

INDIA

Jammu Kashmir Coalition of Civil Society & Association of Parents of Disappeared Persons

Submission

Universal Periodic Review

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I. Information on JKCCS

1. Jammu Kashmir Coalition of Civil Society [JKCCS], an independent, self-funded group, founded in 2000, based in Srinagar, Indian administered Jammu and Kashmir [“J&K”] works on human rights litigation, and documentation. This submission is on behalf of JKCCS and its constituent the Association of Disappeared Persons [APDP], founded in 1994¹.

II. Methodology

2. This submission focuses on India’s role in J&K, based on primary data recorded and verified by JKCCS, and on secondary sources as referenced.

III. Background and Context

3. J&K, an armed conflict with an estimated 7, 00,000 armed forces, is the most militarized zone in the world. Civilians have faced widespread and systematic attacks by Indian State forces for 26 years resulting in 70,000+ extra-judicial killings, 8000+ enforced disappearances, 7000+ unmarked and mass graves and numerous cases of torture and sexual violence. The armed forces, through special legislation and direct political support of the Indian state, enjoy total impunity, and to date have not been prosecuted for their crimes in civilian courts.
4. On the strength of UN Security Council resolutions, the people of J&K demand the end to Indian military occupation, recognition of their right to self-determination, and institution of an international, independent justice mechanism to prosecute State forces. India does not recognize J&K as a “dispute”, armed conflict and rejects the application of international law.

III.A Civilian non-violent uprising of 2016

5. Following the killing of Burhan Muzaffar Wani, Commander, *Hizbul Mujahideen* [armed rebel group operating in J&K] by Indian forces on 8 July 2016, there has been a brutal crackdown by State forces, including by use of army against civilians, in response to peaceful attempts of civilians to condole the killing of the militant commander, and demand the right of self-determination.
6. Over the last 68 days, fundamental rights have been curtailed through continuous State curfews and restrictions [longest in J&K history], 80+ civilians have been killed and 11,000+ injured through State forces action with 800+ having received eye-damage including by the use of pellet shotguns and an 100+ civilians partially or permanently blinded [an admitted 1.3 million pellets were fired in the first 32 days]. There have been some reports of sexual violence. Peaceful gatherings and marches, including funeral processions and public prayers, are met with violence as telecommunication services remain by and large curtailed. Political activists and protestors, including minors, are illegally detained [estimated at 1000+]². JKCCS has submitted 21 cases of use of excessive force, including with dangerous chemicals, to relevant Special Procedures.

¹ For further information on JKCCS, its constituents and affiliates, please visit www.jkccs.net.

² For an overview of the recent violence, please see: Associated Press, <http://bigstory.ap.org/df800517aed649509c5c87043a8e989a>, 23 August 2016; New York Times, http://www.nytimes.com/2016/08/29/world/asia/pellet-guns-used-in-kashmir-protests-cause-dead-eyes-epidemic.html?_r=0, 28 August 2016.

7. Medical services, including hospitals, are attacked and raided³. 100+ ambulances attacked within the first month⁴, as ambulance drivers continue to face State violence⁵.
8. The use of pellet shot guns - directly at protestors - has epitomized the present violence. 14 year old Insha Malik has suffered multiple pellet injuries on her face, including fractures and blindness⁶.
9. The present situation mirrors past State violence in 2008 and 2010 that resulted in killings of 61 and 120 civilians respectively.
10. The Indian State is in violation of the Geneva Conventions, 1949, and Additional Protocols, 1977 and international humanitarian law principles of distinction between civilian and non-civilian targets, prohibition on indiscriminate attacks and proportionality of use of force. In their use of force against civilians, State forces also violate the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, and Code of Conduct for Law Enforcement Officials, 1979.
11. The request by the UN High Commissioner for Human Rights for a fact-finding mission was rejected by Government of India. Similarly, the United Nations Military Observer Group in India and Pakistan has been denied access by Government of India to carry out any work in J&K. Access for civilians to this body is also severely restricted.
12. Past UPRs of India, in 2008 and 2012, focused on ratification of international conventions, and repeal of Armed Forces Special Powers Act, 1990 [AFSPA]. In both UPR's, India's National Reports made no mention of J&K thereby ensuring that J&K remains a blind spot in the UPR process.

IV. Promotion and protection of human rights on the ground

IV.A Scope of international obligations

13. India has yet to ratify the Conventions against Torture and on Enforced Disappearances. Contrary to India's claims, the entirety of both crimes are not covered under domestic law. Despite a recommendation in UPR 2012, India has not acceded to the Rome Statute of the International Criminal Court. India has yet to sign and ratify the 1977 Additional Protocols of the Geneva Conventions. All of the above formed a part of the 2013 recommendations of the Special Rapporteur on Extrajudicial, Summary or Arbitrary executions.
14. Despite being party to the Genocide Convention, 1948, and Geneva Conventions, 1949, and bound by customary international law and a claimant to the UN Security Council, India has yet to legislate on: Genocide, Crimes against Humanity and War Crimes, and join the Mine Ban Treaty, 1997.

IV.B Cooperation with human rights mechanism and obligations

15. In the last 4½ years, the Special Rapporteur on Extrajudicial, Summary or Arbitrary executions has been the only Special Procedure granted access to J&K. Only two other Special Procedures [Freedom of Religion or Belief and Human Rights Defenders] have been allowed access to J&K to date.

³ Amnesty International, <https://www.amnesty.org.uk/press-releases/jammu-and-kashmir-attacks-hospitals-and-medics-must-be-prosecuted>, 11 July 2016; *Medecins Sans Frontieres*, <http://www.msfindia.in/kashmir-operational-update>, 16 July 2016.

⁴ *Rising Kashmir*, <http://www.risingkashmir.com/news/over-100-ambulances-damaged->, 3 August 2016.

⁵ Outlook, <http://www.outlookindia.com/newswire/story/kashmir-ambulance-driver-injured-in-firing-by-security-forces/950055>, 18 August 2016; Kashmir Reader, <http://kashmirreader.com/2016/09/06/ambulance-driver-shot-at-with-pellets/>, 6 September 2016.

⁶ *Greater Kashmir*, <http://www.greaterkashmir.com/news/front-page/tragic-pellets-blind-14-year-old-insha-forever/222869.html>, 14 July 2016. See also generally: *New York Times*, http://www.nytimes.com/2016/08/29/world/asia/pellet-guns-used-in-kashmir-protests-cause-dead-eyes-epidemic.html?_r=0, 28 August 2016.

IV.C Implementation of international human rights obligations, taking into account applicable international humanitarian law

IV.C.I Militarization and Structural Violence

16. A feature of the occupation of J&K is the scale of militarization. JKCCS estimates the strength of the armed forces and police in J&K to range from 6,56,638 to 7,50,981⁷. 29, 591 acres of land, and 1600+ hospitals, schools, hotels, cinema halls and government buildings are occupied by armed forces. The recent civilian uprising saw further deployment of forces and occupation of spaces, including schools⁸. Militarization severely affects the environment – water bodies, mountains, and glaciers – that disturbingly serve, particularly in the case of river waters, as a strategic resource against Pakistan⁹.
17. The militarization makes it clear that human rights violations in J&K are systemic and committed by the Indian State at the highest command structures of the Indian political and armed class. But, India has yet to legislate on the principle of command or superior responsibility.

IV.C.2 Freedom of religion and belief, expression, association and peaceful assembly and right to participate in public and political life

18. India has consistently, including in the last 4½ years, restricted speech, expression, assembly, and religious and political activity in J&K. Support for the demand of right to self-determination, and highlighting of human rights violations lead to restrictions, arrests and State violence.
19. In the recent civilian uprising, the State shut down *Jamia Masjid*, the historic mosque in Srinagar city, and gatherings including congregational prayers on Fridays have been disallowed. Printing and distribution of newspapers was temporarily banned. Attacks on journalists continue¹⁰. Peaceful rallies are attacked and disallowed [a list of 36 such rallies attacked from 29 August to 5 September 2016, with resultant injuries to 1215+ civilians was sent as an urgent appeal on 8 September 2016 to the relevant Special Procedures]. Internet restrictions and surveillance, a constant in J&K, have been particularly severe¹¹. JKCCS received reports that in *Saderkoot* village of North Kashmir the armed forces cut the water supply on account of the villagers taking part in protests. The State cutting essential supplies across Kashmir is a real and imminent threat.
20. In the last 4½ years, attacks on mosques, and religious gatherings have been documented by JKCCS. Since 1989, religious *Milad and Muharram* processions have been banned/restricted. Section 144, Criminal

⁷ JKCCS, *Structures of Violence: The Indian State in Jammu and Kashmir*, http://www.jkccs.net/wp-content/uploads/2015/09/Untitled_1.pdf, pp.10-63, September 2015.

⁸ Indian Express, <http://indianexpress.com/article/india/india-news-india/kashmir-unrest-bsf-stays-in-srinagar-schools-people-question-govts-sincerity-about-education-2993637/>, 24 August 2016.

⁹ JKCCS, *Occupational Hazard: The Jammu and Kashmir floods of September 2014*, <http://www.jkccs.net/wp-content/uploads/2015/04/Occupation-Hazard-JKCCS.pdf>, Chapter II, April 2015.

¹⁰ Kashmir Times, <http://www.kashmirtimes.in/newsdet.aspx?q=56958>, 3 September 2016; Greater Kashmir, <http://www.greaterkashmir.com/news/kashmir/story/227189.html>, 30 August 2016; Reporters without Borders, <https://rsf.org/en/news/rsf-calls-rule-law-be-restored-kashmir>, 11 August 2016.

¹¹ Slate, http://www.slate.com/articles/technology/future_tense/2016/09/india_champion_of_web_access_cuts_off_mobile_internet_in_kashmir.html, 7 September, 2016; Indian Express, <http://indianexpress.com/article/india/india-news-india/kashmiri-held-for-sedition-chhattisgarh-cops-probe-who-made-anti-india-fb-post-2956483/>, 6 August 2016.

Procedure Code, to be used in rare and extreme circumstances, is used to limit all political activity, when convenient to the State. Legal challenge to such State action remains pending in court with no relief.

IV.C.3 Right to life, liberty and security of persons

21. In the last 4½ years, everyday State atrocities continue and are interrupted by periods of sharp increase in violence such as the last 68 days.
22. Extra-judicial executions, including fake encounters, often motivated by awards, cash rewards and out-of-turn promotions, continue unabated. India refuses to abide by international humanitarian law, including in the treatment of arrested/surrendered armed fighters entitled to prisoner of war status and other protections. From 2012, JKCCS has recorded: 142 [2012], 203 [2013], 234 [2014] and 219 [2015] cases of extra-judicial executions. The 18 July 2016 army killing of three civilians, including two women, in *Qazigund*, South Kashmir, is revealing: targeted killings, false claims by State and no punishments¹². Landmines continue to cost lives [1050 deaths and 1964 injuries since 1990].
23. State forces are rewarded for violence. On 15 August 2016, Syed Javed Mujtaba Gilani, Inspector General of Police, Kashmir, responsible for the recent killings was rewarded with the President's Police Medal for Distinguished Service, 2016. Accused are also awarded prestigious UN Peacekeeping Force postings.
24. Enforced disappearances have reduced, but total impunity and devastating effects on families continue. The whereabouts of 8000+ disappeared are still not known. 1500+ half-widows struggle with the daily reality of this crime¹³. From 2012, JKCCS has recorded 10 cases of enforced disappearance. To date, JKCCS has submitted 400 cases of disappearance to the UN Working Group, in addition to a total of 2000+ complaints before domestic judicial / quasi-judicial bodies.
25. Arbitrary detentions, including under the Public Safety Act, 1978 [PSA, a "lawless law"¹⁴], continue unabated. Of 1500+ arrested in the recent uprising, lawyer Babar Nehru of Doda District was wrongly detained under PSA for fostering "communal disharmony". Syed Ali Shah Geelani, Mirwaiz Umar Farooq, Yasin Malik, Masarat Alam and other pro-freedom leaders, are under unlawful detention since 8 July 2016. Syed Ali Shah Geelani and Masarat Alam have been detained for most of the last 26 years despite courts, including the Supreme Court, consistently quashing their detention orders.
26. Torture is routine in J&K but, along with sexual violence, highly underreported. Unlawful detention and interrogation centres, effectively torture centres, are in use. Victims are often buried at these sites. Despite the widespread and systematic use of torture, the International Committee of the Red Cross [ICRC] work in J&K is restricted as per a memorandum of understanding with India. In the recent civilian uprising, seven civilians have been killed by torture.
27. Sexual violence is a weapon of war in J&K. JKCCS has documented sexual violence against civilian men and women¹⁵. Even in the most exemplary cases, the State has ensured impunity. For example, mass rape and torture in villages of *Kunan* and *Poshpora*, North Kashmir, in February 1991 by the army has not been fairly investigated as the army and government stall processes of justice¹⁶. From 2012, JKCCS has recorded seven cases of sexual violence.
28. JKCCS through APDP has documented 7000+ unmarked and mass graves, and despite confirmation by the J&K State Human Rights Commission [SHRC], and offer of assistance by the European Parliament in 2008,

¹² The Caravan, <http://www.caravanmagazine.in/vantage/residents-accounts-armys-claims-firing-deaths-qazigund-kashmir>, 28 July 2016.

¹³ APDP, *Half Widow? Half Wife*, <http://www.jkccs.net/wp-content/uploads/2015/02/Half-Widow-Half-Wife-APDP-report.pdf>, July, 2011.

¹⁴ Amnesty International, *A Lawless Law*, http://www.amnestyusa.org/sites/default/files/asa200012011en_11.pdf, 2011.

¹⁵ JKCCS, *Structures of Violence: The Indian State in Jammu and Kashmir*, http://www.jkccs.net/wp-content/uploads/2015/09/Untitled_1.pdf, pp.481-498, 538, September 2015.

¹⁶ Essar Batool et.al., *Do you remember Kunan Poshpora?*, Zubaan Publications, 2016.

India has refused to act citing lack of capacity and claiming all such graves to contain militant bodies only¹⁷. DNA testing, forensic examinations and protection of gravesites are urgently required.

29. Human rights defenders are subjected to surveillance, intimidation, travel restrictions [70,000+ passports denied so far], illegal detentions, and false cases. Recently, a criminal case of sedition was registered against Amnesty International India for organizing a program on J&K¹⁸. On 14 September 2016, Khurram Parvez, JKCCS, was barred from travelling to Geneva for the HRC session.

IV.C.4 Administration of justice, including impunity, and the rule of law

30. There exists total impunity for State forces for human rights violations in J&K with barriers at every stage of the criminal justice system, including through the use of AFSPA. Documentation and condemnation, including by Amnesty International¹⁹, has led to no change.
31. Recently, JKCCS identified the role of 972 State forces personnel across 333 cases of serious crimes²⁰. The list of accused, their ranks, units and area of operations confirm that crimes in J&K are widespread, systematic and systemic and under directions and in the knowledge of senior officials of the armed forces and the State itself. 972 accused personnel is a fraction of the total State personnel accused of crimes and, as per government records, no prosecutions in civilian courts thus far.
32. The judiciary, including Supreme Court of India, has failed to end impunity. For example, since 2012, in a series of high profile cases of extra-judicial executions of civilians [*Pathribal, Machil and Zahid Farooq*], the courts allowed armed forces to evade civilian courts thereby ensuring impunity.
33. Court-martial processes are not a substitute to transparent trials in civilian courts²¹, even as per domestic armed forces law. Yet, successive governments and courts have effectively declared J&K to be a war zone where civilian trials cannot be held but at the same time refused to apply international humanitarian law.
34. The SHRC is defunct [since June 2014]. Commission of Inquiries and Magisterial enquiries [190, since 2002], ordered by governments have been discontinued and/or their recommendations disregarded. APDP's long standing demand for a Commission of Inquiry on disappearances has always been rejected.
35. India's unwillingness to embolden processes of justice in J&K affects the independence and effectiveness of the judiciary. The resultant legal impunity is an endorsement for further violence. Passage of time, destruction of evidence and further lives, and the inability of human rights groups to effectively document the conflict, warrant international intervention.

V. Recommendations

36. Ensure application of international law, including international humanitarian law, in J&K.
37. Allow access to OHCHR Commission of inquiry / Fact-finding mission to J&K to investigate the situation of human rights violations as per international law.
38. Commit to UN HRC Special Procedure with country mandate specifically for J&K.

¹⁷ APDP, *Buried Evidence*, <http://www.jkccs.net/wp-content/uploads/2015/02/Buried-Evidence-Report-on-Mass-Graves.pdf>, 2009; Associated Press, <https://www.yahoo.com/news/ap-newsbreak-kashmir-wont-dna-test-mass-graves-112723438.html>, 5 September 2012.

¹⁸ Al Jazeera, <http://www.aljazeera.com/news/2016/08/amnesty-international-accused-sedition-india-160818081440628.html>, 18 August 2016.

¹⁹ Amnesty International, [https://www.amnesty.org.in/images/uploads/articles/Kashmir_Report_Web_version_\(1\).pdf](https://www.amnesty.org.in/images/uploads/articles/Kashmir_Report_Web_version_(1).pdf), 2015.

²⁰ JKCCS, *Structures of Violence: The Indian State in Jammu and Kashmir*, http://www.jkccs.net/wp-content/uploads/2015/09/Untitled_1.pdf, p.126, September 2015.

²¹ Amnesty International, [https://www.amnesty.org.in/images/uploads/articles/Kashmir_Report_Web_version_\(1\).pdf](https://www.amnesty.org.in/images/uploads/articles/Kashmir_Report_Web_version_(1).pdf), p.43, 2015.

39. Allow immediate access to J&K to Special Procedures of the UN HRC relevant to specific crimes and on the environment and independence of judiciary.
40. Accede to Conventions on Torture and Enforced Disappearance, Rome Statute of the International Criminal Court, Mine Ban Treaty, 1997, and 1977 Additional Protocols of the Geneva Conventions.
41. Legislate on crimes of Genocide, Crimes against Humanity and War Crimes.
42. Legislate on principle of command or superior responsibility.
43. Repeal AFSPA and PSA.
44. Release all political prisoners in J&K
45. Ensure freedom of travel, including grant of travel documents, to people of J&K regardless of political thoughts, affiliations or activities.
46. Ensure freedom of religion, belief, expression, association and peaceful assembly and right to participate in public and political life in J&K.
47. De-militarize schools, hospitals and all other such public institutions in J&K.
48. Disband all unofficial interrogation and detention centres in J&K.
49. Allow unrestricted access to ICRC, MSF and UNMOGIP.
50. Investigate, with international assistance, the phenomenon of unmarked and mass graves, and immediately protect gravesites.
51. Evolve a mechanism, in cooperation with human rights groups in J&K, to ensure that armed forces personnel accused of human rights violations are not granted any awards, rewards or out-of-turn promotions including through international engagements and recruitment with UN Peacekeeping Forces.
52. Commit to prosecutions of human rights violations in civilian courts, and not court-martial proceedings.