

REPORT OF THE OIC-IPHRC FACT FINDING VISIT TO THE STATE OF AZAD JAMMU AND KASHMIR TO ASSESS HUMAN RIGHTS SITUATION IN THE INDIAN OCCUPIED KASHMIR



اللجنة الدائمة المستقلة لحقوق الإنسان

Independent Permanent Human Rights Commission
La Commission Permanente Indépendante
des Droits de l'Homme

27-29 March 2017

S. No	Content	Page
i.	Introduction and Background of the OIC-IPHRC Fact Finding Mission	1-2
ii.	Observations/Findings of the OIC-IPHRC over the human rights violations in Indian Occupied Kashmir (IoK)	2-5
iii.	<ul style="list-style-type: none"> • Violation of the Right to Self-determination 	5
iv.	<ul style="list-style-type: none"> • Violation of Right to life 	6-7
v.	<ul style="list-style-type: none"> • Violation of Right to Freedom of Opinion and Expression 	8
vi.	<ul style="list-style-type: none"> • Violation of Freedom of Religion 	8-9
vii.	<ul style="list-style-type: none"> • Violation of the Freedoms of Peaceful Assembly and Association 	9
viii.	<ul style="list-style-type: none"> • Protection against torture, cruel, inhuman or degrading treatment or punishment 	9-10
ix.	<ul style="list-style-type: none"> • Measures to bring demographic changes in IoK by the Indian Government 	10
x.	<ul style="list-style-type: none"> • Forced separation of families 	10-11
xi.	<ul style="list-style-type: none"> • Probes and Inquiries 	11
xii.	<ul style="list-style-type: none"> • Line of Control (LoC) violations 	11
xiii.	<ul style="list-style-type: none"> • State of Refugees from IoK in the AJK 	12
xiv.	Conclusion	12
xv.	Recommendations	13-14
xvi.	Annex A: Statistics of Human Rights Violations by Indian Security Forces	15
xvii.	Annex-B: Total population and percentage of Muslim population in IoK	16

INTRODUCTION AND BACKGROUND OF THE OIC-IPHRC FACT FINDING MISSION:

1. Jammu & Kashmir is one of the oldest internationally recognized disputes on the agendas of the Organization of Islamic Cooperation (OIC) and UN Security Council (UNSC).

2. There are two dimensions of the Kashmir dispute: the first and foremost is the political dimension concerning the respective claims of the Governments of India and Pakistan regarding the territorial jurisdiction of the State of Jammu and Kashmir and the second dimension is the investigation of the claims of the reported human rights violations committed by the Indian security forces and civil administration in total disregard of the prevailing international human rights and humanitarian laws. However, the OIC IPHRC, as mandated, is concerned mainly with the human rights aspect of the dispute and has accordingly focused its report on the following:

(a) to assess the human rights and humanitarian situation in Indian Occupied Kashmir (IoK) in the light of prevailing international laws and standards;

(b) to investigate and report upon the allegations of human rights abuses by the Indian security forces in the IoK and;

(c) to make recommendations to protect the fundamental human rights of the Kashmiris.

Mandate of the Fact-Finding Mission

3. The 43rd OIC Council of Foreign Ministers (CFM) through its resolution nos. 8/43-Pol and 52/43-Pol, while welcoming the establishment of a “*Standing Mechanism to monitor human rights violations in the IOK*” requested the IPHRC to undertake a fact finding visit to IoK to ascertain the human rights situation and report its findings to the OIC CFM.

4. Based on the specific mandate from the CFM, OIC-IPHRC, in July 2016, approached the Indian Government to facilitate IPHRC fact-finding visit to IoK. However, to this day, this request remains unheeded. A similar letter, written by the OIC General Secretariat to the Government of India concerning the OIC fact finding visit to IoK, also remains unanswered. In the backdrop of this non-responsiveness from the Indian Government, the Commission discussed the matter in its 9th and 10th Regular Sessions¹ and it was decided that the Standing Mechanism and other IPHRC members should at least visit the State of the Azad Jammu Kashmir (AJK) from the Pakistani side to meet with the refugees from IoK to ascertain the human rights situation in the IoK. A similar suggestion was also made by the Special Representative of the OIC Secretary General on Jammu and Kashmir after his visit to AJK in May 2016.

5. Meanwhile, the Government of the Islamic Republic of Pakistan took the initiative to invite the OIC-IPHRC to visit AJK and meet with the refugees from IoK and other stakeholders of the dispute. They, however, urged the OIC-IPHRC to continue to request India to allow a fact-finding visit to IoK in order to have an objective assessment of the human rights situation on ground and independently investigate prevalent human rights abuses, which have been widely reported by national and international human rights organizations and independent media.

¹ Reports of the IPHRC 9th and 10th Regular Sessions held in April and November 2016

6. In the backdrop of these developments, the OIC-IPHRC delegation, in compliance with the CFM mandate, undertook a three day visit to Islamabad and the AJK from 27-29 March 2017. The delegation was led by the Chairperson Mr. Med Kagwa and comprised of the Commission Members Dr. Rashid Al Balushi, Dr. Raihanah Binti Abdullah, Amb. Abdul Wahab, Dr. Ergin Ergul, Prof. Saleh Al Khathlan and Dr. Oumar Abbou Abba.

Visit Program and sources of information

7. The Commission, during its three day visit met with President and Prime Minister of the State of AJK, Minister of Government of Pakistan for Kashmir Affairs and Gilgit-Baltistan, Advisor to the Prime Minister of Pakistan on Foreign Affairs, Hurriyat Conference representatives (a coalition of political parties' representatives from IoK), relevant government officials, Kashmiri refugees from IoK, victims, witnesses and their families as well as victims of Indian shelling and firing living in the AJK side of the Line of Control (LoC), media and civil society. The Commission appreciates the unfettered, open and transparent access provided by the Governments of Pakistan and the State of AJK to undertake its mandated task with objectivity and neutrality.

OBSERVATIONS/FINDINGS OF THE OIC-IPHRC OVER THE HUMAN RIGHTS VIOLATIONS IN IOK:

8. The Commission had to surmount the gigantic task of collating reliable data and information as the locus of human rights violations existed in the IoK. Therefore, while compiling this fact finding report, besides first-hand information from the victims, witnesses and refugees who have fled from the IoK, representatives of the Hurriyat Conference and members of independent media, the Commission has relied extensively on the data reported by the independent human rights bodies like Amnesty International (AI), Human Rights Watch (HRW), Medecins Sans Frontieres (MSF), International People's Tribunal on Human Rights and Justice in Indian-Administered Kashmir (IPTK), Kashmir Media Service (KMS) and the Association of Parents of Disappeared Persons (APDP).

9. According to the statistics gathered from these sources, reportedly, more than 94,000 Kashmiris have been killed by the Indian Security Forces in IoK. Out of these, more than 7,000 persons have been killed in Indian custody. Further, more than 107,000 structures have been destroyed, more than 22,000 women have been widowed, more than 105,000 children have been orphaned and more than 10,000 women have been raped and molested by Indian military and paramilitary troops in IoK since 1989. Furthermore, since, 8th July, 2016 more than 7000 people fell victim to the pellet gun injuries, out of which over 200 lost their vision which include children between the ages of 5-16 years. Statistical snapshot of the reported casualties is placed at Annex-A

Human rights violations reported by the international media and human rights organizations

10. Over the last three decades, a new phenomenon of half-widows has emerged in IoK. Half-widows are the wives of persons who are missing for more than 10-20 years. They are unaware of the whereabouts of their missing relatives and cannot remarry till they know the fate of their husbands. These half-widows apart from other relatives of disappeared persons are left without any entitlement to land, homes, inheritance, social assistance and pensions.

11. More than 6000 unmarked mass graves have been discovered in Northern Kashmir by a Kashmiri lawyer Pervez Imroz, which has been highlighted by the international media.²

12. The statistics quoted by independent sources about the ongoing human rights violations are self-explanatory to describe the extent of the human tragedy endured by the Kashmiri people. Also, the images shared over the social media and documentaries produced by reputable media outlets no less than CNN³ and Al Jazeera provide insight into the human rights violations committed by the disproportionate use of force by the Indian security forces. The harrowing account of a 14 years old Irfa Shakour who was blinded by the pellet guns is too vivid and painful to ignore.⁴

13. HRW in its report of 2016 highlighted the Indian crackdown on protests in IoK in July 2016, killing more than 90 people and injuring hundreds. The paramilitary Central Reserve Force defended the use of pellet guns, which injured hundreds with impunity telling the courts that ‘it was difficult to follow the SOP given the nature of the protests.’ At least 32 schools were burnt and many taken over by paramilitary forces who set up temporary camps inside them, severely disrupting education of children.

14. Human Rights Watch asked the *“Indian authorities should credibly and impartially investigate police use of force during violent protests in Jammu and Kashmir. The Indian government should publicly order the security forces to abide by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.”*⁵

15. Amnesty International, in its annual report of 2016 underscored the misery of ‘months of curfew and a range of human rights violations by authorities’. It highlighted the killing of more than 80 people, mostly protesters with thousands injured and hundreds blinded by security forces use of pellet guns, which are inherently indiscriminate. The report accused the Indian Security Forces of using arbitrary and excessive force against unarmed demonstrators.

16. Khurram Pervez, a human rights defender was detained for over two months, a day after he was prevented from traveling to Geneva to attend the Human Rights Council meeting. Mr. Pervez also met with the IPHRC delegation during his visit to Geneva and shared in detail the ongoing human rights violations committed by Indian security apparatus in IoK.

17. In the aftermath of the extra-judicial killing of the popular Kashmiri youth leader, Burhan Wani, on 8 July 2016 by the Indian security forces, hundreds of thousands of Kashmiris came out on the streets to protest against the heavy handedness of Indian Security Forces. The Government of India imposed curfews in most parts of IoK to prevent large protests. Despite curfews around 200,000 people attended the funeral of Burhan Wani. The Indian Security forces resorted to the use of live ammunition including pellet guns on the unarmed/innocent protestors. Doctors treating the injured have verified, based on the injuries, that Indian Army fired above the waist height executing a policy of ‘shoot to kill’ resulting in more than 160 civilian deaths, more than 20,000 injured and over 100 people blinded including children that included young girls studying in their homes.

² <https://www.theguardian.com/world/2012/jul/09/mass-graves-of-kashmir>

³ <https://www.youtube.com/watch?v=oKvJmPV96rw>

⁴ <http://www.aljazeera.com/indepth/features/2017/02/kashmir-pellet-guns-170212080445939.html>

⁵ Human Rights Watch, 12 July 2016: <https://www.hrw.org/news/2016/07/12/india-investigate-use-lethal-force-kashmir>

18. The famous newspaper Guardian in its July 18 2016 issue described the Indian high-headedness and prevailing impunity as: *'India is blinding young Kashmiri protestors –and no one will face justice'*.⁶ The New York Times also stated that *"2016 will almost certainly be remembered as the year of dead eyes"*⁷

19. The members of the delegation scanned the videos and pictures shared on social media showing Indian armed forces attacking ambulances carrying the injured. This is corroborated by the Doctors Association Kashmir Press Release of 11 July 2016 in which they confirmed that Indian army attacked the hospitals with teargas shells. In an attempt to curb protests long curfews were imposed in IoK resulting in a deliberate shortage of essential food supplies, medicines, children food, petroleum products and other basic amenities.

20. These gross human rights violations prompted the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein to state that *"We had previously received reports, and still continue to do so, claiming the Indian authorities had used force excessively against the civilian population under its administration.....I believe an independent, impartial and international mission is now needed crucially and that it should be given free and complete access to establish an objective assessment of the claims made by the two sides."*⁸ In August 2016, the Government of Pakistan welcomed the request of the Office of the High Commissioner for Human Rights (OHCHR) and agreed to fully cooperate with the OHCHR mission⁹ but unfortunately India has not responded positively to allow access to the OHCHR fact finding mission to investigate the allegations of human rights abuses in IoK.

21. In addition to the above, some of the specific set of human rights violations that are against the explicit rights granted in International human rights law are given below:

A. Violation of the Right to Self-determination

22. The UN Charter and Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) reaffirm peoples' right of self-determination and by virtue of that right people freely determine their political status and pursue their economic, social and cultural development.

23. The right to self-determination of the people of Jammu and Kashmir is accepted and upheld by the UN and agreed by the parties in dispute i.e. India and Pakistan. The UN Security Council Resolutions 47 of 21 April 1948, 51 of 3 June 1948, 80 of 14 March 1950, 91 of 30 March 1951, 122 of 24 January 1957 and UN Commission on India and Pakistan (UNCIP) Resolutions of 13 August 1948 and of 5 January 1949 all of which, declare that the final disposition of the State of Jammu and Kashmir would be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations. The denial of this fundamental right to the Kashmiri people is a serious breach of international law. In terms of Article 25 of the UN Charter, it remains an international responsibility to pressurize India to agree to grant this fundamental right to the Kashmiris who are denied this right for over seven decades.

B. Violation of Right to life

6 <https://www.theguardian.com/commentisfree/2016/jul/18/india-blinding-kashmiri-protesters-justice-steel-pellets>

7 'An Epidemic of 'Dead Eyes' in Kashmir as India Uses Pellet Guns on Protesters', Ellen Barry Aug. 28, 2016, New York Times

8 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20474>

9 <http://www.mofa.gov.pk/pr-details.php?mm=NDI2Nw>

24. Article 3 of the Universal Declaration of Human Rights (UDHR) stipulates that “*Everyone has the right to life, liberty and security of person.*” The International human rights law prohibits arbitrary deprivation of life under any circumstances, Article 6 of ICCPR, prohibits derogation from the right to life, even during occasions of emergency. ICCPR Articles 4 and 7, explicitly ban torture, even in times of national emergency or when the security of the state is threatened.¹⁰

25. In IoK, with over 700,000 Indian troops, the region is the most heavily militarized zones in the world with a ratio of 1 soldier for 11 civilians. As widely reported and criticized, both in national and international media, Indian Security Forces have blanket immunity through discriminatory laws, imposed in the State, since 1990. Among these laws, Armed Forces Special Power Act (AFSPA) empowers the security forces “to shoot at sight or arrest people without a warrant.” Such laws violate the fundamental human rights and international norms, to which Indian government is a signatory.

(i) **Extrajudicial killings and Fake Encounters**

26. The IPHRC delegation was informed by the AJK administration that since 1990 approx. 617 dead bodies were recovered in the AJK from the river Jhelum coming from the IoK. The Commission also met with the families of the victims who were killed in fake encounters and listened to many painful accounts from those Kashmiris visiting AJK from IoK on special visit visas. These families underwent the trauma of losing their loved ones without any recourse to justice and without any opportunity to register official complaints with the police.

27. The stories of these families are not unfounded as the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns in his report commented “*Evidence gathered confirmed the use of so-called ‘fake encounters’ in certain parts of the country. Where this happens, a scene of a shoot-out is created, in which people who have been targeted are projected as the aggressors who shot at the police and were then killed in self-defence. Moreover, in the North Eastern States, and Jammu and Kashmir the armed forces have wide powers to employ lethal force.*”¹¹

28. IOK - based human rights organization ‘Jammu Kashmir Coalition of Civil Society (JKCCS)’, in its report ‘*Structures of Violence: the Indian State in Jammu and Kashmir*’, highlighted the human rights violations committed by Indian security forces in IoK. The report holds Indian security forces accountable for the disappearance of 8000+ persons, 70,000+ deaths, 6000+ unknown, unmarked and mass graves, and countless cases of torture and sexual violence. The report concludes that structure of Indian State is responsible for creating an environment of impunity for security forces to commit gross human rights violations in IOK.

29. According to yet another report coming from BBC News: ***Fake Killings return to Kashmir***, “*Investigating the latest “fake encounters” of the three men from Nadihal village in Barramulla district, the police said that the army major had done it to get “a promotion and/or a cash reward”.*”¹² Alleged to be terrorists, the individuals were later identified as civilians who went missing and had allegedly been exchanged for money to some members of the Army so they could be killed in a fake encounter for which awards were offered.

¹⁰ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

¹¹ <http://www.un.org/apps/news/story.asp?NewsID=41676#.WPX-Y0UrKUK>

¹² <http://www.bbc.co.uk/news/10400074>

(ii) **Restrictive and discriminatory laws**

30. The delegation has the opportunity to examine in detail the AFSPA and Public Safety Act (PSA) and have found them to be discriminatory laws which encourage impunity in IoK. The PSA, which Amnesty International has also called as '*lawless law*'¹³ is even used to detain minors. The Amnesty International India, HRW, the International Commission of Jurists and UN Special Rapporteur on extrajudicial, summary or arbitrary executions has urged the Government of India to end the use of AFSPA and PSA to detain people, including children¹⁴.

31. It is the considered observation of the delegation that the PSA, which applies only in IoK, permits the State authorities to detain persons without charge or judicial review for as long as two years without visits from family members. People incarcerated under the PSA are sent to Jammu jail to make them inaccessible to their families causing further anguish and mental distress to the affected families. It is worth mentioning that on September 16, human rights activist Khurram Parvez was arrested under PSA for being a threat to "public order" and was lodged in Kot Bhalwal jail Jammu.

32. Under Section 4(a) of the AFSPA, even a non-commissioned officer can order his men to shoot to kill "if he is of the opinion that it is necessary to do so for maintenance of public order". Also, Section 4(b) allows such military personnel to destroy any shelter from which, in his opinion, armed attacks "are likely to be made" or which has been utilised as a hide-out by absconders "wanted for any offense." This discretion has provided the pretext of vandalising the private property even schools and places of worship. Section 4(c) of the Act permits the arrest without warrant, with whatever "force as may be necessary" of any person against whom "a reasonable suspicion exists that he is about to commit a cognizable offence." As evident, the provisions of these acts violate relevant provisions of international law and make India accountable for protection of human rights as provided in Bill of Rights.

33. Amnesty International's report on AFSPA on July 1, 2015¹⁵ severely criticized the Act for creating an environment of impunity for Indian security forces in IOK enabling them to commit atrocious human rights violations without any fear of being tried. It focuses particularly on Section 7 of the AFSPA, which grants virtual immunity to members of the security forces from prosecution for human rights violations.

34. The delegation concurs with the opinion of the UN Special Rapporteur Mr. Christof Heyns that the powers granted under AFSPA are in reality broader than that allowable under a state of emergency as the right to life may effectively be suspended under the Act and the safeguards applicable in a state of emergency are absent. Moreover, the widespread deployment of the military creates an environment in which the exception becomes the rule, and the use of lethal force is seen as the primary response to conflict. This situation is also difficult to reconcile in the long term with India's insistence that it is not engaged in an internal armed conflict. The

¹³ Amnesty International: India: Still a 'Lawless Law' Detention under the Jammu and Kashmir PSA 1978

<https://www.amnesty.org/en/documents/asa20/035/2012/en/>

¹⁴Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 26 April 2017 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1_EN.pdf

¹⁵ Amnesty International Report "Denied: Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir"

Special Rapporteur was, therefore, of the opinion that retaining a law such as AFSPA runs counter to the principles of human rights and democracy.¹⁶

C. Violation of Right to Freedom of Opinion and Expression:

35. Freedom of expression is a fundamental right vital for a functioning democracy and protection of all other rights. Article 19 of UDHR provides that “*everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*”.

36. The delegation interviewed refugees from IoK and met with the members of the civil society and inferred that the right of freedom of speech in IoK is restricted under ‘preventive measures’ which has restricted the movement of political leaders and their ability to connect with the masses. The political leaders are detained under the PSA and kept under unexplained incarceration.

37. It is noticed that during 2016, in order to impose a digital curfew in IoK, blanket ban on internet services was imposed to restrict access to social media and connectivity. The communication blockade also inflicted financial miseries on traders in Kashmir Valley. Amnesty International commented that “*Blanket and indefinite suspensions of telecommunication services do not meet international human rights standards. These shutdowns affect the ability of phone and internet users in Kashmir to seek, receive, and impart information, which is an integral part of the right to freedom of expression. The restrictions on access to telephones, in particular, jeopardize a range of other human rights as well, including the right to life.*”¹⁷

D. Violation of Freedom of Religion:

38. Freedom of religion and belief is guaranteed under the international law¹⁸. The Hurriyat representatives and media reports confirmed that the Indian government imposed arbitrary and unlawful ban on carrying Muharram processions on 8th and 10th Muharram in 2016 which amounts to denial of religious freedom. Instead the civil administration used brute force to disperse the Muharram processions taken out around Lalchowk area on 8th and 10th Muharram.¹⁹

39. Only in 2017, repeated curfews and movement restrictions impeded the holding of the congressional Friday prayers for 20 times at Kashmir’s Historic Grand Mosque (Jamia Masjid) Srinagar. Cleric of Kashmir Mirwaiz Mohammad Umar Farooq was barred from performing his religious obligations by arresting him and imposing curbs on his movements. Congressional Friday prayers were also not allowed in the historic Jamia Masjid of Shopian, since 8 July for nearly 18 weeks.

¹⁶ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 26 April 2017
https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1_EN.pdf

¹⁷ Amnesty’s International “Communications Blackout in Kashmir undermines human rights” 22 July 2016
<https://www.amnesty.org.in/show/entry/communications-blackout-in-kashmir-undermines-human-rights>

¹⁸ Articles 18 of the UDHR and ICCPR and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

¹⁹ Hurriyat’s “Human Rights Report 2016”

40. The rise of far right Hindu politics and party namely Bhartiya Janata Party (BJP) that is currently leading the Indian Government and most northern states of India, coupled with anti-Muslim sentiments and actions in the country have also affected the situation in IoK. The IPHRC delegation observed that there was a palpable nervousness among the Kashmiris over the rise of right wing ‘Hindutva’ which has encouraged ultranationalist leaders to issue belligerent anti-Muslim statements leading to heightened Islamophobia. It was quoted that Rashtriya Swayamsevak Sang (RSS), Hindu extremist group, was allowed to take out armed rallies in IoK to intimidate Muslims. In another such incident, RSS workers escorted by the local police took out a rally in Kishtwar town on October 11, which spread panic among the members of Muslim community.²⁰

E. Violation of the Freedoms of Peaceful Assembly and Association:

41. While meeting with refugees and visiting people from IoK, the IPHRC delegation came across several accounts of relentless imposition of curfew without any leniency offered to cater for the needs of the vulnerable segments of population like elderly, infirm and children. It was told to the delegation that curfew by the State administration is exercised as a tool to suppress civil liberties and inflict collective punishment for the entire population.

42. The Commission was told, the same was confirmed through various sections of media, that the Hurriyat leadership is frequently arrested or is kept under house detention. Ms. Aasiya Andrabi (a well-known woman political leader) was kept under very difficult conditions in jail. The condition of the Chairman of Jammu Kashmir Liberation Front, Mr. Yasin Malik became highly critical during his long imprisonment. Prominent human rights activist Khurram Parvez was kept under illegal detention for more than two months despite calls of human rights groups, including by a panel of human rights experts, for his immediate and unconditional release.²¹

43. As widely observed and reported, since the unrest that started on 8 July 2016, IoK faced the longest curfew, which continued for more than 50 days with no breaks leading to worst humanitarian sufferings.²² Most fundamental rights were curtailed through the imposition of continuous curfews and restrictions. Section 144 of the Criminal Procedure Code, prohibiting assemblies of more than four persons, remains in force for most of the times in the IoK. Assemblies, marches, graffiti, pamphlets, even silent vigils are banned.

F. Protection against Torture, cruel, inhuman or degrading treatment or punishment

44. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)²³ together with Geneva Convention related to The Protection of Civilian Persons in times of war, 1949 and Additional Protocols of 1977 provide for protection against humiliating and degrading treatment; torture, rape, enforced prostitution or any form of indecent assault.

45. The IPHRC delegation had the opportunity to meet with the Kashmiris visiting from IoK, who suffered torture in the hands of the Indian security forces and told that the use of torture, which include stripping off naked during custody is prevalent for seeking confessions.

²⁰ Hurriyat’s “Human Rights Report 2016”

²¹ <https://www.fidh.org/en/issues/human-rights-defenders/kashmiri-human-rights-defender-khurram-parvez-arbitrarily-arrested>

²² <http://indianexpress.com/article/india/india-news-india/kashmirs-longest-curfew-kashmir-unrest-it-is-painful-when-your-baby-needs-milk-and-youre-helpless-2996460/>

²³ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

46. According to Wiki Leaks, US Embassy in one of its cables disclosed the findings of the International Committee of the Red Cross (ICRC) about the widespread use of torture in IoK. The ICRC report claimed that out of 1,296 detainees it had interviewed, 681 said they had been tortured. Of those, 498 claimed to have been electrocuted, 381 said they were suspended from the ceiling, and 304 cases were described as sexual.²⁴

(i) Rape and Molestation

47. The Hurriyat representatives and many refugees in the camp described the ignominious practice of gang rape by the security forces. According to them, rape continues to be a major instrument of inflicting collective punishment to the Muslim society to seek confessions against the male members, coerce the protestors to accept the writ of the administration and break resilience at the community and individual levels.

48. A study done by MSF in 2006 reveals that Kashmiri women are among the worst victims of sexual violence in the world, the figure is much higher than that of Sierra Leone, Sri Lanka and Chechnya. The ages of women raped ranged from 13 to 80 years. Cases of rape and molestation abound in Kashmir and many go unreported because of the fear of social stigma, and of reprisal by State agencies. More often, police refuse to lodge complaints against the Indian troops.²⁵

G. Measures to bring demographic changes in IoK by the Indian Government

49. The political leadership of the State of AJK and also the sections of civil society raised fears that the Government of India has been trying to bring demographic changes in IoK by converting its Muslim majority character into minority through settlement of non-Muslim non-State subjects.

50. These fears are not ill-founded as in 2014, an Indian Parliamentary committee suggested settling of West Pakistan Refugees in IoK (IHK). In this regard, the government announced the decision of setting up Sainik colonies to permanently settle Indian soldiers and build townships to settle displaced Kashmiri Pandits in IoK (IHK). Attempts to setting up colonies for Indian soldiers are in complete violation of the Fourth Geneva Convention. Under Article 49 of the fourth Geneva Convention, the occupying force shall not deport or transfer part of its own civilian population into the territory it occupies. Therefore, India does not have the right to settle its own population in the IHK.²⁶ Annex-B provides table to corroborate the demographic shift in IoK.

H. Forced separation of families

51. The refugees who have fled the IoK to avoid persecution provided heart rending details to the IPHRC delegation that how they yearn to meet their loved ones on the other side of the LoC. In one such account, they shared the incident of talking to their families across the river marking the LoC and when the Indian security forces spotted this interaction, they forcibly removed the unarmed innocent women. Similar stories were shared by other refugees including the curbs put on telephone and internet services that restrict their communication.

²⁴ <https://www.theguardian.com/world/2010/dec/16/wikileaks-cables-indian-torture-kashmir>

²⁵ Kashmir Violence and Health: A report by MSF 2006
https://ru.msf.org/sites/russia/files/migrated/KASHMIR_FINAL_VERSION_221106.pdf

²⁶ <http://cscpr.pk/analysis-and-opinions/altering-demographics-indian-held-kashmir/>

52. Although as a result of the Composite Dialogue between Pakistan and India, cross LoC travel for civilians was opened at 5 points but only two of these are functional at present. Total 451 Bus Services have plied to-date. A total of 12317 passengers have travelled from AJK to IoK while only 6203 passengers have travelled in the opposite direction.

53. The Indian Government does not allow refugees to migrate into the Azad Jammu and Kashmir. The IPHRC delegation met with one of the 80 years old relatives of the refugees who managed to obtain Indian passport after an arduous struggle of 19 years to get visa to cross LoC to meet his daughter.

I. Probes and Inquiries

54. In a functioning democracy, every subject of the state has the right to justice and investigation of any reported crime or human rights violation. The history of judicial probes and administrative inquiries in IoK remains inconclusive. Even under Commission of Inquiry Act, in IoK, the administration has never made the findings public or punished the guilty and this makes one to conclude that probes and inquiries couldn't deliver justice and opportunity of fair trial to the Kashmiris.

55. Even the institutions, which are created under the Act of the Indian Constitution to investigate the allegations of human rights violations remain dysfunctional. The Hurriyat representatives informed that the State Human Rights Commission (SHRC) created in 1997 has remained mostly dysfunctional from time to time. Under Section 12 of the Jammu and Kashmir Protection of Human Rights Act, 1997 it is mandatory for the State government to initiate action on the report of the Commission within a period of four weeks from its receipt and intimate the Commission about the action taken. The successive governments have come in for sustained criticism from the SHRC for ignoring its recommendations. In 2006, SHRC Chairman Justice A M Mir resigned from his post citing "growing human rights violations" and "non-seriousness" of the State government on the issue as the reason behind the decision.²⁷

J. Line of Control (LoC) violations

56. After 1948 Kashmir War, UN established a United Nations Military Observer Group in India and Pakistan (UNMOGIP), for monitoring the ceasefire between Pakistani and Indian forces deployed along LoC. Members of UNMOGIP are deployed on both sides of the LOC to monitor implementation of UNCIP resolution of 1949. However, it is common knowledge that India does not allow UN Military Observers to visit areas beyond their living / office compounds.

57. The documented figure provided by the AJK authorities states that in 2016, the Indian security forces, in contravention of the ceasefire agreement, continued to violate the LoC, resulting in the loss of more than 46 innocent civilians and injuries to 145. The villages and populated areas (that are non-military targets) are also targeted deliberately by the Indian security forces. On 23 November 2016, India intentionally targeted a civilian bus near the LoC resulting in casualties of 10 civilians and injuries to at least 8 others. The IPHRC delegation physically met with the victims of this particular cross-LoC shelling and also inspected the remains of the bus, which was attacked.

²⁷ Hurriyat's Annual Human Rights Report 2016

K. State of Refugees from IoK in the AJK

58. According to the statistics²⁸ made available by the Government of the AJK, since 1989, a total of 6935 families totaling to 38,000 refugees migrated to AJK. The IPHRC delegation met with some of these refugees from IoK who are provided shelter and basic amenities and health and education free of cost by the Government of the State of AJK in refugee camps at Muzaffarabad, Bagh, Kotli, Mirpur and Rawlakot districts. However, the basic subsistence allowance of Rs.1500 per head is too meagre to meet the needs of the refugees. The refugees, though thankful for the efforts of the Governments of the Pakistan and AJK, did urge the international community to share the burden to meet their socio-economic needs.

L. Conclusion

59. Having met the with refugees, victims and families of victims, representatives of political parties and civil society from IoK as well as victims of cross border shelling in AJK, the Commission concludes that, in the absence of India's willingness to facilitate an independent investigation, there is considerable statistical and circumstantial evidence which lends credence to the allegations of indiscriminate and disproportionate use of force by the Indian security forces against unarmed and innocent civilians and human rights activists, resulting in torture, extrajudicial killings, rape and mass blinding through use of pellets.

60. Nonetheless, if India continues to refute these reports, it should allow all international, UN, OIC and other organizations to verify the situation on ground through independent fact finding missions. The Commission, accordingly, hopes that the Government of India will respond positively to the IPHRC request to grant access to the IoK to independently and objectively assess and report upon the human rights situation.

61. The Commission contends that the Kashmir dispute is not merely a question over territorial jurisdiction between India and Pakistan but it concerns about the future of millions of people who wish to exercise their inherent and inalienable right to self-determination.

62. The IPHRC delegation expresses its concerns over the violations of the right to life, right to freedom of opinion and expression, freedom of religion, freedoms of peaceful assembly and association as well as other fundamental human rights of the Kashmiri people guaranteed by international human rights law. Reports of widespread use of torture including rape and molestation of women at the hands of security forces are particularly condemnable. There are reports of widespread curfews and curbs on religious congregations for fear of protests and people have legitimate security concerns regarding protection of their right to life and dignity.

63. The Commission concludes that the use of restrictive and discriminatory laws by Indian Security forces such as AFSPA Act is contrary to the international human rights standards. These laws grant sweeping powers to the Indian security forces to detain, torture and even kill suspects without any fear of investigation hence has led to a culture of impunity, which violates fundamental human rights.

64. The Commission expresses serious concerns on the denial by India of the fundamental right to self-determination of Kashmiri people, well recognized by the relevant UNSC resolutions, and equating their legitimate freedom struggle with terrorism. The Commission has noted that the people of Kashmir has high hopes and expectations from the United Nations, OIC and IPHRC and international community to undertake substantive measures towards realization of their right to self-determination and protection of their basic human rights.

²⁸ Annex-B of the IPHRC IoK fact finding report 2017

65. At the time of writing this report, the viral footage of Indian Security forces parading of an innocent civilian tied to the front of their Jeep as a punishment for alleged stone-throwing is widely condemned both by the national and international human rights community. The footage attests to the Indian Security Forces' acquiescence to using such inhuman tactics to create fear and terror among Kashmiri population.

66. Through discriminatory laws, Indian security forces have created an atmosphere of impunity and fear which has led to grave human rights abuses against unarmed demonstrators and protestors, with little regard for the principles of proportionality and necessity.

M. Recommendations

For the UN and international community

67. The UN has an overbearing role and responsibility to protect and promote the rights of the people of Jammu and Kashmir enabling them to exercise their right to self-determination. Therefore the UN may be requested to ; a) impress upon the Government of India to put an end to the on-going human rights violations in IoK; b) facilitate holding of an independent investigation to all human rights violations, including cases of enforced disappearance, extrajudicial killings, rape and unmarked mass graves; c) urge the Government of India to repeal restrictive and discriminatory laws like AFSA and PSA which contravene international human rights laws and standards; d) implement UN resolutions to allow people of Jammu and Kashmir to exercise their right to self-determination in a free and fair plebiscite under the UN auspices; e) consider commemorating international solidarity day with the Kashmiris; f) condemn and block the attempts of the Indian government to change the demographic status of the majority Muslim State of the Jammu and Kashmir through establishment of illegal settlements for non-residents; and g) encourage and facilitate both Pakistan and India to resume the dialogue process for peacefully resolving all outstanding issues particularly the core issue of the Jammu and Kashmir.

68. In the event of continuing non-cooperation by the Government of India, the UNSC, acting under its obligation to maintain international peace and security and with a view to preventing any further violations of human rights of Kashmiris, may consider and resolve the issue through peaceful means;

69. The UN Human Rights Council may consider appointing a Special Rapporteur with a specific mandate to investigate India's violations in IoK under international law and international humanitarian law;

70. The High Commissioner for Human Rights may continue to urge the government of Indian to accept an OHCHR fact finding mission to IOK and must continue to monitor, document and report the ongoing human rights violations under his regular briefings to the HRC. Relevant Special Procedures of the HRC should also continue to monitor, highlight and report on human rights violations falling under their respective mandates.

71. The Director General of World Health Organisation, in its periodic health situation reports may consider to report upon the health conditions of Kashmiris in the IoK as is done in the case of Palestinians in the Occupied Palestinian Territories. It will help in highlighting the precarious health conditions in the disputed area.

For the Governments of the Pakistan and State of the AJK

72. The Government of Pakistan should continue to provide moral and diplomatic support to the Kashmiris and highlight the issue at all forums including UN to create awareness over the human rights violations and garner support to protect the human rights of the Kashmiris;

For the Government of India

73. The Government of India may be urged to (a) to bring an end to the gross and systematic human rights violations of the Kashmiri people in IoK; (b) allow free access to international media and independent human rights organizations to carry out investigations into alleged human rights violations; (c) repeal all restrictive and discriminatory laws like AFSA and PSA to allow the Kashmiris appropriate access to justice, free trial and freedom of movement; and (d) allow access to the humanitarian organizations to provide much needed medical support to the victims of the violence in particular recent cases of blindness by the pellet gun injuries.

For the OIC

74. The OIC should (a) continue to insist and endeavor to prevail upon the Government of India to agree to receive the OIC and IPHRC Fact Finding Missions to IoK to investigate and report upon the allegations of human rights violations; (b) consider organizing an international conference/symposium on the side-lines of the Human Rights Council in Geneva involving academics, policy makers from UN and OIC Member States and human rights experts to propose ways and means to secure the human rights of the Kashmiris; (c) coordinate with the OIC Contact Group on Jammu and Kashmir to meet regularly on the side-lines of session of the UN General Assembly, the UN Human Rights Council as well as the OIC Ministerial meetings to forge a consensus position for presentation at the international fora; (d) coordinate and collaborate with the Islamic Development Bank and Islamic Solidarity Fund to initiate development projects in the livelihood sector, health and education in the IoK and the refugee camps in the AJK; (e) in case the Government of India continues to violate the human rights of Kashmiris, OIC Member States may be urged to consider using the Boycott Divestment and Sanctions Movement against India to pressurise it to meet its human rights obligations; and (f) urge the Government of India to remove travel restrictions imposed upon the Kashmiri leadership to facilitate their free movement abroad.

For the IPHRC:

75. The IPHRC may continue to coordinate and collaborate with the OIC General Secretariat and Member States to raise the awareness of the human rights violations in IoK. To this regard, IPHRC may continue to regularly brief the OIC Contact Group about the latest human rights situation in IoK. The IPHRC may coordinate with OIC Missions in New York and Geneva to circulate the findings of this report widely with the UN and human rights organizations.

ANNEX-A: Statistics of Human Rights Violations by Indian Security Forces

Human Rights Violations by Indian Security forces	
Total number of killings in the valley from 1989 to March 31, 2017	
Total Killings	94,644
Custodial Killings	7,081
Civilians Arrested	140,739
Structures Arsoned/Destroyed	107,844
Women Widowed	22,834
Children Orphaned	107,607
Womens gang-raped/Molested	10,842
Casualties during ongoing uprising since 08 th July 2016	
Killings	125
Injured	16325
Inured by pellets	7485
Youth lost total eye-sight	55
Youth lost one eye sight	178
Youth at the verge of losing eye-sight	840
Youth whose vision damaged partially	1612
Women molested	534
Houses/shops/structures damaged	65165
Schools arsoned	50
People arrested(general)	10450
People detained under Public Safety Act	750
Compiled by Kashmir Media Service ²⁹	

²⁹ <http://www.kmsnews.org/news/>

ANNEX-B:

Table shows that the percentage of Muslim population in IoK is nearly the same as that of 1961. Contrarily, the percentage of Muslim population in India has increased from 10.70% in 1961 to 14.23% in 2011.

Year	1941	1961	1971	1981	2001	2011
Total	2,946,728	3,560,976	4,616,632	5,987,389	10,143,700	12,541,302
Muslims	2,133,611	2,432,067	3,040,129	3,843,451	6,793,240	8,567,485
Hindus	736,865	1,013,193	1,404,292	1,930,448	3,005,349	3,566,674
Muslims (Percentage)	72.41	68.30	65.85	64.19	66.97	68.31
Hindus (Percentage)	25.01	28.45	30.42	32.24	29.63	28.44

Table 1 Total population and percentage of Muslim population in IoK (Source: Census India)