

Kashmir Scholars Action Group
Civil society stakeholders report submitted to Universal Periodic Review 2017
Indian-administered Kashmir
22 September, 2016

Kashmir Scholars Action Group is an interdisciplinary group of scholars of various nationalities engaged in research on the region of Kashmir. Our research on the Kashmir conflict addresses its history, its consequences for the region and beyond, and its possible resolution. It examines the implications for an internationally mediated political solution, and is of relevance to policy makers.

KSAG does not request that the brief be kept confidential.

This report is based on our sustained and active engagement with civil society groups in Indian-controlled Kashmir. Each of us has written about Kashmiri history, society and politics; and we are particularly concerned about the present conditions of violence. This report is part of our urgent efforts to check the violent and extra-legal nature of the state's response to Kashmiris, who have mobilized in support of their demand for *azadi* (freedom). Even as we list details of the humanitarian crisis, we wish to make clear that we are calling not only for the resumption of basic civil services, the rule of law, and the restoration of human rights in Kashmir, but, most importantly, for an internationally mediated political solution for this ongoing crisis.

A full list of members can be seen at
<https://kashmirscholars.wordpress.com/about/>

1. At the time of writing, 22 September 2016, the human rights and humanitarian situation in Indian-administered Kashmir has reached catastrophic proportions. The long-term pattern of massive human rights violations carried out with total impunity by Indian forces must be recognized as crimes against humanity.
2. Today is the 76th continuous day of curfew in Indian-administered Kashmir. Since July 8, 2016, firing on unarmed demonstrators by Indian forces has killed 87 people. Over 500 have been blinded by pellet-shotguns, and 11,000 maimed and wounded. There are extensive communication blockades; phones and Internet services remain suspended. Newspapers have had their phone lines disabled and their editors were required to censor news of the dead and the injured. Food and fuel supplies were also limited in different parts of Kashmir.
3. Over five hundred people, the majority of them teenagers (14%) and many young children under the age of ten, have been blinded by the "non-lethal" pellet guns used by the Indian forces. The number of wounded is estimated to be over six thousand. According to Indian army's own admission 1.3 million pellets have been used in 34 days.
On September 22, 2016, the newspaper Greater Kashmir reports that the High Court in Srinagar has refused a petition by the Bar Association to ban the use of pellet guns by Indian security forces. The Court also refused to prosecute military and police personnel responsible for firing pellet guns: "The Jammu and Kashmir High Court on Wednesday rejected a plea by a body of Kashmir lawyers seeking ban on use of pellet guns for crowd control. The Court also declined

the plea to prosecute officers who took the decision of using pellets at protestors and those who actually fired them.

“Having regard to the ground situation prevailing as of now and the fact that Government of India, Ministry of Home Affairs has already constituted a Committee of Experts through its Memorandum dated 26.07.2016 for exploring other alternatives to Pellet Guns—before filing the report by the Expert Committee and a decision taken at the Government level—we are not inclined to prohibit use of pellet guns in rare and extreme situations,” a division bench of Chief Justice N Paul Vasanthakumar and Justice Ali Muhammad Magrey said in its order.

The Court was hearing a Public Interest Litigation by the Kashmir High Court Bar Association seeking ban on use of pellets for crowd control, prosecution of those who allowed use of pellet guns and other issues."

4. Ambulances and hospitals have been attacked by Indian forces. More than 50 such incidents have been reported in this period. On the night of August 18, 2016, Ghulam Muhammad Sofi, an ambulance driver was shot by 300 – 400 pellets on his arm, yet still drove to SMHS hospital, Srinagar, with his patients. He suffered severe injuries to the right arm and shoulder but drove the ambulance with one hand to bring the passengers to the SMHS Hospital one kilometer away.

5. Army patrols in cities and towns are breaking into homes and attacking residents. On August 18/19, Shabir Ahmed Mungoo of Khrew, a 30-year old lecturer, was beaten to death by Indian Armed Forces, who broke into his home late at night.

A friend whose family lives in Srinagar wrote to a KSAG member that: " The news is worsening. Now the everyday supplies of milk, food, petrol and medicines that were delivered at night, are completely blocked. They are choking the public to the max. My parents home is under daily attack and the security forces have broken every glass pane in their house, they are prisoners in their own home."

4. Blanket repression against Kashmiri media companies and media persons. Journalists and photographers have been attacked and beaten. Most pro-freedom political leaders are under arrest.

5. Indian civilians have joined in the repression. On August 20th, the Jammu Transporters' Union and Oil Tanker Owners' Association has formally refused to supply petrol and cooking gas to the Kashmir valley. The only access road to Kashmir since 1947 runs through Jammu.

6. The civil administration is on the point of collapse and the Indian army is taking over schools and colleges. The elected government and civil administration more broadly has been severely ineffectual and/or silent through this period, with all decisions seemingly in the hands of Indian security personnel. Nor is there any attempt being made to return to civilian authority. Instead, the Indian military presence is being intensified and 2600 soldiers of the Border Security Force have been inducted into Kashmir, and they have occupied important college and school buildings.

7. Attacks on human rights defenders. On September 21, 2016, human rights defender Khurram Parvez, of the Jammu Kashmir Coalition of Civil Society was prevented from traveling to

Geneva to submit a civil society stakeholder's report to the Human Rights Council. On his return to Kashmir, he was arrested and detained without charges.

Disregarding the orders of the district magistrate for his release, Mr. Parvez has instead been charged under the Public Safety Act (PSA). Mr. Parvez is among the thousands of political prisoners in Kashmir being held under prolonged arrest for their political convictions. (For details please refer to Appendices 1 and 2).

8. These abuses follow a long-term pattern of human rights violations, continued violence and the absence of any functioning mechanisms for justice. Many groups and organizations like the Association of Parents of Disappeared Persons, Jammu and Kashmir Coalition of Civil Society, the Kashmir High Court Bar Association and others have recorded the abuses by Indian forces, including:

- Torture, arbitrary detention and custodial deaths
- Extrajudicial killings
- Rape
- Firing on unarmed demonstrators
- Enforced disappearances
- Unknown, unmarked and mass graves
- Attacks on human rights defenders, journalists, media houses, hospitals and medical personnel
- Prolonged (often "undeclared") curfew and attacks on civilian homes and property
- Enforcement of laws that provide impunity to Indian forces accused of human rights abuses

9. Indian-administered Kashmir remains one of the most highly militarized regions of the world. Since the beginning of the insurgency in 1989, there have been more than half a million Indian troops deployed in Kashmir, with estimates placing the number between 500,000 and 700,000. They are stationed not only along the contested borders with Pakistan and China but throughout the valley, dominating and controlling every aspect of civilian life. Their presence has created a reign of terror that stretches over a quarter of a century and that has touched every house in the valley. While India has used the insurgency as an excuse for the violence and abuses, the insurgency itself is a symptom, not a cause of the problem, which is the denial of the Kashmiri right to self-determination.

10. This long-term pattern of human rights violations and impunity must be recognized as constituting crimes against humanity as defined by the Rome Statute of the ICC.

Crimes against humanity are defined in Article 7 of the Rome Statute of the International Criminal Court: "For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the

jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health."

While India is not a member of the ICC, the definition in the Rome Statute of crimes against humanity and war crimes have become part of international customary law and are binding upon all states.

11. Recommendations

Urgent measures are needed to stop further abuse, create mechanisms for accountability and justice for past abuses, including reparation and the guarantee of non-repetition, and to initiate a political solution that fulfills the Kashmiri right to self-determination.

We urge the UN and the international community to take the following steps:

- 1) Require that the Indian government stop violence against Kashmiri civilians with immediate effect.
- 2) Create a UN Commission of Inquiry to investigate the massive human rights violations to date.
- 3) Work forcefully to demilitarize both sides of the Line of Control between India and Pakistan. Further, to demilitarize all of Kashmir and immediately revoke impunity laws such as the Armed Forces Special Powers Act (AFSPA) and the Public Safety Act (PSA) with immediate and retroactive effect.
- 4) Create credible mechanisms for accountability and justice, (such as an international criminal tribunal), for human rights abuses in Kashmir over the past three decades, including extrajudicial killings, torture, arbitrary detention, sexual and gendered violence, enforced disappearances and unknown and mass graves.
- 5) Create mechanisms and procedures that will enable Kashmiris on both sides of the Line of Control to meet freely and discuss their political futures
- 6) Recognize the right of the Kashmiri people to determine their own political future, and to mediate a just settlement based on the right to self-determination. In this process, international monitors must ensure that there is no government reprisal or intimidation against the people of Kashmir as they discuss and define future arrangements and express their political aspirations.

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