

**Flygtningenævnets baggrundsmateriale**

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**FIDH - International Federation for Human Rights**  
*and its partner organizations*  
**Association of Parents of Disappeared Persons (APDP)**  
*and*  
**Jammu Kashmir Coalition of Civil Society (JKCCS)**

## **Key human rights issues of concern in Indian-Administered Jammu & Kashmir**

**March 2019**

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### **Introduction**

Human rights violations began to be formally reported in Indian-administered Jammu & Kashmir (hereafter “Jammu & Kashmir”)<sup>1</sup> in 1990 in the midst of counter-insurgency operations by the Indian Army to contain an armed struggle against Indian rule. These military operations were marked by excessive and disproportionate use of force. Since 1990, more than 70,000 people have been killed, more than 8,000 have been subjected to enforced disappearances, several thousands have been arrested and detained under repressive laws, and torture and other acts of inhuman and degrading treatment against protestors and detainees have been routinely used by Indian security forces.

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<sup>1</sup> This note exclusively deals with the human rights situation in the Indian state of Jammu & Kashmir, which includes the regions of Jammu, Kashmir Valley, and Ladakh. India controls over 55% of the territory of the historical princely region of Jammu & Kashmir (population of 13 million) while 35% (six million people) is under the control of Pakistan (Azad Kashmir and Gilgit-Baltistan), and 10% under Chinese control.

Although militancy has been declining since 2008, mass mobilizations of unarmed protestors continued to occur frequently from 2008 to 2010 and were met with use of excessive force by Indian security forces. In 2016, in the aftermath of the killing of militant leader Burhan Wani, civilian protests against state violence, demanding the right of self-determination, were met by excessive force by security forces, resulting in numerous gross human rights violations, especially in the Kashmir Valley.

The Indian government has continued to deny access to international human rights bodies to Jammu & Kashmir. In 2016, the government denied a request by then-United Nations (UN) High Commissioner for Human Rights Zeid Ra'ad Al Hussain for access to Jammu & Kashmir to investigate allegations of human rights violations. UN access was again denied in 2017 and 2018. The Pakistani government has offered conditional access to Pakistan-administered Jammu & Kashmir, but maintains that access will be granted only after the Indian government also provides access to Indian-administered areas.

Similarly, international human rights organizations have been denied visas and permissions to travel to Jammu & Kashmir and the few foreign journalists and activists who have tried to make trips there as tourists have been deported.<sup>2</sup> Foreign journalists based in India received an official warning from the Indian government in May 2018 about "traveling to certain areas" without permission, which in practice is never given.<sup>3</sup>

### Recommendations

Call on the Indian government to:

- Allow full and unfettered access to Jammu & Kashmir to UN bodies and representatives, foreign and domestic human rights organizations, and foreign and local journalists.
- Support calls to establish a Commission of Inquiry to investigate allegations of all human rights violations perpetrated in Jammu & Kashmir, as recommended in the report by the UN Office of the High Commissioner for Human Rights (OHCHR).
- Support the establishment of a mechanism to monitor the human rights situation in Jammu & Kashmir through diplomatic missions in New Delhi and Islamabad.

### **The continuing crime of enforced disappearance**

Enforced disappearances in Jammu & Kashmir have been documented since counter-insurgency operations by Indian armed forces began in 1990. Since then, an estimated 8,000 persons have been subjected to enforced disappearance in Jammu & Kashmir.<sup>4</sup> Although numbers have decreased in recent years, people continue to disappear. Many victims have been civilians who were picked up by the Indian armed forces on mere suspicion of having ties with militants and later disappeared. In 2017, seven cases of

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<sup>2</sup> In November 2010, US academic Richard Shapiro was also deported for 'political activism' in Kashmir. See more here: <http://archive.indianexpress.com/news/us-professor-deported-for-political-activism-in-valley/706855/>; In May 2011 Indian activist and writer Gautam Navlakha was denied entry at Srinagar airport. See more here: <https://thekashmirwalla.com/2011/05/gautam-navlakha-denied-entry-deported-from-srinagar-airport-press-note-from-iptk/> ; In September 2011 India deported reputed US journalist David Barsamian from Kashmir. See more here <https://www.dawn.com/news/661343> ;

<sup>3</sup> Columbia Journalism Review, *Dangerous times for the press in Kashmir*, 3 October 2018, <https://www.cjr.org/watchdog/journalism-kashmir.php>.

<sup>4</sup> There are at least 1,500 so-called "half widows" in Kashmir, referring to the wives of men who have disappeared. Due to legal and religious reasons, they cannot remarry for at least seven years, which also delays the process of transferring the property of the missing person. As the crime of enforced disappearances began to be documented in the early 1990s, the families of the disappeared came together to form APDP in 1994.

enforced disappearances were reported.<sup>5</sup> The bodies of five of these persons were recovered a few months later, and three of them had been allegedly killed by the Indian armed forces. In 2018, three civilians were subjected to enforced disappearance and later found dead.

Enforced disappearances are used in Jammu & Kashmir to instil fear among the local population and to dissuade them from participating in, and supporting, the independence movement and to target civilians and militants alike. Many victims of enforced disappearances are thought to have been killed and buried in unmarked mass graves [See below, *Systematic impunity for grave crimes*].

The Indian government denies that enforced disappearances have taken place in Jammu & Kashmir. Although the Indian government acknowledges 4,008 missing persons and claims they crossed the Line of Control (LoC) to Pakistan in the early 1990s and never returned, there have been no efforts to ascertain if these 'missing' persons are dead or alive or even indeed in Pakistan.<sup>6</sup>

Although India signed the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) in 2007, it has yet to ratify it or to pass domestic laws criminalizing enforced disappearance. During the third Universal Period Review (UPR) of India in May 2017, the Indian government did not accept all eight recommendations that called on India to ratify the ICPPED.<sup>7</sup> On 16 August 2010 and again on 19 January 2018, the UN Working Group on Enforced or Involuntary Disappearances (WGEID) requested to conduct a visit to India but, as of July 2018, had not received a positive response from the government.<sup>8</sup>

#### Recommendations

Call on the Indian government to:

- Ratify the ICPPED and criminalize enforced disappearance in domestic legislation.
- Conduct thorough, impartial, and independent investigations into all allegations of enforced disappearances and ensure relatives of victims are provided with timely updates on the progress of investigations.
- Provide full and unconditional access to the WGEID to Jammu & Kashmir.

#### Extrajudicial killings go unabated

Extrajudicial killings of civilians continue to occur with alarming frequency in Jammu & Kashmir. From January 2008 to December 2018, there were 4,059 extrajudicial killings in Jammu & Kashmir, out of which 1,081 were civilians.<sup>9</sup> In 2018, at least 160 civilians, 31 of

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<sup>5</sup> JKCCS, *Annual Human Rights Review 2017*, <https://jkccs.files.wordpress.com/2017/12/jkccs-annual-human-rights-review-2017.pdf>.

<sup>6</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), *Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Balistan*, 14 June 2018, <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>.

<sup>7</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: India*, 17 July 2017, A/HRC/36/10; and UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: India – Addendum*, 6 September 2017, A/HRC/36/10/Add.1; available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/INIndex.aspx>.

<sup>8</sup> UN Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, 30 July 2018, A/HRC/39/46, para. 26; available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/236/81/PDF/G1823681.pdf?OpenElement>.

<sup>9</sup> JKCCS, *2018 deadliest year of the decade – APDP and JKCCS Annual Human Rights Review*, <http://jkccs.net/2018-deadliest-year-of-the-decade-jkccs-annual-human-rights-review/>.

whom were children, were killed - the highest number over the past decade.<sup>10</sup> Nineteen civilians, including five women, were recorded to have been killed in the Kashmir Valley in 2017,<sup>11</sup> and at least 40 civilians in 2018, in the context of military operations or clashes between Indian armed forces and armed militants.

Moreover, in recent years, extrajudicial killings of militants involving Indian armed forces have taken place at an alarming frequency in Jammu & Kashmir. From 1 January 2015 to 31 December 2018, 732 militants were subjected to extrajudicial killings by Indian armed forces. The frequency of extrajudicial killings of militants have increased over the past several years: 105 in 2015; 144 in 2016; 216 in 2017; and 267 in 2018.

On 18 September 2017, three UN Special Rapporteurs communicated to the Indian government their concerns regarding the arbitrary killings of 20 civilians by Indian armed forces during protests in Jammu & Kashmir in 2016.<sup>12</sup> They also condemned the lack of response from the government to previous communications sent by UN Special Procedures in 2016 and early 2017.<sup>13</sup>

On 7 May 2018, in another communication to the Indian government, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions raised concerns about the allegations of the violation to the right to life of 11 civilians in Jammu & Kashmir, 10 of whom had allegedly been killed either intentionally or following excessive or indiscriminate use of firearms by law enforcement officials or the army. The 11th individual had reportedly been killed during an exchange of fire between police and militants.<sup>14</sup> The communication also highlighted the failure of the authorities to conduct prompt and impartial investigations into these killings.

### Recommendations

Call on the Indian government to:

- Investigate all allegations of extrajudicial killings in Jammu & Kashmir and bring the perpetrators to justice.
- Allow free and unconditional access to the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions to investigate allegations of extrajudicial killings by Indian armed forces in Jammu & Kashmir.

### **Torture used as a punitive measure**

The use of torture and inhuman or degrading treatment and punishment remains one of the most under-documented human rights violations in Jammu & Kashmir, despite being a systematic and institutionalized practice inflicted on thousands of people – both civilians and militants. Torture has been used to: punish militants who have been arrested; carry out acts of reprisal against individuals with suspected ties to militants; coerce suspected militants or sympathisers to reveal crucial information. Torture has also been used against a significant numbers of seemingly random civilians.<sup>15</sup>

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<sup>10</sup> Ibid.

<sup>11</sup> JKCCS, *supra* note 5, p.6.

<sup>12</sup> The Special Rapporteurs on Extrajudicial, Summary or Arbitrary Executions, on the Promotion and Protection of the Right to Freedom of Opinion and Expressions, and on the Rights to Freedom of Peaceful Assembly and of Association. Reference AL IND 10/2017.

<sup>13</sup> References IND 5/2016, IND 3/2017 and IND 7/2017, available at: <https://spcommreports.ohchr.org/>. The Government of India has officially responded only to communication IND 5/2016; the other communications remain unanswered.

<sup>14</sup> Reference AL IND 9/2018.

<sup>15</sup> For more information, see APDP & IPTK, *Structures of Violence: the Indian State in Jammu and Kashmir*, September 2015, <https://jkccs.files.wordpress.com/2017/05/structures-of-violence-e28093-main-report.pdf>.

Common torture centers in Jammu & Kashmir are Indian army camps and police stations. In the past, cinema theatres and hotels occupied by armed forces, abandoned houses, and government buildings were also converted into torture centers, where, according to testimonies, extreme forms of torture were perpetrated. Commonly used torture techniques practiced in Jammu & Kashmir include: excessive beatings; water boarding; roller treatment; hanging from the ceiling upside down; tying in stretching positions for prolonged periods; sleep deprivation; burning; mutilating organs; electrocution; and starvation. Forms of sexual torture, such as rape and sodomy, including the insertion of foreign objects, like rods or chili powder, into the victim's rectum and the electrocution of genitals, have also been reported.

Despite signing the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1997, India has not yet ratified the treaty, nor has it taken steps to criminalize torture at the domestic level.

### Recommendations

Call on the Indian government to:

- Ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Amend the Indian Penal Code to incorporate comprehensive definitions of torture and inhuman or degrading treatment and punishment and prescribe appropriate punishments for such acts.

### **Systematic impunity for grave crimes**

Allegations of serious crimes and violations of human rights in Jammu & Kashmir have never been adequately investigated and prosecuted. There have been no adequate prosecutions even in cases in which Indian armed forces have been accused of committing war crimes. Instead, the Indian government justifies its actions as necessary to maintain law and order in the state, to curb militant activity, and to fight terrorism.

Since 1990 to the time of publication, there has not been a single case of prosecution of Indian armed forces in civilian courts for human rights violations committed in Jammu & Kashmir. A 2015 report by APDP and the International People's Tribunal on Human Rights and Justice in Indian-administered Kashmir (IPTK) listed 333 cases of human rights violations committed by 972 individual perpetrators, which included Indian army personnel, paramilitary personnel, Jammu & Kashmir police personnel, and pro-government militants. All of these alleged perpetrators have been granted absolute impunity for the crimes of which they have been accused.<sup>16</sup>

This impunity is exacerbated by laws such as the 1990 Armed Forces (Jammu & Kashmir) Special Powers Act (AFSPA),<sup>17</sup> which allows Indian armed forces to use deadly force, and provides them with the power to: arrest individuals without a warrant on mere suspicion of the commission of a crime; enter and search any premises; stop, search, and seize any vehicle. AFSPA also protects the Indian armed forces from being prosecuted in civilian courts without prior authorization from the government.<sup>18</sup>

The Indian army claims it investigates any human rights violation perpetrated by their personnel, and that these cases are adjudicated in military courts. JKCCS and APDP have tried to obtain details about these alleged prosecutions, but the proceedings of these military

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<sup>16</sup> Ibid.

<sup>17</sup> Available at: [http://legislative.gov.in/sites/default/files/A1990-21\\_1.pdf](http://legislative.gov.in/sites/default/files/A1990-21_1.pdf)

<sup>18</sup> OHCHR, *supra* note 6.

courts are not transparent and are never made public. Based on some of the case details which APDP and JKCCS were able to acquire through right to information applications, it appears that, from 1999 to 2011, seven officers were prosecuted, only three of which were in cases related to potential human rights violations. In the few cases where military trials were conducted, the rulings were later overturned after the indicted persons appealed to civilian courts.<sup>19</sup>

### *Mass and unmarked graves*

The fate or whereabouts of the 8,000 people who have been subjected to enforced disappearance in Jammu & Kashmir have never been officially established. However, there are strong indications that a large number of these people are likely to have been buried in mass and otherwise unmarked graves. In Uri Sub-district, in northern Jammu & Kashmir, there are no less than 940 such graves.<sup>20</sup>

In a 2009 report, APDP and IPTK documented 2,700 unknown, unmarked, and mass graves, containing over 2,943 bodies, across 62 sites in 55 villages in Baramulla, Bandipora, and Kupwara Districts.<sup>21</sup> Of these, 2,373 were unmarked graves. These mass grave sites are under the close scrutiny of the Indian armed forces, especially those stationed near the LoC, and access to these sites is very difficult. According to some of the exhumations conducted thus far and to an enquiry report by the Jammu & Kashmir State Human Rights Commission (SHRC), these graves contain bodies of victims of extrajudicial killings by Indian military and paramilitary forces.

The SHRC investigated the complaints made in APDP and IPTK's 2009 report and, on 16 April 2011, confirmed the existence of 2,730 graves. SHRC recommended forensic examination and DNA testing of the graves along with setting up of a Commission of Inquiry.<sup>22</sup> At the time of publication, neither of these recommendations have been implemented.

On 24 October 2017, in response to a petition filed by APDP, the SHRC passed an order that acknowledged the presence of 3,844 unknown, unmarked, and mass graves in the districts of Poonch (2,717) and Rajouri (1,127) and recommended comprehensive investigations using DNA testing, carbon dating, and other forensic techniques. As of the time of publication, the government of Jammu & Kashmir has not acted on these recommendations and has cited a "lack of infrastructure" for failing to investigate mass graves.

On 4 February 2018, an APDP team of lawyers was prohibited from visiting the grave site of Atta Mohammed, who passed away on 10 January 2016 and had been instrumental in unmasking mass graves in Uri.<sup>23</sup>

### *Inquiries*

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<sup>19</sup> JKCCS, *supra* note 5.

<sup>20</sup> ADPD, *Facts Under Ground: A fact-finding mission on nameless graves & mass graves in Uri area*, 2008, <https://jkccs.files.wordpress.com/2017/05/facts-under-ground-first-report-on-mass-graves-in-kashmir.pdf>.

<sup>21</sup> APDP & IPTK, *Buried Evidence: Unknown, Unmarked, and Mass Graves in Indian-Administered Kashmir*, November 2009, <https://jkccs.files.wordpress.com/2017/05/buried-evidence-report-on-mass-graves.pdf>.

<sup>22</sup> Kashmir Life, *SHRC On Unmarked Graves: The Investigation Report*, 26 April 2016, <https://kashmirilife.net/full-text-of-the-enquiry-report-of-the-investigation-team-of-jak-shrc-on-unmarked-graves-in-north-kashmir-1702/>.

<sup>23</sup> The UNWGEID, and the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression, on the situation of human rights defenders, and on the promotion of truth, justice, reparation and guarantees of non-recurrence sent a communication (reference AL IND 4/2018) to the government of India on 22 March 2018, condemning the blocking of access to APDP lawyers, to which the government of India has not responded.

Allegations of human rights violations, if backed by significant civilian protests, often result in the government ordering probes and constituting inquiry commissions. These initiatives rarely, if ever, lead to concrete results and only appease the public with empty promises of justice. From January 2008 to December 2018, 107 enquiries were ordered by the Jammu & Kashmir government. The highest numbers of enquiries were ordered in 2009, one of which was the Justice Jan Commission, tasked with looking into the rape and murder of two women in Shopian District.<sup>24</sup> Although the final report of the Justice Jan Commission alluded to foul play, the report was not used for an official investigation by the police.

### Recommendations

Call on the Indian government to:

- Immediately repeal AFSPA, and specifically its provisions that require that the central government authorize the prosecution of armed forces accused of human rights violations.
- Fully investigate all suspected locations of mass and unmarked graves and ensure that all available techniques are used to ascertain the identify of the bodies.
- Ensure that inquiry commissions are given the powers to fully investigate allegations of human rights violations and that the relevant authorities make use of their reports in criminal prosecutions.

### Continuing use of arbitrary and administrative detentions to curb dissent

Arbitrary and administrative detentions are used in Jammu & Kashmir to suppress political dissent. Introduced on the pretext of curbing timber smuggling in Jammu & Kashmir in the late 1970s, the 1978 Jammu & Kashmir Public Safety Act (PSA) has been routinely used to detain individuals who have advocated for the right to self-determination or simply questioned and peacefully criticized the government's actions in Jammu & Kashmir.<sup>25</sup> It has been used to target human rights defenders, journalists, pro-independence political leaders, suspected members of armed opposition groups, and people involved in protests, including minors.<sup>26</sup>

The PSA, which provides for detention of up to two years without trial on vague grounds, has been used against individuals who exercised their rights to freedom of peaceful assembly and to freedom of expression. The PSA is enforced through executive orders issued by administrative officials. Although an Advisory Board is mandated to review detention orders under the PSA, right to information petitions have found that between April 2016 and mid-December 2017, the Board recommended to confirm 99.40% of the 1004 detention orders it reviewed.<sup>27</sup> The Jammu & Kashmir High Court subsequently quashed over 81% of these detention orders.<sup>28</sup>

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<sup>24</sup> On 29 May, 2009, Aasiya and Neelofar left their home to visit their orchard and did not return home. The next day, their bodies were found in the Rambiyar Nallah river in ankle deep water. It was alleged that the two women had been raped and murdered by paramilitary troops stationed nearby. Following the incident, severe protests across the Kashmir Valley resulted in a shutdown of Shopian District for 47 days, which compelled the state government, led by then-Chief Minister Omar Abdullah, to institute a one-man Inquiry Commission headed by Justice Jan.

<sup>25</sup> Available at: <http://jkhome.nic.in/psa0001.pdf>.

<sup>26</sup> OHCHR, *supra* note 6.

<sup>27</sup> Commonwealth Human Rights Initiative, *RTI Reveals Advisory Board under J1K Public Safety Act spent 75% of its budget upholding detention orders which J1K High Court quashed later on*, 2 August 2018, <http://www.humanrightsinitiative.org/blog/rti-reveals-advisory-board-under-jk-public-safety-act-spent-75-of-its-budget-upholding-detention-orders-which-jk-high-court-quashed-later-on>.

<sup>28</sup> *Ibid*.

The use of PSA increased considerably during political unrest or civilian uprisings, such as the 2016 protests in reaction to the killing of militant leader Burhan Wani. After these protests, 582 of the more than 8,000 civilians placed under detention were detained under the PSA.<sup>29</sup>

In addition to administrative and preventive detentions, pro-independence figures have been routinely put under house arrest. Since 2008, Hurriyat leaders Syed Ali Geelani, Mirwaiz Umar Farooq, and Jammu Kashmir Liberation Front (JKLF) leader Mohammad Yasin Malik have often been put under house arrest and prohibited from undertaking political activities. In 2018, Syed Ali Geelani completed eight years under house arrest.<sup>30</sup> People in Jammu & Kashmir have also regularly been kept in arbitrary detention in police stations and sometimes even army camps, on the pretext of being questioned.

### Recommendations

Call on the Indian government to:

- Immediately repeal the PSA and ensure that peaceful dissent is allowed in Jammu & Kashmir.
- Immediately release all political prisoners arbitrarily arrested under false and fabricated charges.

### **Ongoing military operations continue to threaten human rights**

#### *Cordon and Search Operations (CASOs)*

During a Cordon and Search Operation (CASO), the male members (including teenage boys) of all households of the area where the CASO is taking place, are asked by the armed forces to vacate their homes and assemble in a designated location. Their identity cards are checked and they are questioned. Meanwhile, female family members are asked to remain in their houses, while army officers search the houses for possible arms and ammunition or any links to the militancy.

CASOs were very common during the 1990s and were known locally as “crackdowns.” Although the practice was abandoned in 2001 due to opposition from the civilian population, CASOs were re-introduced in May 2017.<sup>31</sup> According to data collected from newspaper reports and field visits, at least 358 CASOs were conducted from June 2017 to October 2018, during which allegations of violations, ranging from use of excessive force, inhuman treatment, destruction of property, and sexual violence were reported. The Indian army has been accused of harassment and ransacking of property during CASOs, which can be seen as a form of collective punishment on the civilian population.<sup>32</sup> In recent times, CASOs have often culminated in extrajudicial killings of militants.<sup>33</sup>

#### *Use of pellets*

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<sup>29</sup> JKCCS, *Annual Human Rights Review 2016*, <http://jkccs.net/wp-content/uploads/2018/03/2016-Human-Rights-Review-JKCCS.pdf>

<sup>30</sup> Kashmir Media Service, *Syed Ali Geelani completes 8 years under house arrest*, 23 December 2018, <https://kmsnews.org/news/2017/12/23/syed-ali-gilani-completes-8-years-under-house-arrest-aphc/>

<sup>31</sup> Firstpost, *Kashmir unrest: Security forces bring back cordon-and-search operations after 15 years*, 18 May 2017, <https://www.firstpost.com/india/kashmir-unrest-security-forces-bring-back-cordon-and-search-operations-after-15-years-3454142.html>

<sup>32</sup> Kashmir Reader, *Lolab residents protest against ransacking of property during CASO*, 27 October 2018, <https://kashmirreader.com/2018/10/27/lolab-residents-protest-against-ransacking-of-property-during-caso/>

<sup>33</sup> United News of India, *Encounter ensues during CASO in Kupwara*, 11 October 2018, <http://www.uniindia.com/encounter-ensues-during-caso-in-kupwara/states/news/1375520.html>

The indiscriminate use of pellet shot guns against civilian protestors in Jammu & Kashmir has led to a “dead eye epidemic” as thousands of protesters have lost their eyesight. Pellet shotguns were introduced for crowd control in Jammu & Kashmir during the civilian uprising in August 2010. Their use was first reported in Seelo Village in Sopore Town on 14 August 2010.<sup>34</sup> A month later, on 18 September 2010, Amir Kabir Beigh became the first Kashmiri to lose his eyesight to pellets after being hit in both eyes in Baramulla District.<sup>35</sup> The indiscriminate use of pellet shot guns against civilian protestors in Jammu & Kashmir has led to a “dead eye epidemic” as thousands of protesters have lost their eyesight.

The 2016 civil unrest was met with excessive use of force by the authorities, including the widespread use of pellet shotguns to control protesters. On 18 August 2016, the Central Reserve Police Force (CRPF) informed the Jammu & Kashmir High Court in an affidavit that it used approximately 1.3 million pellets in just 32 days (between 8 July and 11 August) in Jammu & Kashmir to control street protests.<sup>36</sup> According to official data given by the state government, 13 people died in 2016 and four people in 2017 due to pellet injuries.<sup>37</sup>

In January 2018, former Chief Minister Mehbooba Mufti stated in the State Legislative Assembly that, from July 2016 to February 2017, 6,221 persons had been injured due to pellet guns, including 782 eye injuries.<sup>38</sup> However, it is likely that these official figures are underestimated, as records of Srinagar hospitals, quoted in the media, indicated that the eyes of at least 1,178 persons were damaged by pellets in the four months between July and October 2016 alone.<sup>39</sup>

On 26 December 2016, the SHRC ordered Deputy Commissioners of all 10 districts of Kashmir to send a list of victims who received injuries due to pellet guns during the 2016 protests. The government submitted a list of 1,726 victims.

### *Use of landmines*

Intense militarization around the LoC took place in 2001 during Operation Parakaram, during which over a million landmines were laid along the border. By the end of 2013, at least 3,166 known casualties (1,077 people dead and 2,088 injured) were reported by the Landmine and Cluster Munition Monitor.<sup>40</sup> According to media reports, in recent years, the majority of landmine victims appeared to be Indian soldiers and there was a sharp increase in deaths and injuries near the LoC in 2018, with at least 26 such incidents reported.<sup>41</sup>

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<sup>34</sup> The Hindu, *J&K police for the first time use non-lethal weapon for crowd control*, 14 August 2010, <https://www.thehindu.com/news/national/other-states/JampK-police-for-the-first-time-use-non-lethal-weapon-for-crowd-control/article16131974.ece>

<sup>35</sup> The Wire, *Pellet Guns in Kashmir: The Lethal Use of "Non-Lethal" Weapons*, 21 July 2016, <https://thewire.in/rights/kashmir-lethal-pellet-guna>.

<sup>36</sup> The Hindu, *1.3 million pellets used in 32 days, CRPF tells HC*, 19 August 2016, <https://www.thehindu.com/todays-paper/1.3-million-pellets-used-in-32-days-CRPF-tells-HC/article14577711.ece>

<sup>37</sup> Kashmir Life, *17 protesters died of pellet gun injuries in 2016-17 in Kashmir: Govt*, 7 March 2018, <http://kashmirilife.net/17-protesters-died-of-pellet-gun-injuries-in-2016-17-in-kashmir-govt-167424/>

<sup>38</sup> Firstpost, *6,221 people suffered pellet-gun injuries in Jammu and Kashmir in the seven months after Burhan Wani's death*, 25 January 2018, <https://www.firstpost.com/india/6221-people-suffered-pellet-gun-injuries-in-jammu-and-kashmir-in-the-seven-months-after-burhan-wanis-death-4318831.html>

<sup>39</sup> Greater Kashmir, *In 4 months, pellets damage eyes of 1178 persons*, 8 November 2016, <https://www.greaterkashmir.com/news/life-style/in-4-months-pellets-damage-eyes-of-1178-persons/233000.html>

<sup>40</sup> Landmine and Cluster Munition Monitor, 9 December 2014, *Casualties and Victim Assistance* [http://archives.the-monitor.org/index.php/cp/display/region\\_profiles/theme/3522](http://archives.the-monitor.org/index.php/cp/display/region_profiles/theme/3522)

<sup>41</sup> National Herald, *Death-traps along the border: Why are Indian landmines killing Indians?* 9 December 2018, <https://www.nationalheraldindia.com/india/death-traps-along-the-border-why-are-indian-landmines-killing-indians#>

Although the United Jihad Council<sup>42</sup> announced in October 2017 that it was banning the use of antipersonnel mines, both the Indian and Pakistani armed forces continue to use landmines along the LoC. This continues to impact the civilian population living near the LoC, both in terms of the risk of injuries and death it poses and the impacts of the communities' livelihoods.

### Recommendations

Call on the Indian government to:

- Ensure basic human rights are respected during all CASOs conducted in Jammu & Kashmir.
- Take all necessary measures to ensure the respect of the right to life of civilians during counter-insurgency operations.
- Prohibit the use of pellet guns for crowd control purposes.
- Ban the use of landmines and immediately begin taking measures to disarm and remove landmines.

### **Rights to freedoms of expression, freedom of association, and freedom of religion or belief curbed**

#### *Freedom of opinion and expression*

The right to freedom of opinion and expression in Jammu & Kashmir continues to be curtailed by the government, which regularly gags expressions of political opinions and peaceful dissent.

The space for media to carry out their work without fear of being targeted is almost completely closed. In September 2017, Kashmiri freelance photojournalist Kamran Yousuf was arrested by the National Investigation Agency (NIA) without any charges and released on bail in March 2018. His charge sheet, produced in January 2018, accused him of carrying out terrorist and secessionist activities.<sup>43</sup>

In May 2018, Auqib Javed, a journalist working with the daily *Kashmir Observer*, was summoned by the NIA after producing an interview with pro-independence leader Aasiya Andrabi.<sup>44</sup> On 14 June 2018, the Editor-in-Chief of the daily newspaper *Rising Kashmir*, Shujaat Bukhari, was shot dead in the Press Enclave in Srinagar.<sup>45</sup>

With regard to internet censorship and surveillance, in April 2017, the government banned social media for over a month and halted 3G and 4G internet, citing misuse of the services by "anti-national elements."<sup>46</sup> In December 2017, the government of Jammu & Kashmir passed an order that barred all government employees from making, sharing or endorsing any political comments on any social media platforms.

In July 2018, the district administration of Kishtwar in Jammu & Kashmir issued an order that required administrators of WhatsApp groups to register themselves, disclose details of all

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<sup>42</sup> The United Jihad Council, also known as the Muttahida Jihad Council (MJC), is an umbrella organisation of armed groups operating in Jammu & Kashmir.

<sup>43</sup> Outlook Magazine, *NIA Failed To Provide A Single Evidence Against Kamran Yousuf: Delhi Court Grants Bail To Kashmiri Photo-Journalist*, 14 March 2018, <https://www.outlookindia.com/website/story/nia-failed-to-provide-a-single-evidence-against-kamran-yousuf-delhi-court-grants/309505>

<sup>44</sup> The Hindu, *NIA summons Kashmiri journalist*, 13 July 2018, <https://www.thehindu.com/news/national/other-states/nia-summons-kashmiri-journalist/article24414420.ece>

<sup>45</sup> BBC News, *Kashmir journalist Shujaat Bukhari shot dead in Srinagar*, 14 June 2018, <https://www.bbc.com/news/world-asia-india-44488081>

<sup>46</sup> Hindustan Times, *J-K government lifts ban on social media in Kashmir*, 27 May 2017, <https://www.hindustantimes.com/india-news/j-k-government-lifts-ban-on-social-media-in-kashmir/story-U9dfX6tswZhmrqTYFITk5J.html>

group members, and accept responsibility for all posts made in the groups. The order also required group administrators to disclose any posts made in the group that could “lead to trouble.”<sup>47</sup>

### *Freedom of religion or belief*

Under the pretext of maintaining law and order, the Jammu & Kashmir government has frequently resorted to curbing and restricting rights of freedom of religion and belief of the civilian population. For 18 of the 52 Fridays in 2017, the predominantly Muslim population was prevented from offering Friday prayers in the historic Jamia Masjid mosque in Srinagar.<sup>48</sup> In 2016, following the civilian uprising after the killing of militant leader Burhan Wani, the mosque was locked down for 19 weeks.<sup>49</sup> In 2018, for 12 Fridays out of 50, prayers were again disallowed in the Jamia Masjid mosque.

Every year, the Jammu & Kashmir authorities put in place severe restrictions to thwart the *Moharram* processions,<sup>50</sup> citing the possibility of sectarian violence. In 2018, curfew restrictions were put in place to prevent Shia mourners to participate in processions during *Moharram*. In contrast, the government provides security for the Amarnat Yatra (pilgrimage) undertaken by Hindu pilgrims from throughout the country to the Amarnath cave, showing that security concerns can be overcome.

### *Surveillance*

Continuous surveillance has become a regular feature in the lives of people of Jammu & Kashmir. In 2017, the Indian army carried out door to door surveys in central, south, and north Kashmir, asking for precise family details and numbering the houses.<sup>51</sup> Moreover, the Indian army has been carrying out a “security audit,” which is seen by many to be a clandestine census, by seeking information – such as details of employment, phone numbers, ID cards, religious and political opinions, vehicle registration information, and more – regarding the population living around army camps.<sup>52</sup>

In 2017, at least 200 CCTVs were installed at 53 locations to monitor peoples’ activities.<sup>53</sup> In November 2018, the Indian army carried out a survey in select neighborhoods of Srinagar, recording the names and phone numbers of residents and marking surveyed houses with their GPS coordinates.<sup>54</sup>

### Recommendations

Call on the Indian government to:

- Ensure all attacks of intimidation and violence against journalists are duly investigated and prosecuted.
- Refrain from all acts of censorship of modes of communication.
- Immediately halt activities amounting to illegal surveillance of civilians.

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<sup>47</sup> Scroll, *J&K: Kitshtwar administration asks WhatsApp group owners to get registered in 10 days*, 1 July 2018, <https://scroll.in/latest/884872/j-k-kishtwar-administration-asks-those-running-whatsapp-groups-to-get-registered-in-10-days>.

<sup>48</sup> JKCCS, *supra* note 5.

<sup>49</sup> JKCCS, *supra* note 27.

<sup>50</sup> Moharram is the first month of the Islamic Calendar, during which Shias in particular organize processions.

<sup>51</sup> JKCCS, *supra* note 5.

<sup>52</sup> Greater Kashmir, *Army seeks info on populations in vicinity of its camps*, 26 February 2018, <https://www.greaterkashmir.com/news/front-page/army-seeks-info-on-populations-in-vicinity-of-its-camps/277007.html>

<sup>53</sup> JKCCS, *supra* note 5.

<sup>54</sup> Rising Kashmir, *For geotagging Kashmiris, troops dropping at your doorsteps*, 7 November 2017, <http://risingkashmir.com/news/for-geotagging-kashmiris-troops-dropping-at-your-doorsteps>

## Human rights defenders under threat

Reprisals – including killings, torture, threats, and judicial harassment – against human rights defenders for their work documenting human rights violations in Jammu & Kashmir have been reported since the 1990s.

In April 2004, when JKCCS members, along with civil society activists from various parts of India, were monitoring Indian parliamentary elections in Jammu & Kashmir, one of the teams was attacked with an IED device in Kupwara District, leading to the death of human rights defender Aasiya Jeelani and the driver of the vehicle, and to the injury of Khurram Parvez, which resulted in the eventual amputation of his right leg.<sup>55</sup> Similarly, after the release of the ADP and ITPK 2009 report on mass graves, human rights lawyer Parvez Imroz's house was attacked with a grenade while his family was present there.<sup>56</sup>

On 18 October 2015, Kartik Murukutla, a human rights lawyer, was detained upon his return from Pakistan at the Wagah border by Indian Customs, and interrogated by intelligence officials. After returning from a session of the UN Human Rights Council in Geneva in September 2016, he was again stopped by immigration authorities and informed that a "Look Out Circular" had been issued in his name. Although no further information was provided and no markings were made on his passport, he was again stopped in April 2017, this time both at departure and upon returning, and told it was on account of this circular.

In September 2016, Khurram Parvez was detained under the PSA after being prevented from attending the 33rd Session of the UN Human Rights Council the same month. He was released after 76 days when the Jammu & Kashmir High Court overturned his detention order and termed it as "illegal" and an "abuse of power."<sup>57</sup>

### Recommendations

Call on the Indian government to:

- Refrain from all attacks and acts of reprisals against human rights defenders and civil society activists.
- Fully investigate all attacks of violence against human rights defenders and prosecute perpetrators of such acts.
- Allow freedom of movement of human rights defenders working in Jammu & Kashmir, including their freedom to travel overseas.

## Sexual violence used as a tool of repression

Rape and other forms of sexual violence have continued to be used as a tool of repression in Jammu & Kashmir, especially in areas close to the LoC and in remote areas, and perpetrators have been rarely investigated and prosecuted. In February 1991, between 40 to 80 women from eight to 80 years old were gang-raped by the 68 Mountain Brigade of the 4 Rajputana Rifles in the villages of Kunan and Poshpora, in the remote Kupwara District. The rapes took place during a CASO at night, while the men of the village were being tortured.<sup>58</sup> Despite the case having been brought before the Supreme Court of India in 2015, no

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<sup>55</sup> Kashmir Life, *Aasiya's Death Anniversary Assemble Activists In Srinagar*, 20 April 2013, <https://kashmirilife.net/aasiyas-death-anniversary-assemble-activists-in-srinagar-28520/>

<sup>56</sup> Human Rights Watch, *India: Protect Honored Kashmiri Rights Lawyer From Attacks*, 1 July 2018, <https://www.hrw.org/news/2008/07/01/india-protect-honored-kashmiri-rights-lawyer-attacks>

<sup>57</sup> First Post, *Kashmir activist Khurram Parvez, detained under draconian Public Safety Act, finally set free*, 30 November 2016, <https://www.firstpost.com/india/kashmir-activist-khurram-parvez-detained-under-draconian-public-safety-act-finally-set-free-3132576.html>

<sup>58</sup> Batool et al, 2016, Zubaan Books, *Do You Remember Kunan Poshpora?*

progress has made towards achieving justice for the victims and ensuring that the perpetrators do not enjoy impunity.

Recent incidents have demonstrated that rape and sexual violence are still used in Jammu & Kashmir. In 2016, a 16-year-old girl from Handwara in Kupwara District was molested by an Indian army officer. Instead of independently investigating the case, it was reported that the girl was coerced into recording a video statement absolving the soldier responsible.<sup>59</sup> In January 2018, an eight-year-old girl from the Bakerwal community in Kathua was raped and murdered by two police officers. The charge sheet filed by the police stated that one of the motives was to scare the Muslim Bakerwal community into moving away from the area. The trial is ongoing.<sup>60</sup>

In February 2018, a group of women associated with APDP & JKCCS submitted a petition to the SHRC and demanded inquiries be made in 143 cases of sexual violence in Jammu & Kashmir between 1989 and 2017.<sup>61</sup> No progress has been made at the time of publication in these cases.

### Recommendations

Call on the Indian government to:

- Investigate all allegations of rape and sexual violence committed in Jammu & Kashmir and prosecute perpetrators.

### **Lack of safeguards continue to place children in danger**

The conflict in Jammu & Kashmir has resulted in grave violations of the rights of children. From January 2003 to December 2017, 318 children were killed in Jammu & Kashmir, 144 of whom were killed during operations by Indian armed forces and Jammu & Kashmir police, 147 were killed by unidentified gunmen, 15 children died as a result of heavy artillery fire across the LoC, and 12 were killed by militants.<sup>62</sup> At least 31 children were killed in various incidents of violence in 2018, in addition to several cases of injuries. In November 2018, eight-month-old Hiba Nisar of Shopian District became the youngest pellet victim when armed forces fired pellets at her inside her home, which may result in the toddler losing complete eyesight.<sup>63</sup>

Attempts to secure justice for crimes committed against children have been largely fruitless. On 3-4 August 1998, 11 children were among 19 people who were shot dead in their homes in Sailan Village in Poonch District by Special Police Officers (SPOs) and armed forces.<sup>64</sup> In 2012, the families of the victims filed a complain with the Jammu & Kashmir High Court, which directed the Central Bureau of Investigation (CBI) to carry out proper investigations.

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<sup>59</sup> For more details, see: Kashmir Reader, *Handwara girl: prisoner of the state of affairs*, 28 April 2016, <https://kashmirreader.com/2016/04/28/handwara-girl-prisoner-of-the-state-of-affairs/>

<sup>60</sup> Scroll, *'They are boycotting us': Kathua's Bakerwal family returns home a year after their child's murder*, 29 January 2019, <https://scroll.in/article/910325/they-are-boycotting-me-kathuas-bakerwal-family-returns-home-a-year-after-their-childs-murder>.

<sup>61</sup> Greater Kashmir, *Support Group for Victims Petitions SHRC*, 24 February 2018, <https://www.greaterkashmir.com/news/kashmir/support-group-for-victims-petitions-shrc/276754.html>

<sup>62</sup> For more details, see: JKCCS, *Terrorized: Impact of Violence on Children of Jammu & Kashmir*, 2018, <http://jkccs.net/wp-content/uploads/2018/03/2018-Impact-of-Violence-on-Children-of-JK-JKCCS.pdf>.

<sup>63</sup> Al Jazeera, *Kashmir's youngest pellet gun victim could lose complete sight*, 7 December 2018, <https://www.aljazeera.com/indepth/features/kashmir-youngest-pellet-gun-victim-lose-complete-sight-181206223840348.html>.

<sup>64</sup> JKCCS, *The Anatomy of a Massacre: The Mass Killings at Sailan, August 3-4, 1998*, August 2014, <https://jkccs.files.wordpress.com/2017/05/sailan-report-web-version.pdf>.

On 25 August 2015, the CBI concluded that the case should be closed, and exonerated the accused, stating that the families of the victim had been untruthful.<sup>65</sup>

Juveniles have been regularly detained in police stations and illegal detention centers, and many children have been detained under the PSA. In 2011, a 14-year-old boy was charged under the PSA allegedly for stone pelting. He was subsequently sent to the Kot Balwal Jail in Jammu, after being detained at the Central Jail in Srinagar.<sup>66</sup> Not once during his detention was he placed in the only Juvenile Home in the Kashmir Valley. He was released after one month and nine days on humanitarian grounds.<sup>67</sup>

Charging minors under the PSA and detaining them in jails is in contravention of the 2013 Jammu & Kashmir Juvenile Justice (Care and Protection of Children) Act,<sup>68</sup> which states that all juveniles “in conflict with the law”<sup>69</sup> shall be placed under the custody of a special juvenile police unit or in an observation home.<sup>70</sup> The PSA itself was amended in 2012 by the Jammu & Kashmir State Assembly to prohibit the detention of children below 18 years of age.

### Recommendations

Call on the Indian government to:

- Ensure that children are not detained in contravention of the Jammu & Kashmir Juvenile Justice (Care and Protection of Children) Act, the PSA, and the Convention on the Rights of the Child, to which India became a state party in 1992.
- Ensure that all incidences of violence against children are duly investigated and prosecuted.

### **Former militants hindered from reintegrating into society**

In 2010, the Home Department of the Jammu & Kashmir government passed a rehabilitation policy aimed at facilitating the return of ex-militants from Pakistan to Jammu & Kashmir.<sup>71</sup> As a result, around 400 ex-militants and their families who had left in the early 1990s, returned from Pakistan and Pakistan-administered Kashmir. However, they were subsequently denied essential paperwork, such as passports and State Subject certificates.<sup>72</sup>

Thousands of other ex-militants – estimated to number around 30,000 – and their families have also suffered from administrative hurdles and discrimination. Ex-militants have not been able to live normal lives as they have been regularly summoned to police stations, their families have been denied passports and identity cards, and their children have been refused admissions in schools.<sup>73</sup>

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<sup>65</sup> Rising Kashmir, *19 years on, no justice in Sialan massacre case: JKCCS*, 4 August 2017, <http://www.risingkashmir.com/news/19-years-on-no-justice-in-sialan-massacre-case-jkccs>

<sup>66</sup> Greater Kashmir, *Anantnag teenager booked under PSA*, 1 March 2011, <https://www.greaterkashmir.com/news/news/anantnag-teenager-booked-under-psa/90245.html>

<sup>67</sup> The Indian Express, *J-K stone-pelting: Teenager Faizan released*, 5 April 2011, <https://indianexpress.com/article/india/india-others/jk-stonepelting-teenager-faizan-released/>

<sup>68</sup> Jammu & Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013, available at: [http://jkdsdj.jk.gov.in/rulesRegulations/jj\\_Act.pdf](http://jkdsdj.jk.gov.in/rulesRegulations/jj_Act.pdf)

<sup>69</sup> “Juvenile in Conflict with Law” refers to a juvenile who is alleged to have committed an offence and has not completed 18 years of age as of the date of commission of such offence.

<sup>70</sup> “Observation home” means a home established by the Government, or by a voluntary organization and certified by the government as an observation home, for the temporary reception of any juvenile termed “in conflict with the law” during the investigation stage.

<sup>71</sup> For more details on ex Militant Rehabilitation Policy, see [https://mha.gov.in/sites/default/files/JKRehabilitatioPolicy2010\\_07062017.pdf](https://mha.gov.in/sites/default/files/JKRehabilitatioPolicy2010_07062017.pdf)

<sup>72</sup> Under the 1957 Jammu & Kashmir Constitution, Section 6, permanent citizens are defined as state subjects.

<sup>73</sup> Kashmir Watch, *Ex-Militants along with wives demands rehabilitation*, 26 March 2013, <http://kashmirwatch.com/ex-militants-along-with-wives-demands-rehabilitation/>

### Recommendations

Call on the Indian government to:

- Put in place measures to ensure the full and meaningful reintegration of former militants and their relatives into society, including through providing citizenship documents to spouses and children of former militants and ensuring their right to freedom of movement.
- Ensure that rehabilitation and reintegration policies are fully implemented and that local authorities are monitored with regard to their implementation.

### **Situation of minorities instrumentalized by the authorities**

According to official figures, 209 individuals belonging to the Kashmiri Hindu minority were killed from 1989 to 2014 - mostly by unidentified gunmen. These killings and the deteriorating political atmosphere in the Kashmir Valley at the time led to the mass internal displacement of Kashmiri Hindus from the Kashmir Valley to the plains of Jammu and to other cities in India. Calls for their return have frequently been made by state authorities. In 2017, the Jammu & Kashmir Assembly called for creating a conducive atmosphere for the return of migrant Kashmiri Hindus to the valley<sup>74</sup> but the return has been politicised by the Indian government, which has suggested the creation of militarized ghettos for Kashmiri Hindus in different places across the Kashmir Valley.

On 20 March 2000, 36 Sikhs were shot dead by about 20 attackers dressed in army fatigues in Chittisinghpura Village, Anantnag District, south Kashmir. The government accused militants of these killings and, five days after the killings, the Indian army killed five civilians in Pathribal, dubbing them as militants responsible for the killings of the Sikhs. However, investigations by the police and subsequently by the CBI revealed that the victims of Pathribal were civilians and had been killed by the Indian army.

The killings of Kashmiri Hindus and other minorities in Jammu & Kashmir have never been fairly and credibly investigated.<sup>75</sup> In October 2017, India's Supreme Court dismissed a petition seeking the reopening of an investigation into the killings of several Kashmiri Hindus during the 1990s on the basis that the case was too old, despite the fact that there are no statutes of limitation for justice under Indian law with regard to serious crimes such as murder.

### Recommendations

Call on the Indian government to:

- Conduct full investigations into the killings of all civilians, including from religious minorities, in Jammu & Kashmir.
- Put in place measures to allow the safe return of all people who have been displaced from and within Jammu & Kashmir.

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<sup>74</sup> The Hindu, *Jammu & Kashmir Assembly calls for 'safe return' of Pandits*, 20 January 2017, <https://www.thehindu.com/news/national/Jammu-Kashmir-Assembly-calls-for-'safe-return'-of-Pandits/article17063545.ece>

<sup>75</sup> The Indian Express, *Why Kashmiris want a fair probe into the killings of Pandits, prosecution of guilty*, 8 August 2017, <https://indianexpress.com/article/explained/why-kashmiris-want-a-fair-probe-into-the-killings-of-pandits-prosecution-of-guilty-4786855/>