rifles Act (1941/2006) and Rules (2010), the Border Security Force Act (1968) and Rules (1969), the Central Industrial Security Force Act (1968) and Rules (2001), National Security Guard Act (1986) the Indo-Tibetan Border Police Act (1992) and Rules (1994), and the Sashastra Seema Bal Act (2007) and Rules (2009).

⁶⁰ U.C. Jha, “Military Justice system in India”. Available from <http://usiofindia.org/Article/Print/?pub=Journal&pubno=564&ano=435>.

⁶¹ Amnesty International, “Denied: Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir”, 2015, p. 46. Available from <https://www.amnesty.org/download/Documents/ASA2018742015ENGLISH.PDF>.

government for prosecution of members of the security forces in 50 cases.⁶² The central government refused to sanction prosecution in 47 cases, while decisions remained pending in relation to 3 cases as of April 2018.⁶³

54. The Indian authorities have insisted that any allegations of human rights violations by security forces are appropriately handled by the military justice system.⁶⁴ However, according to the Special Rapporteur on Independence of Judges and Lawyers, military courts do not meet international fair trial standards and thus are not suitable to try offences committed against civilians.⁶⁵

55. In July 2017, the Armed Forces Tribunal suspended the life sentences and granted bail to five Indian Army personnel who had been convicted by an army court-martial on 12 November 2014 for the extrajudicial killing of three civilians in Macchil in Baramulla district in 2010.⁶⁶ The killings, which were perpetrated on the night of 29 April 2010, had triggered violent protests in Kashmir in the summer of 2010 and resulted in the deaths of over 100 protesters.⁶⁷ The Armed Forces Tribunal's decision to suspend the life sentences has not been made public. Neither the state nor central authorities have challenged the Armed Forces Tribunal's order.

56. In April 2013, the Supreme Court granted security forces the option to try their own personnel, and the Border Security Force exercised this option in a few instances to the benefit of its personnel.⁶⁸ Thus, in June 2017, media reports indicated that the General Security Forces Court⁶⁹ had acquitted two members of the Border Security Force accused of the extrajudicial execution of 16-year old Zahid Farooq Sheikh on 5 February 2010.⁷⁰ Human rights groups which have been in touch with his families stated they were unaware of the decisions of the military courts or the status of their cases. This had been one of the few instances where the state police conducted a swift investigation and filed a case against the Border Security Force personnel.⁷¹ Additional work may be needed to verify this case.

C. Administrative detention

57. Administrative detention appears to be used by the Jammu and Kashmir authorities to circumvent the protections of ordinary criminal procedure. Introduced in 1978 to primarily

⁶² Parliament of India, Rajya Sabha, Unstarred question no. 1463. Available from <http://rajyasabha.nic.in/>.

⁶³ Ibid.

⁶⁴ Commenting on India's military justice system, Union Minister of State for External Affairs General (retired) V.K. Singh who was then the Chief of Army Staff said, "[T]he meting out of justice under the Army Act is expeditious and stringent". ("104 army men punished for human rights violations in JK: Gen VK Singh", *Press Trust of India*, 24 October 2010.)

⁶⁵ Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, to the General Assembly, in accordance with resolution 17/2 of the Human Rights Council (A/68/285), 7 August 2013, pp. 21-22.

⁶⁶ India, Armed Forces Tribunal, *Ex Col. Dinesh Pathania, Ex Capt Upendra, Ex Hav Devender Kumar Vs Union of India & others*, 25 July 2017. Available from <http://www.livelaw.in/machil-fake-encounter-aft-gives-bail-5-ex-army-men-life-termsays-victims-dressed-like-terrorist-pathan-suit-read-order/>.

⁶⁷ HRW, "Repeal Immunity Law Fueling Kashmir Violence", 17 September 2010. Available from <https://www.hrw.org/news/2010/09/17/india-repeal-immunity-law-fueling-kashmir-violence>.

⁶⁸ Amnesty International, "Denied", p. 38.

⁶⁹ The BSF Act and Rules provide for three types of security force courts: general security force courts, petty security force courts, and summary security force courts; Border Security Force Act and Rules. Available from <http://bsf.nic.in/en/act.html>.

⁷⁰ Amnesty International, *The State of the World's Human Rights 2017/18*, p. 192. Available from <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>.

⁷¹ Amnesty International, "Denied", pp. 38-39.

deal with timber smugglers, the Jammu and Kashmir Public Safety Act, 1978 (PSA) is the most commonly used law for the purpose of administrative detention.

58. PSA authorizes the authorities to impose an administrative detention order for a broad range of activities that are vaguely defined, including “acting in any manner prejudicial to the security of the State” or for “acting in any manner prejudicial to the maintenance of public order”.⁷² PSA allows for detention without charge or trial for up to two years in some cases.⁷³ According to an international NGO, these “vague and broad definitions grant the authorities sweeping powers, whilst also seriously diminishing any real possibility for detainees to contest the legality of their detention.”⁷⁴

59. PSA has reportedly been widely used by the authorities in Jammu and Kashmir to stifle dissent. It has been used to target human rights defenders,⁷⁵ journalists, separatist⁷⁶ political leaders, suspected members of armed opposition groups and people involved in protests.⁷⁷

60. In 2012, the Jammu and Kashmir State Assembly amended PSA to prohibit the detention of people under 18 years of age. However, during the 2016 unrest, there were multiple cases of children under 18 years being detained under PSA.⁷⁸

61. PSA does not provide for a judicial review of detention,⁷⁹ and state authorities have been countering orders by the Jammu and Kashmir High Court to release people detained under this law by issuing successive detention orders.⁸⁰ This tactic has been used to keep people in detention for several weeks, months and, in some cases, years.⁸¹ The Supreme Court of India has described the system of administrative detention, including PSA, as a “lawless law”.⁸²

62. International Treaty Bodies and Special Procedures have called for the revision of PSA so that it meets India’s international human rights obligations.⁸³ The Human Rights Committee has noted that it contravenes the rights enshrined in the International Covenant on Civil and Political Rights, especially the rights to liberty and to a free and fair trial.⁸⁴

⁷² Jammu and Kashmir Public Safety Act, 1978.

⁷³ Ibid.

⁷⁴ Amnesty International, “A Lawless Law”, 21 March 2011, p. 17. Available from <https://www.amnesty.org/en/documents/ASA20/001/2011/en/>.

⁷⁵ A/HRC/19/55/Add.1, p. 6.

⁷⁶ In this report, OHCHR uses the terms separatist and pro-independence interchangeably. In Indian-Administered Kashmir, separatist and pro-independence refer to those who call for Kashmir to be independent from both India and Pakistan and to those who call for Kashmir’s accession to Pakistan. In Pakistan-Administered Kashmir, pro-independence refers to those who call for Kashmir to be independent of both Pakistan and India.

⁷⁷ Amnesty International, “A Lawless Law”.

⁷⁸ OHCHR has received confidential documents that shows six minors were detained under the PSA in 2016-2017. AHRW, ICJ and Amnesty International, “Cease Wrongful Detention in Jammu and Kashmir”.

⁷⁹ HRW, ICJ and Amnesty International, “Cease Wrongful Detention in Jammu and Kashmir”.

⁸⁰ Amnesty International, “A Lawless Law”.

⁸¹ Pro-independence leader Masrat Alam has been charged in 36 PSA cases since his initial detention in 2010. Each time the High Court ruled against his detention, a new PSA case was filed against him (Jammu Kashmir Coalition of Civil Society, “Annual Human Rights Review 2017”, p 18. Available from <https://jkccs.files.wordpress.com/2017/12/jkccs-annual-human-rights-review-2017.pdf>).

⁸² Supreme Court of India, *Jaya Mala v. Home Secretary, Government of Jammu & Kashmir* (29 July 1982). Available from <https://indiankanoon.org/doc/203168/>.

⁸³ Concluding Observations of the Human Rights Committee (CCPR/C/79/Add.81), 4 August 1997, para 18; Opinion adopted by the Working Group on Arbitrary Detention (A/HRC/13/30/Add.1), 4 March 2010, para 51; Report of the Special Rapporteur on the situation of human rights defender, Margaret Sekaggya (A/HRC/19/55/Add.1), 6 February 2012, para 145.

⁸⁴ CCPR/C/79/Add.81, para 18.

While analyzing several cases of arbitrary detention under PSA, the Working Group on Arbitrary Detention observed that, “[the] Government has not refuted the allegation that these persons were detained by security forces under the said Act without serving them with an arrest warrant, which constitutes a violation of due process in detention”.⁸⁵

D. Excessive use of force

63. The killing of civilians between 2016 and 2018 raises the question of whether security forces resorted to excessive use of force to respond to protesters, some of whom were throwing rocks. International human rights groups have accused Indian security forces of using excessive force and failing to adhere to applicable national and international standards on the use of force.⁸⁶

64. In responding to demonstrations that started in July 2016, Indian security forces used excessive force that led to unlawful killings and a very high number of injuries.⁸⁷ The peak of the unrest occurred between July and December 2016. Civil society estimates are that 130 to 145 civilians were killed by security forces between mid-July 2016 and end of March 2018, and 16 to 20 civilians killed by armed groups in the same period.⁸⁸ There have been conflicting estimates by authorities on the number of people killed during that period. In January 2017, Jammu and Kashmir Chief Minister Mehbooba Mufti told the state assembly that 78 people including 2 police officers were killed in the 2016 unrest. However, on 12 January 2018, the state government of Jammu and Kashmir informed the state assembly that 51 people had been killed during the unrest in the Kashmir region between 8 July 2016 and 27 February 2017.⁸⁹ The state government also said that 9,042 people had been injured during protests in the same period including through injuries sustained from the use of bullets, metal pellets and chemical shells.⁹⁰

65. Civil society groups estimate that between 90 and 105 people were killed during the unrest between July and December 2016. According to Srinagar-based Jammu Kashmir Coalition of Civil Society (JKCCS), 105 people were killed in the period following protests that spread across the Kashmir Valley after 8 July 2016.⁹¹ It claims deaths were caused by injuries from pellet shotguns, bullets, tear gas shells, as well as by drowning, inhaling chemical shell fumes and shooting by unidentified gunmen.⁹² Amnesty International, Human

⁸⁵ A/HRC/13/30/Add.1, para 42.

⁸⁶ Amnesty International, “Global Standards on Police Use of Force Violated in Kashmir”, 12 September 2016. Available from <https://amnesty.org.in/news-update/global-standards-police-use-force-violated-kashmir/>;

Physicians for Human Rights, “Blind to Justice: Excessive Use of Force and Attacks on Health Care in Jammu and Kashmir, India”, 12 December 2016, p. 8. Available from <http://physiciansforhumanrights.org/press/press-releases/indian-authorities-unleashed-excessive-force-against-kashmir-protesters.html?referrer=https://www.google.ch/>.

⁸⁷ Jammu and Kashmir Legislative Assembly, Starred A.Q. No.439, 3 January 2017. Available from http://www.jklegislativeassembly.nic.in/Misc/A.Q%20Reply%202017/Starred/2017-01-03%20439/439%20001_result.pdf.

⁸⁸ JKCCS, “Human Rights Review 2016”, p. 5. HRW, International Commission of Jurists and Amnesty International, “Cease Wrongful Detention in Jammu and Kashmir”. JKCCS, “Annual Human Rights Review 2017”, p 7.

⁸⁹ Jammu and Kashmir Legislative Assembly, Unstarred A.Q. No.330, 12 January 2018, Annexure-A. Available from <http://www.jklegislativeassembly.nic.in/replies2018/12jan/UN330.pdf>.

⁹⁰ Jammu and Kashmir Legislative Assembly. Unstarred A.Q. No.330, Annexure-A.

⁹¹ JKCCS. “Human Rights Review 2016”, p. 5. Available from <http://jkccs.net/wp-content/uploads/2018/03/2016-Human-Rights-Review-JKCCS.pdf>.

⁹² JKCCS, “Human Rights Review 2016”, p. 4.

Rights Watch and the International Commission of Jurists all claim there were over 90 fatalities in 2016.⁹³

66. Although not as intense and widespread as in 2016, protests across the Kashmir Valley continued throughout 2017 and into 2018, with several instances of violent clashes between protesters and security forces. Chief Minister Mehbooba Mufti told the state assembly on 23 January 2018 that 172 people had been killed since 2016: 105 in “law and order problems” (85 in 2016 and 20 in 2017); and 67 people in “militancy related incidents” (19 in 2016 and 48 in 2017).⁹⁴

67. JKCCS reported that 108 people were killed in 2017, including 19 near sites of armed encounters between security forces and armed groups.⁹⁵ It claims that nine people were killed by security forces during clashes around the parliamentary elections in April 2017, and four died from pellet shotgun injuries.⁹⁶

68. In January 2018, the state government of Jammu and Kashmir informed the state assembly that five inquiries had been established to review the killing of civilians in 2016,⁹⁷ but it did not specify whether the investigations were completed. The state government added that no inquiries were conducted into civilian killings that took place in 2017.⁹⁸ JKCCS reported that until the end of 2017, none of the inquiries had been completed.⁹⁹ No case of excessive use of force in Jammu and Kashmir has led to prosecution in civilian courts.¹⁰⁰

69. Under international law, States must investigate and prosecute gross violations of international human rights law and serious violations of international humanitarian law.¹⁰¹ In order to fulfil this obligation, States are obliged to undertake prompt, rigorous and impartial investigations of such violations, and, whenever possible, to take judicial and other appropriate measures, in particular the provision of effective remedies to victims, including reparations.¹⁰² This has been explicitly affirmed by a plethora of case law of international and regional human rights bodies,¹⁰³ as well as by States through the adoption of the Basic

⁹³ HRW, International Commission of Jurists and Amnesty International, “Cease Wrongful Detention in Jammu and Kashmir”.

⁹⁴ Jammu and Kashmir Legislative Assembly, Unstarred A.Q. No.123, p.1.

⁹⁵ JKCCS, “Annual Human Rights Review 2017”, p 7.

⁹⁶ Ibid.

⁹⁷ Jammu and Kashmir Legislative Assembly, Unstarred A.Q. No.123. 23 January 2018, p. 2. Available from <http://www.jklegislativeassembly.nic.in/replies2018/23JAN18/A.Q.NO.123%20001.pdf>.

⁹⁸ Ibid.

⁹⁹ JKCCS, “Annual Human Rights Review 2017”, p 13-14.

¹⁰⁰ Jammu and Kashmir Legislative Assembly, Unstarred A.Q. No.123. 23 January 2018, p. 1.

¹⁰¹ In relation to International Humanitarian Law, Article 146 of the Fourth Geneva Convention provides that parties “shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.” Rule 158, International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, Cambridge University Press, 2005. Preamble of the Rome Statute of the International Criminal Court, A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, article 21, preamble (noting “the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”). The Convention on the Prevention and Punishment of the Crime of Genocide creates a legal obligation for States parties to take steps to impose effective penalties on those responsible for genocide. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also binds States to prosecute violators.

¹⁰² Commission on Human Rights Resolution 2005/34; Human Rights Committee, General Comment No. 31, CCPR/C/ 21/Rev.1/Add.13 (2004).

¹⁰³ For example, on Right to Life and Disappearances see: Inter-American Court of Human Rights: *Velásquez Rodríguez v. Honduras*; *Neira Alegria et al. v. Honduras*. United Nations Human Rights Committee: *Bleier v. Uruguay*, Communication No. 30/1978, views of 29 March 1982; *Herrera Rubio v. Colombia*, Communication No. 161/1983, views of 2 November 1987; *Bautista de Arellano, v. Colombia*, Communication No. 563/1993, Views of 27 October 1995. European Court of Human

Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Reparation Principles).¹⁰⁴ Furthermore, there is a growing body of jurisprudence by human rights courts, treaty bodies and other mechanisms confirming the right to know the truth/the right to truth and the duty to preserve memory which emphasise the central importance of a thorough and effective investigative process in order to counter impunity effectively.¹⁰⁵

70. According to human rights groups, a large proportion of those killed during the 2016 unrest died from bullet wounds. According to JKCCS, 71 of the 105 people killed during the 2016 protests died of such wounds.¹⁰⁶ Several cases of civilian deaths caused by live ammunition were also reported in 2017 and 2018. While Chief Minister Mehbooba Mufti testified that 20 people were killed in 2017 in “law and order incidents”,¹⁰⁷ the state government has not disclosed the details of how they were killed. According to JKCCS, 28 people were killed by security forces and 22 by unknown gunmen in 2017.¹⁰⁸

71. The ‘Standard Operating Procedures to deal with Public Agitations with Non-Lethal Measures’ prepared by India’s Bureau for Police Research and Development recommend that security forces warn protesters before using non-lethal or lethal force.¹⁰⁹ International standards on the use of force also note that law enforcement officials need to give clear warning of their intent to use firearms and give people sufficient time to react.¹¹⁰ According to Physicians for Human Rights, protesters and witnesses interviewed during the 2016 unrest said security forces did not give any warning before firing bullets or pellets at demonstrators.¹¹¹

Rights: *Ipekv. Turkey* (see above); *Ergi v. Turkey*, Application No. 23818/94, Judgement 28 July 1998; *Kurt v. Turkey*, Application No. 24276/94, Judgement of 25 May 1998; *Tanrikulu v. Turkey*, Application No. 23763/94, Judgement of 8 July 1999; *Cyprus v. Turkey*, Application No. 25781/94, Judgement of 10 May 2001 (as to Greek–Cypriot missing persons); *Timurtas v. Turkey*, Application No. 23531/94, Judgement of 13 June 2000; *Kiliç v. Turkey*, Application No. 22492/93, Judgement of 28 March 2000; *Tas v. Turkey*, Application No. 24396/94, Judgement of 14 November 2000; *Velikova v. Bulgaria*, Application No. 41488/98, Judgement of 18 May 2000; *Anguelova v. Bulgaria*, Application No. 38361/97, Judgement of 13 June 2002; *Finucane v. The United Kingdom*, Application No. 2978/95 Judgement of 1 July 2003; *Tahsin Acar v. Turkey*, Application No. 26307/95, Judgement of 8 April 2004; *Nachova et al. v. Bulgaria*, Application Nos. 43577/98 and 43579/98, Judgement of 26 February 2004 and *Mehmet Sirin Yilmaz v. Turkey*, Application No. 35875/97, Judgement of 29 July 2004. For torture and ill-treatment see: *Assenov et al. v. Bulgaria* European Court of Human Rights, Application No. 90/1997/874/1086, Judgement of 28 October 1998; *Labita v. Italy* (Application No. 26772/95, Judgement of 6 April 2000); *Casafranca v. Peru*: Human Rights Committee: Communication No. 981/2001, Views of 19 September 2003.

¹⁰⁴ See paragraphs 3(b), (c), and (d) and 4, GA Resolution 60/147: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

¹⁰⁵ See Independent Study on the best practices, including recommendations, to assist States in strengthening their domestic capacity to combat all aspects of impunity, By Diane Orentlicher, E/CN.4/2004/88; See also Note on the Duty to Investigate, Council of Europe, Strasbourg, July 2008.

¹⁰⁶ JKCCS, “Human Rights Review 2016”, p 4.

¹⁰⁷ Jammu and Kashmir Legislative Assembly. Unstarred A.Q. No.123, p. 1.

¹⁰⁸ JKCCS, “Annual Human Rights Review 2017”, p. 7.

¹⁰⁹ Accessed by Venkatesh Nayak through Right to Information Act, 2005. p. 8. Available from <https://www.scribd.com/document/327234413/Standard-operating-procedures-to-deal-with-public-agitations-with-non-lethal-measures>.

¹¹⁰ Principle 10, United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).

¹¹¹ Physicians for Human Rights, “Blind to Justice”, p. 8.

72. There appear to be two distinct patterns concerning the casualties reported from “encounter sites”:¹¹² 1) what authorities have called “accidental killings” involve people not taking part in protests who are “caught or hit in crossfire” or hit by a “stray bullet”, but Kashmiri civil society organizations and journalists have questioned the narrative of these supposedly accidental killings;¹¹³ and 2) authorities claiming that some of those killed were helping members of armed groups, including protesters throwing stones at security forces.¹¹⁴ Security forces reportedly used pellet-firing shotguns and live ammunition in these situations.¹¹⁵ On 15 February 2017, the Chief of Staff of the Indian Army General Bipin Rawat warned protesters that security forces would use “tough action” against anyone intervening in security operations.¹¹⁶

73. JKCCS reported 19 people were killed near armed encounter sites in 2017 including 4 women and 1 girl.¹¹⁷ However, no civilian investigations have been set up to look into these incidents.¹¹⁸ It is also unclear whether security forces launched any internal inquiries. In July 2017, the Supreme Court of India made filing of First Information Reports (FIR) by police officials and a magisterial inquiry mandatory in every “encounter killing”.¹¹⁹

74. On 9 January 2017, the Chief Minister told the state assembly that her government had directed the police to set up district level investigation teams under the Deputy Superintendent of Police for carrying out time-bound investigations into all cases of civilian deaths in the context of protests.¹²⁰ However, the Government has reported no progress in terms of investigation or prosecution in any of these cases.

E. Killings perpetrated in 2018

75. Civilian killings near armed encounter sites and excessive use of force against protesters continued sporadically in 2018. These killings triggered several large protests across the Kashmir Valley that included long spells of strikes and demonstrations by college students. For instance, on 27 January 2018, three civilians were reportedly killed and several injured in Shopian district when Indian Army personnel fired at protesters, some of whom were reportedly throwing stones at security forces.¹²¹ An army spokesperson told the media

¹¹² In the context of Jammu and Kashmir these refer to places where authorities claim to have been engaging armed groups in gunfights.

¹¹³ “Killing Civilians”, *Rising Kashmir*, 19 December 2017. Available from <http://risingkashmir.com/news/killing-civilians>; “Stray bullets in Kashmir: The death of a six-year-old in Kupwara raises some questions”, *Scroll.In*, 17 March 2017. Available from <https://scroll.in/article/831998/stray-bullets-in-kashmir-the-death-of-a-six-year-old-in-kupwara-raised-some-questions>.

¹¹⁴ “J&K police urges Kashmiri youths to not converge at encounter sites”, *Press Trust of India*, 30 March 2017. Available from <https://www.livemint.com/Politics/go4PwjoX8zuS6keRs0mXFP/JK-police-urge-Kashmiri-youths-to-not-converge-at-encounter.html>.

¹¹⁵ JKCCS, “Annual Human Rights Review 2017”, p. 6.

¹¹⁶ “Army chief warns stone pelters of tough action”, *Doordarshan News*, 15 February 2017. Available from <https://www.youtube.com/watch?v=-uWiUoHV7o8>.

¹¹⁷ JKCCS, “Annual Human Rights Review 2017”, p. 7.

¹¹⁸ Jammu and Kashmir Legislative Assembly, Unstarred A.Q. No.123, p. 1.

¹¹⁹ Supreme Court of India, *Extra Judicial Execution Victim Families Association v. Union of India*, p. 19.

¹²⁰ *Ibid.*

¹²¹ “SC stalls probe against Major Aditya, Centre-J&K spar over FIR”, *Press Trust of India*, 5 March 2018. Available from http://www.business-standard.com/article/pti-stories/sc-stalls-probe-against-major-aditya-centre-j-k-spar-over-fir-118030500950_1.html.

on the same day that the soldiers fired at the protesters in self-defence.¹²² The Corps Commander of Srinagar-based 15 Corps Lieutenant General A.K. Bhatt stated his soldiers would only resort to firing in case of high provocation or danger to their lives.¹²³

76. The killings sparked large protests across southern Kashmir for several days. Chief Minister Mehbooba Mufti announced a magistrate-level inquiry, and the state police filed a FIR against army personnel of 10 Garhwal Rifles under sections 302 (murder) and 307 (attempt to murder)¹²⁴ of the Ranbir Penal Code.¹²⁵ One of the Indian Army officers involved in the incident petitioned the Supreme Court of India to cancel the FIR.¹²⁶ Consequently, on 5 March 2018, the court ordered Jammu and Kashmir authorities to halt all investigations until its final verdict.¹²⁷

77. In another incident, on 4 March 2018, four civilians and two men suspected of belonging to an armed group were killed in a gun fight with the Indian Army in Pahnoo area of Shopian district.¹²⁸ The Indian Army claimed the civilians killed in the incident were “linked with militancy”.¹²⁹ This claim was disputed by several state assembly legislators and political parties who called for an independent investigation into the killings.¹³⁰ Chief Minister Mehbooba Mufti said she was “deeply distressed” by the civilian deaths in Shopian.¹³¹ The police are reportedly investigating the incident,¹³² but there is no information on the status of the probe.

78. On 1 April 2018, 4 civilians, 13 armed group members and 3 security forces personnel were killed in 3 separate gun battles between security forces and armed groups in Shopian

¹²² “Jammu and Kashmir: 2 civilians killed in army firing in Shopian”, *Press Trust of India*, 27 January 2018. Available from <https://www.livemint.com/Politics/9N2vfDSJ2ZZzwhPXQRj9oM/Jammu-and-Kashmir-2-civilians-killed-in-army-firing-in-Shop.html>.

¹²³ Lieutenant General A.K. Bhatt, Media statement, 26 February 2018. Available from <https://www.youtube.com/watch?v=p9nxPIJqLiw>.

¹²⁴ “Jammu and Kashmir Police file FIR against army personnel for death of civilians in Shopian firing”, *Press Trust of India*, 28 January 2018. Available from <https://www.firstpost.com/india/jammu-and-kashmir-police-file-fir-against-army-personnel-for-death-of-civilians-in-shopian-firing-4324367.html>.

¹²⁵ The Ranbir Penal Code is a criminal code applicable in the state of Jammu and Kashmir. The Indian Penal Code does not apply in the state as article 370 of the Indian Constitution gives autonomous status to the state of Jammu and Kashmir.

¹²⁶ “Shopian Case: J&K says Major Aditya not name in FIR, SC halts probe”, *Press Trust of India*, 5 March 2018. Available from <https://www.thehindubusinessline.com/news/fir-against-the-army-shopian-case-jammu-and-kashmir-says-major-aditya-not-named-in-fir-sc-halts-probe/article22930798.ece>.

¹²⁷ Ibid.

¹²⁸ “Shopian firing incident: 2 LeT militants, 4 civilians shot dead in Kashmir”, *Press Trust of India*, 5 March 2018. Available from http://www.business-standard.com/article/current-affairs/shopian-firing-incident-2-let-militants-4-civilians-shot-dead-in-kashmir-118030500251_1.html.

¹²⁹ “Shopian firing: CM says civilians among those killed, Army makes counter-claim”, *Press Trust of India*, 5 March 2018. Available from http://www.business-standard.com/article/pti-stories/shopian-firing-cm-says-civilians-among-those-killed-army-makes-counter-claim-118030501128_1.html.

¹³⁰ Ibid.

¹³¹ Jammu and Kashmir Chief Minister Mehbooba Mufti, Statement on Twitter, 5 March 2018. Available from <https://twitter.com/MehboobaMufti/status/970542375444668417>.

¹³² “Police probing into Shopian firing, DGP calls for peace”, *Press Trust of India*, 5 March 2018. Available from http://www.business-standard.com/article/pti-stories/police-probing-into-shopian-firing-dgp-calls-for-peace-118030500606_1.html.

and Anantnag districts.¹³³ The civilian killings were followed by days of protests across the Kashmir Valley, including by students.¹³⁴

F. Use of pellet-firing shotgun

79. One of most dangerous weapons used against protesters during the unrest in 2016 was the pellet-firing shotgun, which is a 12-gauge pump-action shotgun that fires metal pellets. It was deployed by the Central Reserve Police Force and the Jammu and Kashmir Police against protesters, some of whom were throwing stones. According to human rights organizations, the shotgun cartridges contain 500 to 600 pellets that resemble ball bearings.¹³⁵ The ammunition is made of lead alloy that is fired at a high velocity thereby dispersing the metal pellets over a large area.¹³⁶ Experts claim that there is no way of adequately controlling the trajectory of these shotguns beyond a limited range, which makes them inherently inaccurate and indiscriminate.¹³⁷ The pellet-firing shotgun was first used in Kashmir during mass protests in 2010; it is not known to have been used against protesters anywhere else in India.¹³⁸

80. The Central Reserve Police Force claims the pellet-firing shotgun is the “least lethal” option they have at their disposal for crowd-control.¹³⁹ However, pellet shotgun use by law enforcement agencies resulted in multiple deaths and serious injuries of hundreds civilians between 2016 and 2018.¹⁴⁰ According to official figures presented in the Parliament, 17 people were killed by pellet injuries between July 2016 and August 2017.¹⁴¹ According to information received by the Jammu and Kashmir State Human Rights Commission (SHRC) from 10 districts of the Kashmir Valley, 1,726 people were injured by metal pellets in 2016.¹⁴² In January 2018, Chief Minister Mehbooba Mufti stated before the state assembly that 6,221 people had been injured by pellet guns in Kashmir between 8 July 2016 and 27 February 2017; among the victims, 728 had eye injuries.¹⁴³ The Chief Minister reported that 54 people suffered some form of visual impairment due to pellet injuries.¹⁴⁴ Civil society organizations claim that the number of people partially or completely blinded due to pellet

¹³³ “Major counter-terror offensive in J-K: 13 militants, 3 jawans, 4 civilians killed”, *Press Trust of India*, 1 April 2018. Available from http://www.business-standard.com/article/pti-stories/major-counter-terror-offensive-in-j-k-13-militants-killed-3-jawans-4-civilians-dead-118040100711_1.html.

¹³⁴ “Student protests rock Jammu and Kashmir”, *Press Trust of India*, 6 April 2018. Available from <http://www.newindianexpress.com/nation/2018/apr/06/student-protests-rock-jammu-and-kashmir-1797593.html>.

¹³⁵ Amnesty International, “Losing Sight in Kashmir”, p. 3. Physicians for Human Rights, “Blind to Justice”, p. 7.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ Parliament of India, Rajya Sabha, Unstarred Question no. 511, 7 February 2018. Available from <https://rajyasabha.nic.in>. Amnesty International, “Losing Sight in Kashmir”, 13 September 2017, p.1.

¹³⁹ “There will be more casualties if pellet guns are banned, CRPF tells J-K HC”, *Press Trust of India*, 19 August 2016. Available from http://www.business-standard.com/article/current-affairs/more-fatalities-if-pellet-guns-are-banned-crpf-tells-j-k-hc-116081900585_1.html.

¹⁴⁰ Amnesty International, “Losing Sight in Kashmir”, p. 3. Physicians for Human Rights, “Blind to Justice”, p. 7.

¹⁴¹ Parliament of India, Rajya Sabha, Unstarred Question no. 511. Available from <http://rajyasabha.nic.in/>.

¹⁴² Information shared by SHRC.

¹⁴³ Jammu and Kashmir Legislative Assembly, Unstarred A.Q. No.330, 12 January 2018, Annexure-A. Available from <http://www.jklegislativeassembly.nic.in/replies2018/12jan/UN330.pdf>.

¹⁴⁴ *Ibid.*, Annexure to the Government Order No.10, p. 4.

injuries is higher.¹⁴⁵ A right to information query found that 16 personnel from the Jammu and Kashmir Armed Police were also injured by pellet-firing shotguns.¹⁴⁶

81. A few months after violent confrontations between protesters and security forces in Kashmir left over 100 people dead in the summer of 2010, the Union Ministry of Home Affairs commissioned a taskforce to produce standard operating procedures for the use of non-lethal measures in “public agitations”.¹⁴⁷ The 12-gauge pellet-firing shotgun used in Kashmir was not listed in the Standard Operating Procedures issued by the Bureau of Police Research and Development in March 2011.¹⁴⁸ A right to information application seeking to know the “efficacy and impact” of the pellet shotgun was rejected by the authorities on the grounds that this was sensitive information related to national security.¹⁴⁹ In February 2018, the Union Ministry of Home Affairs told the Parliament that a state-run laboratory had conducted tests on the impact of metal pellets but has not published the results.¹⁵⁰

82. In December 2016, the Jammu and Kashmir High Court Bar Association petitioned the Supreme Court of India seeking an immediate ban on the use of the pellet-firing shotgun. Though a final verdict is awaited, the court observed during the hearing that it needed assurances from the authorities that pellet shotguns would not be used indiscriminately.¹⁵¹ The central government told the Supreme Court it continued to use pellet shotguns because all other alternatives such as tear gas, chili-based chemical shells and rubber bullets had failed to stop the protesters.¹⁵² In March 2017, the Union Ministry of Home Affairs told the Parliament that an expert committee set up to explore alternatives to pellet shotguns had recommended the use of a chili-based munition PAVA (Pelargonic Acid Vanillyl Amide) shells, STUN-LAC (stun grenades and shells) and tear gas shells “to disperse rioters”.¹⁵³ However, the Union Ministry of Home Affairs added that if these alternatives proved ineffective, security forces would resort to pellet shotguns.¹⁵⁴

83. According to human rights groups and medical professionals in Kashmir, apart from physical injuries, many victims of pellet shotguns face serious mental health issues, including symptoms of psychological trauma.¹⁵⁵ NGOs have called for reparations in compliance with

¹⁴⁵ Amnesty International in 2016 profiled 88 cases and adds that many cases could not be tracked because the injured reported false identities at hospitals to avoid arrest. (“Losing Sight in Kashmir”) Also, Physicians for Human Rights quotes statistics from the Jammu and Kashmir Department of Health that 837 of the estimated 12,000 people injured during protests in 2016 had sustained eye injuries, in one or both eyes. (“Blind to Justice”, p. 12)

¹⁴⁶ Ibid, p. 108.

¹⁴⁷ The Director General of the Central Reserve Police Force (CRPF) was a member of this task force. CRPF had first deployed pellet-firing shotguns in Kashmir in June 2010.

¹⁴⁸ Accessed by Venkatesh Nayak through Right to Information Act, 2005. Available from <https://www.scribd.com/document/327234413/Standard-operating-procedures-to-deal-with-public-agitations-with-non-lethal-measures>.

¹⁴⁹ Venkatesh Nayak, RTI/GoI/OFB/2016/1, Submission for request for information under the Right to Information Act, 2005. Available from <http://www.humanrightsinitiative.org/download/OFB-riotweapons&ammosale-RTIappln&docs-Jul16.pdf>.

¹⁵⁰ Parliament of India, Rajya Sabha, Unstarred Question no. 512. Available from <http://rajyasabha.nic.in/>.

¹⁵¹ “Apply mind before using pellet guns, says Supreme Court”, *Press Trust of India*, 14 December 2016. Available from <http://indianexpress.com/article/india/kashmir-apply-mind-before-using-pellet-guns-says-supreme-court-4427186/>.

¹⁵² “After skunk water, laser dazzler fail, Centre mulls alternative to pellet guns in Kashmir”, *Press Trust of India*, 10 April 2017. Available from <https://www.news18.com/news/india/after-skunk-water-laser-dazzler-fail-centre-mulls-alternative-to-pellet-guns-1370718.html>.

¹⁵³ Parliament of India, Lok Sabha, Unstarred question no. 41185, 28 March 2017. Available from <http://164.100.47.194/Loksabha/Questions/QResult15.aspx?qref=50527&lsno=16>.

¹⁵⁴ Ibid.

¹⁵⁵ Doctors Association Kashmir, “Pellet gun lethality obvious”, 15 July 2016. Amnesty International, “Losing Sight in Kashmir”.

international standards for those injured.¹⁵⁶ However, the state government of Jammu and Kashmir has so far announced small financial assistance packages for 54 people¹⁵⁷ and promised government employment to 12 others.¹⁵⁸

84. Despite the public outrage over the deaths and mass blindings caused by the use of pellet-firing shotguns, the state government has only set up one special investigation into a death caused by pellet-gun injuries. On 9 January 2017, it ordered the Deputy General of Police-Central Kashmir Range to set up a Special Investigation Team to probe the killing of 21-year-old Riyaz Ahmad Shah, on 2 August 2016. A pellet cartridge shot at close range had penetrated and burst in his abdomen, leaving over 300 metal pellets in his body.¹⁵⁹ The police had previously filed a FIR against “security forces” in relation to his death.¹⁶⁰ However, there have been no investigations into determining whether the other deaths and serious injuries caused by pellet-firing shotguns are cases of excessive use of force by police and central paramilitary forces.¹⁶¹

85. Indian security forces continue to use pellet shotguns in Kashmir today. On 1 April 2018, around 40 people were reportedly injured, including 35 hit in the eyes, by pellet shotguns used against people protesting against the killing of civilians in Shopian and Anantnag districts.¹⁶²

G. Arbitrary arrests and detention, including of children

86. As a State party to the International Covenant on Civil and Political Rights, India is obligated to ensure the principles of legality¹⁶³ and the right to liberty and security.¹⁶⁴ The right to liberty and security includes the right not to be subjected to arbitrary arrest or detention,¹⁶⁵ the right to know the reasons for one’s detention and charges, if any,¹⁶⁶ the right to be brought before a judge within a reasonable time following arrest or detention, and the right to appeal to a court of law to review the arrest or detention.¹⁶⁷

87. Commenting on the system of administrative detention in India, the United Nations Human Rights Committee recommended that anyone arrested or detained be informed of the reasons for their arrest and charges against them.¹⁶⁸ It also recommended that “continued detention should be determined by an independent and impartial tribunal constituted and operating in accordance with article 14, paragraph 1, of the Covenant”.¹⁶⁹ The Committee was of the view that “a central register of detainees under preventive detention laws be

¹⁵⁶ Ibid, p. 109; and Physicians for Human Rights, “Blind to Justice”, p. 18.

¹⁵⁷ Out the 54 injured who have been offered financial assistance, 37 suffered permanent or partial visual impairment. (Jammu and Kashmir Legislative Assembly. Unstarred A.Q. No.330, 12 January 2018, Annexure-B.)

¹⁵⁸ Ibid, Annexure-C.

¹⁵⁹ FIR 57/2016 at Police Station Karan Nagar, Srinagar, Jammu Kashmir.

¹⁶⁰ Jammu and Kashmir Legislative Assembly. Unstarred A.Q. No.123, pp. 2-3.

¹⁶¹ According to information tabled by the Government of Jammu and Kashmir in the state assembly on 23 January 2018, only one case of death caused by pellet shotgun is being currently investigated (FIR 57/2016). There is no publicly available information to indicate if other deaths caused by pellet shotgun injuries in 2016-2018 are being investigated. (Jammu and Kashmir Legislative Assembly, Unstarred A.Q. No.123. 23 January 2018.)

¹⁶² Confidential information provided to OHCHR.

¹⁶³ Article 15(1), International Covenant on Civil and Political Rights.

¹⁶⁴ Article 9, International Covenant on Civil and Political Rights.

¹⁶⁵ Article 9(1), International Covenant on Civil and Political Rights.

¹⁶⁶ Article 9(2), International Covenant on Civil and Political Rights.

¹⁶⁷ Article 9(4), International Covenant on Civil and Political Rights.

¹⁶⁸ CCPR/C/79/Add.81, para 24.

¹⁶⁹ Ibid.

maintained and that the State party accept the admission of the International Committee of the Red Cross to all types of detention facilities, particularly in areas of conflict”.¹⁷⁰

88. A right to information application found that over 1,000 people were detained under the Jammu and Kashmir Public Safety Act between March 2016 and August 2017.¹⁷¹ It also found that the state Government had not created any rules or standard operating procedures under PSA to guide the authorities while issuing a detention order.¹⁷² Issuing authorities – usually district magistrates or divisional commissioners – thus solely rely on dossiers prepared by the Jammu and Kashmir Police and reportedly do not verify facts.¹⁷³ Additional work may be needed to verify this allegation.

89. For example, on 15 September 2016, prominent civil society advocate Khurram Parvez was arrested and detained under PSA, a day after being prevented from travelling to Geneva to attend the thirty-third session of the United Nations Human Rights Council.¹⁷⁴ Several United Nations human rights experts¹⁷⁵ publicly called for his immediate release, noting that the travel ban and his detention were “a deliberate attempt to obstruct his legitimate human rights activism”.¹⁷⁶ He was released on 30 November 2016 after spending 76 days in detention.

90. Human rights groups had warned Jammu and Kashmir authorities that minors were being arrested under PSA in 2016 and 2017.¹⁷⁷ Opposition parties raised the issue in the Parliament¹⁷⁸ and state assembly,¹⁷⁹ but authorities have regularly denied that minors were being picked up under PSA.¹⁸⁰

91. In 2014, the Committee on the Rights of the Child called upon India to review its security-related laws with a view to prohibiting criminal and administrative proceedings against persons under the age of 18.¹⁸¹ It recommended that all persons under the age of 18

¹⁷⁰ Ibid.

¹⁷¹ RTI application by the Jammu and Kashmir RTI Movement. Available from <http://www.humanrightsinitiative.org/blog/no-rules-sops-for-ordering-preventive-detentions-under-jk-psa>.

¹⁷² Ibid.

¹⁷³ Amnesty International, “A Lawless Law”, p. 31.

¹⁷⁴ Amnesty International, “Kashmiri human rights defender held in administrative detention”, 16 September 2016. Available from <https://amnesty.org.in/news-update/kashmiri-human-rights-defender-held-administrative-detention/>.

¹⁷⁵ The Working Group on enforced or involuntary disappearances; the Special Rapporteur on the situation of human rights defenders, Mr. Michel Forst; the Chair-Rapporteur of the Working Group on Arbitrary Detention, Mr. Sètondji Adjovi; the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr. Maina Kiai, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. David Kaye.

¹⁷⁶ “UN experts urge India to release prominent human rights defender detained for over a month”, 19 October 2016. Available from <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20697&LangID=E>.

¹⁷⁷ Amnesty International, HRW and ICJ, “Cease Wrongful Detentions in Jammu and Kashmir”.

¹⁷⁸ Parliament of India. Rajya Sabha, Unstarred question no 4534, 12 April 2017. Available from, <http://rajyasabha.nic.in/>.

¹⁷⁹ “MLA marshalled out from Jammu and Kashmir Assembly for disruption”, *Press Trust of India*, 24 January 2017. Available from, <https://www.deccanchronicle.com/nation/politics/240117/mla-marshalled-out-from-jammu-and-kashmir-assembly-for-disruption.html>.

¹⁸⁰ OHCHR has received confidential documents that shows six minors were detained under the PSA in 2016-2017.

¹⁸¹ CRC/C/OPAC/IND/CO/1, Concluding observations on the report submitted by India under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/OPAC/IND/CO/1&Lang=En

be handled by the juvenile justice system in all circumstances, and that age verification procedures be consistently and effectively applied.

H. Torture

92. As a State party to the International Covenant on Civil and Political Rights, which prohibits torture under any circumstances (Article 7), India is obliged to ensure that no person is “subjected to torture or to cruel, inhuman or degrading treatment or punishment”. There have long been persistent claims of torture by security forces in Kashmir.¹⁸²

93. On 18 August 2016, a 30-year-old college lecturer, Shabir Ahmad Mangoo, died after being severely beaten in the custody of the Indian Army on 18 August 2016.¹⁸³ He was among 30 men picked up from their houses in Pampore of Pulwama district by the Indian Army and Special Operations Group of the Jammu and Kashmir Police. Due to public outcry, the Indian Army ordered an internal probe into his killing,¹⁸⁴ and the police filed a FIR against soldiers of the 50 Rashtriya Rifles battalion of the Indian Army.¹⁸⁵ There was no information or update on the status of the army’s investigation as of April 2018. In December 2016, responding to a petition in this case, the Jammu and Kashmir High Court asked the central and state governments why there should not be a “time bound” independent probe into the killing of Shabir Ahmad Mangoo. Responding to the court and to public pressure, the state government set up a special investigation team in January 2017, under the Deputy Inspector General of Police (South Kashmir Range).¹⁸⁶ The state government has not issued any update on this investigation.

94. In a video that emerged on 14 April 2017, a Kashmiri man, Farooq Ahmad Dar, was seen strapped to the front of a moving Indian Army jeep, while a soldier can be heard shouting, “This will be the fate of those who throw stones.”¹⁸⁷ Farooq Ahmad Dar later told journalists and human rights organizations that on 9 April while he was going to a neighbouring village, army personnel seized him and tied him to the front of an army jeep which drove around Budgam district for over 28 kilometres.¹⁸⁸ The Indian Army claimed Farooq Ahmad Dar was leading stone-throwing protesters, and that they tied him to the jeep to use him to protect election officials.¹⁸⁹ Indian Army chief General Bipin Rawat¹⁹⁰ and Attorney General of India Mukul Rohatgi defended the Army’s use of Farooq Ahmad Dar as

¹⁸² HRW, “Everyone Lives in Fear - Patterns of impunity in Jammu and Kashmir”, 11 September 2006, pp. 94-102. Available from <https://www.hrw.org/sites/default/files/reports/india0906web.pdf>.

Amnesty International, “India: Torture continues in Jammu and Kashmir”, 1 November 1995. Available from <https://www.amnesty.org/en/documents/asa20/033/1995/en/>

¹⁸³ “Army regrets lecturer killing; orders probe”, *Press Trust of India*, 18 August 2016. Available from <https://www.indiatoday.in/pti-feed/story/army-regrets-lecturer-killing-orders-probe-686753-2016-08-18>.

¹⁸⁴ Ibid.

¹⁸⁵ FIR no 156/2016, Police Station Pampore, Jammu and Kashmir.

¹⁸⁶ Jammu and Kashmir Legislative Assembly, Unstarred A.Q. No.123, p. 2-3.

¹⁸⁷ “Kashmiri man used as human shield by army narrates his ordeal”, *Video Volunteers*, 18 April 2017. Available from <https://www.youtube.com/watch?v=f5ThpNSI460>.

¹⁸⁸ “Farooq the human shield”, *GK TV*, 19 April 2017. Available from https://www.youtube.com/watch?v=CY6zSHv9_oY

¹⁸⁹ “Major Gogoi Give Brief Why He Tied Kashmiri Man To His Jeep As Human Shield”, *Aaj Tak*, 23 May 2017. Available from <https://www.youtube.com/watch?v=uze3b2bkyRY>.

¹⁹⁰ “Dirty war has to be fought with innovative ways: Gen Bipin Rawat”, *Press Trust of India*, 28 May 2017. Available from http://www.ptinews.com/news/8744667_PTI-Exclusive--Dirty-war-has-to-be-fought-with-innovative-ways--Gen-Bipin-Rawat.html.

a “human shield”.¹⁹¹ In May 2017, the Indian Army presented an award to the soldier accused of ordering the actions against Farooq Ahmad Dar.¹⁹²

95. In a decision issued in July 2017, SHRC found Farooq Ahmad Dar had been subjected to torture, humiliation and wrongful confinement, and directed the Jammu and Kashmir government to pay him Rs 1 million (approximately USD 15,600) as compensation.¹⁹³ The state government refused to pay the compensation arguing that it was not responsible for this human rights violation and that it had met its responsibility by initiating an investigation into the case.¹⁹⁴ SHRC did not send a notice to the Indian Army as it does not have jurisdiction over forces controlled by the central government operating in Kashmir. Farooq Ahmad Dar has not yet received any compensation.

96. Another case of torture involving the Indian Army is that of manual labourer Nasrullah Khan who was allegedly detained and tortured at the Indian Army’s 27 Rashtriya Rifles camp on 31 August 2017.¹⁹⁵ He was later found near the army camp reportedly with physical injuries which were severe.¹⁹⁶ The state police filed a FIR into the torture of Nasrullah,¹⁹⁷ but there is no publicly available information on any progress in this investigation.

I. Enforced disappearances

97. While JKCCS and the Association of Parents of Disappeared Persons claim over 8,000 people have been disappeared since 1989,¹⁹⁸ the state and central governments say around 4,000 are missing, most of whom they allege crossed over to Pakistan-Administered Kashmir. In January 2017, Chief Minister Mehbooba Mufti told the Jammu and Kashmir Assembly that 4,008 “missing persons” from the state were in Pakistan-Administered Kashmir for arms training.¹⁹⁹

¹⁹¹ “Attorney General defends Army in human shield row”, *India Today*, 17 April 2017. Available from <https://www.youtube.com/watch?v=a6eUD4XImSE>.

¹⁹² Chief of Army Staff General Bipin Rawat told the *Press Trust of India* that the “main objective of awarding Major Leetul Gogoi, when a Court of Inquiry was finalizing its probe into the incident, was to boost the morale of young officers of the force who are operating in a very difficult environment in the militancy- infested state.” (“Dirty war has to be fought with innovative ways: Gen Rawat”, *Press Trust of India*, 28 May 2017. Available from http://www.ptinews.com/news/8744667_PTI-Exclusive-Dirty-war-has-to-be-fought-with-innovative-ways--Gen-Bipin-Rawat.html.)

¹⁹³ SHRC/115/207, Jammu and Kashmir State Human Rights Commission order, 10 July 2017.

¹⁹⁴ The state government in its response to the SHRC stated that the initial police investigation found Farooq Ahmad Dar was not involved in stone-throwing and was arbitrarily picked up to be used as a “human shield”. Yet, it argued that paying compensation before investigations were completed would be an admission of guilt. Government of Jammu and Kashmir, Home Department (Home/SHRC/28/2017), 27 October 2017.)

¹⁹⁵ “Army conducts inquiry after man goes missing in J&K’s Kupwara district”, *Press Trust of India*, 3 September 2017. Available from <http://www.thehindu.com/news/national/army-conducts-inquiry-after-man-goes-missing-in-jks-kupwara-district/article19615206.ece>.

¹⁹⁶ Association of Parents of Disappeared Persons, Submission for Universal Periodic Review of India, 22 September 2016. Available from https://www.upr-info.org/sites/default/files/document/india/session_27_-_may_2017/apdp_upr27_ind_e_main.pdf. JKCCS, “Annual Human Rights Review 2017”, p. 16.

¹⁹⁷ FIR 62/2017, Police Station Lal Pora, Jammu and Kashmir.

¹⁹⁸ JKCCS, “Human Rights Review 2016”, p. 5.

¹⁹⁹ Jammu and Kashmir Legislative Assembly, Unstarred question no. 669, 11 January 2017. Available from http://www.jklegislativeassembly.nic.in/replies%202017/11th%20of%20Jan%202017/Unstarred/669%20001_result.pdf

98. According to JKCCS, there were at least seven cases of enforced or involuntary disappearances reported in 2017. Of these, the bodies or remains of five people were found a few months later. Three cases were blamed on security forces, while perpetrators have not been identified in the other four.²⁰⁰

99. Impunity for enforced or involuntary disappearances in Kashmir continues as there has been little movement towards credibly investigating complaints, including into alleged sites of mass graves in the Kashmir Valley and Jammu region.

100. India signed the Convention for the Protection of all Persons from Enforced Disappearance on 6 February 2007 but has yet to ratify it. While the Government of India has reiterated to the Human Rights Council several times that it is committed to ratifying the Convention,²⁰¹ the National Human Rights Commission of India observed in 2012 that there was no evidence to show that the government was seriously planning to do so.²⁰² The Commission added, “enforced disappearance was not codified as a criminal offence in domestic law, nor were extant provisions of law used to deter the practice.”²⁰³ The Government of India has stated it is cooperating with the Working Group on Enforced or Involuntary Disappearances,²⁰⁴ but it has never allowed a visit by this mechanism despite having issued a standing invitation to all thematic special procedures in 2011.²⁰⁵ In 2014, the Committee on the Elimination of Discrimination against Women expressed deep concern about the reported high level of violence, including enforced disappearance, against women in conflict-affected regions, including Kashmir.²⁰⁶ On 24 October 2017, SHRC directed the Government of Jammu and Kashmir to complete investigations into 2,080 unmarked graves in Poonch and Rajouri districts of Jammu division within 6 months.²⁰⁷ It is believed that these graves come from earlier waves of security operations in Kashmir. SHRC Chairperson Bilal Nazki said that as the state government had previously admitted the existence of mass graves in these districts, the Commission was reiterating its call for the authorities to complete their investigations. In 2011, the SHRC had conducted its own investigation into mass graves in northern Kashmir and identified 574 bodies out of 2,156 bodies.²⁰⁸

101. Cases of enforced disappearances continued to be reported in 2017, such as the case of Manzoor Ahmad Khan, a shopkeeper from Kupwara district. In September 2017, villagers in the Lolab area of Kupwara district demanded that the Indian Army reveal his whereabouts, alleging he had been detained at the 27 Rashtriya Rifles camp in Trimukh area on 31 August 2017.²⁰⁹ It is believed that Manzoor Ahmad Khan was detained along with Nasrullah Khan,

²⁰⁰ JKCCS, “Annual Human Rights Report 2017”, p. 9-10.

²⁰¹ Government of India Submission United Nations Human Rights Council for India’s Third Universal Periodic Review 2017, para 34. Available from https://mea.gov.in/Uploads/PublicationDocs/27953_27953_UPR_-III_for_MEA_website_.pdf.

²⁰² National Human Rights Commission Submission to the United Nations Human Rights Council for India’s Second Universal Periodic Review 2012, para 20. Available from <http://nhrc.nic.in/Documents/Reports/UPR-Final%20Report.pdf>.

²⁰³ Ibid.

²⁰⁴ Government of India, Submission United Nations Human Rights Council for India’s Third Universal Periodic Review 2017, para 35.

²⁰⁵ Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/36/39), 31 July 2017, para 27. Available from http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/39.

²⁰⁶ CEDAW/C/IND/CO/4-5.

²⁰⁷ “Complete DNA profiling of bodies in unmarked graves: SHRC”, *Press Trust of India*, 4 November 2017. Available from <http://www.thehindu.com/todays-paper/tp-national/complete-dna-profiling-of-bodies-in-unmarked-graves-shrc/article19979027.ece>.

²⁰⁸ Office of the Senior Superintendent of Police, Jammu and Kashmir State Human Rights Commission, “Enquiry Report of Unmarked Graves in north Kashmir” (SHRC/PIW/2011/1000), 2 July 2011. Available from <http://kashmirglobal.com/wp-content/uploads/2011/09/enquiry-report-of-unmarked-graves-in-north-kashmir.pdf>.

²⁰⁹ Petition to the Jammu and Kashmir High Court by family of Manzoor Ahmad Khan; and

who was later found near the army camp with physical injuries.²¹⁰ Manzoor Ahmad Khan's family filed a FIR at the Lal Pora police station²¹¹ and petitioned the Jammu and Kashmir High Court, seeking a judicial intervention in the case. After massive protests, the Indian Army established an inquiry into the disappearance.²¹² However, there has not been any publicly available information on the status of this inquiry or its findings. The Jammu and Kashmir Police reportedly set up an investigation into the disappearance in December 2017,²¹³ but there has been no publicly available information on the progress of this probe.

J. Violations of the right to health

102. As a State party to the International Covenant on Economic, Social and Cultural Rights, India is obligated to respect, protect and fulfill the right to health.²¹⁴ Moreover, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials requires that security forces ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.²¹⁵

103. During the 2016 unrest, there were numerous reports of attacks on, and obstruction of, basic medical services that had a severe impact on the injured and general civilian population in Kashmir. According to human rights groups, the fear of being arrested inside the hospital led to a large number of injured patients fleeing before receiving medical attention.²¹⁶ Human rights groups claimed that days-long curfews²¹⁷ and communications blockades²¹⁸ also had a major impact on people and their access to medical care in Kashmir. The Doctors Association Kashmir cautioned in 2016 that the communication blockade escalated conditions of anxiety and depression among patients.²¹⁹

104. According to JKCCS, around 200 ambulances were damaged by security forces and, in some cases, by protesters during the 2016 unrest.²²⁰ There are also independent accounts alleging ambulances and ambulance drivers were attacked by security forces.²²¹ The Doctors Association Kashmir documented several instances of doctors, paramedics and ambulance drivers being obstructed and physically assaulted by security forces as well as by protesters. In one incident, security forces allegedly targeted an ambulance driver with a pellet-firing

"Army conducts inquiry after man goes missing in J&K's Kupwara district", *Press Trust of India*, 3 September 2017.

²¹⁰ "Army conducts inquiry after man goes missing in J&K's Kupwara district", *Press Trust of India*, 3 September 2017.

²¹¹ FIR 63/2017, Police Station Lal Pora, Jammu and Kashmir.

²¹² *Ibid.*

²¹³ "Police probing Kupwara man's disappearance case: Law Minister", *Greater Kashmir*, 10 December 2017. Available from <http://www.greaterkashmir.com/news/kashmir/police-probing-kupwara-man-s-disappearance-case-law-minister/268590.html>.

²¹⁴ Article 12, International Covenant on Economic, Social and Cultural Rights.

²¹⁵ Principle 5c, United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>.

²¹⁶ Physicians for Human Rights, "Blind to Justice", p. 13. Amnesty International, "Losing Sight in Kashmir".

²¹⁷ *Ibid.*

²¹⁸ Amnesty International, "Communications Blackout in Kashmir Undermines Human Rights", 22 July 2016. Available from <https://amnesty.org.in/news-update/communications-blackout-kashmir-undermines-human-rights/>.

²¹⁹ Doctors Association Kashmir, "Communication blockade increases mental problem", 24 July 2016.

²²⁰ JKCCS, "Human Rights Review 2016", p. 16.

²²¹ "Forces in Kashmir did not spare even the ambulance staff", *Video Volunteers*, 2 August 2016. Available from <https://www.youtube.com/watch?v=TTy6GduHkwI>.

shotgun that injured him seriously while he was ferrying patients to the hospital.²²² Due to several cases of medical services personnel being targeted during the 2016 unrest, the Doctors Association Kashmir appealed to the security forces and protesters to ensure free and safe passage to ambulance drivers and medical staff so that everyone could get access to health services.²²³

105. Doctors in Srinagar accused the security forces of firing tear gas near hospitals and, in some cases, inside the hospital, which affected their ability to work and further affected the health of the patients.²²⁴ Curfews in the Kashmir Valley also reportedly prevented medical staff of hospitals from reporting to work in prominent Srinagar hospitals as they were stopped by security forces.²²⁵

106. None of the attacks or obstructions on medical staff which occurred in 2016 have been investigated despite medical groups and local civil society organizations having documented such instances.²²⁶

K. Restrictions on the right to freedom of expression

107. The Kashmir region experienced frequent communications blockades during the 2016 unrest as the state government suspended mobile and internet services on multiple occasions.²²⁷ The authorities justified the complete bar on mobile internet facilities that affected nearly 7 million people in Kashmir for between 5 to 7 months “as [a] preventive measure to avoid any law and order problems and passing of rumours by miscreants/ anti-national elements.”²²⁸

108. As a State party to the International Covenant on Civil and Political Rights, India is obliged to protect the right to freedom of expression and opinion.²²⁹ While Article 19(3) of the Covenant allows states to impose restrictions on certain grounds including protection of “public order”,²³⁰ the Human Rights Committee has warned that any such curbs must be necessary and proportionate and should not jeopardize the right itself.²³¹ Similarly, the Committee has also noted that restrictions on the freedom of journalists or those wishing to travel to human rights-related meetings and restricting the entry of foreign journalists is not compatible with Article 19(3).²³²

109. Restrictions on mobile telephony in the Kashmir Valley appear to have remained in place for significant periods in 2016. According to media reports, post-paid mobile phone connections were restored at the end of July 2016, while the more commonly used prepaid

²²² Doctors Association Kashmir, “Shooting at ambulance driver unacceptable act of barbarism: DAK”, 19 September 2016.

²²³ Doctors Association Kashmir, “DAK appeals for free passage to ambulances, staff”, 4 September 2016.

²²⁴ Ibid.

²²⁵ Physicians for Human Rights, “Blind to Justice”, p. 15.

²²⁶ According to information provided by Chief Minister Mehbooba Mufti to the state assembly, no enquiry commissions have been set up to investigate violations related to attacks or obstruction to access medical care in 2016. (Jammu and Kashmir Legislative Assembly, Unstarred A.Q. No.123. 23 January 2018, p. 1.)

²²⁷ Amnesty International, “Communications Blackout in Kashmir Undermines Human Rights”, 22 July 2016. JKCCS Human Rights Review 2016, pp. 22-23.

²²⁸ Confidential order sent by Inspector General of Police, Jammu division to seven mobile internet providers, 9 July 2016, No ZPHQ7CC/10903-909. Similar orders are also believed to have been sent in the Kashmir division.

²²⁹ Article 19, International Covenant on Civil and Political Rights.

²³⁰ Article 19(3), International Covenant on Civil and Political Rights.

²³¹ Human Rights Committee, *General Comment 34, Article 19, Freedoms of opinion and expression*, CCPR/C/GC/34, 12 September 2011, paras 21-36.

²³² Ibid, para 45.

mobile phone connections were fully restored only in mid-October 2016.²³³ The state authorities also reportedly attempted a complete communications blackout in the Kashmir Valley in mid-August 2016, cutting broadband internet services for between three to six days,²³⁴ along with virtually all the mobile phone networks in Kashmir.²³⁵ Two private telecom industry bodies wrote to the Government of India on 15 July 2016 urging it to lift restrictions on voice services in Kashmir.²³⁶

110. Communications blackouts seriously impact the right of people to seek, receive, and impart information, which is integral to the right to freedom of expression.²³⁷ The Doctors Association Kashmir said the indefinite communications blackouts had a profound impact on the right to health and right to life as civilians struggled to access medical services without phone or internet connections.²³⁸ The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and other international human rights experts have reiterated that the shutting down of entire communications networks, as in Kashmir during the 2016 protests, cannot be justified under international human rights laws.²³⁹

111. In 2016, the authorities in Jammu and Kashmir imposed restrictions on freedom of expression, targeting media and journalists. During the night of 15 July 2016, Jammu and Kashmir Police raided the offices of three prominent newspapers in the Kashmir Valley: *Greater Kashmir*, *Kashmir Times* and *Rising Kashmir*; copies of their newspapers were seized and some staff reportedly detained.²⁴⁰ The newspapers were not allowed to publish for three days. The editors were only informed of the decision orally and no written orders were

²³³ “Prepaid mobile services in Kashmir, snapped since July unrest, restored”, *Press Trust of India*, 15 October 2016. Available from <https://www.hindustantimes.com/india-news/prepaid-mobile-services-in-kashmir-snapped-since-july-unrest-restored/story-hNGmLQQSb2JyjuStJ9IJ.html>.

²³⁴ Only some connections of BSNL – the Government-owned service provider – which has very limited circulation but is used by all public authorities, were permitted. According to one broadcaster, the services were continued in areas of Srinagar where most of the Government offices are located. (“Access denied: no internet in Kashmir after broadband snapped”, *Press Trust of India*, 13 August 2016. Available from <http://www.ndtv.com/india-news/broadband-internet-services-suspended-across-kashmir-1443867>.)

²³⁵ Only post-paid BSNL numbers, which are mainly with police, army and government officials, were allowed to operate. (“Kashmir unrest: Government orders shutdown of internet, mobile services”, *Press Trust of India*, 12 September 2016. Available from <http://indianexpress.com/article/india/india-news-india/kashmir-government-orders-shutdown-of-internet-mobile-services-3027526/>. “Mobile phone services restored in Kashmir Valley”, *The Tribune*, 20 August 2016. Available from <http://www.tribuneindia.com/news/jammu-kashmir/community/mobile-phone-services-restored-in-kashmir-valley/282934.html>.)

²³⁶ JAC/2016/092, Joint letter sent to union Minister of Communications by Association of Unified Telecom Service Providers in India and Cellular Operators Association of India, 15 July 2016.

²³⁷ Article 19(2), International Covenant on Civil and Political Rights.

²³⁸ Doctors Association Kashmir, “Communication blockade increases mental problem”, 24 July 2016. Amnesty International, “Communications Blackout in Kashmir Undermines Human Rights”.

²³⁹ ‘Kill switches’ (i.e. shutting down entire parts of communications systems)... are measures which can never be justified under human rights law. (See “Joint Declaration on Freedom of Expression and responses to conflict situations”. Available from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15921&LangID=E#sthash.qEj2NPoj.dpuf>); In February 2017, the cutting of internet services in Cameroon for 3 weeks was described by the Special Rapporteur as “an appalling violation of their right to freedom of expression.” (OHCHR, “UN expert urges Cameroon to restore internet services cut off in rights violation”, 10 February 2017. Available from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21165&LangID=E>.)

²⁴⁰ Committee to Protect Journalists, “Indian authorities shut down media outlets in Jammu and Kashmir”, 18 July 2016. Available from <https://cpj.org/2016/07/indian-authorities-shut-down-media-outlets-in-jamm.php>.

provided.²⁴¹ It is unclear if any judicial process was undertaken to look into this publication embargo, as the chief minister subsequently claimed that the situation was created by a gap in communication and was not intended as a ban.²⁴²

112. The nearly three month ban on the *Kashmir Reader* newspaper was ostensibly for its critical coverage of the state government's response to the 2016 protests.²⁴³ The district magistrate of Srinagar, who issued the order, provided vague reasons attempting to justify it such as the newspaper "contains such material and content which tends to incite acts of violence and disturb public peace and tranquility".²⁴⁴ Several international groups working on media freedoms, including PEN International and the Committee to Protect Journalists, criticized the ban on the *Kashmir Reader*.²⁴⁵

113. Restrictions on access to the internet continued in 2017. According to an internet freedoms group, internet services in Jammu and Kashmir were suspended 32 times in 2017, compared to 10 times in 2016.²⁴⁶ On 17 April 2017, the state government imposed a ban on social media networks and mobile services following widespread protests.²⁴⁷ In a 2017 press statement, the Special Rapporteurs on promotion and protection of the right to freedom of opinion and expression and on the situation of human rights defenders called for an immediate revocation of this ban while observing, "the internet and telecommunications bans have the character of collective punishment and fail to meet the standards required under international human rights law to limit freedom of expression."²⁴⁸

L. Reprisals against human rights defenders and restrictions on journalists

114. Human rights defenders who have tried to bring international attention to the human rights situation in Jammu and Kashmir have faced reprisals while access has been obstructed for some journalists.

115. As previously noted, prominent human rights defender Khurram Parvez was arrested and detained under PSA on 15 September 2016, a day after being prevented from travelling to the Human Rights Council in Geneva. Human rights lawyer Kartik Murukutla, who works with Khurram Parvez at JKCCS, was detained at the New Delhi airport immigration desk on

²⁴¹ "Kashmir newspapers raided, printing banned for 3 days to 'ensure peace", *Hindustan Times*, 17 July 2016. Available from <http://www.hindustantimes.com/india-news/j-k-govt-bans-publication-of-newspapers-in-valley-for-3-days-to-ensure-peace/story-VbUcLgOQOScIxCMmHdYrgP.html>.

²⁴² Advisor to Chief Minister Mehbooba Mufti told a news channel that the printing ban was a "miscommunication". ("Newspaper ban didn't have Mehbooba Mufti's consent, claims advisor", *Press Trust of India*, 18 July 2016. Available from <https://economictimes.indiatimes.com/news/politics-and-nation/newspaper-ban-didnt-have-mehbooba-muftis-consent-claims-advisor/articleshow/53271542.cms>.)

²⁴³ Amnesty International, "Closure of Kashmiri newspaper a setback to free speech".

²⁴⁴ District Magistrate Srinagar order dated 2 October 2016, in possession of OHCHR.

²⁴⁵ PEN International, "Revoke blanket ban on Kashmir newspaper", 10 November 2016. Available from <http://www.pen-international.org/newsitems/india-revoke-blanket-ban-on-kashmir-newspaper/>. Committee to Protect Journalists, "Kashmir newspaper ordered to suspend printing", 3 October 2016. Available from <https://cpj.org/2016/10/kashmir-newspaper-ordered-to-suspend-printing.php>.

²⁴⁶ Software Freedom Law Centre, "Internet Shutdowns". Available from <https://www.internetshutdowns.in/>.

²⁴⁷ Special Rapporteur on freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, "India must restore internet and social media networks in Jammu and Kashmir, say UN rights experts", 11 May 2017. Available from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21604>.

²⁴⁸ *Ibid.*

24 September 2016 on his return from Geneva after attending the same Council session; he was informed that there was a “look out” notice in his name which he alleges is a form of intimidation and reprisal against him for his engagement with the international human rights mechanisms.²⁴⁹

116. Kashmiri photojournalist Kamran Yousuf was arrested on 5 September 2017 and charged with sedition for allegedly being involved in a “conspiracy against the nation”. In its special court in New Delhi, the National Investigative Agency accused Kamran Yusuf of being involved in “several stone-pelting incidents”, using as primary evidence that his mobile number was “persistently located at places where counter-terrorist operations were in progress”.²⁵⁰ The Agency argued that Kamran Yusuf was not a “real journalist” as he has not received “any formal training”, only covers “anti-national events” and has never covered the government’s development work.²⁵¹ He was released on bail on 12 March 2018.

117. French journalist and documentary film-maker Paul Comiti was arrested on 9 December 2017 in Srinagar for allegedly violating Indian visa conditions.²⁵² The FIR argued that he had violated his business visa conditions by meeting pro-independence leader Mirwaiz Umar Farooq and filming an event related to people injured by pellet-firing shotguns.²⁵³ Paul Comiti was released on bail on 13 December 2017.

118. Under Indian visa regulations, journalists travelling to India for professional activities are required to apply for a specific journalist visa.²⁵⁴ According to Reporters Sans Frontières, it is “nearly impossible” for foreign journalists to obtain Indian ‘journalist visas’ because of stringent conditions.²⁵⁵ Independent experts of the United Nations and regional organizations on freedom of expression have stated that “administrative measures should not be used to restrict the movement of journalists, including the entry of foreign journalists into a country, or media coverage of demonstrations or other events of public interest, unless this is strictly justified by the exigencies of the situation, in line with the three-part test.”²⁵⁶

M. Violations of the right to education

119. Widespread protests, long periods of curfew and frequent strikes in 2016 and 2017 had a cumulative impact on students and their right to education. A media investigation claimed that schools and colleges were closed for nearly 60 per cent of the working days between July 2016 and May 2017.²⁵⁷ Confidential information received by OHCHR indicates

²⁴⁹ Report of the Special Rapporteur on the situation of human rights defenders (A/HRC/37/51/Add.1), 16 February 2018, para 313.

²⁵⁰ National Investigation Agency, Charge sheet RC – 10/2017/NIA/DLI, State Vs Hafiz Muhammad Saeed & Others.

²⁵¹ Committee to Protect Journalist, “Indian authorities say jailed photojournalist Kamran Yousuf not a ‘real journalist’”, 16 February 2018. Available from <https://cpj.org/2018/02/indian-authorities-say-jailed-photographer-kamran-.php>. Amnesty International, Urgent Action ASA 20/7931/2018 India, 22 February 2018. Available from <https://amnesty.org.in/wp-content/uploads/2018/02/ASA2079312018ENGLISH.pdf>.

²⁵² Bail application submitted to the Chief Magistrate of Srinagar district court.

²⁵³ FIR no 87/2017, Police Station Kothibagh, Srinagar, Jammu and Kashmir.

²⁵⁴ India, Bureau of Immigration, Journalist Visa (J). Available from <https://boi.gov.in/content/journalist-visa-j>.

²⁵⁵ Reporters Sans Frontiers, “India: French journalist arrested in Kashmir”, 11 December 2017. Available from <https://rsf.org/en/news/india-french-journalist-arrested-kashmir>.

²⁵⁶ The three part test is: “it is provided for by law, it serves to protect a legitimate interest recognised under international law and it is necessary to protect that interest.” Joint Declaration on Freedom of Expression and responses to conflict situations.

²⁵⁷ “Since July 2016, Kashmir schools & colleges have been shut on 60% of working days”, *India Spend*, 30 May 2017.

an estimated 130 school days were lost in 2016 for approximately 1.4 million children. Local media reported that schools were closed for over four months after the protests started in 2016.²⁵⁸

120. Nevertheless, the Union Government of India claimed in December 2016 that all schools in Kashmir remained opened during the 2016 unrest, attendance of teachers reached 90 per cent in some districts and that around 95 per cent of students appeared for the board examination.²⁵⁹ However, in a decision that appears to contradict the central government's claims, the state government of Jammu and Kashmir on 17 November 2016 announced mass promotion for students studying in "lower classes including eight, ninth and 11th classes" due to the inability to complete the curriculum.²⁶⁰

121. While there do not appear to have been lengthy school and college closures in 2017, curfews, strikes, protests and killing of civilians continued to impact their functioning. In April 2017, colleges across the Kashmir Valley were closed over a week following calls for protests by the banned Kashmir University Students Union after over 50 students were injured on 15 April in clashes with security forces at a college in southern Kashmir's Pulwama district.²⁶¹

122. A large number of arson attacks on schools were reported in Kashmir during the 2016 unrest. The central government told the Parliament that 31 schools were damaged in such attacks, with 14 consequently fully damaged and 17 partially.²⁶² It added that the Jammu and Kashmir Government had provided extra security to schools considered vulnerable and that 14 arson attempts were thwarted as a result of such measures.²⁶³ The state government stated that 32 schools were damaged—14 fully and 18 partially.²⁶⁴ Almost all the schools attacked were state-run schools, and most of the attacks took place between August and December 2016. Jammu and Kashmir Police Chief Shesh Paul Vaid told a Kashmiri newspaper in December 2016 that 25 people had been arrested in connection with these attacks.²⁶⁵ However, there has been no publicly available information of any convictions in these cases.

123. The report of the United Nations Secretary-General on Children and Armed Conflict for 2017 referred to at least 30 schools burned and partially destroyed by armed groups in Jammu and Kashmir in 2016.²⁶⁶ There were no cases of attacks on schools reported in 2017.

²⁵⁸ "J-K govt orders mass promotion of school students in Kashmir valley", *Press Trust of India*, 17 November 2016. Available from <https://www.hindustantimes.com/education/j-k-govt-orders-mass-promotion-of-school-students-in-kashmir-valley/story-bHpPHIQL73iLFTRvZ87EoJ.html>.

²⁵⁹ The board examination is an important certification system in the Indian schooling system (Parliament of India, Lok Sabha, Unstarred question number 3111, 5 December 2016, p. 2. Available from <http://loksabha.nic.in>).

²⁶⁰ Interview of Mr Aijaz Ahmad Bhat, Director of School Education, Government of Jammu and Kashmir, 17 November 2016. Available from https://www.youtube.com/watch?v=yGa_D_JG0uE.

²⁶¹ "Clashes break out at Srinagar institute as colleges across Kashmir open after a week", *Press Trust of India*, 24 April 2017. Available from <http://www.livemint.com/Politics/yaV0vQFibLBrLHtr5Dzi6M/Clashes-break-out-at-Srinagar-institute-as-colleges-across-K.html>.

²⁶² Lok Sabha, Parliament of India, Unstarred question number 3111.

²⁶³ Ibid.

²⁶⁴ Jammu and Kashmir Legislative Assembly, Unstarred question number 607. Available from <http://www.jklegislativeassembly.nic.in/replies%202017/24th%20of%20Jan%202017/Un-Starred/607.pdf>

²⁶⁵ "5084 arrested in 2371 law and order incidents since July 8: Vaid", *Rising Kashmir*, 19 December 2016. Available from <http://risingkashmir.com/news/5084-arrested-in-2371-law-and-order-incidents-since-july-8-void>.

²⁶⁶ A/72/361- S/2017/821, para 204.

124. In addition, government reports confirmed the military use of four schools by security forces in that region for several weeks.²⁶⁷ According to one civil society report, central police forces occupied at least seven schools in the Kashmir Valley between August and November 2016.²⁶⁸ The Security Council has consistently raised concerns about military occupation of schools worldwide, stressing this may render them as targets and endangers the lives of children and teachers.²⁶⁹ India's National Commission for the Protection of Child Rights has stated that the use of schools by security forces "violates the spirit and letter of the RCFCE Act (Right of Children to free and Compulsory Education Act 2009) because it actively disrupts access to education and makes schools vulnerable to attacks."²⁷⁰

N. Sexual violence

125. Although this report specifically focuses on events since July 2016, without access, OHCHR was not able to confirm specific claims alleging incidents of sexual violence within this timeframe. However, there were some recent legal developments in past emblematic cases, and impunity for sexual violence remains a key ongoing human rights concern in Kashmir. Authorities have failed to independently investigate and prosecute allegations of sexual violence by security forces personnel. There is no record of allegations of sexual violence by security forces being prosecuted in a civilian court.²⁷¹

126. In February 2018, the Support Group for Justice for Kunan Poshpora Survivors filed a petition before the State Human Rights Commission, urging the investigation into all cases of alleged sexual assault by security forces and non-State actors as well as reparations for survivors.²⁷² The group provided the Commission with documentation in 143 cases of alleged sexual violence committed between 1989 and 2017.²⁷³

127. In the 2013 report on her mission to India, the Special Rapporteur on violence against women, its causes and consequences, said, "[W]omen living in militarized regions, such as Jammu and Kashmir and the north-eastern states, live in a constant state of siege and surveillance, whether in their homes or in public. Information received through both written and oral testimonies highlighted the use of mass rape, allegedly by members of the State security forces, as well as acts of enforced disappearance, killings and acts of torture and ill-treatment, which were used to intimidate and to counteract political opposition and insurgency."²⁷⁴ The Special Rapporteur added that she was "not informed of any measures to ensure accountability and redress for victims".²⁷⁵

128. In 2014, the Committee on the Elimination of Discrimination against Women expressed particular concern about "the Provisions of the Armed Forces (Special Powers) Act requiring prior authorization by the Government to prosecute a member of the security

²⁶⁷ Ibid.

²⁶⁸ Amnesty International, "Children's right to education must be protected in Kashmir", 4 November 2016. Available from <https://amnesty.org.in/news-update/childrens-right-education-must-protected-kashmir/>.

²⁶⁹ Security Council Resolution 2143 (S/RES/2143), 7 March 2014, para 18. Available from <http://www.refworld.org/docid/533ac1164.html>.

²⁷⁰ India, National Commission for Protection of Child Rights, *Protection of Children's Rights in Areas of Civil Unrest*, 2010. Available from http://ncpcr.gov.in/view_file.php?fid=61.

²⁷¹ Parliament of India, Rajya Sabha, Unstarred question no. 1463. Available from <http://rajyasabha.nic.in/>.

²⁷² Complaint on sexual violence in Kashmir filed with the State Human Rights Commission by the Support Group for Justice for Kunan Poshpora Survivors, 23 February 2018.

²⁷³ Ibid.

²⁷⁴ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Addendum: Mission to India (A/HRC/26/38/Add.1), 1 April 2014, para 23.

²⁷⁵ Ibid, para 69-71.

forces and the reportedly high risk of reprisals against women who complain about the conduct of the security forces; and, the lack of centres providing medical, psychological, legal and socioeconomic support to women and girls who are victims of sexual violence in conflict-affected areas,²⁷⁶ including Kashmir and the North-East.²⁷⁷

129. One significant case that illustrates the state's failure to investigate and prosecute allegations of sexual violence and addressing impunity for sexual crimes in Kashmir is the Kunan-Poshpora mass rape, which took place 27 years ago and for which attempts to seek justice have been denied and blocked over the years by the authorities at different levels.

130. According to survivors²⁷⁸ and a local administration official²⁷⁹, on the night of 23 February 1991, soldiers from the 4 Rajputana Rifles regiment of the Indian Army gang-raped around 23 women of Kunan and Poshpora villages of Kupwara district. The Indian Army and Government of India have denied the allegations.²⁸⁰ In 1991, Wajahat Habibullah, who at the time was the divisional commissioner of the Kashmir region (a civil service position), filed a report with the state government addressing these allegations. In March 1991, former Chief Justice of Jammu and Kashmir High Court Mufti Bahauddin Farooqi led a fact-finding team that interviewed several survivors; he reportedly noted that "he had never seen a case in which normal investigative procedures were ignored as they were in this one".²⁸¹ The Jammu and Kashmir Police stopped its investigations by October 1991 after it declared the case was "untraceable".²⁸² In July 2013, Wajahat Habibullah accused the state authorities of deleting parts of the report where he had recommended a higher level investigation and a special order to ensure army cooperation.²⁸³

131. Survivors and human rights groups have campaigned for an independent investigation into this case for many years.²⁸⁴ In October 2011, SHRC directed the state government to reopen and reinvestigate the case and to prosecute a senior official whom it accused of

²⁷⁶ CEDAW/C/IND/CO/4-5, paras. 12-13.

²⁷⁷ Ibid.

²⁷⁸ As told to and recorded by Support Group for Justice for Kunan Poshpora Survivors in "Do You Remember Kunan Poshpora?: The Story of a Mass Rape", *Zuban Books*, 2016.

²⁷⁹ The Deputy Commissioner of Kupwara district S.M. Yasin in his official report on the incident said the army personnel had committed multiple rapes in Kunan and Poshpora villages. Interview available from <https://www.indiatoday.in/india/video/sm-yasin-former-deputy-commissioner-of-kupwara-breaks-his-silence-on-kunan-poshpora-450949-2014-02-24>.

²⁸⁰ United States of America, Department of State, "Country Reports on Human Rights Practices for 1991", February 1992, p.1397. Available from https://ia802307.us.archive.org/35/items/countryreportson1991unit/countryreportson1991unit_bw.pdf

²⁸¹ "India Moves Against Kashmir Rebels", *The New York Times*, 7 April 1991. Available from <https://www.nytimes.com/1991/04/07/world/india-moves-against-kashmir-rebels.html>.

²⁸² Amnesty International, "India: Police must effectively investigate long-standing rape allegations against army in Jammu and Kashmir", 23 July 2013. Available from <https://www.amnesty.org/download/Documents/12000/asa200352013en.pdf>.

²⁸³ Ibid.

²⁸⁴ The Indian Army invited the Press Council of India to investigate the allegations. A three-member Press Council of India commission visited the villages from 8 to 9 June 1991 and reported that they found the allegations to be "baseless". The members of this commission were journalists and their investigation had no legal standing. Their report has since been criticized by several civil society groups. (HRW, "World Report 1992". Available from <https://www.hrw.org/reports/1992/WR92/ASW-07.htm>.) In July 2017, the Kashmir Editors Guild told a Press Council of India delegation that the only way of salvaging its credibility in Kashmir was to revisit its 1991 report on Kunan-Poshpora mass rapes, which the Guild described as a "bid to undermine and subvert the institution of media in Kashmir". ("Revisit 1991 report on mass rapes: Editors' guild to PCI", *The Tribune*, 20 July 2017. Available from <http://www.tribuneindia.com/news/jammu-kashmir/revisit-1991-report-on-mass-rapes-editors-guild-to-pci/439627.html>.)

deliberately obstructing the investigation.²⁸⁵ On 18 July 2013, a court in Kupwara district ordered the state police to reinvestigate the case within three months.²⁸⁶ When no progress was made despite these orders, five survivors filed a petition in the Jammu and Kashmir High Court in October 2013. In July 2014, the High Court reportedly said the 2011 SHRC recommendations were supported by evidence and asked the state government to consider paying monetary compensation within three months.²⁸⁷ The state government has challenged this order in the Supreme Court of India.

132. On the AFSPA, the Special Rapporteur on violence against women said that it “allows for the overriding of due process rights and nurtures a climate of impunity and a culture of both fear and resistance by citizens”.²⁸⁸ She urged the Indian authorities to repeal the AFSPA as “a matter of urgency” and “ensure that criminal prosecution of members of the Armed Forces is free from legal barriers”.²⁸⁹ For its part, the Committee on the Elimination of Discrimination against Women urged India to amend or repeal the AFSPA “so that sexual violence against women perpetrated by members of the armed forces or uniformed personnel is brought under the purview of ordinary criminal law and, pending such amendment or repeal, to remove the requirement for government permission to prosecute members of the armed forces or uniformed personnel accused of crimes of violence against women or other abuses of the human rights of women and to grant permission to enable prosecution in all pending cases”.²⁹⁰

133. Also, an expert committee established to review India’s laws against sexual assault in the aftermath of the landmark 12 December 2012 Delhi gang-rape case stated that the AFSPA legitimized impunity for sexual violence, and recommended its amendment to bring it under the purview of ordinary criminal law, thereby doing away with the need for sanction for prosecution.²⁹¹ The central government did not accept this recommendation.²⁹² However, the government did accept the committee’s recommendation to remove the need for government’s permission to prosecute civil public servants accused of rape and some forms of sexual violence.²⁹³

²⁸⁵ Amnesty International, “India: Police must effectively investigate long-standing rape allegations against army in Jammu and Kashmir”.

²⁸⁶ “Kupwara court order reinvestigation of mass rape case”, *The Telegraph*, 18 June 2013. Available from https://www.telegraphindia.com/1130619/jsp/nation/story_17023891.jsp.

²⁸⁷ “Kunan-Poshpora rapes: HC asks J&K to consider paying compensation in 3 weeks”, *The Indian Express*, 2 July 2014. Available from <http://indianexpress.com/article/india/india-others/kunan-poshpora-rapes-hc-asks-jk-to-consider-paying-compensation-in-3-weeks/>.

²⁸⁸ A/HRC/26/38/Add.1.

²⁸⁹ Ibid.

²⁹⁰ Committee of the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of India (CEDAW/C/IND/CO/4-5), para 13.b.

²⁹¹ Government of India, “*The Report of the Committee on Amendments to Criminal Law*”, 23 January 2013. Available from <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>.

²⁹² HRW, “India: Reject new sexual violence ordinance”, 11 February 2013. Available from <https://www.hrw.org/news/2013/02/11/india-reject-new-sexual-violence-ordinance>. Amnesty International, “India: New Sexual Violence Law Has Both Positive and Regressive Provisions”, 22 March 2013. Available from <https://www.amnesty.org/en/press-releases/2013/03/india-new-sexual-violence-law-has-both-positive-and-regressive-provisions-2/>.

²⁹³ Ibid.

VI. Abuses by armed groups²⁹⁴

134. The Government of India accuses armed groups of committing human rights abuses in Jammu and Kashmir and holds them responsible for causing “disturbances in Kashmir”.²⁹⁵ India maintains that these armed groups are based in territories controlled by Pakistan and are actively supported by Pakistan.²⁹⁶ The Government of Pakistan categorically denies any allegation of involvement in stoking unrest in Indian-Administered Kashmir or of providing support to armed groups operating there.²⁹⁷

135. Since the late 1980s, a variety of armed groups has been actively operating in the Indian state of Jammu and Kashmir, and there has been documented evidence of these groups committing a wide range of human rights abuses, including kidnappings, killings of civilians and sexual violence.²⁹⁸ The landscape of armed intervention by groups operating in Indian-Administered Kashmir has shifted over the years. In the 1990s, around a dozen significant armed groups were operating in the region; currently, less than half that number remain active.²⁹⁹ The main groups today include Lashkar-e-Tayyiba, Jaish-e-Mohammed, Hizbul Mujahideen and Harakat Ul-Mujahidin; they are believed to be based in Pakistan-Administered Kashmir.³⁰⁰ Hizbul Mujahideen is also part of the United Jihad Council, which began as a coalition of 14 armed groups in 1994, claiming to be fighting Indian rule in

²⁹⁴ In the humanitarian field, the United Nations has developed the following working definition of non-State armed groups (hereinafter: armed groups): “Groups that have the potential to employ arms in the use of force to achieve political, ideological or economic objectives; are not within the formal military structures of States, State-alliances or intergovernmental organizations; and are not under the control of the State(s) in which they operate.” (G. McHugh, M. Bessler, *Humanitarian negotiations with armed groups: A manual for practitioners*, United Nations: New York, 2006, p. 87. Available from <https://reliefweb.int/sites/reliefweb.int/files/resources/28BEC3628B99A532852571070071B4B3-un-ocha-30jan.pdf>.)

²⁹⁵ Thirty-third session of Human Rights Council, Statement by Ambassador and Permanent Representative of India to the UN in Geneva under Agenda Item 4 General Debate, 19 September 2016. Available from <http://www.pmindiaun.org/pages.php?id=1367>.

²⁹⁶ *Ibid.*

²⁹⁷ <https://www.cfr.org/backgrounder/kashmir-militant-extremists>

²⁹⁸ Carnegie Endowment for International Peace, “The menace that is Lashkar-e-Taiba”, March 2012. Available from https://carnegieendowment.org/files/LeT_menace.pdf. HRW, “Behind the Kashmir Conflict: Abuses by the Indian Security Forces and Militant Groups Continue”, 1999. Available from <https://www.hrw.org/reports/1999/kashmir/back.htm>. Amnesty International, “Appeal to armed opposition groups in Jammu and Kashmir to abide by humanitarian law”, 3 March 1997, pp. 1-2. Available from <https://www.amnesty.org/download/Documents/160000/asa200381997en.pdf>. Amnesty International, “India: Impunity in Jammu and Kashmir”, April 2001, p. 2. Available from <https://www.amnesty.org/download/Documents/128000/asa200232001en.pdf>.

²⁹⁹ Council on Foreign Relations, “Kashmir Militant Extremists”, 9 July 2009. Available from <https://www.cfr.org/backgrounder/kashmir-militant-extremists>. “Who are the Kashmir militants?”, *BBC*, 1 August 2012. Available from <http://www.bbc.com/news/world-asia-18738906>. “Profiles: Armed Groups”, *Al Jazeera*, 3 April 2012. Available from <https://www.aljazeera.com/indepth/spotlight/kashmirtheforgottenconflict/2011/07/2011731161726482729.html>.

³⁰⁰ https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/entity/lashkar-e-tayyiba; https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/entity/jaish-i-mohammed; https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/entity/harakat-ul-mujahidin/hum; International Crisis Group (ICG), “Kashmir: Confrontation and Miscalculation”, 11 July 2002, pp. 6-8. Available from <https://www.crisisgroup.org/asia/south-asia/kashmir/kashmir-confrontation-and-miscalculation>.

Kashmir, that was allegedly formed by Pakistan's defence establishment.³⁰¹ Despite the Government of Pakistan's assertions of denial of any support to these groups, experts believe that Pakistan's military continues to support their operations across the Line of Control in Indian-Administered Kashmir.³⁰² Three of these armed groups (Lashkar-e-Tayyiba, Jaish-e-Mohammed and Harakat Ul-Mujahidin) are listed on the Security Council "ISIL (Da'esh) & Al-Qaida Sanctions List"³⁰³ for their activities in Indian-Administered Kashmir among other places.³⁰⁴

136. Between January 2016 and April 2018, civil society organizations have accused members of armed groups of numerous attacks against civilians, off-duty police personnel and army personnel on leave,³⁰⁵ including the killing of 16 to 20 civilians. Some of the alleged attacks include the killing of activists of mainstream political parties and threats against their leaders.³⁰⁶

137. A major episode of attacks against civilians by armed groups operating in the Kashmir Valley is that against the minority Hindus, known as Kashmiri Pandits.³⁰⁷ These attacks and threats from armed groups forced hundreds of thousands of Kashmiri Pandits to flee Kashmir and seek shelter in Jammu and other parts of India.³⁰⁸ According to the Union Ministry of Home Affairs, around 62,000 Kashmiri Pandit families live outside Kashmir and primarily

³⁰¹ HRW, "With friends like these: Human rights violations in Azad Kashmir", 2006, p.20. ICG, "Kashmir: Confrontation and Miscalculation", p. 6.

³⁰² Brookings Institute, "Why Pakistan supports terrorist groups, and why the US finds it so hard to induce change", 5 January 2018. Available from <https://www.brookings.edu/blog/order-from-chaos/2018/01/05/why-pakistan-supports-terrorist-groups-and-why-the-us-finds-it-so-hard-to-induce-change/>; The Royal Institute of International Affairs, "Sharif Ruling Threatens Pakistan's Already Brittle Institutions", 2 August 2017. Available from <https://www.chathamhouse.org/expert/comment/sharif-ruling-threatens-pakistans-already-brittle-institutions>; ICG, "Pakistan's relations with India: Beyond Kashmir?", 3 May 2012, pp. 12-14. Available from <https://www.crisisgroup.org/asia/south-asia/pakistan/pakistan-s-relations-india-beyond-kashmir>; Council on Foreign Relations, "Global Conflict Tracker". Available from <https://www.cfr.org/interactives/global-conflict-tracker#!/conflict/conflict-between-india-and-pakistan>; HRW, "With friends like these: Human rights violations in Azad Kashmir", pp. 19-25; ICG, "Kashmir: Confrontation and Miscalculation", pp. 6-8; Brookings Institute, "Terror Trail Leads from Kabul to Kashmir", 25 March 2002. Available from <https://www.brookings.edu/opinions/terror-trail-leads-from-kabul-to-kashmir/>.

³⁰³ Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al-Qaida, and associated individuals, groups, undertakings and entities. Available from <https://www.un.org/sc/suborg/en/sanctions/1267>.

³⁰⁴ https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/entity/lashkar-e-tayyiba; https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/entity/jaish-i-mohammed; https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/summaries/entity/harakat-ul-mujahidin/hum.

³⁰⁵ "J&K police asks its personnel to avoid visiting hometowns", *Press Trust of India*, 16 August 2017. Available from <http://indianexpress.com/article/india/jk-police-asks-its-personnel-to-avoid-visiting-hometowns-4615700/>; "Ex-militant and a lawyer shot dead in Kashmir", *Press Trust of India*, 17 August 2017. Available from <https://www.financialexpress.com/india-news/ex-militant-and-a-lawyer-shot-dead-in-kashmir/630200/>. Amnesty International, "The State of the World's Human Rights 2017/18", p. 189. Amnesty International, "The State of the World's Human Rights 2016/17", p. 183. Available from <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>.

³⁰⁶ JKCCS, "Annual Human Rights Report 2017", p. 40.

³⁰⁷ HRW, "Everyone lives in fear", 11 September 20016. Amnesty International, "Denied", p. 15.

³⁰⁸ Ibid.

left because of “disturbed conditions prevailing in the [Kashmir] valley during 1989-90”.³⁰⁹ Other estimates of the number of displaced Kashmiri Pandit families vary.³¹⁰

138. Similarly, there are varying figures of the number of Kashmiri Pandits who were killed by armed groups since an armed insurgency started in the late 1980s. According to the Kashmiri Pandit Sangharsh Samiti, which represents the small Pandit population that has remained in Kashmir, approximately 650 Kashmiri Pandits have been killed by armed groups.³¹¹ Other Pandit groups, especially those based outside Kashmir, claim much higher figures. A 2008 Jammu and Kashmir Police report stated that 209 Pandits had been killed since 1989.³¹² In December 2017, the Union Ministry of Home Affairs told the Parliament that according to state government figures, 174 Kashmiri Pandits had been killed by armed groups.³¹³ It added that the state police had filed charges in 30 cases while 142 cases had been reported as “untraced”.³¹⁴

139. Survivors, Kashmiri Pandit community groups and human rights organizations have been calling for independent investigations into the violence against the Pandit community and related displacement. However, no such investigations have been instituted by either the state or central government. In 2017, a Kashmiri Pandit group, ‘Roots in Kashmir’, petitioned the Supreme Court of India, calling for investigations into the killing of Pandits and their “exodus” from the Kashmir Valley. It sought to reopen 215 cases in which over 700 members of the Kashmiri Pandit community were killed in 1989-90. The Supreme Court dismissed the petition on the grounds that “...more than 27 years have passed.... no fruitful purpose would emerge, as evidence is unlikely to be available at this late juncture.”³¹⁵ However, in 2017, the Court directed the Central Bureau of Investigation to probe 80 cases of extrajudicial killings committed in Manipur in 1979, reportedly stating that “crimes cannot be overlooked only because of the passage of time”.³¹⁶ On 27 October 2017, the Supreme Court rejected a review petition filed by ‘Roots in Kashmir’ urging it to revisit its July 2017 order.³¹⁷

140. In addition to the responsibility that armed groups bear for their conduct under international law, States retain the obligation to uphold international human rights law in

³⁰⁹ Starred Question No 332, Lok Sabha, Parliament of India. 9 August 2016. Available from <http://loksabha.nic.in>.

³¹⁰ For example, the United States Government, reported in 2007 that 300,000 had migrated as a result of attacks by armed groups. (United States Department of State, Bureau of Democracy, Human Rights and Labor, “2006 Country Reports on Human Rights Practices”, 6 March 2007. Available from <https://www.state.gov/j/drl/rls/hrrpt/2006/78871.htm>.)

³¹¹ “Kashmiri Pandits: Why we never fled Kashmir”, *Al Jazeera*, 2 August 2011. Available from www.aljazeera.com/indepth/spotlight/kashmirtheforgottenconflict/2011/07/201176134818984961.html.

³¹² “209 Kashmiri Pandits killed since 1989, say J-K cops in first report”, *The Indian Express*, 4 May 2008. Available from <http://archive.indianexpress.com/news/209-kashmiri-pandits-killed-since-1989-say-jk-cops-in-first-report/305457/>.

³¹³ Parliament of India, Rajya Sabha, Starred Question No 49, 20 December 2017. Available from <http://rajyasabha.nic.in>.

³¹⁴ Ibid.

³¹⁵ “SC ‘no’ to plea for probe into massacre of Kashmiri Pandits”, *Press Trust of India*, 24 July 2017. Available from <http://www.thehindu.com/news/national/sc-no-to-plea-for-probing-massacre-of-kashmiri-pandits/article19341621.ece>.

³¹⁶ “Manipur ‘encounter killings’: Overruling Centre and Army, Supreme Court orders CBI probe in multiple cases”, *The Indian Express*, 14 July 2017. Available from <http://indianexpress.com/article/india/overruling-centre-army-sc-orders-cbi-probe-into-extra-judicial-killings-in-manipur-4750061/>.

³¹⁷ Amnesty International, “Supreme Court’s refusal to reopen cases of killings of Kashmir Pandits disappointing”, 28 October 2017. Available from <https://amnesty.org.in/news-update/supreme-courts-refusal-reopen-cases-killings-kashmiri-pandits-disappointing/>.

relation to all persons in their territory and subject to their jurisdiction. This includes the obligation to exercise due diligence and to do everything in their capacity to protect all such persons from threats to the enjoyment of their human rights posed by non-State actors, including de facto authorities and armed groups. States must seek to hold the individual perpetrators of human rights violations accountable and guarantee the rights of victims, including the right to an effective remedy and reparation.

VII. Human rights violations in Pakistan-Administered Kashmir

A. Constitutional and legal structures impacting the enjoyment of human rights

141. Pakistan-Administered Kashmir comprises two administrative regions: Azad Jammu and Kashmir (AJK) and Gilgit-Baltistan (G-B). In 1948, UNCIP acknowledged the existence of “local authorities” (as distinct from the Government of Pakistan) on the Pakistani side of the ceasefire line in Jammu and Kashmir. These two administrative regions have remained distinct “territories” since then and have not been formally incorporated into Pakistan as they are considered to be part of the disputed state of Jammu and Kashmir.³¹⁸

142. AJK officially has a parliamentary system with a prime minister, an autonomous government, and a president as the constitutional head of state, but it has been effectively controlled by the Government of Pakistan throughout its entire history.³¹⁹ The “Azad Jammu and Kashmir Adaptation of Laws Act, 1988” adapts and enforces several Pakistani laws in AJK.³²⁰ Although most Pakistani laws are applied in AJK, AJK sends no delegates to the National Assembly of Pakistan. This position was denounced in the 2007 report of the European Parliament Committee on Foreign Affairs Rapporteur which noted Pakistan’s failure to fulfil its obligations to introduce meaningful and representative democratic structures in AJK.³²¹

³¹⁸ “When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and that State shall be determined in accordance with the wishes of the people of that State.” Constitution of Pakistan, Article 257.

³¹⁹ Per the AJK Interim Constitution Act 1974, the AJK Council has most powers, including legislative and taxation. The Chairperson of the Council is the Prime Minister of Pakistan, who also nominates six Pakistani Ministers/MPs and there are six members elected by the AJK assembly. Although direct elections for an assembly take place, the Pakistani-majority council is not accountable to the assembly – its decisions are final and not subject to judicial review. At the implementation level, virtually all key officers of the AJK Government are seconded from Pakistan, including the Chief Secretary, the Inspector General of Police, the Finance Secretary, the Home Secretary, the Health Secretary and the Accountant-General, Auditor General and Chief Election Commissioner. They not only exercise the real authority within AJK, but also maintain a check on AJK’s elected government. AJK had enjoyed a brief period of limited autonomy between 1970 and 1974. From 1947 to 1970 the Government at Muzaffarabad remained virtually entirely under the control of the Government of Pakistan, with few political rights available to the people of AJK. (Centre for Peace, Development and Reforms, “An Appraisal of Constitutional, Financial and Administrative Arrangements between the Governments of Pakistan and Azad Jammu and Kashmir”, June 2011. Available from http://www.cpd.org.pk/images/publications/2011_CPDR_Kashmir_Report.pdf.)

³²⁰ Azad Jammu and Kashmir Adaptation of Laws Act, 1988. Available from http://www.ajkassembly.gok.pk/acts_passed_by_assembly.htm.

³²¹ European Parliament, Committee on Foreign Affairs, “Kashmir: present situation and future prospects”, 25 April 2007, para 18. Available from <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A6-2007-0158+0+DOC+XML+V0//EN>.

143. According to an international NGO, while AJK has the “trappings of a sovereign state, it is only nominally independent.”³²² It observed “the AJK Council, headed by Pakistan’s prime minister, formally has the power to override laws passed by AJK’s elected legislature, and the AJK judiciary cannot review its decisions. However, though the Council is ostensibly all-powerful, it has very little authority in practice, because the military exercises almost complete control over the territory.”³²³ Additional work may be needed to verify this allegation.

144. Known as the Northern Areas until 2009, Gilgit-Baltistan (G-B) is another part of the former princely state of Jammu and Kashmir, which was on the Pakistani side of the Line of Control in 1949. Under the 1949 Karachi Agreement between the Government of Pakistan and representatives of AJK and the All Jammu and Kashmir Muslim Conference, Pakistan’s administrative control over the Northern Areas was ratified.³²⁴ However, the Northern Areas was neither incorporated into Pakistan, nor was it given notional autonomy like AJK. In 1999, the Supreme Court of Pakistan directed Islamabad to extend fundamental freedoms to the Northern Areas within six months.³²⁵ The EU Parliament Rapporteur’s report in August 2007 identified “a total absence of constitutional identity or civil rights... people are kept in poverty, illiteracy and backwardness.”³²⁶ When Pakistani authorities promulgated the Gilgit-Baltistan Empowerment and Self-Governance Order 2009,³²⁷ the Government of Pakistan reportedly argued that this would establish full internal autonomy.³²⁸

145. According to the United Nations Country Team in its submission to Pakistan’s 2012 Universal Periodic Review, G-B and AJK “spell out additional challenges with less stable constitutional and legislative framework”.³²⁹ The Committee on the Elimination Racial Discrimination noted with concern that the laws of Pakistan are not applicable in these provinces to the same extent as in the other parts of the territory.³³⁰ In fact, Pakistan’s prime minister, the federal minister for Kashmir Affairs and Gilgit-Baltistan and the federal civil service reportedly have full control over all government operations in both AJK and G-B.³³¹ According to an international NGO, federal intelligence agencies are deployed across the two regions and have “considerable powers over local elected representatives and officials”.³³² Additional work may be needed to verify this allegation.

146. According to the prominent national NGO, the Human Rights Commission of Pakistan (HRCP), despite the 2009 Order superior courts in G-B cannot annul laws that

³²² ICG, “Step towards peace: Putting Kashmiris first”, 3 June 2010, p. 7. Available from <https://d2071andvip0wj.cloudfront.net/b106-steps-towards-peace-putting-kashmiris-first.pdf>.

³²³ ICG, “Pakistan’s relations with India: Beyond Kashmir”, 3 May 2012, p. 19. Available from <https://www.crisisgroup.org/asia/south-asia/pakistan/pakistan-s-relations-india-beyond-kashmir>.

³²⁴ Human Rights Commission of Pakistan (HRCP), “Gilgit-Baltistan: Aspirations of identity, integration and autonomy”, March 2017. Available from <http://hrcp-web.org/publication/wp-content/uploads/2017/04/Gilgit-Baltistan-report-Aspirations-for-identity-integration-autonomy.pdf>.

³²⁵ Freedom House, “Freedom in the World 2009”, ‘Pakistani Kashmir’. Available from <https://freedomhouse.org/report/freedom-world/2009/pakistani-kashmir>.

³²⁶ European Parliament, “Report on Kashmir: Present Situation and Future Prospects”, p.21/para. 20.

³²⁷ Pakistan, Ministry of Kashmir Affairs and Northern Areas, Gilgit-Baltistan (Empowerment and Self-Governance) Order 2009, 9 September 2009. Available from <http://gbla.gov.pk/page/governance-order>.

³²⁸ Freedom House, “Freedom in the world 2010”, ‘Pakistani Kashmir’. Available from <https://freedomhouse.org/report/freedom-world/2010/pakistani-kashmir>.

³²⁹ Compilation prepared by OHCHR in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/2 – Pakistan (A/HRC/WG.6/14/PAK/2), para 6, 13 August 2012

³³⁰ Ibid.

³³¹ Freedom House, “Freedom in the World 2016”. Available from <https://freedomhouse.org/report/freedom-world/2016/pakistani-kashmir>.

³³² Ibid.

violate fundamental rights, unlike in Pakistan.³³³ G-B's highest court, the Supreme Appellate Court, does not have powers to act under *suo moto* jurisdiction unlike the Supreme Court of Pakistan.³³⁴ According to HRCP, the 2009 order does not guarantee the right to a fair trial, protection against double punishment and self-incrimination, right to information and right to education.³³⁵ HRCP found that the constitutional article that guarantees equal protection before the law does not prohibit discrimination on the basis of sex.³³⁶ The 2009 Order does not guarantee dignity of a person,³³⁷ and residents of G-B are not guaranteed the right to preserve their language, script or culture.³³⁸

B. Restrictions on the rights to freedoms of expression and association

147. The interim constitution of AJK has placed several restrictions on anyone criticizing AJK's accession to Pakistan,³³⁹ in contravention to international standards on the rights to freedoms of expression and opinion, assembly and association. It explicitly states, "[N]o person or political party in Azad Jammu and Kashmir shall be permitted to propagate against or take part in activities prejudicial or detrimental to the ideology of the State's accession to Pakistan."³⁴⁰ The AJK electoral law expands on this, disqualifying anyone running for elected office for propagating any opinion or acting contrary to "the ideology of the State's accession to Pakistan."³⁴¹ No person can be appointed to a government position unless they take an oath of office, which includes that they "will remain loyal to the country and the cause of accession of the state of Jammu & Kashmir to Pakistan."³⁴²

148. According to international NGOs, the ban on political parties that do not support the eventual accession of Jammu and Kashmir to Pakistan has in effect silenced all kinds of dissent, including demands for greater transparency and accountability.³⁴³ Moreover, they allege that those who protest Pakistan's position face threats and travel bans, and are subject to imprisonment and torture.³⁴⁴

149. Human rights groups report that publishers of books or periodicals are also required to make a declaration of loyalty to accession to Pakistan.³⁴⁵ A number of books supporting Kashmiri independence were also reportedly banned by a government order in February

³³³ HRCP, "Gilgit-Baltistan: Aspirations of identity, integration and autonomy", p. 10.

³³⁴ Ibid.

³³⁵ Ibid.

³³⁶ Ibid.

³³⁷ Ibid.

³³⁸ Ibid.

³³⁹ Article 7(2), Azad Jammu and Kashmir Interim Constitution Act, 1974. Available from http://www.ajkassembly.gok.pk/AJK_Interim_Constitution_Act_1974.pdf.

³⁴⁰ Ibid.

³⁴¹ Azad Jammu and Kashmir Legislative Assembly Ordinance, 1970, p. 41, cited in HRW 2006.

³⁴² Ibid.

³⁴³ ICG, "Step towards peace: Putting Kashmiris first", p. 7-8. Freedom House, "Freedom in the world 2018", 'Pakistani Kashmir'. Available from <https://freedomhouse.org/report/freedom-world/2018/pakistani-kashmir>.

³⁴⁴ Ibid.

³⁴⁵ HRW, "With friends like these: Human rights violations in Azad Kashmir", 2006, p. 32. Freedom House, "Freedom in the world 2018", 'Pakistani Kashmir'. Available from <https://freedomhouse.org/report/freedom-world/2018/pakistani-kashmir>.

2016.³⁴⁶ To publish within AJK, media owners have to obtain permission from Government of Pakistan's Kashmir Council and the Ministry of Kashmir Affairs.³⁴⁷

150. The Gilgit-Baltistan Empowerment and Self-Governance Order 2009 imposes similar restrictions on freedom of expression and association of people under its jurisdiction. Article 9(2) under the fundamental rights section states, "No person or political party in the area comprising Gilgit-Baltistan shall propagate against, or take part in activities prejudicial or detrimental to the ideology of Pakistan."³⁴⁸

151. According to international NGOs, in both AJK and G-B, pro-independence political parties and activists are not allowed to participate in the political process,³⁴⁹ while political leaders who are seen to be opposing Pakistani rule have been subject to surveillance, harassment, and even imprisonment.³⁵⁰

152. The Human Rights Committee has noted that the realization of right to self-determination is "an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights".³⁵¹

153. Media organizations reportedly need permission from Pakistan's Ministry of Kashmir Affairs and Gilgit-Baltistan to operate in AJK and G-B.³⁵² In October 2016, authorities in G-B arrested journalist Daulat Jan Mathal on anti-terrorism charges because the publications he edited supported national autonomy for G-B.³⁵³ He is accused of "damaging the solidarity and integrity of Pakistan" by publishing material supporting the Balawaristan National Front, a local nationalist party.³⁵⁴ In October 2017, a Pakistani anti-terrorism court summoned journalist Shabbir Saham after G-B authorities charged him of defaming a regional legislator.³⁵⁵ The summons were in response to Shabbir Saham's article, in Pakistan's *Daily Times* newspaper, in which he claimed members of a national political party were involved with a criminal gang responsible for human trafficking and prostitution.³⁵⁶

154. According to international human rights groups, media houses in AJK and G-B are known to practice self-censorship to avoid harassment by state authorities.³⁵⁷ As the media is dependent on official advertisements for revenue, authorities have allegedly discontinued advertisements when media houses were deemed too critical.³⁵⁸

³⁴⁶ "Meanwhile, in Pakistan-occupied Kashmir, books on 'Azadi' continue to be banned", *Scroll.in*, 18 March 2016. Available from <https://scroll.in/article/805113/meanwhile-in-pakistan-occupied-kashmir-books-on-azadi-continue-to-be-banned>.

³⁴⁷ United States of America, Department of State, "Pakistan 2016 Human Rights Report", p. 24. Available from <https://www.state.gov/documents/organization/265758.pdf>.

³⁴⁸ Gilgit-Baltistan (Empowerment and Self-Governance) Order 2009, Article 9(2).

³⁴⁹ ICG, "Step towards peace: Putting Kashmiris first", p. 7-8. Freedom House, "Freedom in the World 2016". HRW, "With friends like these", pp. 32-39.

³⁵⁰ Ibid.

³⁵¹ Human Rights Committee, *CCPR General Comment No. 12: Article 1 (The right to self-determination)*, *The Right to Self-determination of Peoples*, 13 March 1984, para 1.

³⁵² Freedom House, "Freedom in the World 2016". HRW, "With friends like these", 2006, p. 32.

³⁵³ Case file with the Committee to Protect Journalists. Available from <https://cpj.org/data/people/daulat-jan-mathal/index.php>.

³⁵⁴ Ibid.

³⁵⁵ Committee to Protect Journalists, "Pakistani journalist faces terrorism and defamation charges for article critical of regional government", 4 October 2017. Available from <https://cpj.org/2017/10/pakistani-journalist-faces-terrorism-and-defamatio.php>.

³⁵⁶ Ibid.

³⁵⁷ HRW, "With friends like these", pp. 32-39. Freedom House, "Freedom in the World 2016".

³⁵⁸ Ibid.

C. Impact of counter-terrorism on human rights

155. According to HRCP, there has been “rampant misuse” of Pakistan’s Anti-Terrorism Act, 1997 (ATA) by G-B authorities particularly against young activists.³⁵⁹ Civil society groups and political activists told HRCP the misuse of ATA increased after the introduction of Pakistan’s National Action Plan for countering terrorism and extremism in December 2014. HRCP found that “hundreds of individuals” had been imprisoned under the ATA in G-B, and it was being used to target locals who have been raising issues related to the “rights of the people”.³⁶⁰

156. In 2017, the Human Rights Committee in its review of Pakistan expressed concern at the “very broad definition of terrorism laid down in the Anti-Terrorism Act; the supremacy of this Act over other laws, including the Juvenile Justice System Ordinance, 2000, which enables the courts to try juveniles; the power of the authorities to detain a person for up to one year; and the admissibility of confessions made in police custody as evidence in court.”³⁶¹ The Committee also raised concerns about the extensive jurisdiction of anti-terrorism courts and the absence of procedural safeguards in their proceedings.³⁶² The Committee against Torture noted that the ATA “eliminates legal safeguards against torture that are otherwise provided to persons deprived of their liberty.”³⁶³

157. According to HRCP, several political activists, especially from the Awami Workers Party, have been arrested and charged under the ATA. G-B residents told HRCP that the ATA has been used against people who have been protesting the acquisition of their lands for the China-Pakistan Economic Corridor (CPEC) project without receiving any resettlement or compensation.³⁶⁴ Prominent political activist Baba Jan was arrested and charged with 11 other protesters under the ATA for their environmental activism.³⁶⁵ All 12 activists were sentenced to life imprisonment by an anti-terrorism court in September 2011.³⁶⁶ They were then acquitted by G-B’s Chief Court on 9 April 2015.³⁶⁷ However, on 9 June 2016, G-B’s Supreme Appellate Court upheld their life-sentences.³⁶⁸ After his acquittal in April 2015, Baba Jan had filed nomination papers for a local election that pitted him against G-B Governor Mir Ghazanfar Ali Khan’s son Salim Khan. The election was cancelled and an appeal against his acquittal was immediately accepted, thereby rendering him ineligible for contesting elections.³⁶⁹

158. Section 11 EE of the ATA, commonly known as the “Scheduled Four”, is meant to be used against “proscribed organizations” not directly involved in terrorism but suspected of sectarian violence.³⁷⁰ However, in G-B, the Scheduled Four has been used for surveillance of youth activists, human rights defenders and political workers.³⁷¹ Activists told HRCP that

³⁵⁹ HRCP, “Gilgit-Baltistan: Aspirations of identity, integration and autonomy”, pp.17-18.

³⁶⁰ Ibid.

³⁶¹ CCPR/C/PAK/CO/1, paras. 21-22.

³⁶² Ibid.

³⁶³ CAT/C/PAK/CO/1, para. 12.

³⁶⁴ HRCP, “Gilgit-Baltistan: Aspirations of identity, integration and autonomy”, p.18.

³⁶⁵ Ibid.

³⁶⁶ Ibid.

³⁶⁷ “Case closed: G-B Chief Court acquits Baba Jan, 11 other protesters”, *The Express Tribune*, 9 April 2015. Available from <https://tribune.com.pk/story/867209/case-closed-g-b-chief-court-acquits-baba-jan-11-other-protesters/>.

³⁶⁸ “Gilgit-Baltistan court upholds life sentence for Baba Jan”, *The News International*, 10 June 2016. Available from <https://www.thenews.com.pk/latest/126846-Gilgit-Baltistan-court-upholds-life-sentence-Baba-Jan>.

³⁶⁹ HRCP, “Gilgit-Baltistan: Aspirations of identity, integration and autonomy”, p.18.

³⁷⁰ Pakistan, Anti-Terrorism Act, 1997, p.11. Available from <http://www.molaw.gov.pk/molaw/userfiles1/file/Anti-Terrorism%20Act.pdf>.

³⁷¹ HRCP, “Gilgit-Baltistan: Aspirations of identity, integration and autonomy”, p.20.

police do not share specific charges against them but expect them to report their whereabouts to the local police station regularly.³⁷² In 2016, media reported that around 140 people from G-B had been placed under the Scheduled Four to avoid any protests against CPEC projects.³⁷³

D. Violations of land rights

159. Several communities in G-B have been raising concerns about the impact of CPEC on their lives. HRCP was informed that G-B authorities had forcibly evicted locals in Maqpoon Das area, while the Chief Secretary of G-B had allocated the same land to state authorities for the CPEC.³⁷⁴ The displaced claimed they had not received compensation or relocation from the authorities.³⁷⁵ OHCHR has received information that indigenous people in G-B have complained of not being properly informed or consulted on decisions affecting them and their livelihoods. Additional work may be needed to verify these allegations.

E. Restrictions on the freedom of religion or belief

160. Similar to the Constitution of Pakistan, AJK's Interim Constitution also defines who may be considered to be a Muslim.³⁷⁶ This definition is used to declare members of the Ahmadiyya community as non-Muslims and is the basis of institutional discrimination against them. On 6 February 2018, the AJK Legislative Assembly passed a constitutional amendment that declared the Ahmadiyya to be non-Muslims.³⁷⁷

161. Pakistan's blasphemy provisions³⁷⁸ are also reportedly in force in AJK and G-B.³⁷⁹ They have been criticized by several international Treaty Bodies and experts as they violate a range of international human rights principles and embolden those who instigate violence against religious minorities.³⁸⁰

³⁷² Ibid.

³⁷³ "Strict Watch: 140 people placed under Schedule-IV of anti-terrorism act", *The Express Tribune*, 10 May 2016. Available from <https://tribune.com.pk/story/1100218/strict-watch-140-people-placed-under-schedule-iv-of-anti-terrorism-act/>.

³⁷⁴ HRCP, "Gilgit-Baltistan: Aspirations of identity, integration and autonomy", p.20.

³⁷⁵ Ibid.

³⁷⁶ Article (3), Azad Jammu and Kashmir Interim Constitution Act, 1974.

³⁷⁷ "AJK parliament declares Ahmadis as non-Muslims", *The Nation*, 7 February 2018. Available from <https://nation.com.pk/07-Feb-2018/ajk-parliament-declares-ahmadis-as-non-muslims>. "Ahmadis are not Muslims, decides AJK", *The News*, 7 February 2018. Available from <https://www.thenews.com.pk/print/277827-ahmadis-are-not-muslims-decides-ajk>.

³⁷⁸ Chapter 15 of Pakistan Penal Code deals with "offences relating to religion" provides the legal basis action against blasphemy. Section 295-C provides life sentence or the death penalty for anyone using derogatory remarks against the Holy Prophet. Section 298-B and 298-C outline the Islamic religious activities that cannot be undertaken by groups described as Ahmadiyya, Qadiani or Lahori group; Pakistan, Penal Code [Pakistan], Act No. XLV, 6 October 1860. Available from <http://www.refworld.org/docid/485231942.html>.

³⁷⁹ Austrian Centre for Country of Origin & Asylum Research and Documentation, "Pakistan-Administered Kashmir (Azad Kashmir and Gilgit-Baltistan)", 7 May 2012, p. 74. Available from https://www.ecoi.net/en/file/local/1028814/90_1337596756_accord-pakistan-20120507-kashmir.pdf. Freedom House, "Freedom in the World 2016".

³⁸⁰ Blasphemy laws violate freedom of religion and belief, freedom of expression, right to equality, right to life. Interim report of Special Rapporteur on freedom of religion or belief Ahmed Shaheed (A/72/365), 28 August 2017; Report of the Special Rapporteur on freedom of religion or belief Ahmed Shaheed (A/HRC/37/49), 28 February 2018, Human Rights Committee, Concluding Observations on the initial report of Pakistan (CCPR/C/PAK/CO/1), 23 August 2017.

VIII. Civilians killed and injured by increasing ceasefire violations

162. Following border skirmishes in 2002 and 2003, India and Pakistan re-established a ceasefire along the Line of Control and Working Boundary in November 2003.³⁸¹ However, both countries have accused each other of repeatedly violating the ceasefire over the last 15 years. According to figures provided by the two governments, ceasefire violations seem to have been increasing between 2016 and April 2018. Media and civil society reports indicate incidents of cross-border shelling and firing have been increasing precipitously since January 2018. As a result there appears to have been increasing civilian casualties and a large number of people being displaced.

163. According to the Government of Pakistan, India committed 415 violations between 1 January and 2 March 2018, which led to the death of 20 civilians and injuries to 71 others;³⁸² It claimed India committed 1,970 violations³⁸³ in 2017 killing 54 civilians and injuring 174.³⁸⁴ The Government of India claims that Pakistan committed over 560 violations between 1 January and 19 March 2018, killing 23 civilians and injuring over 70 people.³⁸⁵ It blamed Pakistani forces for committing over 970 ceasefire violations killing 12 civilians and injuring over 70 others in 2017.³⁸⁶ While Pakistan accused India of 382 ceasefire violations in 2016,³⁸⁷ India blamed Pakistan for 449 violations.³⁸⁸

164. According to UNMOGIP, the peacekeeping mission has received 141 alleged ceasefire violations complaints from Pakistan between the start of 2018 and 27 March 2018, 479 complaints in 2017 and 115 complaints in 2016. UNMOGIP does not collect data on civilian casualties. India has not submitted complaints to UNMOGIP since 1972.

IX. Conclusions and recommendations

165. This report highlights the wide range of ongoing serious human rights violations and patterns of impunity in Indian-Administered Kashmir particularly from July 2016 to April 2018. It also raises significant human rights concerns in Pakistan-Administered Kashmir.

166. OHCHR recognizes the complexity of the historical background and political issues that has led to the current situation in Kashmir, which has been divided between India and Pakistan. People on both sides of the Line of Control have been detrimentally impacted and suffer from limitations or denial of a range of human rights.

167. There remains an urgent need to address past and ongoing human rights violations and to deliver justice for all people in Kashmir who have been suffering seven decades of conflict. Any resolution to the political situation in Kashmir should entail a commitment to ending the cycles of violence and accountability for past and current human rights violations

³⁸¹ Parliament of India, Rajya Sabha, Unstarred question 288, 4 December 2003. Available from <http://mea.gov.in/rajya-sabha.htm?dtl/8839/q+288++indias+proposals+for+normalising+relations+with+pakistan>.

³⁸² Pakistan, Ministry of Foreign Affairs, *Ceasefire violations by India on 2nd March 2018*. Available from <http://www.mofa.gov.pk/pr-details.php?mm=NTk00Q>.

³⁸³ Ibid.

³⁸⁴ Pakistan, Ministry of Foreign Affairs, *Ceasefire violations by India on 7 December 2017*. Available from <http://www.mofa.gov.pk/pr-details.php?mm=NTY5Mg>.

³⁸⁵ India, Ministry of External Affairs, *Pakistan Deputy High Commissioner summoned and protest lodged at the killing of five innocent civilians in unprovoked firing by Pakistan forces*, 19 March 2018. Available from <http://mea.gov.in/press-releases.htm?dtl/29670/pakistan+deputy+high+commissioner+summoned+and+protest+lodged+at+the+killing+of+5+innocent+civilians+in+unprovoked+firing+by+pakistan+forces>.

³⁸⁶ Parliament of India, Lok Sabha, Unstarred Question No. 2981, “Cross Border Shelling”, 13 March 2018. Available from <http://loksabha.nic.in>.

³⁸⁷ Pakistan, Ministry of Foreign Affairs, *Ceasefire violations by India on 7 December 2017*.

³⁸⁸ Parliament of India, Lok Sabha, Unstarred Question No. 2981, “Cross Border Shelling”.

and abuses committed by all parties and redress for victims. Such a resolution can only be brought about by meaningful dialogue that includes the people of Kashmir.

168. OHCHR is alarmed by the frequent reports of increasing infringements of the ceasefire agreement since the start of 2018, including shelling and shooting, that have resulted in civilian casualties and the forced displacement of people living along the Line of Control. The Governments of India and Pakistan should immediately cease all shelling and firing along the Line of Control and Working Boundary and do all that is reasonable to ensure that the rights of civilians living in these areas are respected and protected.

169. Restrictions on access to Kashmir imposed by both the Governments of India and Pakistan impede the work of civil society organizations, journalists and independent human rights experts including OHCHR. Lifting those restrictions would be an important step towards greater transparency in Kashmir.

OHCHR recommends:

To the Human Rights Council:

Consider the findings of this report, including the possible establishment of a commission of inquiry to conduct a comprehensive independent international investigation into allegations of human rights violations in Kashmir.

To the authorities in India:

- (a) Fully respect India's international human rights law obligations in Indian-Administered Kashmir,
- (b) Urgently repeal the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990; and, in the meantime, immediately remove the requirement for prior central government permission to prosecute security forces personnel accused of human rights violations in civilian courts;
- (c) Establish independent, impartial and credible investigations to probe all civilian killings which have occurred since July 2016, as well as obstruction of medical services during the 2016 unrest, arson attacks against schools and incidents of excessive use of force by security forces including serious injuries caused by the use of the pellet-firing shotguns;
- (d) Investigate all deaths that have occurred in the context of security operations in Jammu and Kashmir following the guidelines laid down by the Supreme Court of India;
- (e) Investigate all cases of abuses committed by armed groups in Jammu and Kashmir, including the killings of minority Kashmiri Hindus since the late 1980s;
- (f) Provide reparations and rehabilitation to all individuals injured and the family of those killed in the context of security operations;
- (g) Investigate and prosecute all cases of sexual violence allegedly perpetrated by state and non-state actors, and provide reparations to victims;
- (h) Bring into compliance with international human rights standards all Indian laws and standard operating procedures relating to the use of force by law enforcement and security entities, particularly the use of firearms: immediately order the end of the use of pellet-firing shotguns in Jammu and Kashmir for the purpose of crowd control;
- (i) Amend the Jammu and Kashmir Public Safety Act, 1978 to ensure its compliance with international human rights law;

- (j) Release or, if appropriate, charge under applicable criminal offences all those held under administrative detention and ensure the full respect of standards of due process and fair trial guaranteed under International law;
- (k) Treat any person below the age of 18 who is arrested in a manner consistent with the Convention on the Rights of the Child;
- (l) Investigate all blanket bans or restrictions on access to the Internet and mobile telephone networks that were imposed in 2016, and ensure that such restrictions are not imposed in the future;
- (m) End restrictions on the movement of journalists and arbitrary bans of the publication of newspapers in Jammu and Kashmir.
- (n) Ensure independent, impartial and credible investigations into all unmarked graves in the state of Jammu and Kashmir as directed by the State Human Rights Commission; if necessary, seek assistance from the Government of India and /or the international community. Expand the competence of the Jammu and Kashmir State Human Rights Commission to investigate all human rights violations and abuses in the state, including those allegedly committed by central security forces;
- (o) Ratify the International Convention for the Protection of all Persons from Enforced Disappearance, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and introduce enabling domestic laws as recommended during India's UPR in 2008, 2012 and 2017;
- (p) In line with its standing invitation to the Special Procedures, accept the invitation requests of the almost 20 mandates that have made such requests; in particular, accept the request of the Working Group on Enforced or Involuntary Disappearances and facilitate its visit to India, including to Jammu and Kashmir;
- (q) Fully respect the right of self-determination of the people of Kashmir as protected under international law.

To the Government of Pakistan:

- (a) Fully respect international human rights law obligations in Pakistan-Administered Kashmir;
- (b) End the misuse of anti-terror legislation to persecute those engaging in peaceful political and civil activities and expressions of dissent, and amend the Anti-Terrorism Act to bring it in line with international human rights standards, including by incorporating human rights safeguards;
- (c) Federal and local authorities should amend sections of the Interim Constitution of Azad Jammu Kashmir and other relevant legislation that limit the rights to freedoms of expression and opinion, and peaceful assembly and association;
- (d) Immediately release from prison or house arrest any political activists, journalists and other civil society actors who have been convicted for peacefully expressing their opinions;
- (e) Federal and local authorities should amend the constitutions of Azad Jammu and Kashmir and Gilgit-Baltistan to end the criminalization of the Ahmadiyya Muslims and to allow to them to freely and safely exercise their freedom of religion or belief;
- (f) Abolish blasphemy provisions in Azad Jammu Kashmir and Gilgit-Baltistan to facilitate the enjoyment of freedom of religion and belief by all people;
- (g) Fully respect the right of self-determination of the people of Kashmir as protected under international law.