

Foreword

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For as long as it has existed, the All-Party Parliamentary Kashmir Group's chief purpose has rightly been to draw attention in Britain to the parlous human rights picture in this most troubled of regions.

Violations, most egregiously in Indian-administered Jammu and Kashmir (J&K), frame everyday life for millions of Kashmiris. Excessive state violence, systematized by a legal framework which grants near-wholesale impunity to those responsible, is routine; its severity is well-documented independently, and borne out by the breadth and detail of credible submissions made to the APPKG; it is, in sum, a reality that warrants far greater attention than it receives.

In this vein, my priority as Chair has been to bring together the powerful testimony our group has often received on a more ad-hoc basis into a formal report – one which accurately reflects the gravity of the present situation and does justice to the historic injustices which continue to blight the lives of Kashmiri civilians. Its publication will, I hope, represent not just a significant moment for the group but offer a touchstone for action on the issue here in the UK.

Due in no small part to the determined consciousness-raising efforts of the redoubtable Kashmiri diaspora in Britain, the contours of the current situation will be grimly familiar to our supporters in and outside Parliament. The MPs and Peers who attend our events, and participate in the debates we've regularly secured, will have heard colleagues draw frequent attention to the issues canvassed in this report. Our findings build on their efforts and the work, in most cases over many years, of all those who have given evidence to the APPKG. I want to register my gratitude to all of them.

Two immediate points of context have overshadowed this inquiry. The first, dispiritingly, is the continuing cycle of violence set in motion by the killing of the 22 year-old Burhan Wani July 2016. In a now-familiar sequence of events, protests are followed by disproportionate and bloody reprisals, inducing further and more widespread waves of discontent in which previously apathetic Kashmiris are invested at significant personal risk. The cumulative human cost is immense, and the "establishment of durable peace" anticipated by the Simla Agreement in 1972 could hardly be more imperative than it is today. To this end, seriousness about upholding

human rights – beginning, crucially, with honesty on the part of both India and Pakistan about how Kashmiris’ rights are now disregarded – will be of foundational importance.

The second point of context is therefore hugely welcome: the release, in June 2018, of the UN High Commissioner for Human Rights’ (OHCHR) comprehensive report on recent developments in Kashmir. Their report incorporates both a thorough analysis of the widespread violations in Indian-administered J&K over the past two years, and a clear-eyed look at the failings that continue to mar governance from a human rights standpoint in Pakistani-administered AJK and Gilgit-Baltistan.

A note on sources

The scope of our inquiry is inevitably somewhat narrowed by the APPKG’s limited ability independently to investigate and verify incidents of human rights abuse. In this light, of course, the OHCHR’s findings are a particularly well-timed complement, in enabling a significant degree of cross-collaboration with violations alleged in the written submissions we have received. We have also been immeasurably helped by preceding reports from Amnesty International and Human Rights Watch, among others.

A second level on which the shape of our inquiry is heavily constrained by the evidence available to us is in our asymmetric focus on violations on the Indian side of the Line of Control. Although this is in large part reflects the asymmetry which exists in reality –

human rights abuses are without question more egregious and more widespread in Indian- than Pakistani-administered Kashmir – it is also borne upon by the relative difficulty we have had in securing testimony favourable to the Indian side. Repeated requests notwithstanding, no representative of either Indian central government or the J&K state government has agreed to give evidence, verbally or in writing. Our inquiry is undoubtedly the weaker for this omission.

By this token, our report’s concern with Indian violations should not be taken to imply indifference to the heavy burdens imposed on freedom of expression and political dissent in AJK and Gilgit-Baltistan. Support for a free press and open polity in Pakistani-administered Kashmir must be seen as an essential precondition for lasting and democratic peace.

Recommendations

A number of key recommendations follow from the findings of our report. What follows is not an exhaustive list of concerns in Kashmir, but reflects, in the Group’s judgment, the areas in most profound need of remedy.

1. The Government of India must repeal the Armed Forces (Jammu and Kashmir) Special Powers Act 1990 and enable prosecution of armed forces and security personnel in the civilian judicial system
2. The Government of Jammu and Kashmir must urgently provide a strict and limited statutory basis for administrative detention powers, in line with international

legal principles, by repealing or amending the Public Safety Act 1978

3. The Government of India must initiate a comprehensive public investigation into the identities of bodies in mass and unmarked graves, with an independent forensic verification process, and provide for a full freedom of information mechanism for the families of suspected victims of enforced disappearance
4. The Government of India should immediately ban the use of pellet firing shotguns
5. The Government of Jammu and Kashmir must open its prisons to international inspection.
6. The Governments of India and Pakistan should work to resume regularised visa-regulated civilian travel across the Line of Control and reunite separated families.

The legal dimension

Central to any assessment of the dynamics which shape civilian life in Jammu & Kashmir is an appreciation of the distinct legal structure which governs the operation of the state's vast per capita military presence, which is reliably pegged at c. 600,000 Army officers, stationed alongside significant permanent armed deployments from the Central Reserve Police Force (CRPF) and Border Security Force (BSF).

This is a natural starting point not least because the distinctiveness of the legal picture in J&K is central both to pro- and anti-government perspectives.

For India, where the basic posture of successive central governments (and baldly that of the incumbent Modi administration) has been to view Kashmir 'pre-eminently as a law and order problem, rather than an issue which is symptomatic of political alienation,'¹ giving security forces the tools and freedoms they require is a matter of logic and proportion. Lt. Gen. B.S. Jaswal, the Chief of the Indian Army's Northern Command, put the central issue in 2010:

'For special circumstances you require special laws. There are special circumstances in Jammu and Kashmir ... that require special laws to [empower] the Army to act firmly in certain circumstances that exist in this case'

From a critical standpoint, by contrast, the parallel legal apparatus in J&K, in both form and consequence, violates Kashmiris' human rights. The crux of a 1993 Amnesty International report —

'The pattern of grave human rights violations in Jammu and Kashmir ... involves persistent reports of thousands of arbitrary arrests and prolonged arbitrary detentions under special laws curbing important legal safeguards and thus facilitating human rights violations; notably "disappearances", routine torture of detainees so brutal that it frequently results in death, rape of women during search operations, and extrajudicial executions of unarmed civilians, often falsely labelled as having been the result of "encounters" or as having occurred in "cross-fire"; [and] security forces have ... operated with virtual impunity'

— echoes with dispiriting precision the points raised by commentaries written two decades later. In 2012, the Crisis Watch Group summarised the legal picture in the following terms:

'J&K remains heavily militarised, and draconian laws that provide legal cover for human rights abuses by security officials remain in force [, giving the] army widespread powers to search houses, arrest people

¹ Dr Farzana Shaikh, Chatham House, in oral evidence to the APPKG

without warrants and detain suspects indefinitely'

Attention has justifiably been given to two pieces of legislation in particular: the Armed Forces (Jammu & Kashmir) Special Powers Act (AFSPA); and the Public Safety Act (PSA) – whose combined effect, critics contend, is massively to broaden the discretionary powers given to security forces in J&K, and then shield them from legal scrutiny or attempt at prosecution.

A closer analysis of their provisions as written, and effects in practice, will shed some light on how these legal fixities systematically determine failures to uphold human rights in J&K.

The Special Powers Act, versions of which apply in other Indian states, is used to deploy the military in internal conflict scenarios. In its 2016 survey of the human rights picture in India, the U.S. State Department summarizes its provisions as follows:

'Under the AFSPA, a central government designation of state or union territory as a "disturbed area," authorizes security forces in the state to use deadly force to "maintain law and order" and arrest any person "against whom reasonable suspicion exists" without informing the detainee of the grounds for arrest. The law also provides security forces immunity from civilian prosecution for acts committed in regions under the AFSPA'

Second, the Public Safety Act, which applies only in J&K, gives state authorities permanent powers of

administrative detention. Again, from the State Department's 2016 report:

'The Act ... permits state authorities to detain persons without charge or judicial review for up to two years without visitation from family members. Authorities allowed detainees access to a lawyer during interrogation, but police in Jammu and Kashmir allegedly routinely employed arbitrary detention and denied detainees access to lawyers and medical attention'

In both instances there are parallel but distinct criticisms in relation to human rights. On the one hand, critics hold that the AFSPA and PSA constitute an immediate evidentiary violation of India's international human rights obligations. On the other, it is pointed out that (well-evidenced) claims of abuse by police and security forces reflect a culture of disregard for human rights which is in practice systematized by the Acts themselves. In the APPKG's judgement both of these propositions are amply justified.

The Special Powers Act

The first of several localised Armed Forces Special Powers Acts (AFSPA) came into force in 1958 in the Naga Hills in India's northeast; subsequent iterations continue to have force in Nagaland, Manipur, Assam, and parts of Mizoram. In 1989, in response to the burgeoning armed insurgency there, the Act's ambit was expanded to cover Jammu & Kashmir. This exigency was given permanent (and retroactive) legal force at the state level by the

Armed Forces (Jammu and Kashmir) Special Powers Act of 1990.

A number of humanitarian organisations as well as UN agencies consider AFSPA provisions to be in direct conflict with human rights directives to which India is itself a signatory.

A close reading of the legislation reveals the full extent of its application.

The effect of Sections 3, 3(a) and 3(b) is to invest both State and Union governments with the power unilaterally to designate 'disturbed areas' subject to quasi-martial provisions. Once a 'disturbed area' classification has been issued, Section 4 gives any serving member of the armed forces extremely broad discretionary power to do take whatever action they believe necessary in pursuit of maintaining 'public order' without the possibility of prosecution.

In practice, as one usefully thorough survey of the law's implications suggests, these articles combine to give the entire military and security establishment in J&K extraordinary latitude:

Any commissioned or non-commissioned officer or any other person in the armed forces ... may fire upon or use force, even amounting to death, against any person, if [they think] it necessary. [The] officer can destroy, any premises, public or private, from which armed attacks are made or are likely to be made [The] officer can arrest, without warrant, any person who has committed a

cognisable offence or against whom a reasonable suspicion exists or is about to commit a cognisable offence. Moreover, the officer can enter and search, without warrant, any premises to make any arrest or to recover any person or any property suspected to be stolen or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises and seize any property. The said officer can stop, search and seize any vehicle reasonably suspected to be carrying any person who has committed a non-cognisable offence or against whom a reasonable suspicion exists that he or she has committed or is about to commit non-cognisable offences. [The] appointed officer also has the power to search and break open the lock of any door, almirah, safe, box, cupboard, drawer package or other thing.

The consequence of such a broadly defined 'disturbed area' designation, as a 2015 Amnesty International report suggests, has been to permanently change the operating logic and strategic limits of counter-insurgency for troops deployed in J&K:

The classification of "disturbed area" ... has allowed the army and paramilitary forces to argue that they are on "active duty" at all times and that therefore all actions carried out in the state - including human rights violations - are carried out in the

course of official duty, and are to be treated as service-related acts instead of criminal offences'

The Indian government, of course, contends that virtually every country affords serving military and police personnel some degree of leeway to make these real-time judgements. This is true – indeed it is virtually unexceptionable – but in our judgement misleads as a justification for the AFSPA. The breadth of the immunity provided for by the SPA places the legal regime it creates at a clear extreme among democratic states. Even, then, if we take the point that the difference is one of degree rather than category, the untrammelled carte-blanche afforded to Army officers in J&K, up to and including the use of legal force, cannot be justified by appeal to accepted international practice.

In this vein, it is Section 7 of the SPA – which mandates approval from central government in order for any attempt at prosecution of officers operating under its auspices to proceed in civilian courts – which most obviously gives the Act's preceding provisions their teeth.

The text of the provision is striking in its breadth, extending this presumption of immunity to all 'persons acting in good faith.' Troublingly, appraisal of whether the 'good faith' criterion is satisfied is itself left to the agencies determining whether to issue permission to prosecute (the Ministry of Defence or Ministry of Home Affairs, depending on whether the case involves a serving Army officer).

This mechanism has not gone untested: the J&K state government has sought permission to prosecute in 50 cases since 2001; and strikingly, the Union government has declined to provide it in 47 of these.

Amnesty International highlight several cases in which 'victims' families ... have argued that prosecuting civil offences such as murder or rape should not require sanction from central government as such offences do not fall under the "exercise of the powers conferred" by the AFSPA. In such cases, extraordinarily, the Army and security forces have 'successfully countered that all acts must be considered done in "good faith" since security force personnel are constantly ... under threat in "disturbed areas".'

By any measure this is an extraordinary state of affairs, albeit one without obvious remedy in Indian domestic law, the Supreme Court having upheld the AFSPA's constitutionality in a 1997 ruling (although the Court did not, as Amnesty reasonably points out, have to consider India's obligations under international law).

Insofar as Indian security forces feel emboldened to act without restraint, then, the impunity granted by AFSPA is only partly responsible. Of equal weight is a political and legal culture on the part of Indian central government which tends toward fierce resistance to permitting prosecution even in rare instances where the J&K state government opts to pursue them.

It is worth restating that the APPKG does not reject in principle a more limited construction of the Indian

Government's case: armed soldiers engaged in counter-insurgency do obviously require additional legal protections in order to discharge their duties. But such an argument does not make the case for a law as expansive as the AFSPA – either on paper or in the deeply disturbing context adumbrated hereabove.

Laws, after all, are only as effective as their enforcement mechanisms, and the absence of any legally enforceable standard for “good faith,” or statutory limitation on “powers conferred” under the Act, renders its references to such requirements virtually meaningless as a check on abuses.

It is vital that legislation which affords any measure of legal insulation to armed personnel, especially in domestic arenas, seeks equally to create a legal framework within which soldiers can make responsible decisions; the AFSPA does the opposite. The Act holds out the permanent prospect of blanket immunity, and in practice this immunity is underwritten by the consistent willingness of central Government to indulge excesses.

On evidence considered by the APPKG, this willingness is certainly not lost on serving personnel. A Human Rights Watch commentary on conditions in Kashmir in March 2018 framed the problem in the following terms:

Though protests in Kashmir can be violent at times, the response of the security forces should always be proportionate. Lethal force should be the last resort, used only when lives are

threatened. Promptly investigating allegations of abuses and prosecuting those responsible is key to resolving this “mess”

The above passage captures the essence of our frustration: laws matter, but the effect of the AFSPA is to erode rather than strengthen the rule of law across the state. It militates against a return to a rule-governed society which incorporates respect for human rights, and its repeal should be a matter of priority.

Recommendation: the Government of India must repeal the Armed Forces (Jammu and Kashmir) Special Powers Act 1990 and enable prosecution of armed forces and security personnel in the civilian judicial system.

The Public Safety Act

The Public Safety Act (PSA), a state law promulgated in 1978, is the most frequently used of several instruments which enable administrative detention by police and security forces in J&K. A 2011 Amnesty International report on the PSA elaborates the theoretical effect of its provisions:

Chapter IV of the PSA is entitled “Power to Make Orders Detaining Certain Persons” and regulates such detentions. Unlike the National Security Act 1980 (NSA) – a similar law in force in other states of India, which limits detention to a maximum period of one year, the PSA provides for detention for a

maximum of two years “in the case of persons acting in any manner prejudicial to the security of the State. Detention under the PSA can be ordered by either of two executive officers – the Divisional Commissioner or a District Magistrate. Once a PSA detention order has been issued, the grounds of detention must be provided to the detainee within five to ten days of the detention, but without the necessity to disclose facts that the detaining authority “considers to be against the public interest to disclose”

From a human rights standpoint two central objections to the PSA emerge.

The first mirrors a criticism of the AFSPA canvassed above: clauses that ought to impose limitations on the law’s application – most obviously “matters prejudicial to the security of the State” – lack any legally enforceable standard, and so in practice broaden it to the point of sanctioning abuses. The APPKG is convinced by Amnesty International’s contention that ‘the possibility of detention on such broad and vaguely defined allegations violates the principle of legality required by Article 9(1) of the International Covenant on civil and Political Rights (ICCPR).’ India is a party to the ICCPR.

The second criticism turns on the demonstrable willingness of security forces in J&K to enforce the Act’s provisions in an arbitrary and abusive fashion, both by routinely relying on administrative detention powers rather than utilising conventional powers of

arrest and by pursuing such detentions without any demonstrable cause.

In 2014 a petition under India’s Right to Information Act revealed the extent of this practice: a total of 16,329 administrative detentions had been filed since 1988. Tellingly, rates of detention under the PSA were not correlated with levels of violence in the state, lending credence to the suggestion that administrative detention powers are being abused.

Due process principles observed in the context of PSA detentions also appear to fall far below what could be thought of as an acceptable standard.

Detainees are not permitted to request legal representation, and the Act sets out no mechanism for judicial review.

Without the possibility of judicial review, commensurately little store is set by record-keeping or transparency, and as a consequence granular detail on individual cases is rarely available to us. But statistics at the periphery – for the most part collected in instances where PSA detention cases come into contact with the regular civilian judiciary – paint a consistent picture of ad-hoc, arbitrary justice, with prosecutions unable to pass legal muster.

Amnesty International’s report goes on to note that where PSA detention orders are supplemented by ‘allegations that equipment and ammunition have been recovered at the time of arrest (a commonplace ruse in the absence of substantive charges, of which more later) these allegations do not bear even superficial scrutiny in civilian courts. Their findings are stark:

only 0.5 percent of the J&K residents thus charged and tried are actually convicted. 'In the vast majority of the ... cases studied for this report in which arms and ammunition were [purportedly] recovered, the detainees were also charged under the Arms Act and prosecuted in regular courts, [which] appear unconvinced by the evidence in such cases.'

Further malfeasances are in evidence when looking at routine enforcement practices under PSA aegis. In one particularly striking example, leaked minutes of a "special security meeting" held in Srinagar in 2005 reveal Army generals in command of counter-insurgency forces setting explicit targets for the detention of suspected militants.

The perverse incentive structure inevitably created by this 'targets' regime – which requires police to meet monthly and quarterly quotas for arrest and detention – is at profound odds with any recognisable standard of justice.

Indeed, in 'at least 77' cases of PSA detention studied in the report, 'no reference ... to any specific act, date or event' is adduced at all. In such a climate, as the report reasonably notes, wholesale 'fabrication and concoction ... cannot be ruled out.' But equally as troubling should be the more immediate and unavoidable consequence that in the absence of concrete allegations, detainees have no means of defending themselves. The APPKG notes with concern the United Nations Working Group on Arbitrary Detention's finding, in a 2008 review of ten PSA cases, that these detentions failed to conform to a number of binding

international obligations to which India is a signatory.

There is, of course, a familiar circularity to violence, in that demonstrations are offered as a pretext both for reprisals and for the preservation of such a draconian legal framework, and that these manifestations of state repression themselves inspire fresh cycles of militancy and resentment.

The same vicious logic has played out in the attitude of successive Indian governments both to revisiting the AFSPA and PSA and seeking to broker a peace. Dr Gareth Price at Chatham House described the catch-22 in late 2017: against a backcloth of protest, India is perpetually unwilling to open negotiations; but 'when protests die down, governments have generally interpreted [it] as Kashmiri acquiescence towards the status quo,' obviating any impetus for dialogue or reform.

Breaking this logjam is essential. As a first step, evidence of a sincere willingness on India's part to bring policing and criminal justice in J&K in line with international norms would be hugely welcome.

Recommendation: the Government of Jammu and Kashmir must urgently provide a strict and limited statutory basis for administrative detention powers, in line with international legal principles, by repealing or amending the Public Safety Act 1978.

Forced disappearances and a lack of transparency

The second article of the International Convention for the Protection of All Persons from Enforced Disappearance, signed but as yet not ratified by India, adopts the following definition:

For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law"

The APPKG has considered a number of well-evidenced submissions alleging forced disappearances in J&K. By any reckoning this constitutes a gross violation of international law as well as Indian domestic law, and the Group is particularly troubled by the refusal of security forces in the state to commit to investigating credible allegations when they are presented.

While official data is of course not available to us, solid evidence of disappearances numbering in the thousands, is lent credence by the International People's Tribunal on Human Rights (IPTHR)'s 2009 findings, which indicated 2,943 unidentified bodies across 55 villages in Kashmir. The IPTHR 'fears that many of those bodies belong to the roughly 8,000 civilians believed to be victims of

enforced disappearances by security forces in Kashmir.'

The Crisis Watch Group's credible reporting on the issue finds a similarly sobering picture:

During the last two decades, thousands of Kashmiris have disappeared as a result of security operations. An investigation conducted by the J&K State Human Rights Commission in 2011 found 2,156 bodies in unmarked graves at 38 sites in northern Kashmir. While the Indian government claimed that the bodies were all of unidentified, mostly Pakistani, militants that had had been given to village authorities for burial, at least 574 were identified as local Kashmiris'

The J&K State Human Rights Commission's (SHRC) three-year investigation, concluded in 2011, followed more than two decades' worth of allegations on the part of community leaders in Kashmir.

The figures identified in the SHRC report – of 574 bodies identified as those of missing locals, and 2,156 unidentified graves which 'in every probability' contain victims of enforced disappearance – are likely to be conservative ones; the Association of Parents of Disappeared Persons places the ceiling on unconfirmed burials nearer 10,000. But the Commission's inquiry is of genuine significance insofar as it represents the first acknowledgement on the part of Indian state bodies – at either state or central government level – that such

graves exist at all. But the gauntlet has been laid down: the questions the SHRC's findings raise for the State Government (including direct and repeated requests to complete and publish its own investigations, with DNA analysis, into unmarked mass graves) remain conspicuously unanswered.

In this context, the APPKG is especially troubled by the seemingly deliberate opacity of the process mandated by the J&K Government for ascertaining the identity of a body located within a grave.

In order for an investigation to be opened, the petitioning family member must provide information including the precise date and circumstances of the death or disappearance, and evidence to justify 'some degree of certainty of the grave believed to contain their loved one.'

These conditions are in the APPKG's judgment sufficiently onerous as to put due process beyond the reach of most Kashmiri citizens, and seemingly designed to be so.

They are also in tension with the relevant articles in the Convention for the Protection of All Persons from Enforced Disappearance. Relevantly, Article 24 (2) provides that victims have "the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person," and that the "State Party shall take appropriate measures in this regard."

A number of the Convention's articles deal with the right to truth, and their combined effect is clearly to place the

burden for investigation and remedy on state actors, rather than victims or their families. The process followed in Jammu & Kashmir is almost laughably at odds with such an expectation.

The J&K Government posture, of wholesale refusal to investigate the identity of bodies deposited in mass graves, is in our view both morally indefensible and wholly at odds with international legal instruments which India is notionally committed to upholding.

Recommendation: the Government of India must initiate a comprehensive public investigation into the identities of bodies in mass and unmarked graves, with an independent forensic verification process, and provide for a full freedom of information mechanism for the families of suspected victims of enforced disappearance.

Use of pellets

Armed security personnel in J&K have rightly drawn condemnation for the use of rubber and steel pellet-firing shotguns as a primary means of crowd dispersal, including to break up non-violent protests. Heartbreaking images of Kashmiri civilians disfigured as a result of injuries sustained by pellet fire – and in several dozen cases, permanently blinded – have come uniquely to emblemize the disregard for human life which too often characterizes policing tactics in J&K.

Such pellet-firing weaponry is not just liable to disfigure its victims; it is also massively inaccurate. A Right to

Information request filed by Amnesty International indicated that at least 16 serving police officers had been treated for pellet injuries within one locality in Kashmir, laying bare the collateral risk involved. Such enormous costs can never be justified in civilian policing.

The Indian government's stated justification for the shotguns' deployment rests on a surreal classification of such weapons as 'non-lethal.' As a legal construction, this is absurd. The logic it conjures is that security forces are presented with a binary choice between killing unarmed protesters and firing indiscriminately into crowds. They are not. Even were the ratio of J&K security personnel to civilians not as great as it is, their refusal to countenance any means of peaceful crowd control, or permit protests to occur unencumbered, is unacceptable and deserving of strong condemnation. Authorities in J&K have comprehensively failed to provide any convincing public order justification for the use of such indiscriminate tactics.

Recommendation: the Government of India should immediately ban the use of pellet-firing shotguns.

Proceedings of APPKG delegation to Pakistani-administered Kashmir (AJK) and Line of Control

The APPKG heard from a series of witnesses during our delegation to Islamabad and Muzaffarabad in

September 2018, which have helped to inform the conclusions of this report.

We heard from individuals who have fled Indian-administered Kashmir testify that their homeland was now heavily militarised, with many army check points in towns and villages, and instances of disappearances of citizens; a fear of rape as a weapon; the description of victims now as 'half widows'; the cutting of women's hair by force and other repressive acts.

Recommendation: the Government of Jammu and Kashmir must open its prisons to international inspection.

These claims echoed those made in testimony during our oral evidence sessions about prison conditions in J&K, where it is alleged the shaving of women's heads is routine.²

We heard from a human rights lawyer from Indian-administered Kashmir whose father was murdered in 1995 when she was just four years old. She asserted that hundreds of people are being held without charge in detention and there was a high level of psychological trauma and even extra-judicial killings.

Another witness told members of the APPKG that there are significant social and educational consequences from State of Emergency provisions on the Indian-administered side of the line of control, because the perpetual military presence interrupts attendance at

² Oral evidence: Raja Najabat Hussain, Chair, JKSDMI, and associates (Annex 1.7)

schools and higher education, a reality emblemized by the 2010 killing of a 17-year-old student.

Other witnesses reported to the APPKG their concerns about 'judicial impunity', especially in respect of what they term "Black Laws" – principally the Armed Forces Special Powers Act and the Public Safety Act, which give virtual carte blanche to the authorities.

The use of 'pellet guns' to quell civil unrest was also regularly mentioned in testimony – and perhaps the phrase 'shotgun' may better convey the violence which these weapons embody. The shots can mutilate and blind and have had an impact on hundreds of individuals caught in the crossfire.

The APPKG heard about a significant rise in recent ceasefire violations across the Line of Control, with a consequent rise in the number of civilian casualties and deaths. There have also been reports by India of incursions by the Pakistani authorities causing a recent death of an Indian soldier. For their part, the Pakistani Army assured us that they respond like for like with any artillery fire and do not target civilians.

The proposal to abolish Article 35A of the rules safeguarding Kashmiri land and property for Kashmiris has caused concern about a more concerted effort from the Indian administration to hasten the settlement of non-Kashmiris so as to reduce the likelihood of Kashmir ever opting for independent self-determination in any future referendum. We heard testimony from those in the Pakistan-administered Azad Kashmir about the

parallels they draw with the policy of the Israeli government pursuing the rapid settlement of Israeli citizens in disputed territories, so that a firmer claim is staked. We do not believe that the changes being made by the Indian government are likely to help foster a resolution to this situation.

The refugee experience

The APPKG visited the refugee camp at Thotha, near Muzaffarabad, and heard first-hand from those whose families have been split apart in some cases for several decades between the Indian and Pakistan administered sides of Kashmir.

We heard from families, principally women and children, now in supported accommodation provided by the AJK Government, who have either fled or been displaced from the Indian-administered areas, about the heavy burdens placed on communication with family members across the Line of Control, which is often limited to messages sent via the encrypted WhatsApp service.

In total, upwards of 40,000 individuals, dispersed across 27 camps across AJK, have refugee status, most near Muzaffarabad. Conditions at the Thotha camp appeared reasonable and efforts were being taken to provide education, basic facilities and training and learning opportunities so handicraft skills could be maintained and earnings made by the individuals living there.

Militarisation at border

The APPKG delegation was allowed access to the crossing point at Chakothei at the Line of Control on the Pakistan-administered side, where the level of fortification and nature of the division was self-evident. We heard about the scale and resources behind the militarisation of both sides of the Line of Control, and the alleged one-soldier-per-12-population ratio of military personnel on the Indian-administered side.

The delegation heard from four villagers living in the vicinity of the border, including from the son of a man killed in August 2018 by a mortar strike seemingly visited on their property at random; many witnesses testified to the arbitrariness of such attacks, such that their primary effect – and by design – is to maintain a climate of fear.

The delegation also heard from a farmer who was the victim of a sniper attack, shot through the cheek and arm while tending to his land the previous month. These first-hand accounts were compelling and credible. They seemed to confirm that there are recent and ongoing Indian incidents affecting civilians across the LOC.

There were tentative grounds for optimism about the form a solution might take. For instance, it was positive to see that several times each week a convoy of around thirty truck loads is able to cross between India and Pakistan at Chakothei as part of a basic trading arrangement in goods and foodstuffs, albeit on a barter basis.

Such confidence-building measures can instil some sense of normality in

such a heavily militarised environment. We were also told that a limited number bus crossings are permitted, enabling Kashmiris to visit family across the Line of Control (although such arrangements are of course strictly controlled).

Recommendation: the Governments of India and Pakistan should work to resume regularised visa-regulated civilian travel across the Line of Control and reunite separated families.

Conclusions

This report echoes many of the findings of June's OHCHR report which was justifiably scathing about the behaviour and approach of the Indian authorities – although it should again be although, as has been suggested, there are significant issues for the Government of Pakistan to address too.

The APPKG calls on the Indian Government to take seriously the persistent concerns about the injury they continue to visit on civilians in the parts of Jammu and Kashmir which they administer. It would be unjustifiable, for instance, for India to assume a permanent seat on the United Nations Security Council, as is frequently mooted, if this level of military rule, repressive activities, use of unnecessary force and absence of legal redress continues to obtain.

It is difficult to see any route to a lasting resolution and ultimately self-determination for the people of Kashmir which does not begin with a serious commitment to institute confidence-building measures and efforts to demilitarise the region.

We note that the election cycles of both Pakistan and India often militate against peace-building efforts, and championing dialogue rather than beating the drum for conflict comes with domestic political risk. But the degree of military engagement which now persists between two nuclear powers must surely prompt the international community to take extra steps to press for a resolution, rather than relegate the Kashmir issue to the status of a domestic dispute to be bilaterally resolved by India and Pakistan alone.

Perhaps the next window of opportunity for peaceful dialogue will occur after the conclusion of the Indian elections in the summer of 2019. The new Pakistani Government has signalled its willingness to engage, with Prime Minister Khan pledging in August to “take two [steps] if India takes one.”

This said, promised talks between Foreign Ministers at this year’s UN General Assembly were cancelled by India, on the stated pretexts of alleged incursions across the Line of Control and the honouring of Kashmiri activists on postage stamps in Pakistan.

The representatives of Pakistan and India are going to need to transcend short-term incentive structures and set aside prejudices to pursue consequential dialogue.

However intractable things seem, there are ample precedent for similarly bleak prospects giving way to negotiation and settlement. The Good Friday Agreement might be instructive on the matter of options for shared

governance which might need to be an initial way forward for Kashmir. The APPKG does not make a specific recommendation on this at this stage, but remains committed to a positive pathway. But this will require visionary leadership on both sides.

In the meantime, we offer this report as our contribution to the debate on the need for human rights to be respected, especially on the Indian-administered side. Far too many innocent lives have been lost already; far too many lives are blighted now.

This is intolerable; it must end.