

Non-Paper

India's Massive and Consistent Human Rights Violations in Occupied Jammu and Kashmir



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Executive Summary

Jammu and Kashmir is one of the oldest unresolved disputes on the agenda of the UN Security Council. For the past 7 decades, India has resorted to ruthless oppression, committing grave human rights violations against unarmed Kashmiris in Indian Occupied Jammu and Kashmir (IOJ&K), to deny them from their inalienable right to self-determination – a right promised to the Kashmiris by numerous UN Security Council resolutions.

The egregious human rights violations prior to August 5th, 2019 have been documented in detail in the two Kashmir Reports of 2018 and 2019 of the Office of the High Commissioner for Human Rights (OHCHR).

The human rights situation in IOJ&K has further deteriorated post August 5th, 2019 due to illegal, unilateral Indian actions. Post August 5th, 2019, the UN Secretary General Antonio Guterres has expressed concerns “over reports of restrictions on the Indian-side of Kashmir, which could exacerbate the human rights situation in the region”.

The Office of the High Commissioner of Human Rights has expressed concerns on the excessive use of force including the use of pellet-firing shotguns, detention of political leadership, curbing of freedom of religion or belief, movement, peaceful assembly, and restricting their rights to health, education.

UN Special Rapporteurs have termed the shutdown of the internet and telecommunication networks in IOJ&K, as “inconsistent with the fundamental norms of necessity and proportionality,” and “a form of collective punishment of the people of Jammu and Kashmir, without even a pretext of a precipitating offence”. They have called the detentions in IOJ&K to “constitute serious human rights violations”.

Organization of Islamic Countries (OIC), Independent Permanent Human Rights Commission (IPHRC) has termed IOJ&K as “world’s largest prison”.

A snapshot of last 11 months of widespread, systematic, and gross human rights violations in IOJ&K is as under:

- India has imposed one of the longest military siege and incarceration (a year) of a population more than size of many developed countries – more than 8 million.
- All fundamental freedoms remain in abeyance.
- The impunity laws including Armed Forces Special Powers Act and Public Safety Act, are being used callously by the Indian occupation forces to carry out gross human rights abuses.
- A communications and internet blockade are in place, giving effect to a virtual siege.

- Muslims have been denied Friday and Eid prayers violating their fundamental freedom of religion or belief.
- Doctors and emergency personnel are being regularly harassed and there are reports of acute shortage of medical supplies.
- Senior Kashmiri leadership is languishing in jails, even during COVID-19 emergency.
- Thousands of youth have been abducted, enforced disappeared and put in prisons across India, with families having no access to their children.
- Reprisals especially of journalists and human rights defenders, to the extent of extrajudicial killing, are being pursued across IOJ&K.
- Unlawful Activities (Prevention) Act (UAPA) is being used to silence the human rights defenders. Kashmiri media houses are being vandalized and journalists being killed, beaten or being tried under UAPA.
- Rape is being employed as an instrument of state policy by India to terrorize the Kashmiris. Women and girls regularly face harassment including sexual violence.
- State-terrorism is being inflicted on the local population through fake “encounters” and indiscriminate use of pellet guns and live ammunition against unarmed civilians including women and children. In the recent report “Children and armed conflict” of the Secretary General covering the period January to December 2019, for the 75th Session of the General Assembly, regarding IOJ&K notes that “the casualties that occurred in Jammu and Kashmir were mainly caused by torture in detention, shootings, including from pellet guns...”.
- The use of excessive and indiscriminate force by the Indian security forces has resulted in extra-judicial killing of more than 200 Kashmiris and injuring of thousands.
- Cordon and Search Operations are a regular feature, in which innocent civilians are being tortured, intimidated, harassed, many families being rendered homeless and without shelter, as well as women and girls facing sexual violence.
- Villages have been ransacked and being tortured collectively and individually.
- The forced demographic change in IOJ&K under the new Domicile Rules by India is institutionalizing a system of domination over indigenous populations and their disempowerment and disenfranchisement- around 25,000 Indian nationals have been granted domicile certificates till date.

The atrocities in IOJ&K are putting enormous strain on the peace and security of the region, threatening escalation between two nuclear armed neighbours who have fought multiple wars over Kashmir. The champions of human rights cannot afford to remain silent in face of such cruelty, which has gone unchecked for far too long.

The international community must prevail upon India to ‘unlock’ freedoms¹ in IOJ&K, lift inhuman military siege, release all political prisoners, restore access to internet and communications services and allow people to enjoy all liberties and freedoms. Above all India should also allow the Kashmiris to exercise freely their inalienable right to self-determination, which remains the only abiding guarantee for a lasting peace in the region.

¹ <https://news.un.org/en/story/2019/10/1050141>

INTRODUCTION

The Indian Occupied Jammu and Kashmir (IOJ&K) has a long and tragic history of massive human rights abuses by Indian occupying forces, who for over seven decades are committing atrocities with complete impunity². Today, IOJ&K is the most militarized part of the world³, where close to a million security forces have been deployed to curb the legitimate struggle of the Kashmiris for their inalienable right to self-determination.

2. After cold-blooded murder of Burhan Wani in 2016, the Indian “state terrorism” against Kashmiris in IOJ&K reached unprecedented levels with attendant consequences for human rights. Taking serious note of these excesses, the United Nations human rights mechanisms, notable human rights organizations, independent observers, parliamentary bodies, think tanks and the international media took to report most extensively about the state of appalling human rights in IOJ&K.

3. One of the most significant pronouncements on India’s systematic and widespread violations of human rights in IOJ&K came from the United Nations High Commissioner for Human Rights, who published two comprehensive reports (2018⁴ and 2019⁵) on the despicable state of human rights in IOJ&K, repeatedly calling for establishment of a “Commission of Inquiry” (COI) to investigate gross and systematic violations of the rights of people of Jammu and Kashmir⁶. The Special Mandate Holders and Rapporteurs of the Human Rights Council have also frequently urged India to ease restrictions in Kashmir and hold the perpetrators of these heinous crimes accountable.

4. A new chapter in the repression of Kashmiris at the hands of Indian authorities was opened on 5th August 2019, when India illegally and unilaterally changed the status of IOJ&K and paved the way for demographic change in the valley with an aim to turn the indigenous Muslim population into a minority. This was accompanied by a huge security clampdown in the occupied territory, a communication blackout including shutdown of internet and telephone services, an excruciating curfew and an additional deployment of additional 180,000 paramilitary troops, turning the territory into world’s biggest open-air prison.⁷

2. <https://amnesty.org.in/projects/justice-jammu-kashmir/>

3. <https://www.forbes.com/sites/ranisingh/2016/07/12/kashmir-in-the-worlds-most-militarized-zone-violence-after-years-of-comparative-calm/#67299ebf3124>

4. <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

5. https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf

6. While Pakistan welcomed these reports and supported the call for establishment of COI, India rejected them.

7. <https://www.bbc.com/news/world-asia-india-49294301>

5. Since then, there has been no letup in the worsening humanitarian situation in IOJ&K. Almost a year into the siege, hundreds of political leaders⁸, including pro-Indian political figures⁹, remain detained, thousands of young men and children¹⁰, political activists, human rights defenders, journalists¹¹ and lawyers¹² have been arbitrarily arrested and nearly five thousand incarcerated¹³. Muslims have been denied Friday and Eid prayers violating their fundamental freedom of religion or belief.¹⁴ Doctors and emergency personnel are being regularly harassed and there are reports of acute shortage of medical supplies.¹⁵

6. Despite calls to ease up the restrictions, the India authorities also callously exploited the COVID-19 crisis to further advance its unlawful occupation. The coronavirus has exacerbated the suffering of the Kashmiris condemning them to the precipice of a vast human tragedy. The prolonged siege in Indian occupied Jammu & Kashmir had already depleted essential medical supplies in hospitals, turning them into graveyards¹⁶. Now with the coronavirus spreading rapidly, the hospitals are entirely incapable of meeting the public health crisis.

7. Post August 5th, 2019, the UN Secretary General Antonio Guterres has expressed concerns “over reports of restrictions on the Indian-side of Kashmir, which could exacerbate the human rights situation in the region”.¹⁷

8 <https://www.reuters.com/article/us-india-kashmir-separatists-insight/lock-them-up-india-marginalizes-kashmiri-separatist-leaders-by-detaining-dozens-idUSKCN1UR4F9>

9 <https://www.indiatoday.in/india/story/kashmir-article-370-mehbooba-mufti-arrested-taken-to-guest-house-1577554-2019-0805>

10 <https://www.reuters.com/article/us-india-kashmir-children/nine-year-old-among-nearly-150-children-briefly-held-in-indian-kashmir-court-probe-idUSKBN1WG47W>

11 <https://thewire.in/rights/nazir-ahmed-ronga-lawyer-detained-kashmir-crackdown>

12 <https://thewire.in/rights/nazir-ahmed-ronga-lawyer-detained-kashmir-crackdown>

13 <https://www.theguardian.com/world/2016/nov/08/india-crackdown-in-kashmir-is-this-worlds-first-mass-blinding>

14 Written statement submitted by the Jammu and Kashmir Council for Human Rights (JKCHR) during the 42nd Session of the Human Rights Council <http://www.jkchr.com/statements/A-HRC-42-NGO-137.PDF>

- The New York Times Report, ‘India’s Crackdown Hits Religious Freedom in Disputed Kashmir’: <https://www.nytimes.com/aponline/2019/12/10/world/asia/ap-as-kashmir-religious-freedom.html>

- The Washington Post Report, ‘India’s crackdown hits religious freedom in disputed Kashmir’: https://www.washingtonpost.com/world/asia_pacific/indias-crackdown-hits-religious-freedom-in-disputed-kashmir/2019/12/10/9613c378-1bc2-11ea-977a-15a6710ed6da_story.html

15 A team of women human rights defenders comprising Annie Raja, Kawaljit Kaur, Pankhuri Zaheer from National Federation Indian Women, Poonam Kaushik from Pragatisheel Mahila Sangathan and Syeda Hameed from Muslim Women’s Forum visited IOJ&K between September 17 and 21, 2019. The report can be found at:

<https://www.freekashmir.org/womens-voice-fact-finding-report-on-kashmir/>

16 <https://www.wsj.com/articles/indias-kashmir-clampdown-turns-hospitals-into-graveyards-11566990962>

17 Statement attributable to the Spokesman for the Secretary-General on the situation in Jammu and Kashmir: <https://www.un.org/sg/en/content/sg/statement/2019-08-08/statement-attributable-the-spokesman-for-the-secretary-general-the-situation-jammu-and-kashmir>

8. The Office of the High Commissioner of Human Rights has expressed concerns on the excessive use of force including the use of pellet-firing shotguns, detention of political leadership, curbing of freedom of religion or belief, movement, peaceful assembly, and restricting their rights to health, education.¹⁸

9. UN Special Rapporteurs have termed the shutdown of the internet and telecommunication networks in IOJ&K, as “inconsistent with the fundamental norms of necessity and proportionality,” and “a form of collective punishment of the people of Jammu and Kashmir, without even a pretext of a precipitating offence”. They have called the detentions in IOJ&K to “constitute serious human rights violations”.¹⁹

10. Organization of Islamic Countries (OIC), Independent Permanent Human Rights Commission (IPHRC) has termed IOJ&K as “world’s largest prison”.²⁰

11. Commentators and citizens of Kashmir believe that *"Once the real political leaders are freed from detention or house arrest, and people are allowed to express their sentiments freely, there will be huge protests and people will come out against illegal Indian moves to annex Kashmir's land and resources"*.²¹

OCCUPATION AND THE CULTURE OF IMPUNITY

12. Famous researcher and historian Alastair Lamb once wrote, *"it has become apparent that the Indian Republic is faced with, at least in that part of the Vale of Kashmir which it occupies, what can only be described as a terminal colonial situation."*²²

Human Rights and the Rule of Law

13. To continue this colonial project in IOJ&K²³, India has devised an elaborate legal and administrative architecture to enable its security forces to maintain occupation at all cost. Indian forces enjoy complete impunity for all actions that are

¹⁸ Press Briefing Note dated 29 October 2019 on Indian Administered Kashmir by OHCHR, Update of the High Commissioner for Human Rights during the 42nd Session of the Human Rights Council

¹⁹ The UN Special Procedure Mandate Holders communication dated 22 August 2019 to India. The UN experts included Mr. David Kaye (USA), Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Mr. Michel Forst (France), Special Rapporteur on the situation of human rights defenders; Mr. Bernard Duhaime, Chair-Rapporteur, Working Group on Enforced or Involuntary Disappearances; Mr. Clement Nyaletsossi Voule, Special Rapporteur on the right to peaceful assembly and association; Ms Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions.

²⁰ OIC IPHRC Press release: https://www.oic-iphrc.org/en/press_details.php?id=SU9LMzkxOV9AIyFA

²¹ <https://www.bbc.com/news/world-asia-india-49294301>

²² <https://fpif.org/terror-impunity-kashmir/>

²³ <https://www.theguardian.com/commentisfree/2019/aug/14/narendra-modi-kashmir-hindu-first-india-autonomy>

taken in service of ‘state terrorism’ in IOJ&K, with almost non-existent safeguards and standards to observe human rights.

14. Human rights and the rule of law have been greatly jeopardized in IOJ&K by various national laws and their implementation by governmental personnel. These range from distortions created by laws themselves to malpractices at the operational level.²⁴ A brief account of these is given further below.

The “permanence” of “emergency” laws

15. In substance, India has treated the situation in IOJ&K as a state of emergency but avoided classifying it as such in international terms, thereby obstructing the call for accountability and transparency.²⁵

Derogation of rights under international human rights humanitarian law obligation

16. India is a party to 1966 International Convention of Civil and Political Rights (ICCPR) which reinforces universal standards in the civil and political field, closely linked with the rule of law. The human rights propounded in this instrument include the right to self-determination, the right against arbitrary arrest, security of person, freedom from torture, and equality before the law. In IOJ&K, however, Indian actions are in stark contravention to the provisions of this instrument.

17. On another front, India is a party to the four 1949 Geneva Conventions on humanitarian law which establish basic rules concerning international and non-international armed conflicts. Of particular relevance to the situation in IOJ&K is Article 3, found in all four Conventions, which pertains to protection accorded to those taking no active part in hostilities in non-international armed conflicts by prohibiting the following:

1. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
2. Taking of hostages;
3. Outrages upon personal dignity.

18. India has been reluctant to classify the conflict in IOJ&K as a non-international armed conflict under the Geneva Conventions for fear of internationalizing the Kashmir issue. It does not allow an unfettered access to the International Committee of the Red Cross (ICRC), which is a key international organization offering protection

²⁴<https://www.icj.org/wp-content/uploads/1995/01/India-human-righst-in-Kashmir-fact-finding-mission-report-1995-eng.pdf>

²⁵<https://www.icj.org/wp-content/uploads/1995/01/India-human-righst-in-Kashmir-fact-finding-mission-report-1995-eng.pdf>

and assistance in such situations, to operate in IOJ&K. Even when ICRC is allowed access, its freedom of movement is severely restricted.²⁶

Preventive Mechanisms

19. India has developed comprehensive legal mechanisms which give security forces emergency and overarching powers without any checks and balances, leading to grave human rights violations. Two important pillars of these emergency provisions are the so-called Public Safety Act (PSA) and the Armed Forces Special Powers Act (AFSPA).

Public Safety Act (PSA)

20. Public Safety Act (PSA) is a special law that allows for administrative detention of up to two years without charge, in name of “security of state” and “maintenance of public order”.²⁷

21. This law was recently amended in Kashmir to allow detainees to be moved out of the state, which led to transportation of many Kashmiris in jails all over India. The OHCHR reports that at least 40 people, mainly political leaders, were transferred to prisons outside the state in 2018. Transferring detainees to other states makes it harder for family members to visit and for legal counsel to meet with them. OHCHR also noted that prisons outside the state were considered hostile for Kashmiri Muslim detainees, especially political leaders.

22. OHCHR²⁸ and other human rights organizations have repeatedly called on Indian authorities to repeal this draconian law which is often used by security forces to detain protesters, political dissidents, and other activists on vague grounds for long periods, ignoring regular criminal justice safeguards.

23. By using the PSA to incarcerate suspects without charge or trial, Indian authorities have made a mockery of basic principles of the rule of law and severely upended the “right to fair trial” and “due process” safeguards which are *erga omnes* obligations under international law. The PSA violates international human rights law on number of levels:

- Firstly, under international human rights law, restrictions on liberty must obey the principle of legality and proportionality. Legal parameters must be adequately accessible, so that people know how the laws limit their conduct, and they must also be precise, so that people can regulate their conduct

²⁶<https://www.icj.org/wp-content/uploads/1995/01/India-human-rightst-in-Kashmir-fact-finding-mission-report-1995-eng.pdf>

²⁷ Under section 8 of the PSA, a Divisional Commissioner or a District Magistrate - both executive authorities - may issue a detention order to prevent any person from acting in a manner prejudicial to the “security of the State or the maintenance of the public order”.

²⁸ In 2012, the UN Special Rapporteur on the situation of human rights defenders, after a fact-finding mission to India, expressed serious reservations and called for the repeal of the PSA.

accordingly. However, the PSA does not define “security of the state”, and provides a vague and over-broad understanding of “public order”.

- Secondly, anyone arrested has a fundamental right to be immediately informed about the reasons for the arrest. The UN Human Rights Committee has stated that this must also apply to preventive and administrative detentions. However, Section 13 of the PSA allows the detaining authority to not communicate grounds of detention, and also to withhold any information that it considers “to be against the public interest to disclose”.
- Thirdly, any arrested person also has a right to judicial review of her detention. The PSA, however, makes no such provision for ordinary judicial review. Instead, an Advisory Board which lacks independence from the government reviews all orders. The Board provides for no opportunity to appeal, there is a bar on legal representation for the detained person, and the Board’s report is confidential.
- Fourthly, through its Section 16(5) the PSA violates the detained person’s right to communicate with and be represented by a counsel of their choice by explicitly stipulating that legal counsel cannot represent a detained person before the Advisory Board.
- Fifthly, it denies individuals the right to remedy under international human rights law and standards²⁹. Section 22 of the PSA provides a complete bar on criminal, civil or “*any other legal proceedings...against any person for anything done or intended to be done in good faith in pursuance of the provisions of this Act*”. By protecting officials even in situations where PSA is abused, this section enables impunity³⁰.

Armed Forces Special Powers Act (AFSPA)

24. The Armed Forces Special Powers Act, or AFSPA has long been a symbol of abuse, oppression, and discrimination in IOJ&K. Its application and misuse have fueled a cycle of tyranny and atrocity³¹, condemning the people of Kashmir to immense suffering and misery.

29. When acceding to the ICCPR in 10 April 1979, India made a reservation to Article 9, declaring that it “shall be so applied as to be in consonance with the provisions of clauses (3) to (7) of Article 22 of the Constitution of India.” (Article 22 (3) weakens the protections for arrested persons that are present in Article 22(1) and 22(2) for persons subjected to administrative (or “preventive”) detention.) The right to be produced before a magistrate within 24 hours of arrest, and to consult and be represented by a lawyer of choice, which is otherwise available to persons arrested in India, is unavailable to persons placed in administrative detention.

30. The Armed Forces (Special Powers) Act, 1989, which is in force in Jammu and Kashmir, contains a similar provision which has often been used to block accountability.

31. <https://www.hrw.org/news/2018/03/20/security-forces-india-engage-extrajudicial-killings-then-are-protected>

25. AFSPA grants the military wide-ranging powers to arrest without warrant, shoot-to-kill, and destroy property in so-called “disturbed areas.”³² It also protects military personnel responsible for serious crimes from prosecution³³.

26. According to independent observers like the Human Rights Watch, the AFSPA has not only led to massive human rights violations, but it has allowed members of the armed forces to perpetrate abuses with impunity. It facilitates abuses, especially extrajudicial killings, torture, rape and “disappearances”, and shields members of armed forces by prohibiting prosecutions from being initiated without permission from the central government³⁴. Such permission is rarely granted.

27. Meenakshi Ganguly, senior South Asia researcher for Human Rights Watch says, *“The Indian government’s responsibility to protect civilians from attacks by militants is no excuse for an abusive law like the AFSPA. Fifty years of suffering under the AFSPA is 50 years too long – the government should repeal the AFSPA now.”*³⁵

28. Enacted on August 18, 1958 as a short-term measure to allow deployment of the army against an armed separatist movement in India’s northeastern, the AFSPA has been invoked for six decades. It has since been used throughout the Northeast, particularly in Assam, Nagaland, Tripura and Manipur. A variant of the law was also used in Punjab during a separatist movement in the 1980s and 90s, and has been in force in Jammu and Kashmir since 1990.

29. Indian officials have long sought to justify use of this barbaric law by citing the need for the armed forces to have extraordinary powers to combat armed insurgents. The Army argues that if they are not allowed to continue to operate in the Kashmir Valley without impunity then Kashmir will secede.³⁶

30. The Army’s top commander in Jammu and Kashmir was reported to have said the India could be compelled to grant the Kashmir independence if the controversial Armed Forces Special Powers Act was lifted.³⁷

32. Section 4 of AFSPA provides: “Any commissioned officer, warrant officer, non-commissioned officer...may, in a disturbed area, (a) if he is of opinion that it is necessary to do so for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area...” Such provisions clearly violate the international standards on use of force, including lethal force, and the related principles of proportionality and necessity.

33. Section 6 of AFSPA and 7 of the Jammu and Kashmir AFSPA, grant protection to the officers acting under these Acts and stipulate that prosecution of members of the armed forces is prohibited unless sanction to prosecute is granted by the central Government.

34 Since the law came into force in Kashmir in 1990, the Indian government has not granted permission to prosecute any security force personnel in civilian courts.

35 <https://www.hrw.org/news/2008/08/18/india-repeal-armed-forces-special-powers-act>

36 <https://www.amnestyusa.org/listen-to-the-silent-cries-of-the-disappeared-in-kashmir/>

37 <https://www.thehindu.com/news/national/army-raises-secession-spectre-to-counter-plan-to-lift-afspa/article2615878.ece>

31. In 1997, the United Nations Human Rights Committee expressed concerns over the “climate of impunity” provided by the Act. Since then, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions (2006), the Committee on the Elimination of Discrimination against Women (2007) and the Committee on the Elimination of Racial Discrimination (2007), have all called for an end to the AFSPA.

32. The OHCHR in its two reports on Jammu and Kashmir also noted that AFSPA “remains a key obstacle to accountability,” because it provides effective immunity for serious human rights violations. The reports recommend establishment of a ‘commission of inquiry’, “to conduct a comprehensive, independent, international investigation” into allegations of human rights violations in Kashmir to address one of the most serious humanitarian crises of the world.

VIOLATIONS OF HUMAN RIGHTS IN IOJ&K

33. Despite widespread and endemic abuse of human rights in IOJ&K, there is little criticism from within India on the atrocities committed by Indian armed forces in name of maintenance of law and order.

34. Kashmiri journalist and author, Mirza Waheed has written extensively about this indifference. In his recent article in the *Guardian* he wrote,

“Two-and-a-half decades of rebellion against India in Kashmir have hardened the indifference of India’s political and intellectual classes to the human cost of the country’s repressive tactics in the valley.

The hostility now appears to be total, unbridgeable, and for those on the receiving end, unbearable. Powerful TV studios urge the state to be more aggressively macho, while actively suppressing or distorting news from Kashmir.

One prominent newspaper ran an online poll about the continued use of the pellets that had wounded and blinded so many Kashmiris – a clear majority voted in support. Eminent columnists speak calmly of the need for “harsh love” toward civilian protesters to rationalize the state’s ruthless response. And the Twitter account for a government initiative, Digital India, posted a poem calling for the army to murder Kashmiris until they surrender.”³⁸

35. Some of the most serious reported cases of various human rights violations carried out by Indian security forces in IOJ&K are appended below.

³⁸ <https://www.theguardian.com/world/2016/nov/08/india-crackdown-in-kashmir-is-this-worlds-first-mass-blinding>

Extrajudicial killings

36. Extrajudicial killings at the hand of security forces during regular interaction or in custody is a regular feature of daily life in IOJ&K. Most Kashmiri families have lost a relative, friend, or neighbor in the violence. Over a hundred thousand Kashmiri civilians have been killed in the wave of unrest gripping IOJ&K for decades.

37. To seek protection under AFSPA, the security forces brand the murdered as militants, or “over-ground workers”³⁹, a term used by them for peaceful civilians accused of providing ideological or material support to so-called militants.

38. The Srinagar-based Jammu and Kashmir Coalition of Civil Society reported that conflict-related casualties were the highest in 2018 since 2008, with 586 people killed, including 160 civilians.⁴⁰ In 2019, 159 militants and 80 civilians, including 12 women, were extra-judicially killed by security forces.

39. In wake of 5 August actions, the Indian occupation forces have doubled down on so-called “cordon and search operations” and fake “encounters” to conduct extra-judicial killings. In one example of this inhumanity, Indian security forces have refused to return the bodies of killed Kashmiris to their families for proper burial. Even recently, the international community was outraged over the viral image of a three-year-old Kashmiri child sitting on his grandfather’s chest in the middle of a street who had been extra-judicially killed by the Indian armed forces.⁴¹

Arbitrary arrests and detentions

40. Indian forces routinely detain Kashmiris whenever they fear that largescale protests and unrest is imminent. This is done mostly when Indian forces kill a militant/freedom fighter or introduce new draconian laws to keep things in Kashmir under control.⁴² In such circumstances, the authorities use what is called a ‘*revolving-door*’ detention policy⁴³ to keep people coming out on streets to protest against Indian actions. In Srinagar district alone, 1,500 youth was picked up and then released under a continuous process in couple of weeks following August 2019 decision.⁴⁴

41. According to multiple reports, more than 4000 Kashmiris were detained under the PSA. This was done by the Indian government to prevent them from protesting against the illegal Indian actions of revoking the status of an internationally

39 <https://www.hrw.org/news/2018/03/20/security-forces-india-engage-extrajudicial-killings-then-are-protected>

40 <https://www.hrw.org/news/2019/07/10/kashmir-un-reports-serious-abuses>

41 <https://www.aljazeera.com/indepth/opinion/photo-dead-kashmiri-making-macabre-narrative-200707151444834.html>

42. <https://www.thehindu.com/news/national/about-4000-people-arrested-in-kashmir-since-august-5-govt-sources-to-afp/article29126566.ece>

43 <https://www.thehindu.com/news/national/now-revolving-door-arrests-in-kashmir/article29310428.ece>

44. <https://www.ndtv.com/india-news/mehbooba-mufti-daughter-iltija-javed-writes-to-amit-shah-says-caged-like-animals-2085742>

recognized disputed territory in violations of international laws and relevant UNSC resolutions.

42. Those detained included approximately 400 elected officials and political leaders, as well as former chief ministers of Jammu and Kashmir belonging to the National Conference and the Jammu and Kashmir People's Democratic Party⁴⁵. There were also around 144 children among detained, including a nine-year-old Sahil Ahmad Sheikh from Srinagar's Batamaloo.⁴⁶

43. There have been serious allegations of torture and beatings in custody.⁴⁷ Many detainees were not allowed to contact their families or lawyers. Most of the detainees were flown out of Kashmir because prisons there ran out of capacity.

44. The officials completely ignored numerous habeas corpus petitions and used powers under the PSA to block all legal recourse to free the arbitrarily arrested people.

45. Some Kashmiris told Human Rights Watch that Indian security forces have also detained family members of suspects instead, when they have failed to locate them. This amounts to collective punishment, in violation of international human rights law.⁴⁸

46. In order to control the unrest caused by illegal Indian actions of August 2019, the government openly claimed that these arrests could be made indefinitely. On September 7, India's national security adviser, Ajit Doval, told NDTV that "*the government had no specific plans to start releasing the detainees as it was being extra careful about the entire situation*,"⁴⁹

47. And even when some of these people were released, the government required the detainees to sign an undertaking that barred them from speaking against "*the recent events*" in Jammu and Kashmir for one year, and not issue any statement, public speech, or participate in public assembly and related events as such acts have the "*potential of endangering peace and tranquility and law and order in the state*".⁵⁰

48. It is also a sad fact in Kashmir that many detained never return home. At least 6,000 single or mass graves have been found in India-held Kashmir since 2008, and many of them are believed to be possible victims of enforced disappearances, a

45 <https://www.hrw.org/news/2019/09/16/india-free-kashmiris-arbitrarily-detained>

46 <https://www.reuters.com/article/us-india-kashmir-children/nine-year-old-among-nearly-150-children-briefly-held-in-indian-kashmir-court-probe-idUSKBN1WG47W>

47 <https://www.aa.com.tr/en/asia-pacific/69-deaths-in-kashmir-since-aug-5-rights-group-says/1688788>

48 <https://www.hrw.org/news/2019/09/16/india-free-kashmiris-arbitrarily-detained>

49 <https://www.ndtv.com/india-news/they-can-challenge-their-detention-nsa-ajit-doval-on-j-k-political-leaders-2097181>

50 <https://www.telegraphindia.com/india/crisis-in-kashmir-bond-of-silence-that-buys-freedom/cid/1712906>

phenomenon in which a Kashmiri man disappears after being picked up by the Indian army or police.

49. Prolonged detention without charge violates India's obligations under international human rights law, especially ICCPR, which prohibits arbitrary arrest and detention. Anyone detained should be promptly taken before a judge and provided the reasons for their arrest and detention and any charges against them. They should have prompt access to a lawyer and family members.

50. United Nations treaty bodies and special procedures have repeatedly called on India to amend the Public Security Act to ensure that it complies with its international human rights obligations.

51. Recently, UN human rights experts and special mandate holders, including David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Michel Forst, Special Rapporteur on the situation of human rights defenders; Bernard Duhaime, Chair-Rapporteur, Working Group on Enforced or Involuntary Disappearances; Clement Nyaletsossi Voule, Special Rapporteur on the right to peaceful assembly and association; and Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions jointly issued a statement saying that such detentions constitute serious human rights violations. They also expressed their “grave concern” over allegations that “the whereabouts of some of those detained is not known, heightening the risk of enforced disappearances, which may proliferate against the backdrop of mass arrests and restricted access to the internet and other communications networks”.⁵¹

Reprisals against journalists and human rights defenders

52. Indian occupation forces have employed terrorizing methods of reprisals to silence the Kashmiris from sharing information about grave human rights violations with the rest of the world including the United Nations. Reprisals especially of journalists⁵² and human rights defenders, to the extent of extrajudicial killing, are being pursued across IOJ&K.⁵³ Unlawful Activities (Prevention) Act (UAPA) is being used to silence and harass the human rights defenders. Kashmiri media houses are

⁵¹<https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24909&LangID=E>

⁵² Communication dated 12 May 2020 sent to India by the UN Special Rapporteur on the promotion and protection of right to freedom of opinion and expression, Working Group on Arbitrary Detention and the Special rapporteur on the Situation of Human Rights Defenders: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25237>

⁵³ Report by Committee to Protect Journalists, 'India uses opaque legal process to suppress Kashmiri journalism, commentary on Twitter': <https://cpj.org/blog/2019/10/india-opaque-legal-process-suppress-kashmir-twitter.php>

regularly being vandalized and journalists being killed, beaten or being tried under UAPA.⁵⁴

Sexual violence

53. The women in Kashmir have to resist the occupation not only of their land but also of their bodies as systematic sexual abuse and other forms of gender-based violence are often deployed as weapons in war in Kashmir. Every home in Kashmir has a tale of the price that has been paid in the quest for right to self-determination.⁵⁵

54. Over the years, the rape of Kashmiri women by Indian forces has become a means of collective punishment against the entire population. Human Rights Watch has identified two main scenarios in which Kashmiri women are subject to rape by Indian forces: during ‘*search and cordon operations*’ and during reprisal attacks by Indian forces after military ambushes.

55. Although Indian human rights groups and the international press have reported on the widespread use of rape by Indian security forces in Kashmir, there are no reliable statistics on the exact number of rape and sexual assault cases because of the restrictions on communications placed by the Indian authorities.

56. One of the most horrific incidents of gendered violence in the region is the **Kunan Poshpora mass rapes of 1991** where more than 300 Indian army soldiers raped as many as 150 women.⁵⁶

57. Almost 29 years later, the Indian state has refused to acknowledge the crimes, while the survivors are left with little to no avenues to pursue justice as the Indian army has continued to exercise barbarism and has enjoyed complete impunity, thanks to the AFSPA.

58. According to 1996 Human Rights Watch report, India uses rape as a “counter-insurgency tactic” in Indian Occupied Kashmir to terrorize the populace. A retired Indian Major General, SP Sinha, once said on national TV that Kashmiri women

⁵⁴ UAPA invoked against journalists include Masrat Zahra and Gowhar Geelani and Peerzada Aashiq, - Communication dated 6 May 2020 to India by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Working Group on Arbitrary Detention, Special Rapporteur on the promotion and protection of right to freedom of opinion and expression, Special Rapporteur on independence of judges and lawyers, Special Rapporteur on the rights of freedom of peaceful assembly and association, Special Rapporteur on the situation of human rights defenders, Special Rapporteur on minority issues, Special Rapporteur on the right to privacy, Special Rapporteur on freedom of religion or belief.

⁵⁵ <https://thediplomat.com/2018/02/all-these-years-later-do-not-forget-the-kunan-poshpora-mass-rapes/>

⁵⁶ <https://thediplomat.com/2018/02/all-these-years-later-do-not-forget-the-kunan-poshpora-mass-rapes/>

should be raped to avenge atrocities against Kashmiri Pandits during their exodus from Kashmir in 1990.⁵⁷

59. In 2019, a Bharatiya Janata Party leader also reflected Indian mindset when she encouraged “Hindu brothers” to gang-rape Muslim women openly in the streets.⁵⁸

60. Fetishization of Kashmiri women is not new in India. Even Indian Prime Minister Nehru had once compared the Kashmir valley to a gorgeous young woman that was courted by many⁵⁹. After India revoked the special status of Kashmir in August 2019, many Indians openly said that they would go to Kashmir and get brides from there. A Google trends data shows searches in India for “Kashmiri girl”⁶⁰ and “How to marry Kashmir women” was increasingly searched after August 5.⁶¹

61. On August 10, Manohar Lal Khattar, chief minister of Haryana, was quoted as saying: “*Some people are now saying that as Kashmir is open, brides will be brought from there.*”⁶² Nivedita Menon, a Professor at Jawaharlal Nehru University in New Delhi, said: “*These are proclamations of conquest and plunder, and reveal the real intention behind the abrogation of 370.*”

Use of pellet guns

62. IOJ&K is suffering from what **New York Times** called an ‘*epidemic of dead eyes*’⁶³, as Indian security forces use metallic pellet guns on peaceful protestors, seriously hurting them and blinding many in the process.

63. India introduced the officially “non-lethal” pellet shotgun in Kashmir in 2010, when major anti-India protests and clashes with government forces left over 100 dead.⁶⁴

64. Pellet guns were used indiscriminately after massive protests erupted in entire Kashmir following the death of Burhan Wani in 2016, and the year is still recalled by locals as the year of mass blinding in Kashmir, or as the “*dead eye epidemic*”. In the

⁵⁷ <https://scroll.in/video/944004/caught-on-tv-ex-army-officer-wants-death-for-death-rape-for-rape-in-favour-of-kashmiri-pandits>

⁵⁸ <https://scroll.in/latest/928986/bjp-mahila-morcha-leaders-says-hindus-should-enter-muslim-womens-homes-and-rape-them-expelled>

⁵⁹ <https://www.hindustantimes.com/india/nehru-compared-kashmir-to-a-beautiful-woman/story-Wc4rEpAZ1PphMtQvG6ku6H.html>

⁶⁰ <https://www.americanbazaaronline.com/2020/02/24/womens-bodies-weaponization-of-rape-in-kashmir-440299/>

⁶¹ <https://www.aljazeera.com/indepth/features/women-biggest-victims-inhumane-siege-190820122327902.html>

⁶² <https://www.aljazeera.com/indepth/features/women-biggest-victims-inhumane-siege-190820122327902.html>

⁶³ <https://www.nytimes.com/2016/08/29/world/asia/pellet-guns-used-in-kashmir-protests-cause-dead-eyes-epidemic.html>

⁶⁴ <https://www.france24.com/en/20181130-indian-pellet-guns-kashmir-kill-blind-enrage>

seven months following Wani's killing in July 2016, over 6,000 people were injured by pellet guns, including 782 who suffered eye injuries, according to Amnesty.⁶⁵

65. One journalist covering this turbulent time reported:

*"In a matter of four to five weeks, Indian troops, with a clear mandate to be unsparring, wounded over 10,000 people. One of the youngest – five-year old Zohra – was admitted to a hospital in Srinagar with lacerations to her abdomen and legs. Fourteen-year-old Insha was in the family kitchen when a swarm of pellets pierced her face. She has lost vision in both eyes. In southern Kashmir, four girls, aged between 13 and 18, were shot in their faces last week. It is doubtful that these little girls posed a threat to the military force – estimated at 700,000 soldiers and police – stationed in Kashmir."*⁶⁶

66. As the uprising continued, the armed forces, by their own admission, fired nearly 4,000 cartridges at stone-throwing demonstrators, crowds protesting against police brutality, and even onlookers. This means that they sent, by one recent estimate, 1.3m metal balls hurtling towards public gatherings predominantly made up of young unarmed people.⁶⁷

67. Government data from 2017 revealed the weapon killed 13 people and injured more than 6,000 in eight months alone, including nearly 800 with eye injuries. In 2018, a 19-month-old girl Heeba Jan suffered severe eye injuries after being hit by a pellet gun fired by security forces and became the "*youngest victim*" of pellet-induced eye injuries.⁶⁸

68. Indian authorities continue to use this barbaric tactic of crowd control despite international condemnation. One army commander has said that it is by far the most effective weapon at his disposal, boasting that "*If you pinch them, only then people will understand.*"⁶⁹

69. In the recent report "Children and armed conflict" of the Secretary General covering the period January to December 2019, for the 75th Session of the General Assembly, regarding IOJ&K notes that "The United Nations verified the killing (8) and maiming (7) of 15 children (13 boys, 2 girls), between the ages of 1 and 17, by or during joint operations of the Central Reserve Police Force, the Indian Army (Rashtriya Rifles) and the Special Operations Group of the Jammu and Kashmir Police... the

⁶⁵ <https://time.com/longform/pellet-gun-victims-kashmir/>

⁶⁶ <http://www.albiladdailyeng.com/indias-crackdown-kashmir-worlds-first-mass-blinding/>

⁶⁷ <https://www.theguardian.com/world/2016/nov/08/india-crackdown-in-kashmir-is-this-worlds-first-mass-blinding>

⁶⁸ <https://www.bbc.com/news/world-asia-india-46368231>

⁶⁹ <https://www.nytimes.com/2016/08/29/world/asia/pellet-guns-used-in-kashmir-protests-cause-dead-eyes-epidemic.html>

casualties that occurred in Jammu and Kashmir were mainly caused by torture in detention, shootings, including from pellet guns...”⁷⁰

70. Human Rights Watch and other leading human rights organizations have repeatedly called on Indian government to publicly order its security forces to abide by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The Basic Principles state that security forces shall “*apply non-violent means before resorting to the use of force and firearms,*” and that “*whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life.*” Furthermore, “*intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.*”

71. India so far was not heeded to these calls.

Torture

72. The widespread human rights violations, including use of indiscriminate torture, is a tactic employed by Indian armed forces to break people’s will in IOJ&K.⁷¹

73. Unlike other forms of heinous human rights abuses like extra-judicial killings, enforced disappearances or indiscriminate and excessive force exemplified by the use of pellet shotguns, torture is a state crime that often remains hidden even from the media, unless the victim dies as a result of his/her injuries. As many deaths due to torture-related injuries are not immediate but may occur after years or even decades, accurate figures of such fatalities and morbidity are extremely hard to estimate.

74. Since 5 August 2019, reports of torture of civilians by Indian armed forces in IOJ&K have surfaced repeatedly. Human rights researchers were able to gather information concerning the torture of 14 individuals, mostly youth, on the night of 5 August. These 14 were tortured by Indian Army personnel led by Major Aditya from Zaldoora Camp in Pulwama District, South Kashmir. The 14 were detained after an army raid on their homes in Nadapora village of Parigam area in connection with a stone-pelting incident against the motorcade of an army commander earlier in the day. Army personnel took the victims to the roadside, forcibly removed their clothes, severely beat them with bamboo sticks and plastic canes, and forced them to sit one on top the other. One of the victims, an electrician who runs a religious school in the

⁷⁰ A/74/845-S/2020/525

⁷¹ <https://www.jkccs.net/wp-content/uploads/2019/05/TORTURE-Indian-State’s-Instrument-of-Control-in-Indian-administered-Jammu-and-Kashmir.pdf>

village, was severely tortured for refusing to shout “*Jai Shri Ram*” [Praise the Hindu God] through the local mosque’s loudspeakers.⁷²

75. Twenty-four additional cases of torture were reported from Gulshanabad, Gung Bug, Tengpora, Firdosabad, Boatmen’s Colony and Mansoor Colony in Srinagar District.

76. In addition, on 3 September, 24-year-old Riyaz Ahmad Thickrey died in police custody after being tortured in the Handwara area of Kupwara District. On 17 September, 15-year-old Yawar Ahmed Bhat from Chandigam Village, Pulwama District, died after consuming poison possibly as a result of trauma of being detained.

77. Association of Parents of Disappeared Persons (APDP) and Jammu Kashmir Coalition of Civil Society (JKCCS) jointly published a report in 2019, exposing the extent of torture used by Indian authorities. The report says that the majority of forms of torture listed in the UN Istanbul Protocol have been used in Jammu and Kashmir.

78. In 326 cases, the victims were reportedly beaten; in 231, they were electrocuted. More than a hundred victims said they were stripped naked, put through roller treatment (using a heavy roller to apply pressure on the legs), restrained in stress positions, or hung upside down.

79. Following graph shows the findings of the above-mentioned report on torture in detail:

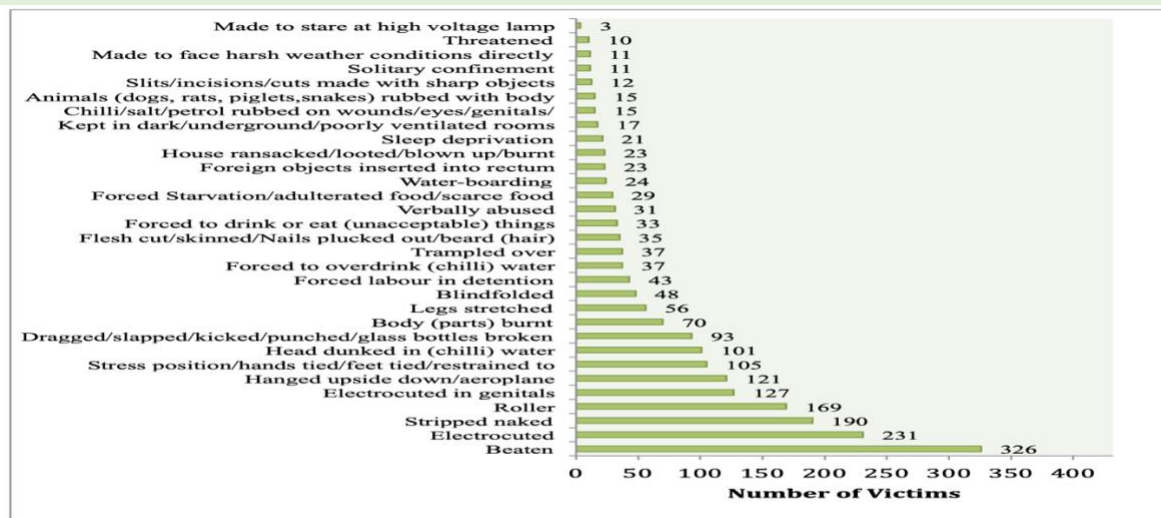


Figure: Number of people subjected to different forms of torture or other cruel, inhuman or degrading treatment

⁷²<https://thewire.in/rights/kashmir-boy-dies-by-suicide-after-allegedly-being-beaten-by-soldiers>

HIDUTVA IDEOLOGY AND HUMAN RIGHTS ABUSE IN IOJ&K

80. While legal and administrative protection to the Indian armed forces was provided through Indian brutal occupation of Kashmir, the current BJP-RSS government, have taken this culture of impunity one step further.

81. Any criticism of human rights abuses by armed forces is now deemed unpatriotic by the party's ultranationalist supporters. Perpetrators are frequently protected, such as the officer who strapped a civilian atop a military vehicle as a human shield against stone-throwing protestors in Kashmir in April 2018. Instead of prosecuting him, the government praised the officer's actions and honoured him with a commendation.⁷³

82. Ignoring complaints from Kashmiris, the Attorney General at the time said, "*the Army should be applauded for this action*". Similarly, in February 2018, some BJP leaders joined the *Hindu Ekta Manch* in a demonstration in support of a Hindu police officer accused of raping and killing an eight-year-old Muslim child in Jammu.

83. The recent claims made by Prime Minister Narendra Modi and Home Minister Amit Shah that the autonomy to Jammu and Kashmir was the cause of "separatism" in Jammu and Kashmir are also disingenuous.⁷⁴

84. Their statements cannot eyewash the fact the followers of Hindutva ideology have long sought to annex the land and resources of IOJ&K, by revoking its special status, bringing demographic changes to turn Muslim majority of the region into a minority, and ruthlessly suppressing all form of dissent and opposition. The recent "reorganization" of Jammu and Kashmir reflects this supremacist agenda to turn Kashmir into an Indian colony.⁷⁵ For Indian political class currently ruling India, "*land is more important than the people of Kashmir*".⁷⁶ Around 25,000 Indian nationals have been granted domicile certificates till date.

85. In 2002 the Rashtriya Swayamsevak Sangh (RSS), the core organization of the Hindu nationalist movement, demanded that Kashmir should be divided into three parts: a separate Hindu-majority Jammu state; the Muslim-majority Kashmir valley; plus, union territory status for Ladakh.

86. Simultaneously the Vishwa Hindu Parishad (VHP), an RSS affiliate, called for the state to be divided into four parts: a separate Jammu state and Ladakh as a union

73 <https://www.hrw.org/news/2018/03/20/security-forces-india-engage-extrajudicial-killings-then-are-protected>

74 <https://www.bbc.com/news/world-asia-india-49316350>

75 <https://www.theguardian.com/commentisfree/2019/aug/14/narendra-modi-kashmir-hindu-first-india-autonomy>

76 <https://thewire.in/politics/hindu-rashtra-project-end-goal>

territory, plus the carving out of a sizeable area, also with union territory status, in the Kashmir valley to be inhabited solely by Kashmiri Pandits, the valley's small Hindu minority who were forced to leave nearly en masse when insurgency erupted there in 1990. Under the VHP plan, what remained of the Kashmir Valley would then be left to the Muslim majority.

87. India under BJP-RSS has emerged as the largest and most pervasive purveyor of terrorism. It has used terrorism as an instrument of its repressive policies against its own Muslim population in India and in IOJ&K.

88. Atrocity crimes being carried out in IOJ&K and within India against its Muslim minority do not begin in a day. They are always preceded by systematic hate speech, discriminatory policies and other warning signs.

89. The recent spike in systematic violence and discrimination against Muslims in India, coupled with decades of oppression and atrocities in IOJK, are all part of the “Hindutva” ideology of BJP-RSS government which seeks to eliminate the heritage of Islam from India through destruction of Muslim shrines, monuments and transformation of India’s Muslims into oppressed, second class citizens, and non-citizens. If the state sponsored religious hatred, stigmatization, stereotyping and discrimination against Muslims remain unchecked, they can lead to ethnic cleansing, genocide, and crimes against humanity.

CONCLUSION

90. Indian occupying forces continue to commit grave human rights violations in IOJ&K in plain sight of the international community. More recently Indian aggression against Kashmiris has taken a form of a collective punishment for the occupied people without even a pretext of a precipitating offense.⁷⁷ India’s long and cruel occupation has brought unimaginable suffering for the people of IOJ&K in which many war crimes and crimes against humanity were committed.⁷⁸

91. The atrocities in IOJ&K are putting enormous strain on the peace and security of the region, threatening escalation between two nuclear armed neighbours who have fought multiple wars over Kashmir. The champions of human rights cannot afford to remain silent in face of such cruelty, which has gone unchecked for far too long.

92. The international community must prevail upon India to ‘unlock’ freedoms⁷⁹ in IOJ&K, lift inhuman military siege, release all political prisoners, restore access to internet and communications services and allow people to enjoy all liberties and freedoms. Above all India should also allow the Kashmiris to exercise freely their

⁷⁷ <https://news.un.org/en/story/2019/08/1044741>

⁷⁸ <https://time.com/longform/pellet-gun-victims-kashmir/>

⁷⁹ <https://news.un.org/en/story/2019/10/1050141>

inalienable right to self-determination, which remains the only abiding guarantee for a lasting peace in the region.