

UNITED NATIONS HUMAN RIGHTS COUNCIL

**Submission by the Association of Parents of Disappeared Persons to the
Universal Periodic Review of India**

Submitted on 22 September 2016

Association of Parents of Disappeared Persons (APDP)¹ is a collective of relatives of victims of enforced and involuntary disappearances in Kashmir. The APDP was formed in 1994 to organize efforts to seek justice and get information on the whereabouts of family members who have been subjected to enforced disappearance. It presently consists of family members of about one thousand victims. APDP actively campaigns for an end to the practice and international crime of involuntary and enforced disappearances at local, national and international platforms. Members of the APDP have been engaged in documenting enforced disappearances in Kashmir since 1989 and have collected information on over one thousand such cases, so far. APDP is currently a recipient of funding from the United Nations Voluntary Fund for Victims of Torture for work on torture in Kashmir.

¹ <http://apdpkashmir.com/home/>

1. The Association of Parents of Disappeared Persons (APDP) welcomes this opportunity to make a submission to the Working Group on the Universal Periodic Review on the widespread and systematic violation of human rights in Kashmir.
2. This submission details the following human rights violations in Kashmir:
 - Enforced disappearances (ED)
 - Sexual violence
 - Legal immunity emboldening impunity
 - Arbitrary arrest and detention
 - Unnecessary, disproportionate and excessive use of force

The conclusion suggests Recommendations that we urge be made during India's Universal Periodic Review 2017.

Enforced disappearances

3. Reports suggest that over 8000 people have been disappeared in Kashmir since 1989.² Even as recently as November 2015, APDP monitoring has recorded 3 cases of enforced disappearance from Kupwara region.³ A large majority of these cases remain unresolved, and families are left searching for relatives and loved ones for years.
4. Families face insurmountable hurdles while seeking accountability for enforced disappearance of their family members disappeared persons. Police actively discourage families from recording official complaints, and are unwilling to provide information about the whereabouts of the disappeared persons. A major concern is that enforced disappearances are not codified as a criminal offence, and hence complaints are filed under provisions of “abduction” and “kidnapping” under the Ranbir Penal Code,⁴ or merely noted as “missing” persons. These legal provisions are inadequate, and do not capture the nature and complexity of the crime of enforced disappearance; do not incorporate the element of state involvement in the crime; or that families are also victims of this crime. In the few instances where families have been able to file writ petition before the High Court or initiate other legal processes, the case drags interminable in court with the state and security forces adopt a hostile and obstructionist position Legal provisions entrenching immunity [see section below] further serve to deny justice to families.

² See an interview with APDP's Parveena A hanger here:

http://therealnews.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=10359

. See also: https://www.hrw.org/reports/2006/india0906/6.htm#_ftnref357

³ <http://kashmirreader.com/2016/03/10/three-missing-kupwara-men-still-untraced/>

⁴ Sections 364 and 365 of the Ranbir Penal Code.

5. Enforced disappearances have grievously impacted families and particularly women. The pain and trauma caused by the enforced disappearance of a family member where the primary earner has been disappeared, families often struggle economically. Few families have received an ex-gratia relief of one hundred thousand INR, but there are no mechanisms for providing compensation or reparation to victim families. Further, the ex-gratia relief awarded by State often entails an overt or covert threat to not pursue accountability and justice for the ED. ED also have significant legal ramifications on the families and next of kin as property rights, rights of guardianship, and right to remarry, remain unresolved for years. Women whose husbands have suffered ED are referred to as “half-widows”. In the course of monitoring, APDP has also found instances where the police have falsely implicated family members of disappeared persons in criminal offences - such as “arms possession” - to discourage them from pursuing the case further.

6. India signed the International Convention for the Protection of All Persons from Enforced Disappearance (CED) in 2007⁵, but has yet not ratified it. The Working Group on Enforced or Involuntary Disappearances (WGEID) has requested a visit to India, which has yet not happened. In previous UPRs in 2008 and 2012, states recommended that India ratify the CED. In 2008, the government said, “The process of its ratification is underway”,⁶ however in 2012, it did not accept any recommendations regarding the CED.⁷

Sexual Violence

7. Sexual violence by armed forces remains uninvestigated and punished in Kashmir. In the Kunan Poshpora cases⁸, no investigation has taken place into complaints of mass rapes in 1991, the Rajputana Rifles unit of the Indian army.

8. The Criminal Law (Amendment) Act 2013, which made substantive legal amendments to ensure accountability for sexual violence, also added an Explanation to section 197 of the Code of Criminal Procedure, to clarify that no prior sanction of the government was required to prosecute public servants including members of armed forces in cases of sexual violence.⁹ Pertinently, the Jammu and Kashmir Criminal Laws (Amendment) Act, 2013, did not similarly amend the analogous provision in their Code of Criminal Procedure. Therefore, section 197 of the Jammu and Kashmir Code of Criminal Procedure continues to operate in its pre-2013 form and requires prior government sanction for prosecution even for sexual offences, while it stands amended in the rest of India. Not even a single case of sexual violence by security forces has been prosecuted so far before a civilian court.

AFSPA - encouraging impunity

5 https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&clang=en

6 http://ap.ohchr.org/documents/E/HRC/decisions/A_HRC_DEC_8_108.doc

7 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/167/57/PDF/G1216757.pdf?OpenElement>

8 <http://zubaanbooks.com/shop/do-you-remember-kunan-poshpora/>

9 <http://indiacode.nic.in/acts-in-pdf/132013.pdf>

9. Several so-called security laws operate in Kashmir including the Jammu and Kashmir Armed Forces (Special) Powers Act, 1990 [J&K AFSPA], and the Public Safety Act, 1978. The AFSPA is a draconian law that gives the armed forces in “disturbed areas” the power to arrest without warrant, enter and search any premises, and in certain circumstances, “fire upon or otherwise use force, even to the causing of death”. These vague and overbroad provisions have created a climate of impunity and facilitated other human rights violations.

10. Under Section 7 of J&K AFSPA¹⁰, governmental sanction is required before any member of the armed forces can be prosecuted for crimes in a civilian court. Right to Information queries disclose that sanction has never been granted for prosecution in a case human rights violation. Section 197 of the Code of Criminal Procedure is also similar. Several Treaty bodies, special procedures,¹¹ as well as national authorities¹² have recommended that the AFSPA be repealed. The Justice Verma Committee Report 2013 in its recommendations with regard to offences against women in conflict zones stated that there is an imminent need to review the continuance of AFSPA.¹³ In a recent judgment on extrajudicial killings titled *EEVFAM and Anr. versus Union of India*, the Supreme Court also reiterated the need to ensure accountability for excessive use of force, even in areas where the AFSPA operates.¹⁴ While several countries recommended that India repeal the AFSPA in its 2008 and 2012 UPRs, the Indian government has refused to accept these recommendations.

11. Laws governing the armed forces – such as the Army Act – allow for security personnel accused of crimes, including human rights violations, to be tried in military courts and not civilian courts. Military tribunals are the wrong place to try cases of human rights violations. They are structurally neither independent nor impartial. The judge, prosecutor and defense are usually members of the armed forces. Furthermore, the trials are not public, and victims and their families are unable to participate. There have been recent instances where military tribunals have convicted and punished people for human rights violations. However, it is still essential that such trials happen in civilian courts.

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http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/Armedforces_J&K_Spl.powersact1990.pdf

11 Several UN human rights bodies have recommended that AFSPA be repealed or significantly amended - Committee on the Elimination of Discrimination against Women (2014), the Special Rapporteur on violence against women (2014), the Special Rapporteur on extrajudicial, summary or arbitrary executions (in 2013 and again in 2015), the Special Rapporteur on the situation of human rights defenders (2012).

12 The Justice Jeevan Reddy Committee advocated its repeal; the Fifth Report of the Second Administrative Reforms Commission; The Justice Verma Committee Report 2013 called for a review on the continuance of AFSPA [Para 12(g) at pg 151]; The Hegde Commission – a fact finding commission set up by the Supreme Court in *EEVFAM and Anr. v Union of India* - stated that AFSPA had become “a symbol of oppression, an object of hate, and an instrument of discrimination and high-handedness.” Former Union Home Minister Chidambaram in 2016 stated that AFSPA is not necessary:

<http://indianexpress.com/article/opinion/columns/across-the-aisle-even-to-the-causing-of-death/>

13

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

14 http://supremecourtindia.nic.in/FileServer/2016-07-08_1467967629.pdf

12. In 2012, the Supreme Court of India issued an order in the case of General Officer Commanding v CBI. This involved the extrajudicial killing of 5 people by security forces. Following an investigation, the Central Bureau of Investigation had filed charges stating this was a fake encounter. In this case, the Court reaffirmed the validity of the sanction provision and the discretion of the army to try such cases in military courts.¹⁵

Arbitrary arrest and detention

13. Authorities in Kashmir use “preventive” detention laws to keep persons in detention without charge or trial for long periods of time. The Jammu and Kashmir Public Safety Act (PSA), for example, authorizes such detention for a period of up to 2 years. As reports in 2011 and 2012 have shown, there have been 8000-20000 detentions under the PSA in Kashmir in the last 2 decades.¹⁶ The PSA is used with provisions of the Code of Criminal Procedure to keep persons in detention for years at a time. By its own admission, during 2009 to 2014, 1127 persons were arrested and detained without trial. According to official records, at least 9329 persons¹⁷ have been detained in 13 jails of the state since 2002, while 1309 persons¹⁸ have been detained only in the last 6 years.
14. Such administrative detention is contrary to international human rights law. While Recommendations against such pre-trial detentions were raised in previous UPRs but not accepted by India.

Unnecessary and excessive use of force: the 2016 uprising

15. In July 2016, Indian security forces extra-judicially killed Burhan Wani – a suspected militant leader. His death was followed by wide public gatherings and protests in Kashmir. The state responded to these protests using lethal, excessive and unnecessary force and restricting the freedom of movement, association, and assembly. In some cases, protesters also threw stones. The protests are still on-going at the time of writing this submission.
16. In 71 days since the protests began, death toll stands at 82 and number of injured has reached 13,000. ¹⁹ The military presence in Kashmir has increased considerably in the last 3 months. Now thousands more soldiers are to be posted in Kashmir to deal with the ongoing protests.²⁰ Police have used tear gas shells, live ammunition, as well as pellet guns on protesters. According to the CRPF Inspector General, 8,650 tear-smoke shells were

¹⁵ <https://indiankanoon.org/doc/40133779/>

¹⁶ http://www.amnestyusa.org/sites/default/files/asa200012011en_11.pdf

¹⁷ <http://kashmirwatch.com/9329-jailed-in-jk-excluding-foreigners-only-38-held-under-psa/>

¹⁸ <http://news.statetimes.in/1309-persons-detained-under-psa-in-last-6-years-jammu-and-kashmir-govt/>

¹⁹ <http://www.greaterkashmir.com/news/front-page/day-71-toll-86-injured-13-000-it-isn-t-stopping-class-7-student-killed-in-srinagar/228611.html>

²⁰ <http://www.ndtv.com/india-news/exclusive-key-change-in-army-deployment-in-kashmir-valley-1456602>

used from July 8 to August 11, and around 2,671 pellets have been used too.²¹ In another incident a 30 year old lecturer was beaten to death in Khrew area of South Kashmir, of which army took responsibility.²² Similar incidents reported include the killing of a 21 year old man who worked as an ATM guard, with about 360 pellets lodged in his abdomen;²³ and the death of an 11 year-old boy who also succumbed to pellet injuries.²⁴ The victims have been as old as 82 years old and as young as 3 years old.

17. Pellet guns were introduced in Kashmir by the government in 2010 describing them as a “non lethal” crowd control method. Since 8th of July, there has been an indiscriminate use of pellet guns. 1.3 million pellets were used in 32 days. Around 14% of the victims are below the age of 15. 933 cases of pellets were reported at SMHS in the first week of August.²⁵ The pellet victims include mostly teenagers and school going children who have been maimed for life.²⁶ About 90% of the pellets have been hit above the waist. ²⁷ This clearly shows an intention to aim at the vital organs of the body with an intention to incapacitate or kill.²⁸ The use of pellet guns constitutes an unprovoked and excessive use of force against the people. According to local media houses, more than 500 eye surgeries have been carried out in the two largest hospitals in Kashmir since July 8th.²⁹ After several protests against the use of pellet guns, India started considering alternatives³⁰ and approved the use of “chili shells” as a replacement. Chili shells are also very harmful.³¹ However, despite this approval, there has been no reduction in the use of pellet guns.³²
18. In the course of curbing protests, the state has further restricted the freedom of expression, movement and association. There has been a crackdown on media and communication, mobile phone and Internet services have been barred which made

21 <http://www.thehindu.com/todays-paper/13-million-pellets-used-in-32-days-crfp-tells-hc/article9005202.ece>

22 <http://www.firstpost.com/india/kashmir-unrest-30-year-old-professor-shabir-ahmad-mungoo-dies-after-being-thrashed-by-drunk-armed-forces-2964990.html>

23 <http://indianexpress.com/article/india/india-news-india/kashmir-21-year-old-killed-by-pellets-case-registered-against-security-personnel-2951122/>

24 <http://indianexpress.com/article/india/india-news-india/protests-in-kashmir-valley-after-body-of-11-year-old-found-with-pellets-3036803/>

25 <http://www.thehindu.com/news/national/other-states/14-of-pellet-gun-victims-in-jk-below-15/article9014946.ece>

26 <http://m.greaterkashmir.com/news/life-style/story/227818.html>

27 <http://www.bbc.com/news/world-asia-india-36822567>

28 http://www.nytimes.com/2016/08/29/world/asia/pellet-guns-used-in-kashmir-protests-cause-dead-eyes-epidemic.html?ref=collection/timestopic/Kashmir&action=click&contentCollection=world®ion=stream&module=stream_unit&version=latest&contentPlacement=2&pgtype=collection&r=3

29 <http://m.greaterkashmir.com/news/life-style/story/225799.html>

30 https://www.washingtonpost.com/world/asia_pacific/pellet-guns-blind-too-many-protesters-so-india-seeks-a-new-nonlethal-weapon/2016/08/30/47d14b3e-6e11-11e6-993f-73c693a89820_story.html

31 <http://www.indiatimes.com/news/india/here-s-everything-you-need-to-know-about-the-chilli-based-pava-shells-which-is-likely-to-replace-pellet-guns-in-kashmir-260623.html>

32 <http://www.thecitizen.in/index.php/NewsDetail/index/3/8650/Pellet-Guns-Continue-to-Kill-2-Dead-50-Injured>

communication difficult and left the locals surrounded with rumours and lack of information.³³ Authorities in Kashmir ordered a ban on newspaper printing and raided news agencies and seized newspapers.³⁴ Journalists have also been attacked with pellets.³⁵ The violation of their freedom of expression and constant persecution can be sensed from the arrest of a Kashmiri man in Chhatisgarh simply for ‘liking’ certain “anti-India” material on a social networking site.³⁶

19. On Eid, for the first time in the history of Kashmir, congregational prayers were not allowed in three major places – Hazratbal, Eidgah and Jama Masjid, infringing the freedom of religion³⁷
20. There have been several allegations of attacks on hospitals, ambulances³⁸, medics and paramedics by security forces.³⁹ In a statement, a Doctor’s Association strongly condemned attacks on medical facilities stating that it was a deliberate attempt to target doctors and hospitals.⁴⁰ There have been instances of firing and tear gas shelling in hospitals. In Chadoora, forces entered the hospital, attacked staff and vandalized hospital property. There have been such incidents reported from other areas of Kashmir as well. ⁴¹ Even the ambulance driver ferrying patients to the hospital was attacked with pellets by security forces.⁴² Such attacks are violations of human rights law and humanitarian law.
21. Prominent human rights activist Khurram Parvez⁴³ was stopped at Delhi Airport and not allowed to board a flight to Geneva on 14th September 2016 to attend the 33rd session of the United Nations Human Rights Council.⁴⁴ Upon return to Kashmir on 15th September, Khurram was placed under preventive detention by J&K Police on trumped

33 <http://www.nytimes.com/2016/07/19/world/asia/news-crackdown-in-kashmir-leaves-locals-surrounded-by-rumors.html?action=click&contentCollection=Asia%20Pacific&module=RelatedCoverage®ion=Marginalia&pgtype=article>

34 https://www.washingtonpost.com/world/authorities-in-indian-controlled-kashmir-seize-newspapers-shut-down-cable-tv/2016/07/16/47d0ada0-4b89-11e6-90a8-fb84201e0645_story.html

35 <http://kashmirreader.com/2016/09/04/kashmir-two-photojournalists-shot-at-with-pellets/>

36 <http://indianexpress.com/article/india/india-news-india/kashmiri-held-on-train-for-liking-anti-india-web-posts-2954534/>

37 https://www.washingtonpost.com/world/asia_pacific/fresh-clashes-kill-1-protester-in-indian-kashmir/2016/09/13/c032caa4-7978-11e6-8064-c1ddc8a724bb_story.html

38 <http://www.hindustantimes.com/india-news/50-ambulances-attacked-in-kashmir-activists-blame-security-forces/story-bCmMFbOZl4x6bzzl4jXTwO.html> and <http://onlykashmir.in/crpf-attacked-hospital-ambulances-ferrying-wounded-youth/>

39 <http://twocircles.net/2016jul11/1468247544.html#.V95p-4h97rc>

40 <http://www.thehindu.com/news/cities/Delhi/kashmir-hospital-seeks-action-against-crpf-personnel/article8914326.ece>

41 <http://www.thecitizen.in/index.php/NewsDetail/index/3/8414/Forces-Raid-Hospitals-in-Kashmir>

42 <http://indianexpress.com/article/india/india-news-india/kashmir-ambulance-driver-fired-with-pellets-while-ferrying-patients-to-the-hospital-2986778/>

43 <http://www.nytimes.com/2016/09/17/world/asia/khurram-parvez-united-nations.html?ref=asia>

44 <http://www.nytimes.com/2016/09/16/world/asia/india-kashmir-khurram-parvez-jkccs.html?ref=asia>

up charges for “inciting trouble and disrupting peace”.⁴⁵ A day after the Court ordered the release of Khurram, the J&K police booked him under the Public Safety Act. At the time of writing he was being held in Kotbalwal jail, Jammu. Numerous detentions⁴⁶ are made under the Public Safety Act, 1978, which allows for detention without trial for upto 6 months.⁴⁷

22. The curfew and increased militarization of Kashmir has negatively impacted the Right to Education. Due to curfew and insecurity children did not attend school for 3 months. After 11 years Border Security Force (BSF) entered Srinagar and occupied schools.⁴⁸ 20 schools were transformed into battlefields by BSF despite clear international and national guidelines that the schools must not be occupied during conflict.⁴⁹ A school at Zachaldara remains under army occupation for 20 years.⁵⁰
23. There has been a general shortage of essential commodities because of severe restrictions in place.⁵¹ Van drivers of milk companies⁵² allege harassment at the hand of forces at Pulwama, Kakapora and various other places.⁵³ The vegetable and fruit markets in Srinagar and other areas have also not been allowed to operate freely. The farmers find it difficult to yield paddy because of the restrictions imposed on their movement.⁵⁴

Recommendations

- A. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
- B. Facilitate a visit of the Working Group on Enforced or Involuntary Disappearances to Kashmir;
- C. Ensure that enforced disappearance is codified as a criminal offence consistent with CED;

45 <http://indianexpress.com/article/india/india-news-india/khurram-parvez-human-rights-activist-detained-jammu-kashmir-afad-3037889/>

46 <http://kashmirreader.com/2016/09/11/govt-slaps-psa-on-175-people-250-to-be-booked/>

47 http://www.amnestyusa.org/sites/default/files/asa200012011en_11.pdf

48 <http://indianexpress.com/article/india/india-news-india/kashmir-unrest-bsf-stays-in-srinagar-schools-people-question-govts-sincerity-about-education-2993637/>

49 <http://www.kashmirawareness.org/paramilitary-forces-occupy-20-schools-50-vital-installations-govt-says-no-comment/>

50 <http://kashmirreader.com/2016/03/31/20-years-later-school-remains-under-army-occupation-in-zachaldara/>

51 <http://indianexpress.com/article/india/india-news-india/kashmirs-longest-curfew-kashmir-unrest-it-is-painful-when-your-baby-needs-milk-and-youre-helpless-2996460/>

52 <http://www.greaterkashmir.com/news/business/milk-companies-face-forces-wrath-on-roads/226323.html>

53 <http://qz.com/763943/paralysed-for-nearly-50-days-kashmir-is-living-its-worst-nightmare-in-decades/>

54 <http://www.greaterkashmir.com/news/business/story/228592.html>

- D. Ensure that all allegations and complaints of enforced disappearances and sexual violence by security forces are impartially investigated; that perpetrators are brought to justice; and victims and families receive reparations;
- E. Repeal J&K AFSPA, and immediately grant sanction for prosecution in all pending cases involving human rights violations;
- F. Repeal the J&K Public Safety Act, and other provisions authorizing administrative detention.
- G. Amend the Army Act, and analogous provisions in all laws governing the Central Armed Police Forces, and ensure that all cases of human rights violations of civilians are tried in civilian courts, not military courts;
- H. End the use of pellet guns;
- I. Investigate all allegations of excessive and lethal use of force, and prosecute and punish the men in uniform;
- J. End unreasonable restrictions on the freedom of- speech and expression, assembly and movement.
- K. End attacks on medical facilities; the occupation of schools;
- L. Ensure protection of journalists and human rights defenders.