

“With Friends Like These...”

Human Rights Violations in Azad Kashmir

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Map of the Kashmir Region



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Map of the Districts of Azad Kashmir



Courtesy of The Creative Unit, Karachi

Frequently Used Abbreviations

All Jammu and Kashmir Muslim Conference (MC)
All Jammu and Kashmir Peoples Party (AJKPP)
All-Parties Hurriyet Conference (APAC)
All Parties Nationalist Alliance (APNA)
Asian Development Bank (ADB)
Azad Jammu and Kashmir (AJK), Azad Kashmir
Azad Jammu and Kashmir Jamaat-e-Islami (AJK-JI)
Azad Jammu and Kashmir Pakistan People's Party (AJKPPP)
Inter-Services Intelligence Directorate (ISI)
Jamaat-ud-Dawa (JD)
Jammu and Kashmir National Students' Federation (JKNSF)
Jammu Kashmir Liberation Front (JKLF)
Lashkar-e-Toiba (LT)
Line of Control (LoC)
Nongovernmental organization (NGO)
Pakistan Electronic Media Regulatory Authority (PEMRA)
Pakistan Military Intelligence (MI)
People's League (PL)
Special Communications Organization (SCO)
United Jihad Council (UJC)
United Kingdom (U.K.)
United Nations (U.N.)
United Nations Children's Fund (UNICEF)
United Nations Commission for India and Pakistan (UNCIP)
United Nations High Commission for Refugees (UNHCR)
United Nations Military Observer Group in India and Pakistan (UNMOGIP)

I. Summary

Pakistan says they are our friends and India is our enemy. I agree India is our enemy, but with friends like these, who needs enemies?

—Mir Afzal Suleri, Muzaffarabad resident

The massive earthquake that struck on October 8, 2005, wreaking death and destruction on Kashmir, instantly conflated Kashmir's long-running man-made crisis with a natural one. The poor response of the Pakistani government and military to the earthquake, and the attendant further loss of life, served to highlight that even natural disasters in Kashmir have a strong human component.

Major cities and thousands of villages in Azad Jammu and Kashmir (AJK, Azad Kashmir), including the capital Muzaffarabad, were reduced to rubble. The devastation was immense—at least eighty-eight thousand people died, more than one hundred thousand were injured, and more than two million were left homeless. The United Nations Children's Fund (UNICEF) estimated that seventeen thousand children were among the dead.

Kashmir is one of the most heavily militarized regions of the world, and those buried under the rubble and their relatives who tried frantically to dig them out with their bare hands would have been justified in thinking that help would arrive rapidly. It was fair to hope that the armies massed on both sides of the Line of Control (LoC) separating Azad Kashmir and Jammu and Kashmir state, ostensibly to protect the Kashmiri population, would move quickly to save Kashmiri lives from a natural threat. But as time passed and the sound of life beneath the rubble began to grow silent, it became painfully and brutally clear that the hope was misplaced. In the aftermath of the disaster, the Indian and Pakistani militaries simply did not make the saving of Kashmiri lives a top priority. As India and Pakistan engaged in diplomatic one-upmanship—making and refusing offers of help based on political opportunism rather than humanitarian concerns—the death toll mounted.

In the first seventy-two hours after the earthquake, thousands of Pakistani troops stationed in Azad Kashmir prioritized the evacuation of their own personnel over providing relief to desperate civilians. The international media began converging on Muzaffarabad within twenty-four hours of the earthquake and fanned out to other towns in Azad Kashmir shortly thereafter. They filmed Pakistani troops standing by and refusing to help because they had “no orders” to do so as locals attempted to dig out those still alive, sending a chilling message of indifference from Islamabad. Having filmed the refusal, journalists switched off their cameras and joined the rescue effort themselves; in one instance they shamed the soldiers into helping. But unlike the death and destruction, the media were not everywhere. The death toll continued to mount.

Many Kashmiris told Human Rights Watch that prior to the earthquake, the Pakistani military kept a close watch on the population to ensure political compliance and control; this was facilitated by the placement of military installations frequently in close proximity to populated areas. In the context of a military presence that was more abuser than protector, and domineering Pakistani political control, the failure of the authorities to respond quickly and more humanely to the aftereffects of the earthquake in Azad Kashmir came as little surprise. That failure generated massive public resentment against the Pakistani state, and it highlighted the need for an examination of the conduct of Pakistani authority in Azad Kashmir. This report on the state of human rights in Azad Kashmir shows longstanding restrictions on fundamental freedoms, as well as politically motivated mistreatment of persons supporting an independent Kashmir.

The earthquake put the international spotlight on Azad Kashmir for the first time. Previously, attention had been almost wholly on Jammu and Kashmir state in India, which since 1989 has endured a brutal insurgency and counterinsurgency. Human rights abuses by the Indian security forces and separatist forces in Jammu and Kashmir have been relatively well documented and often condemned. But the world knows little about Azad Kashmir, other than that the territory has been used by

Pakistan-backed militant groups as a staging ground for attacks in Jammu and Kashmir.¹

Aid organizations and donors that wanted to learn about Azad Kashmir after the earthquake so that they could respond in a useful and informed manner quickly discovered that there was virtually no published information. This is because prior to the earthquake, Azad Kashmir was one of the most closed territories in the world. While Jammu and Kashmir state had known considerable tourist traffic prior to the beginning of the insurgency there, the areas of Kashmir on the other side of the LoC had seen little external interest or presence after the end of the British colonial era in 1947—a situation used by Pakistan to exercise absolute control over the territory.

Information, particularly about the human rights situation, governance, the rule of law, and the institutions that hold real power in Azad Kashmir is more important than ever as the territory rebuilds and, by necessity, opens up to the international community in the aftermath of the earthquake. In the coming years, international engagement with the territory is likely to be intense. For that engagement to be effective and beneficial to the people of Azad Kashmir, it is essential that international actors approach the territory with an awareness of its particular history and its fraught, often tense and unhappy relationship with the Pakistani state in general and the Pakistani military in particular.

Azad Kashmir is a legal anomaly. According to United Nations (U.N.) resolutions dating back to 1948, Azad Kashmir is neither a sovereign state nor a province of Pakistan, but rather a “local authority” with responsibility over the area assigned to it under a 1949 ceasefire agreement with India. It has remained in this state of legal limbo since that time. In practice, the Pakistani government in Islamabad, the Pakistani army and the Pakistani intelligence services (Inter-Services Intelligence, ISI) control all aspects of political life in Azad Kashmir—though “Azad” means “free,” the residents of Azad Kashmir are anything but. Azad Kashmir is a land of strict curbs on political pluralism, freedom of expression, and freedom of association; a muzzled press; banned books;

¹ Human Rights Watch holds all governments to their obligations under international human rights and humanitarian law. Accordingly, we do not seek to compare the human rights situation in Azad Kashmir with that in Jammu and Kashmir state in India. Given the radically divergent histories, ethnicities and relationships with the central authority on both sides of the LoC, any such comparative study would be meaningless. Human Rights Watch has documented human rights violations in Jammu and Kashmir, most recently in “‘Everyone Lives in Fear’: Patterns of Impunity in Jammu and Kashmir,” A Human Rights Watch Report, vol. 18, no. 11(C), September 2006.

arbitrary arrest and detention and torture at the hands of the Pakistani military and the police; and discrimination against refugees from Jammu and Kashmir state. Singled out are Kashmiri nationalists who do not support the idea of Kashmir's accession to Pakistan. Anyone who wants to take part in public life has to sign a pledge of loyalty to Pakistan, while anyone who publicly supports or works for an independent Kashmir is persecuted. For those expressing independent or unpopular political views, there is a pervasive fear of Pakistani military and intelligence services—and of militant organizations acting at their behest or independently.

Human Rights Watch has previously reported that torture is routinely used in Pakistan, and that acts of torture by military agencies primarily serve the purpose of “punishing” errant politicians, political activists and journalists. Azad Kashmir is no exception. Though torture is not commonplace, it is threatened often, and—when perpetrated by the military—is carried out with impunity. Human Rights Watch knows of no cases in which members of military and paramilitary security and intelligence agencies have been prosecuted or even disciplined for acts of torture or mistreatment. This report documents incidents of torture by the ISI, and by Azad Kashmir police acting at the ISI's and the army's behest.

Tight controls on freedom of expression have been a hallmark of the Pakistani government's policy in Azad Kashmir and are also documented in this report. This control is highly selective. Pakistani-backed militant organizations promoting the incorporation of Jammu and Kashmir state into Pakistan have had free rein—particularly from 1989 when the insurgency began to 2001—to propagate views and disseminate literature; by contrast, groups promoting an independent Kashmir find promoting their views sharply curtailed. But frequent official repression of freedom of expression and assembly is not limited to controls and censorship specific to Kashmiri nationalists, journalists and election cycles. This repression can also be violent and very publicly so. For example, Pakistani police used *lahtis* (canes) and rifle butts to break up a peaceful demonstration in Muzaffarabad on November 11, 2005, by approximately two hundred earthquake survivors protesting eviction from their makeshift camp. Several protestors, including children, were injured as a result of police efforts to break up the demonstration.

Since 1994, when the ISI organized thirteen militant groups operating in Jammu and Kashmir state into the Muttahida [United] Jihad Council, army-backed militant organizations have shared, with the Pakistani military through the ISI, real decision-making authority and the management of the “Kashmir struggle.” Even mainstream political parties allowed representation by Pakistan in the Azad Kashmir Legislative Assembly are largely sidelined. As the government-backed militant groups gained strength and dominance, Kashmiri nationalist militants left the movement or were sidelined and eventually began to be persecuted by the authorities and their proxies. Soon after Pakistan began supporting the U.S.-led “global war on terror” in 2001, the United Jihad Council ceased to operate publicly. Several groups simply changed their names and now operate independently or through clandestine underground networks. The Pakistani intelligence apparatus retains close associations with these groups.

Virtually all independent commentators, journalists, as well as former and serving militants, Pakistani military officers and Pakistan-backed Azad Kashmir politicians speaking off-the-record told Human Rights Watch that there was continuing militant infiltration from Azad Kashmir into Jammu and Kashmir state, but were not willing to be quoted for fear of reprisal from the ISI. Most of those interviewed were of the view that though the level of infiltration had decreased substantially since 2004 (a brief spike in the immediate aftermath of the earthquake notwithstanding), there have been no indications that the Pakistani military or militant groups had decided to abandon infiltration as policy.

It was thus no accident that militant groups were the first on the scene dispensing relief goods and other aid after the earthquake. Nor was it a sign of their great organizational prowess. As the Pakistani military prioritized the rescue of its own personnel, it probably sought the assistance of its closest allies in Azad Kashmir, the militant groups. These groups, which had undoubtedly suffered the loss of personnel and infrastructure themselves in the earthquake, won much local appreciation for their rescue and relief efforts. This public relations coup could not have been possible without logistical support from sections of the Pakistani military’s intelligence apparatus. For example, one of the first groups to set up operations was the Jamaat-ud-Dawa —the Lashkar-e-Toiba group operating under a new name. In January 2002 the Pakistani government had banned the LT as a terrorist group. However, in the aftermath of the earthquake,

President Pervez Musharraf went out of his way to praise its relief work and brushed off calls to restrict its operations. The Pakistani military apparently saw the earthquake as an opportunity to craft a new image for the militant groups rather than as an opportunity to disband them.

This report also documents discrimination against Kashmiri refugees and former militants from India, most of whom are secular nationalists and culturally and linguistically distinct from the peoples of Azad Kashmir. The last major episode involving these former militants took place on April 7, 2005, when Pakistani security forces prevented them from greeting the inaugural bus service between Srinagar (the Jammu and Kashmir state capital) and Muzaffarabad and arrested, jailed and beat them. A primary motive for the discrimination would appear to be that many of these people do not share the vision of a unified Kashmir under Pakistani control.

Successive Pakistani governments have asserted that Kashmir's political future must be determined in accordance with the wishes of the people. But the reality of Azad Kashmir prior to the earthquake was life dominated by governmental restrictions on fundamental freedoms. As the international community supports the task of reconstruction, it must insist on a new respect by Pakistan for the human rights of the people of Azad Kashmir. No viable solution to the Kashmir issue can exclude the exercise of fundamental civil and political rights for the people of Azad Kashmir in an environment free of coercion and fear.

Key recommendations

The October 2005 earthquake brought into focus the dominant role of the Pakistani army in the governance of Azad Kashmir and the almost complete absence of any independent civil society in the territory. While Pakistani civil society's immediate, rapid mobilization in the aftermath of the earthquake is commendable, the Pakistani military's blundering and ineffective response to the humanitarian disaster was indicative of more than just the military's different priorities in the region. It also highlighted its inability to assume the role of civil society that, as a matter of security policy, it has prevented from taking root. The army must greatly reduce its political role in Azad Kashmir in order to make way for genuinely civilian governmental institutions that respect basic rights.

The post-earthquake situation provides the international community with a unique opportunity to engage with Azad Kashmir's population, government officials, civil society, and the Pakistani military to improve the state of civil and political rights in the territory. Reconstruction in Azad Kashmir, for which the international community has pledged U.S.\$6.5 billion, can only be successful if central to the process is the creation of an open, empowered, rights-respecting society.

Specifically, Human Rights Watch makes the following key recommendations (a full set of recommendations is given at the end of this report):

To the Pakistani government

- Release all individuals imprisoned or detained and withdraw immediately all criminal cases against anyone, including Kashmiri nationalists, for the peaceful expression of their political views, including that Azad Kashmir should be independent.
- End the practice of arbitrary arrest and detention, other forms of harassment, and torture and other ill-treatment of persons exercising their right to freedom of expression, including those who peacefully oppose Kashmir's accession to Pakistan or demand greater autonomy for the territory.
- Repeal constitutional curbs on freedom of association, expression and assembly in Azad Kashmir so that the constitution and Azad Kashmir law are consistent with international human rights standards.
- Prosecute to the full extent of the law and in accordance with international standards those members of the armed forces, its intelligence agencies, government officials and police personnel implicated in serious violations of human rights, including arbitrary arrests and torture.
- Respect press freedom and allow full independent coverage of both past and ongoing events in Azad Kashmir. Remove formal and informal prohibitions on news gathering and reporting by the Azad Kashmir and Pakistani media, and accord all journalists full freedom of movement. End the practice of banning books and literature.
- Ensure that human rights organizations have freedom of movement throughout Azad Kashmir and allow them to carry out investigations and fact-

finding missions free from intimidation and interference by military authorities.

To Azad Kashmir-based militant groups

- Cease threatening civilians who do not cooperate with or support the activities of militant groups.
- Publicly denounce abuses committed by any militant group in Jammu and Kashmir state and call for accountability for such abuses on both sides of the Line of Control.

To donors and other international actors

- Ensure greater civilian oversight of relief, rehabilitation and reconstruction efforts. Aid should be handled through a process that involves the Azad Kashmir government, as well as local, national and international NGOs, civil society groups (particularly those working in the field), and the affected population.
- Ensure the continuing distribution of reconstruction aid without regard to political affiliation. In particular, there should be no discrimination against Kashmiri nationalists who do not support Kashmir's accession to Pakistan or refugees who have entered Azad Kashmir from Jammu and Kashmir state since 1991.
- Use every available opportunity to press for an end to impunity for perpetrators of serious human rights abuses, including members of the military, intelligence agencies, police and militant groups. Urge respect for international due process and fair trial standards and press for impartial inquiries into, and accountability for, cases of arbitrary detention and torture and other ill-treatment in detention.

II. Background

Social and demographic facts

Azad Jammu and Kashmir is 5,134 square miles (13,297 square kilometers) in area. The total population was 2,973,000 according to the population census of 1998, and was estimated to be 3,271,000 in 2002, of whom 87.5 percent live in rural areas and 12.5 percent are urban. The population density is 246 persons per square kilometer. The literacy rate was reported as 55 percent in the 1998 census and was estimated to be 60 percent in 2002, which is higher than in Pakistan.² The territory also enjoys a very high primary school enrollment rate for both boys and girls, at over 90 percent.³

Azad Kashmir is divided into Muzaffarabad and Mirpur divisions, which are further subdivided into eight administrative districts: Muzaffarabad division comprises Muzaffarabad, Neelum, Bagh, Poonch, and Sudhnutti districts; Mirpur division comprises Mirpur, Kotli, and Bhimber districts. Muzaffarabad city is the territory's capital.

Culture and ethnicity

The people of Azad Kashmir are almost entirely Muslim. However, Islam or its sects are not the principal arbiters of identity in Azad Kashmir. The people of Azad Kashmir comprise not only diverse tribal clans (*biradari*) but are culturally and linguistically markedly different from the Kashmiris of the central valley of Jammu and Kashmir state in India. Cultural practice in Azad Kashmir has more in common with the Punjab than with the Kashmir valley.

The territory is far from ethnically homogenous. The *biradari* is the overriding determinant of identity and power relationships within the Azad Kashmiri socio-political landscape. While the Gujjars, numbering close to eight hundred thousand,

² Official website of the Government of Azad Jammu and Kashmir, "Facts and Figures" section, [online] http://www.ajk.gov.pk/site/index.php?option=com_content&task=view&id=2256&Itemid=47 (retrieved August 30, 2006).

³ The website of the Ministry of Education, Government of Pakistan, provides primary school enrollment figures for Azad Kashmir at <http://www.moe.gov.pk/enrollment.htm> (retrieved August 30, 2006).

are possibly the largest such group, historically the two most influential *biradaris* have been the Sudhans from the southeast (concentrated in Bagh district and Rawalakot subdivision of Poonch district) and the Rajputs who are spread out across the territory. Sudhans and Rajputs number, respectively, a little over and a little under half a million. Almost all of Azad Kashmir's politicians and leaders come from one of these two groups.⁴

Azad Kashmir is also home to approximately three hundred thousand Mirpuri Jats hailing from the southern part of the territory. Though the Mirpuris are the closest geographical and cultural relatives of the Potohari Punjabis, in recent decades they have chosen to define themselves increasingly as Kashmiris. Mirpuris have migrated to the United Kingdom (U.K.) in large numbers and constitute the overwhelming "Kashmiri presence" in that country.

The Mirpuri Jats have gained in influence in Azad Kashmir in recent decades largely through the clout that major remittances from Britain have bought them. Mirpuri economic clout has paid political dividends, helping propel barrister Sultan Mehmood Chaudhry to power as the first Mirpuri leader of Azad Kashmir in 1996. Kashmir expert Alexander Evans writes:

The Mirpuri Jats, looked down upon by Rajputs and Sudhans, gained power in the 1990s largely because of their wealth.... Valley Kashmiris view Mirpuris with much the same condescension as their Punjabi counterparts, but they also consider Mirpuris part of the former princely state of Jammu and Kashmir. They remain Kashmir state subjects – even if not ethnically Kashmiri as Valley Kashmiris would understand it.... [O]n the Pakistani side, the south-east (Sudhan heartland) and south (Mirpur) dominate, while the north (both Muzaffarabad and the Neelum) is less influential.... But Rajputs and

⁴ There is a sound historical reason for the Sudhans' sharing in the political dominance of Azad Kashmir: the first attempt to wrest control of Kashmir from the Maharaja in 1947-48 and bring the state into Pakistan was Sudhan-inspired and led. The slogan "*Kashmir banega Pakistan*" ("Kashmir shall become Pakistan") was first and foremost then a Sudhan statement of intent, co-opted by the Pakistani state.

Sudhans remain important brokers in local politics – not least as Gujjars tend to follow the lead of local Rajput and Sudhan leaders.⁵ There are also a number of other small tribes and sub-tribes.

Administration

Formally, Azad Kashmir has a parliamentary form of government. The president of Azad Jammu and Kashmir is the constitutional head of the state, while the prime minister, supported by a council of ministers, is the chief executive. Azad Kashmir has its own Supreme Court, High Court, and Legislative Assembly comprising forty-nine members, of whom forty-one are directly elected and eight are indirectly elected—the latter comprise a member each from the technocrats, scholars, and overseas Kashmiris, and five women.⁶ Under the current constitutional dispensation, twelve of the forty-eight seats in the Legislative Assembly are reserved for Kashmiri refugees from Indian Jammu and Kashmir settled across Pakistan. Azad Kashmir also has a multi-tiered system of local governance.⁷

Azad Kashmir maintains a dual judicial system. Judicial officers in districts, high courts and the Supreme Court include Islamic judges dispensing Sharia law. These judges (who do not require a law degree) deal with criminal cases involving Sharia law. Other criminal cases and civil cases are dealt with by regular judges and magistrates.

All key administrative offices are manned by Pakistani officials. These include the office of the chief secretary (the principal bureaucrat), the inspector-general of police, the accountant-general and the finance secretary. (Pakistani political control in Azad Kashmir is discussed in detail in Chapter III, below.)

⁵ Alexander Evans, “Kashmir: A tale of Two Valleys,” *Asian Affairs*, vol. XXXVI, no. I, March 2005.

⁶ Official website of the Government of Azad Jammu and Kashmir, “List of Members Legislative Assembly 2006” section, [online] http://www.ajk.gov.pk/site/index.php?option=com_content&task=view&id=2618&Itemid=142 (retrieved August 30, 2006).

⁷ There are 202 Union Councils, ten Town Committees, fifty Markaz Councils, two Municipal Corporations, eleven Municipal Committees, nineteen sub-divisions, and 1,646 villages.

The Pakistan-India dispute over Kashmir

In 1947, the British decolonization plan for India required the partition of the subcontinent into two successor states, India and Pakistan. However, the partition plan was applicable only to the eleven provinces of “British India”—areas directly under British sovereignty as of June 3, 1947. In addition, the Indian subcontinent comprised some 562 “princely states” of varying size that enjoyed defense agreements with the paramount power and remained under the nominal control of their hereditary rulers.

The State of Jammu and Kashmir was an example of the latter. The territory comprising it had been sold by the East India Company to Maharaja Gulab Singh for a sum of 7,500,000 rupees in 1846 in an agreement titled The Treaty of Amritsar. Between 1846 and 1947 Kashmir remained under the direct though nominal control of Gulab Singh and his successors as their hereditary possession.

As British withdrawal from India became imminent, the princely states were given the choice to either resume their independent status or join Muslim-majority Pakistan or Hindu-majority India. Most of the decisions by the ruling princes were made based on geography or religious majority. However, Kashmir was a problem because it was a Muslim-majority state ruled by a Hindu prince. The British left it for future negotiations when the Maharaja of Kashmir failed to decide whether to accede to either India or Pakistan.⁸

The conflict in Kashmir has its origins in the state’s accession to India in 1947.

Maharaja Hari Singh, the then ruler of Kashmir, signed a standstill agreement with Pakistan but took no decision on the state’s accession. A month after the end of British rule on the subcontinent, Kashmir was invaded by Kashmiri Sudhan tribesmen encouraged by Pakistan.⁹ Unable to defend his state, the Maharaja of Kashmir sought India’s assistance, and on October 26, 1947, signed an Instrument of

⁸ M.J. Akbar, *Kashmir: Behind the Vale* (New Delhi: Roli Books, 2003), pp. 94-102.

⁹ Calling for immediate assistance, Maharaja Hari Singh in a letter to Lord Mountbatten of October 26, 1947, said that “a grave emergency” had arisen because the Pakistan Government had “permitted steady and increasing strangulation of supplies like food, salt and petrol” and allowed “desperadoes with modern weapons” to infiltrate into Kashmir.

Accession,¹⁰ paving the way for Indian soldiers to come to his assistance.¹¹ The first war between India and Pakistan had begun.

In January 1948, Jawaharlal Nehru, then prime minister of India, requested that the U.N. play a role in the resolution of the Kashmir dispute.¹² The U.N. Security Council passed a resolution on August 13, 1948, calling for the immediate cessation of hostilities by India and Pakistan as well as a truce agreement so that both Indian and Pakistani forces could withdraw from the state of Jammu and Kashmir. It also recognized the right of the Kashmiri people to determine the future status of Kashmir.

After a ceasefire was called, a third of the Kashmiri state remained under Pakistani control.¹³ The rest became India's Jammu and Kashmir state.¹⁴ Kashmir was divided by a Line of Control. The contour of this line changed slightly after later wars, but has remained more or less the de facto border between Pakistan and India in Kashmir. Through mutual agreement India and Pakistan successfully lobbied for an amendment to the 1948 U.N. resolution, and the U.N. passed another resolution on January 5, 1949, in which the Kashmiri people were only given the right to accede either to India or Pakistan; there was no mention of their having a right to become an independent nation.

In January 1949, the United Nations Military Observer Group in India and Pakistan (UNMOGIP) was deployed to supervise the ceasefire between India and Pakistan.¹⁵ UNMOGIP's functions were to investigate complaints of ceasefire violations and

¹⁰ Instrument of Accession of Jammu and Kashmir State, [online] <http://mha.nic.in/accdoc.htm> (retrieved July 21, 2005).

¹¹ The Maharaja, however, insisted on a special deal under which Kashmir would have its own constitution. Under the Instrument of Accession, Kashmir retained a measure of autonomy, and clause 7 stated that "Nothing in this Instrument shall be deemed to commit me [the Maharaja] in any way to acceptance of any future constitution of India."

¹² Text of India's complaint to the Security Council, January 1, 1948, [online] <http://www.jammu-kashmir.com/documents/jkindiacomplaintun.html> (retrieved July 21, 2005).

¹³ In 1963, Pakistan handed over around 5,000 square kilometers in the Shaksgam Valley to China. Although the transfer was subject to a settlement on the Kashmir issue between the two claimants, China has already built a military highway on this territory and is unlikely to vacate it. The website of the Government of Azad Jammu and Kashmir notes that the area of Azad Kashmir is 13,297 square kilometers. See http://www.ajk.gov.pk/site/index.php?option=com_content&task=category§ionid=34&id=184&Itemid=144 (retrieved September 13, 2006).

¹⁴ Jammu and Kashmir state (which includes the Muslim-majority Kashmir valley, Hindu-majority Jammu, and Buddhist-majority Ladakh) is 101,387 square kilometers. See <http://countrystudies.us/india/123.htm> (retrieved July 21, 2005).

¹⁵ United Nations Military Observer Group in India and Pakistan, [online] <http://www.un.org/Depts/dpko/missions/unmogip/index.html> (retrieved June 1, 2004).

submit finding to each party and to the U.N. secretary-general.¹⁶ Under the terms of the ceasefire, it was decided that both armies would withdraw and a plebiscite would be held in Kashmir to give Kashmiris the right to self-determination.¹⁷

The primary argument for the continuing debate over the ownership of Kashmir is that India did not hold the promised plebiscite. In fact, neither side has adhered to the U.N. resolution of August 13, 1948:¹⁸ while India chose not to hold the plebiscite, Pakistan also failed to withdraw its troops from Kashmir as was required under the resolution.¹⁹ Instead, India cites the 1952 elected Constituent Assembly of Jammu and Kashmir, which voted in favor of confirming accession to India.²⁰ New Delhi also says that since Kashmiris have voted in successive national elections in India, there is no need for a plebiscite. The 1948-49 U.N. resolutions can no longer be applied, according to India, because of changes in the original territory, with some parts “having been handed over to China by Pakistan and demographic changes having been effected in Azad Kashmir and the Northern Areas.”²¹

India’s argument for the legitimacy of its claim to all of Kashmir, including the portion administered by Pakistan, is based on the Instrument of Accession. Similar instruments determined the distribution of all princely states in the 1947 partition; questioning the accession of Kashmir would (the argument goes) imply unraveling the constitutional and legal basis for the creation of India and Pakistan.²²

Pakistan, however, has always questioned the legality of Kashmir’s accession and said that India had agreed to the U.N. resolutions calling for self-determination after the

¹⁶ Ibid.

¹⁷ The U.N. resolutions said that a plebiscite would be held so that Kashmiris could choose to accede to either India or Pakistan. Many Kashmiris advocate a third option: they want the right of self-determination to not just be confined to joining India or Pakistan, but to include becoming an independent state.

¹⁸ The text of the U.N. Resolution of August 13, 1948, and India’s position on it, are available at <http://www/jammu-kashmir.com/documents/jkunresolution.html> (retrieved July 21, 2005).

¹⁹ Sumit Ganguly, ed., *The Kashmir Question: Retrospect and Prospect* (London: Frank Cass & Co, 2003), pp. 2-3.

²⁰ The United Nations Security Council rejected this argument. For various Security Council Resolutions on Kashmir see <http://www.kashmiri-cc.ca/un/> (retrieved July 20, 2005).

²¹ Embassy of India, Washington D.C., “A Comprehensive Note on Jammu & Kashmir,” [online] http://www.indianembassy.org/policy/Kashmir/Kashmir_MEA/UN.html (retrieved July 20, 2005).

²² J.N. Dixit, *Anatomy of a Flawed Inheritance: Indo-Pak relations 1970-1994*, (Delhi: Konarak Publishers, 1995), p. 200.

Instrument of Accession had been signed. India also overruled the same exercise of powers by the Muslim ruler of the Hindu-majority state of Hyderabad—the largest and richest of the princely states—arguing that the people’s right of self-determination was paramount when the Nizam of Hyderabad sought to declare independence for his state. Hyderabad was forced into the Indian Union through “police action” in 1948.²³ Similarly, the Muslim rulers of the Hindu-majority states of Junagadh and Manavadar signed instruments of accession to Pakistan but were overruled by the Indian government, which seized the states on grounds of geographical contiguity and religious majority.²⁴

Pakistan asserts that India cannot argue self-determination and the will of the majority in other instances and ride roughshod over the same principle in Kashmir. Hence, in contrast to India, which considers the part of Kashmir under its control to be part of the Indian Union, Pakistan does not exercise formal sovereignty over the portion of Kashmir it controls. Rather, the territory is theoretically self-governed through its own interim constitution pending a plebiscite to determine the status of the historical state of Jammu and Kashmir.

Above all, both Islamabad and New Delhi see Kashmir as legitimizing the competing political frameworks that led to the partition of India. Islamabad believes that Muslim-majority Kashmir will choose to be part of Pakistan and it will justify, once again, the ideological basis for the 1947 partition that was predicated on the assumption that Muslims and Hindus were separate nations.²⁵ India, for that same reason, is unwilling to let go of Kashmir: a Muslim majority state is proof that India is secular.

²³ The Muslim Nizam refused to accede to the Indian Union, although it entirely surrounded his territory, demanding the right as ruler of 18 million (overwhelmingly Hindu) subjects to rule a separate state. The resulting standoff ended with the state’s occupation by Indian troops between September 13 and 17, 1948, and its incorporation as a state of India the next year.

²⁴ The Nawab of Junagadh (a Muslim) decided that Junagadh should accede to Pakistan, which was just across the Arabian Sea. The unsettled conditions in Junagadh had led to a cessation of all trade with India. The Nawab was forced to flee to Karachi with his family and established a provisional government. A plebiscite was held on February 20, 1948, in which the electorate voted overwhelmingly to join the Indian Union. India then assumed formal control over the entire state of Junagadh. A “liberation army” (*azad fauj*) of twenty thousand men with armored cars and modern weapons entered Junagadh and the state was secured. The Government of Pakistan protested, saying that since the state had acceded to Pakistan on September 5, 1947, India’s takeover was illegal.

²⁵ Apart from religion, Pakistani scholars also explain that Kashmir is vital to the country’s economy because it is the source of most rivers flowing into Pakistan. Among the various disputes related to Kashmir between India and Pakistan is the construction of dams in Jammu and Kashmir state, which will allow India control over Pakistan’s irrigation and water sources—see this chapter, section “The Politics of Water,” below.

Since the British left the subcontinent almost sixty years ago, India and Pakistan have fought two wars specifically over Kashmir, in 1947-48 and in 1965.²⁶ In 1971, a third war between the two countries led to the secession of East Pakistan, which became independent as Bangladesh. That truncation of Pakistan further exacerbated the distrust between the two countries and drives Islamabad's policy on Kashmir.²⁷ Since India had helped in dividing Pakistan, it became a priority for Islamabad to ensure unity through an anti-Indian Islamic ideology.²⁸

The role of militant groups

The situation in Azad Kashmir transformed rapidly as the situation in Jammu and Kashmir state worsened and a stream of refugees began to cross into the territory from 1989 onwards. The government of Pakistan and the Azad Kashmir authorities welcomed these refugees at the time with some fanfare; for Pakistan, the propaganda value of hosting the refugees was immense. For one, their arrival underlined the seriousness of the situation in Jammu and Kashmir state and thereby bolstered Pakistan's stance that Indian control over Kashmir was not only illegitimate under international law but also despised by those living under it. Certainly, many of those who crossed over were fleeing persecution. Others were Kashmiri nationalists who had taken up arms against the Indian state.

The militants who crossed over to Azad Kashmir in the 1989-91 period were strikingly different from those who have spearheaded the insurgency against the Indian state from the mid 1990s onwards. The 1989-91 militants were overwhelmingly Kashmiris from the central valley, many from Srinagar. Even if they joined Islamist organizations such as Hizbul-Mujahedin, they remained essentially secular nationalists seeking the independence of Kashmir. Kashmiri-speaking, they were also culturally and linguistically distinct from the peoples of Azad Kashmir. Most had little or no idea of what Azad Kashmir was beyond a vague awareness that it was "Azad" (free) under Pakistani control and would be the logical base to take on the Indian state. They

²⁶ "India-Pakistan Wars," entry in *The Columbia Encyclopedia, Sixth Edition 2001-2005* (New York: Columbia University Press, 2005), [online] <http://www.bartleby.com/65/in/India-Pak.htm> (retrieved July 21, 2005).

²⁷ Not only did Pakistan end up losing half of its territory, but its military was also routed, leaving some 90,000 prisoners of war.

²⁸ Hussan Haqqani, "Pakistan's Endgame in Kashmir," in Ganguly, ed., *The Kashmir Question*, pp. 43-45.

viewed Pakistan, which was eager to offer support, much more favorably than India. Thus, in the early years of the Kashmiri rebellion against Indian control, the indigenous Jammu Kashmir Liberation Front (JKLF) remained the engine of the Kashmiri nationalist movement and in control of it.

The situation had transformed dramatically by 1994 when the ISI organized thirteen groups operating in Kashmir into the Muttahida [United] Jihad Council. Apart from the Hizbul-Mujahedin the other members included the Harkat-ul-Ansar, Jamiat-ul-Mujahedin and Al-Jihad. By early 1999, there were only four or five member groups of the United Jihad Council that were considered effective, including the LT, Hizbul-Mujahedin, Al Badr and Harkat-ul-Mujahedin.

As the ISI-backed militant groups gained strength and dominance, Kashmiri nationalist militants left the JKLF-led nationalist movement or were sidelined and eventually began to be persecuted by the authorities and their proxies. Hanif Haidry, a native of Srinagar, told Human Rights Watch,

I joined the Jamaat-e-Islami, Hizbul-Mujahedin faction in 1987 at the age of twenty-five and disassociated from it in 1991 as I felt that it had become violent. I then went back to Jammu and Kashmir state and tried to settle down. But because there was persecution, I returned to the Pakistani-controlled side. My family in [Jammu and Kashmir state] is constantly interrogated by RAW [Research and Analysis Wing, India's external intelligence body] and others too.... I have two daughters and one son—all in Srinagar. And while my family is harassed by the Indians there, I am mistreated by the Pakistanis here.

I totally blame the religious parties for turning our indigenous national struggle into a violent one. This happened in the late 80s and early 90s when money started to roll in and people like us—who genuinely wanted independence—were used by these religious parties which were supported by the Pakistanis. But I equally blame the Indian government.

We wanted independence and felt that Muslims on this side would be more sympathetic to our cause and therefore we came here—it is true that at the time we were intoxicated by the concept of Islamic jihad. Initially when we started with Hizbul-Mujahedin, our idea was to develop a Kashmiri freedom movement which would also involve Hindu Pandits of Jammu. However once the ISI became involved the movement took on a new face and lost its initial purpose. It gave many political players an opportunity to initiate their own militant organizations. That was when I decided to leave the movement. I now have nowhere to go. Life is hell in Pakistan and would be harsh in Srinagar. Here, I am regularly harassed by the ISI, often threatened with arrest and torture, and also by my former comrades in the jihadi organizations. I would rather be in my place of birth with my family and suffer there rather than in an unwelcoming foreign land where I have no rights, no respect and no hope for the future.²⁹

Throughout the 1990s, Azad Kashmir was increasingly dotted with militant camps operating under the supervision of the Pakistani army. Only when Pakistan began supporting the U.S.-led “global war on terror” in 2001 did the United Jihad Council cease to operate publicly. Several groups have simply changed their names and operate independently or through clandestine underground networks.³⁰ And there are many reports indicating that the Pakistani intelligence apparatus retains direct association with operations by these groups.

Though militant camps in Azad Kashmir proper have become non-operational in the aftermath of September 11, 2001 and the consequent peace process with India, militant infiltration into Jammu and Kashmir state was ongoing through the October 8, 2005 earthquake (though markedly reduced), and continues at the reduced rate to date. Immediately prior to the earthquake and in the months following it, Human Rights Watch was repeatedly told by independent analysts, members of militant groups, and Pakistan-backed Azad Kashmir politicians and members of the Pakistani

²⁹ Human Rights Watch interview with Hanif Haidry, Muzaffarabad, August 3, 2005.

³⁰ “Jihad Recruitment is on the Rise,” *The Friday Times* (Lahore), July 29, 2003, [online] <http://www.pakistan-facts.com/article.php?story=20030729154610902> (retrieved May 31, 2004).

military speaking off-the-record, that infiltration is not only ongoing but its cessation is non-negotiable in the absence of a final settlement of the Kashmir dispute. (Most of these commentators are not willing to be named for fear of reprisal from the ISI.)

A Muzaffarabad journalist, who only agreed to speak to Human Rights Watch on condition of anonymity and on the bank of the Neelum river that runs through Muzaffarabad to ensure he was not overheard, explained his views on the general situation in Azad Kashmir:

Everybody here has reason to hate the militants. They have taken over our lives and hold them hostage. Meanwhile, Kashmiri nationalists including the All-Parties Hurriyet Conference [an umbrella organization for Kashmiri nationalist groups] across the LoC are deeply resentful of how the ISI has warped and damaged the Kashmir movement. And only fools believe that the ISI has decided to end the jihad. Every day you hear stories of infiltration. I know a group went across last week. They have moved the camps but not gone out of business. Everybody abhors India of course but nobody loves the jihadis either. We are caught between a rock and a hard place – unable to overthrow the Indian yoke there and at the mercy of Pakistani jihadis and the dreaded ISI here. But the problem is, we are all compromised. If the ISI call me and ask me whether I spoke to you, I will probably tell them everything. That is the price to be paid to live in peace if not in dignity.³¹

Pakistani military installations have often been placed in close proximity to highly populated civilian areas, ostensibly because of a lack of space. However, many Kashmiris told Human Rights Watch that the Pakistani military used the bases to keep a close watch on the population to ensure political compliance and control. Instead of helping to protect the population, the military uses its close proximity to the civilian population to commit abuses. Given this context, the total collapse of Azad Kashmir's governmental structures in the aftermath of the October 8 earthquake came as no

³¹ Human Rights Watch interview with local journalist, Muzaffarabad, August 1, 2005.

surprise. Akbar Zaidi, a noted Pakistani academic, explained this collapse:

While there is... quasi-civilian Government, real power still rests with the President and the military institutions supporting him. The response to [the] earthquake... needs to be seen in this light.... The military is... a key constituent of the government.... [I]t was therefore the force expected to react immediately by providing relief and help, particularly medical support... The quake's aftermath has exposed a much-trumpeted "success" story of Musharraf's regime, the local government system called "District Government", to be just as flimsy, apolitical and dysfunctional as many had felt it was. This system and its elected bodies are part of the rubble along with the entire physical infra-structure of the area... The state's reaction to the devastating earthquake has revealed that despite the continued global appreciation for its role in the war on terror, the military rules an alienated society and fails to respond to local needs in time of crisis. Its obsession with its notion of "security" continues to undermine real human security in Pakistan.³²

Similarly, it was no accident that militant groups were the first on the scene dispensing relief goods and aid in the immediate aftermath of the earthquake. Nor was it a sign of any great organizational prowess. As the Pakistani military prioritized the rescue of its own personnel, it apparently sought the assistance of its closest allies in Azad Kashmir, the militant groups. Jan McGirk, Southeast Asia correspondent for the U.K. daily newspaper *The Independent*, reported on the inadequate military response and the public reaction to it:

Nearly a quarter of a million troops were already stationed in the area, to enforce a tentative ceasefire with Pakistan's nuclear-armed neighbor, India, over claims to the disputed territory. After living under the military dictatorship of General Pervez Musharraf for six years, the victims expected a disciplined and professional relief effort to alleviate

³² S. Akbar Zaidi, "Emergency Relief in a Military State," *D+C* (Frankfurt-am-Main, Germany), December 2005, [online] http://www.inwent.org/E+Z/content/archive-eng/12-2005/debate_art3.html (retrieved August 24, 2006).

their suffering... It took days before the army would reach any stricken areas beyond the towns; while it dallied, tens of thousands of loved ones were smothered under the rubble and the injuries of survivors went septic. Without any shelter, vulnerable infants and elders contracted pneumonia when intermittent downpours soaked their bedding. In grief, people could only cling to one another for body heat as hail pelted down and thunderclaps heralded more aftershocks. Villagers grumbled that the army must be tending to its own casualties first and had abandoned its hapless civilians to the elements.³³

These groups had suffered the loss of infrastructure and personnel themselves in the earthquake, as McGirk noted:

[R]eports that the quake killed a hundred militants in training camps established near the Line of Control... have been circulating; the government has never acknowledged that such camps exist, even though India has since 1989 accused Pakistan of arming and supporting Islamic guerrillas and demanded the camps' closure...³⁴

The militant groups won much appreciation for their rescue and relief efforts in the second week of October 2005.³⁵ This public relations coup could not have been possible without logistical support from sections of Pakistan's intelligence apparatus. For example, the Jamaat-ud-Dawa, the renamed "welfare" wing of the LT, was in possession of and distributing weatherized tents within two days of the earthquake. The only source of weatherized tents in the immediate aftermath of the earthquake was the Pakistani army.

The post-earthquake role of militant organizations underlines the continuity of the military-militant relationship in Azad Kashmir. Pakistan's two-track policy on the militant groups operating in Jammu and Kashmir state—assurances of roll-back for

³³ Jan McGirk, "Kashmir: The Politics of an Earthquake," *opendemocracy.net*, October 19, 2005, [online] <http://www.opendemocracy.net/debates/article.jsp?id=2&debateId=43&articleId=2941> (retrieved August 24, 2006).

³⁴ *Ibid.*

international consumption but only a scale-down and lower visibility in the theatre of operations—appears to be continuing. The Pakistani military apparently saw the earthquake as an opportunity to craft a new image for the militant groups rather than as an opportunity to disband them.

The politics of water

A continuing source of political tension between Kashmiris and Pakistan is over the Mangla Dam project, which affects the waters of the Jhelum and Poonch rivers before they flow into Punjab in Pakistan. Particularly affected is the relatively well-off Mirpuri community in Azad Kashmir (see above), which has increasingly felt a sense of discrimination and economic exploitation by Pakistan because of the project. In a 1991 article, Roger Ballard of the U.K.'s Manchester University explained why:

To Pakistan Mangla is a vital asset which brings many benefits... Mangla is thus critical to the success of the Pakistani economy as a whole. Yet despite the great benefits which Mangla has brought to everyone in Pakistan proper, those unfortunate enough to live immediately upstream of the dam have had... to bear the brunt of its environmental costs.³⁶

The debate around the Mangla Dam, though beyond the scope of this report, is notable because of the central role it has played in shaping the Mirpuri disconnect from Pakistan. Pakistan argues that the construction of the Mangla Dam is a consequence of the 1961 Indus Basin treaty between India and Pakistan with the World Bank acting as guarantor. The Azad Kashmiris, particularly the Mirpuris, argue that water is a Kashmiri natural resource commandeered by the Pakistani state to the disadvantage of Kashmiris. This is a key issue fueling calls for Kashmiri independence. The acrimony over the dam continues in Mirpur as the dam is currently being raised.

Chaudhry Arif, the convener of the Mangla Dam Action Committee, a protest group formed to demand better compensation for those affected by the Mangla Dam, told Human Rights Watch,

³⁶ Roger Ballard, "The Kashmir Crisis: A view from Mirpur," *Economic and Political Weekly* (Mumbai), 1991, pp. 513 – 517.

Water is our natural resource. Arabs have oil, the Baloch have minerals. Kashmir has water. All of Pakistan uses our water. In the process, there remain acute water shortages in Mirpur from where we can see the dam feeding the palatial homes of Islamabad. Meanwhile, water-borne disease is on the rise in Mirpur and other parts of Kashmir due to scarce water here. We have been uprooted from our homes, not paid adequate compensation and denied royalty while Pakistan and India steal our natural wealth. This is the worst kind of exploitation and colonization.³⁷

³⁷ Human Rights Watch interview with Chaudhry Arif, Mirpur, August 3, 2005.

III. Constitutional Structure of Azad Kashmir and Its Relationship to Pakistan

Government of Azad Kashmir, by the Pakistanis, for Pakistan.

—Former president of Azad Kashmir (name withheld)

Azad Kashmir has its own constitution, the Azad Jammu and Kashmir Interim Constitution Act of 1974, and a locally chosen parliamentary form of government, as described above (see Chapter II, Background: Administration). The constitution allows for many of the structures that comprise a self-governing state, including a legislative assembly elected through periodic elections, a prime minister who commands the majority in the assembly, an indirectly elected president, an independent judiciary, and local government institutions.

But these provisions are hollow. Under Section 56 of the Jammu and Kashmir Interim Constitution Act (which was drafted by the Federal Ministries of Law and Kashmir Affairs in Islamabad), the Pakistani government can dismiss any elected government in Azad Kashmir irrespective of the support it may enjoy in the AJK Legislative Assembly. The Interim Constitution Act provides for two executive forums—the Azad Kashmir Government in Muzaffarabad and the Azad Kashmir Council in Islamabad.

The latter body, presided over by the prime minister of Pakistan, exercises paramount authority over the AJK Legislative Assembly, which cannot challenge decisions of the council. The council is under the numerical control of the federal government in Islamabad, as in addition to the Pakistani prime minister it comprises six other federal ministers, the minister of Kashmir affairs as the ex-officio member, the prime minister of Azad Kashmir, and six Azad Kashmir members elected by the Legislative Assembly.³⁸ The interim constitution act lists fifty-two subjects—virtually everything of any importance—that are under the jurisdiction of the Azad Kashmir Council, which has been described as the “supra power” by the Azad Kashmir High Court. Its decisions are final and not subject to judicial review.

³⁸ Azad Jammu and Kashmir Interim Constitution Act 1974, Section 31, 3rd Schedule (p. 161).

Thus, Azad Kashmir remains for all intents and purposes under Pakistan's strict control, exercising no real sovereignty of its own. From the outset, the institutional set up in the territory was designed to ensure Pakistan's control of the area's affairs. According to the United Nations Commission for India and Pakistan (UNCIP)³⁹ resolutions, Azad Kashmir is neither a sovereign state nor a province of Pakistan, but rather a "local authority" with responsibility over the area assigned to it under the ceasefire agreement.⁴⁰ The "local authority" or provisional government of Azad Kashmir as established in October 1947 handed over to Pakistan under the Karachi Agreement of April 28, 1949, matters related to defense, foreign affairs, negotiations with the UNCIP and coordination of all affairs relating to Gilgit and Baltistan (strategically important territories that now comprise Pakistan's "Northern Areas" but are claimed by India as part of the state of Jammu and Kashmir).

A former president of Azad Kashmir (who preferred not to be named in this report) described the situation as "[g]overnment of Azad Kashmir, by the Pakistanis, for Pakistan." He also pointed to the striking continuity of the "old princely system" under British rule because of Islamabad's "viceroy" role generally and the maintenance of the traditional *biradari* system locally.⁴¹

The constitution of Azad Kashmir poses major impediments towards genuine democracy as it bars all those parties and individuals from participating in the political process who do not support the idea of Kashmir's accession to Pakistan and hence precludes all those who are in favor of Kashmiri independence. To fail to support, or fail to appear to support Kashmir's accession to Pakistan means to invite the ire of Pakistan's abusive intelligence agencies and its military. It also entails inviting political persecution, such as ineligibility to contest elections or to seek employment with any government institution, or the curtailing of basic freedom of expression. (These issues are explored in more detail in Chapters IV and V, below.)

³⁹ The United Nations Security Council established the United Nations Commission on India and Pakistan (UNCIP) through resolution 39 (1948) to investigate and mediate the Kashmir issue.

⁴⁰ N.C. Behera, "Looking within the other Kashmir," *Asia Times Online*, February 20, 2003, [online] http://www.atimes.com/atimes/South_Asia/EB2oDfo7.html (retrieved August 24, 2006).

⁴¹ Human Rights Watch interview with a former president of Azad Kashmir, Islamabad, August 2005.

Interference and control by Islamabad in Azad Kashmir politics

Because of the mandate of the AJK Legislative Assembly and its particular division of power with Pakistan, the elected political leaders of Azad Kashmir essentially remain titular heads of the territory while the real power resides in Islamabad. This requires a compliant Azad Kashmir administration, and explains the repeated changes in Azad Kashmir's leadership at Pakistan's will. And in common with previous such exercises, the most recent election to the Legislative Assembly, in July 2006, was greeted with widespread charges of poll rigging by all opposition political parties and independent analysts (see Chapter V, below).⁴² Another instrument of exercising control is through assigning virtually all major civil and police administrative posts to Pakistani civil and military officials who are "on deputation" from Islamabad. The Azad Kashmir government is also totally dependent on the federal government of Pakistan for its finances.

Power in Azad Kashmir is exercised primarily through the Pakistani army's General Headquarters in Rawalpindi, just outside Islamabad, and its corps commander based in the hill station of Murree, two hours by road from Muzaffarabad. It is widely understood in Pakistan and privately admitted by virtually all politicians from Azad Kashmir that the corps commander in Murree is known to summon the Azad Kashmir prime minister, president and other government officials regularly to outline the military's views on all political and governance issues in the territory.

During the rule of Pakistan's first military leader, Ayub Khan (1958-68), President K.H. Khurshid of Azad Kashmir was forced to resign by a mid-level police official and later jailed in Palandari and Dalai Camp. During Prime Minister Zulfikar Ali Bhutto's government (1972-77), another president of Azad Kashmir, Sardar Qayyum, was suddenly arrested by a mid-level official of the Federal Security Forces in Muzaffarabad and subsequently dismissed. During General Zia-ul-Haq's government (1977-88), Brig. Hayat Khan was appointed administrator of Azad Kashmir, a post he held for seven years. When a civilian government was reestablished in Pakistan in 1988, Benazir Bhutto's swearing in as prime minister was shortly followed by the installation of an elected government of Bhutto's Pakistan People's Party in Azad Kashmir. When Bhutto was sacked by the president in

⁴² "Azad Kashmir Poll Results", *Dawn* (Karachi), July 14, 2006, [online] <http://dawn.com/2006/07/14/ed.htm#2> (retrieved August 24, 2006).

1990, Azad Kashmir Prime Minister Mumtaz Rathore was “escorted” to Islamabad in a helicopter and made to sign a letter of resignation.

When Nawaz Sharif became prime minister of Pakistan in 1990, Sardar Qayyum once again rose to power as prime minister of Azad Kashmir, the nominee of the Pakistani army. During Bhutto’s next stint in power (1993-96), she cautiously chose not to dismiss Sardar Qayyum, but elections in 1996 brought her Pakistan People’s Party to government again in the territory, as expected, and Sultan Mahmood Chaudhry became prime minister.

Following General Musharraf’s 1999 coup, Sardar Muhammad Anwar Khan took the oath of office on August 25, 2001, as president of Azad Kashmir. Sardar Anwar had been nominated by the All Jammu and Kashmir Muslim Conference (MC, the ruling party in the AJK Legislative Assembly, backed by Musharraf) on July 29, 2001, in a decision evidently reached in Islamabad, as at the time of his nomination the members of the assembly had little or no idea who Anwar was.⁴³ Prior to this appointment, he had served in the Pakistani army for thirty-five years and was an army major-general at the time of his appointment, retiring from the army just four days before his election as president on August 1, 2001.⁴⁴ Controversially, his retirement was under an ordinance issued by Musharraf that waived the restriction on government servants accepting any political post before they had been retired for a minimum of two years.⁴⁵ Anwar’s term of office ended following Legislative Assembly elections held in Azad Kashmir on July 11, 2006. On July 27, AJK Muslim Conference candidate Raja Zulqarnain Khan was elected president of Azad Kashmir for a five-year term.⁴⁶

Sardar Sikandar Hayat Khan, a veteran of Pakistan-sponsored politics, served as prime minister of Azad Kashmir from July 2001 to July 25, 2006, when he was

⁴³ Human Rights Watch was informed by five members of the ruling Muslim Conference on separate occasions that they had never heard of Sardar Anwar until they were informed by Anwar that Islamabad had nominated him for election by the Legislative Assembly. All five requested anonymity.

⁴⁴ The president’s military career is not mentioned in his profile on the Government of Azad Kashmir’s official website.

⁴⁵ Susannah Price, “Ex-general elected to Kashmir post,” BBC News Online, August 1, 2001, http://news.bbc.co.uk/1/hi/world/south_asia/1468287.stm (retrieved August 24, 2006).

⁴⁶ “Zulqarnain elected AJK president,” *Dawn* (Karachi), July 28, 2006, [online] <http://dawn.com/2006/07/28/top13.htm> (retrieved August 24, 2006).

succeeded by Musharraf nominee and Muslim Conference president Sardar Attique Ahmad Khan.⁴⁷

Regarding Azad Kashmir's political party landscape, since the early 1990s real decision-making authority and the management of the "Kashmir struggle" has rested firmly with the Pakistani military through the ISI and ISI-backed militant organizations (see above, Chapter II, Background: The role of militant groups), and the mainstream political parties allowed representation by Pakistan in the AJK Legislative Assembly have not figured among the principal political actors in Azad Kashmir. However, they have benefited from the perks, privileges and funds for purposes of patronage and generating public support.

Sardar Karamdad Khan, a Muzaffarabad-based lawyer, summed up for Human Rights Watch the dispensation of power in the territory:

The Pakistani bureaucracy is the real administrative power, the ISI and the Pakistan army exercise coercive power. And under the constitution, the elected representatives are subservient to the Kashmir Council controlled by Pakistan. High Court and Supreme Court Judges can only be appointed by approval of the Ministry of Kashmir Affairs in Islamabad. The Minister of Kashmir Affairs can dismiss the PM, as can the Chief Secretary—another Islamabad appointee. Under Article 56, the President of Pakistan can dissolve the Legislative Assembly. Surely, this is a truly unique form of self-rule.⁴⁸

⁴⁷ "Sardar Attique sworn in as AKJ premier," *Dawn* (Karachi), July 26, 2006, [online] <http://dawn.com/2006/07/25/nat5.htm> (retrieved August 24, 2006).

⁴⁸ Human Rights Watch interview with Sardar Karamdad Khan, Muzaffarabad, July 25, 2005.

IV. Restrictions on Freedom of Expression

Tight controls on freedom of expression have been a hallmark of the Pakistani government's policy in Azad Kashmir. This control is highly selective. Militant organizations have had free rein—particularly between 1991 and 2001—to propagate their views and disseminate literature. However, those supportive of independence for a united Kashmir, or otherwise critical of the Pakistani government, have faced continual repression.

Loyalty oath

No person in Azad Kashmir can be appointed to *any* government job, including the judiciary, unless he or she expresses loyalty to the concept of Kashmir's accession to Pakistan. The oath of office for the president, prime minister, speaker, member of the legislative assembly or the Azad Kashmir Council also incorporates the following statement: "I will remain loyal to the country and the cause of accession of the state of Jammu & Kashmir to Pakistan."⁴⁹ (The consequences of not taking the oath for persons seeking political office are discussed below, in Chapter V.)

Print media and publishing

The Pakistani government has long limited dissemination of news in Azad Kashmir. There is no locally-based news agency. Azad Kashmir only has one daily newspaper and so people largely rely on local editions of Pakistani newspapers for news and information. The laws governing publications provide a partial explanation for this barren information landscape: in order to publish within the territory, newspapers and periodicals need to be granted permission by the Kashmir Council and the Ministry of Kashmir Affairs in Islamabad. These bodies are unlikely to grant permission to any proposed publication likely to be sympathetic to any discourse on Kashmir and its affairs other than that sanctioned by the Pakistani government. In any case, the

⁴⁹ The oath is based on Article 7(2) of the Azad Jammu and Kashmir Interim Constitution Act of 1974, and in addition to holding political office or being appointed to a government job, the submission of a signed declaration to the same effect is required in order to publish books or periodicals.

publisher would have to sign the declaration of support to accession to Pakistan mentioned above. Technically, the same rules apply to the publication of books.

Human Rights Watch spoke extensively to working journalists and writers in the major towns of Azad Kashmir. Members of the press complained of the intrusive and coercive policies of the Azad Kashmir government but particularly of the ISI and the Pakistani military. Almost every journalist interviewed described incidents of coercion, intimidation, threats and occasional violence against the media by the military, its intelligence agencies, and militant groups.

Consequently, self-censorship has been as endemic as coercion. It is indicative of the climate of fear that pervades Azad Kashmir that while journalists were forthcoming in describing incidents off-the-record, virtually all interviewed by Human Rights Watch requested not to be quoted, even anonymously. Their rationale was that Azad Kashmir was a relatively small territory and they would be easily identifiable through the specifics of the incident described. One journalist explained his reasons to Human Rights Watch in these words:

You will go away. We have to live and work here. Our families live here. The ISI is very powerful. It is also very unforgiving. The officer who presided over my beating is still serving. Even if he was not, he would inform his successor of the “disciplinary action” taken against me and to keep an eye on me. If they don’t want to be blamed themselves, they will instruct one of the jihadi groups to teach me a lesson. I know freedom of expression is important but not important enough to die for. At least not to me. Sometimes they just summon you for no reason at all. On some flimsy excuse. Someone with a similar name writes something unrelated to Kashmir in some part of Pakistan but the army or the jihadis decide it is you. They also force you to create and kill news according to what suits them. Things are bad. You have heard how bad from many of us. Just don’t mention my name, that’s all.⁵⁰

⁵⁰ Human Rights Watch interview with local journalist, Azad Kashmir, July 29, 2005.

Waheed Kiyani, a local journalist working for the Reuters news agency, was arbitrarily arrested by the ISI on July 10, 2003, as he was returning from the city of Rawalakot after covering a political meeting. For security reasons, Kiyani was unwilling to talk to Human Rights Watch. However, Human Rights Watch interviewed others including the organizers of the meeting who described what happened. Arif Shahid, chairman of the All Parties Nationalist Alliance (APNA, a conglomerate of nationalist Kashmiri parties) and JKLF secretary general, told us:

On July 10, 2003, we held a conference titled ‘Kashmir Unity Conference’ at Khaigala where AJK and Gilgit Baltistan leadership was present. About three hundred delegates attended. We offered a form to all delegates. The form gave the options of independence, joining Pakistan or joining India. The answer was two for India, two for Pakistan and the rest for independence.

Only one international journalist was present—the Reuters correspondent Waheed Kiyani. As soon as he stepped out [of the meeting], he was followed by the ISI and he was arrested at Rawalakot. He told me that they kept him blindfolded and his camera/photos were confiscated and he was taken to the ISI headquarters and torture cell near Rawalakot.

We went to Rawalpindi in Pakistan and informed Reuters. Kiyani was released two days later, on July 12. On the same day we attended a seminar in Muzaffarabad. Kiyani covered the event. He was called on stage by General Anwar, the AJK President who told him in full public view to ‘forget it and be grateful you are alive,’ and ‘offer thanksgiving prayers.’

In this atmosphere of shameless open coercion, it is no surprise that Kiyani wants to put the incident behind him and is hesitant to talk about it now. This is the reality of press freedoms in AJK. And of course, the rest house where the delegates of the conference were staying was also raided on the same day, July 10. The owner ran away from the

scene. The rest house was empty as we had finished and left according to schedule.⁵¹

The Azad Kashmir government regularly bans books that it considers to be prejudicial to the “ideology of the state’s accession to Pakistan.”⁵² This includes all books that propagate or discuss the Kashmiri nationalist discourse with its emphasis on independence for a united Kashmir. Arif Shahid, quoted above, is himself the author of four books banned by the authorities.

Muhammad Saeed Asad, a self-described Kashmiri nationalist, is the author of numerous books on Kashmiri affairs, and is employed as a social welfare officer in the Azad Kashmir Ministry of Social Welfare and Women’s Development when he is not under suspension for writing books to which the government objects. In 2002, he was suspended for writing a book on the Mangla Dam (see above) that questioned Pakistan’s right to water sources originating in Kashmir. Pakistan has banned three books written by Saeed Asad for being “anti-state and an attempt to promote nationalist feelings amongst Kashmiris.”⁵³ These include *Shaur-e-Farda*, banned in 1996, which comprises letters written by Maqbool Butt to his friends and relatives over a span of two decades (Maqbool Butt, founder of the JKLF, is a central figure in the Kashmiri nationalist movement.)⁵⁴ Saeed Asad’s book on the Mangla Dam controversy was banned on November 21, 2002, and a book on the Northern Areas (in the grip of unrest due to lack of rights and, as noted above, claimed by Kashmiri nationalists and India as part of Kashmir),⁵⁵ was banned in June 2004. He told Human Rights Watch:

⁵¹ Human Rights Watch interview with Arif Shahid, Rawalakot, July 28, 2005. Human Rights Watch interview with Kamila Hyat, Joint Director, Human Rights Commission of Pakistan, Lahore, September 14, 2006.

⁵² Azad Jammu and Kashmir Interim Constitution Act 1974, art. 7(2).

⁵³ The letter of suspension to Saeed Asad is on file with Human Rights Watch.

⁵⁴ Maqbool Butt is considered a hero by Kashmiri nationalists and the founder of the movement for an independent Kashmir. He was disliked almost equally by India and Pakistan, and viewed as a terrorist by the former and a double agent by the latter. He was hanged on February 11, 1984, in Tihar Jail, New Delhi, age forty-five, and buried there.

⁵⁵ The complex history of the Northern Areas (NA) is intricately linked to the Kashmir dispute. Since 1947-48, the NA have been administered by Pakistan although they are not legally part of it as they find no mention in the constitution of Pakistan and are neither a province of Pakistan nor an autonomous territory having a constitutional status of its own like Azad Kashmir. Though Pakistan blames the constitutional limbo the NA is in on its unresolved dispute with India over Kashmir, it has chosen to separate the territory from Azad Kashmir. Both Kashmiri nationalists and India disagree with Pakistani policy in this regard.

Please use my name. We are ready to struggle, I am a man of words and so I will remain in the public domain. My books have been banned because they talk of Kashmiri rights and Kashmiri nationalism. I am a Kashmiri nationalist and why should I not be allowed to call myself such?

I was suspended from my government job for writing on the Mangla Dam issue. The ISI called me upon publication of the book. It was a major in the ISI. He verified that I had compiled the book and had not been forced into writing it.

The book represented the views of Kashmiris on Mangla and indicates that Pakistan was exploiting Kashmir for its own gains. Two weeks after publication, I had a three-hour-long meeting with Pakistan's Military Intelligence. They told me that this was a sensitive matter and I should not have written about it. 'The public does not know why you have brought this into the public domain,' the officer said. I replied that people had a right to know what Mangla Dam was and who derived advantages from it. It was my national duty, as a Kashmiri, to bring this out. 'This is precisely your crime,' the officer said. The meeting had majors from GHQ Rawalpindi and officers from Military Intelligence. 'You should avoid writing such books. We are placing you under surveillance' one said. But, I made it clear to them that I would keep on writing and they could keep on banning my work.

They keep giving me trouble by stopping pay raises, suspending me from the job periodically and posting me from district to district in order to make life difficult. But, I am determined to keep on writing and to keep on working.

The government of Pakistan is willing to fund books and propaganda to the tune of millions of dollars to propagate its own views and stance. Why can't we exert our individual efforts to disagree? They brook no dissent and want total and complete control. The Pakistan government

just wants to suppress the Kashmiris. I have been repeatedly offered advancement if I support Pakistan. Endless youth in Kashmir who have masters and professional degrees are unemployed because the government knows they are pro-independence.

This is how the Pakistanis, our so-called friends, treat us. We are at war with India so they persecute us. We are not at war here but they persecute us anyway. Would you like to have such friends? Would you want to live under such rule? No you would not. So why should we?⁵⁶

The October 8, 2005 earthquake resulted in a considerable weakening of the Pakistani government's ability to curb freedom of expression and information in the territory. The influx of international and Pakistani media into the territory in the aftermath of the earthquake was unprecedented. However, for freedom of expression to take root in Azad Kashmir, the external media presence must be systematized into permanent structures such as news bureaus and regional offices.

Electronic media and telecommunications

As with the print media, prior to the earthquake the only radio station allowed to operate in the territory was the Azad Kashmir Radio, a subsidiary of the state-controlled Radio Pakistan. Typically, state-run radio and television news programs present news according to priorities of state protocol rather than newsworthiness—that is, a news bulletin will begin with the engagements and observations of the president of Pakistan and make its way down the official pecking order to the local level. The influx of and consequent competition from satellite channels has, as yet, not resulted in a change in the news culture of state-controlled media. Subsequent to the earthquake, the government allowed a private FM radio station to broadcast in the territory as long as the broadcast is limited to entertainment.

(In November 2005, Pakistan's government-run electronic media regulatory authority, PEMRA, stopped three local (Pakistani) partners of the BBC from broadcasting two daily thirty-minute "earthquake specials" produced by the BBC's Urdu service.

⁵⁶ Human Rights Watch interview with Saeed Asad, Rawalakot. July 30, 2005.

PEMRA officials, accompanied by dozens of armed policemen, seized equipment from one of the local partners' Karachi offices and ordered two satellite television partners to stop running news content from the BBC. Pakistan's information minister declined to comment on the incident when approached by the BBC. Though the "earthquake specials" resumed after an outcry by international organizations, including Human Rights Watch, the government of Pakistan appears unwilling to tolerate critical reporting of events in Azad Kashmir not just in the territory, but across Pakistan.⁵⁷⁾

Before the earthquake, telephone landlines were limited and strictly monitored in Azad Kashmir and only a limited mobile telephone service was operational. All telecommunications stations were controlled by the Special Communications Organization (SCO), which is a functional unit of the Pakistani army. Subsequent to the earthquake, the Pakistani government allowed private Pakistani mobile phone companies to operate in Azad Kashmir—but only after it was pointed out that the loss of life could have been lessened and the rescue effort made easier, particularly in the major cities, had victims buried under rubble been able to use mobile phones as they did in Islamabad and quake-affected areas in Pakistan's North West Frontier Province.⁵⁸

Public protest

Official repression of freedom of expression is not limited to controls and censorship specific to Kashmiri nationalists and journalists. Pakistani police used *lahtis* (canes) and rifle butts to break up a peaceful demonstration in Muzaffarabad on November 11, 2005, by approximately two hundred earthquake survivors protesting eviction from their makeshift camp. Witnesses told Human Rights Watch that police arrived early at the Jalalabad Garden camp that day and told the quake victims that they had to leave by sunset. Several protestors, including children, were injured as a result of police efforts to break up the demonstration. A Muzaffarabad journalist told Human

⁵⁷ "Pakistan: Donors Need Accountability on Human Rights," Human Rights Watch news release, November 16, 2005, [online] <http://hrw.org/english/docs/2005/11/16/pakist12045.htm>.

⁵⁸ "President's press conference in Muzaffarabad," President of Pakistan press room, October 18, 2005, [online] <http://www.presidentofpakistan.gov.pk/FilesPressRoom/PressConferences/1018200590032PMPresident%20press%20conference.pdf> (retrieved August 24, 2006).

Rights Watch that when he asked a senior administration official to order the police to stop the violence, the official responded, “What else do you expect the police to do? We can hardly tolerate this sort of behavior from these people. If they don’t behave they will get beaten of course.”

V. Restrictions on the Right to Participate in Elections and Related Abuses

No person or political party in Azad Jammu and Kashmir shall be permitted to propagate against or take part in activities prejudicial or detrimental to the ideology of the State's accession to Pakistan.

—Part 7(2) of the Azad Jammu and Kashmir Interim Constitution Act, 1974

Successive Pakistani governments have asserted that Kashmir's political future must be determined in accordance with the wishes of its people. Yet its own constitutional provisions preclude all political choices to Kashmiris except to support its accession to Pakistan. Shamshad Hussain Khan, an Azad Kashmir Supreme Court lawyer, summed up the situation arising from the constitutional framework:

The document referred to as the constitution of Azad Kashmir is a sham. It's a biased document. These laws and practices are in contradiction to the pledges made by the government to the international community and the U.N. On the one hand, the Pakistan government says that U.N. Security Council resolutions must apply. On the other, the constitution prohibits it. We have been and are being persecuted—through arbitrary arrests, torture, curbs on movement, and by being barred from seeking higher education or employment—for simply demanding a third or even a second option for Kashmir. The stance and the legislation are simply irreconcilable.⁵⁹

As noted in Chapter III, the constitution of Azad Kashmir was drafted by the Pakistani government, as opposed to being framed by the elected representatives of Azad Kashmir themselves. It spells out fundamental rights, but inserts a crucial caveat: “No person or political party in Azad Jammu and Kashmir shall be permitted to propagate against, or take part in activities prejudicial or detrimental to, the ideology of the

⁵⁹ Human Rights Watch interview with Shamshad Hussain Khan, Rawalakot, July 2005.

state's accession to Pakistan.”⁶⁰ Thus, the constitution poses major impediments towards genuine democracy as it bars all those parties and individuals from participating in the political process that do not support the idea of Kashmir's accession to Pakistan.

To guard against the possibility of circumventing the constitutional bar, the Azad Kashmir electoral law expands on the theme. A person shall stand disqualified for running for elective office if “[h]e is propagating any opinion or acting in any manner prejudicial to the ideology of Pakistan, the ideology of the State's accession to Pakistan or the sovereignty, integrity of Pakistan or security of Azad Jammu and Kashmir or Pakistan, or morality, or the maintenance of public order, or the integrity or independence of the Judiciary of Azad Jammu and Kashmir or Pakistan, or who defames or brings into ridicule the Judiciary of Azad Jammu and Kashmir or Pakistan, or the Armed Forces of Pakistan.”⁶¹

As a result, political groups such as the JKLF and the APNA that do not support Kashmir's accession to Pakistan are barred from contesting elections. When their members have attempted to field candidates, as they did in the 2001 and 2006 elections to the AJK Legislative Assembly, the authorities have sought to suppress them, including in 2001 through the use of arbitrary arrest often accompanied by ill-treatment.⁶²

The 2001 elections

The APNA and JKLF decided to attempt to participate in the 2001 elections and fielded thirty-two candidates, each of whom refused to support accession to Pakistan. Sardar Mohammad Sagheer Khan, secretary general of the JKLF (Amanullah Khan Group), who has been on Pakistan's exit control list since 1992, described his experience to Human Rights Watch:

⁶⁰ Azad Jammu and Kashmir Interim Constitution Act 1974, art. 7(2).

⁶¹ Azad Jammu and Kashmir Legislative Assembly Ordinance 1970, Azad Jammu and Kashmir Election Commission, Muzaffarabad, 2002, Chapter 3, 2(vii).

⁶² “Pakistan: Abuses Feared in Kashmir Elections,” Human Rights Watch news release, July 7, 2006, [online] <http://hrw.org/english/docs/2006/07/06/pakist13696.htm>.

During the scrutiny [in 2001], I asked the returning officer why my basic rights were being violated. There were twenty to thirty policemen in the returning officer's chambers. The police immediately arrested me and hundreds of our workers outside were tear gassed and baton charged. The ISI had seen that we had public support during the nomination filing process earlier, as I had been accompanied by over a thousand supporters. I was arrested, beaten with batons—I received head injuries, I was bleeding and my left arm was dislocated during the beating.

I was then thrown into the police van alone and half an hour later, I was taken to Rawalakot police station where I was beaten with batons, abused and humiliated. My other colleagues joined me about thirty-five to forty minutes later.

Three nights later, we were shifted to Kotli Jail. We were classed as common criminals in jail and kept alongside criminals. We were not criminals and we were kept with them purely to humiliate us. A mentally unbalanced person was also placed in my cell along with a mass murderer. But we managed to maintain the peace despite the best attempts of the police to create a violent situation. The problem was that we were not allowed any family visits. On the direct intervention of influential friends, one or two people were allowed a brief meeting with relatives.

When we were released, we were met by crowds all over. After that we tried to launch a mass contact movement but Rawalakot was placed under unofficial curfew and our meetings were not allowed. The district Poonch and district Kotli administrations were placed on high alert and kept under tight surveillance to prevent us from mobilizing. In the run up to the elections, at least eight hundred people were arrested across Azad Jammu and Kashmir.⁶³

⁶³ Human Rights Watch interview with Sardar Mohammad Sagheer Khan, Rawalakot, July 27, 2005.

Sardar Naseem Iqbal is an Azad Kashmir Supreme Court lawyer and former secretary general of APNA. His party allegiance lies with the JKLF (Rauf Kashmiri Group). Iqbal told Human Rights Watch that APNA decided in May 2001 to file nominations from across Azad Kashmir and for refugee seats. He was a candidate in Poonch. His and his colleagues' nomination papers were promptly rejected for being in violation of the Azad Kashmir election laws and constitution. Sardar Naseem told Human Rights Watch what followed the rejection of his nomination papers:

The nomination was rejected on June 7. The same day, we were called for discussions by the Poonch deputy commissioner, Dr. Mehmoodul Hassan, at his office in Rawalakot. [Five colleagues] and I went. When we got there, a major from the ISI was present. I don't remember his name. He said, 'Just wait outside my office.' When we emerged from the office, we were surrounded by police. Around one hundred police officers. Our supporters were demonstrating in other parts of the city and the police was spread all over. The deputy commissioner ordered our arrest. As soon as he said this, the police started baton charging us. We did not resist arrest and raised our hands, but they continued to beat us, regardless. They threw us in the *nehr*[stream]. [Name withheld] sustained more serious injuries than the others.

They took us to Rawalakot police station. One of our colleagues and fellow candidates from JKLF (Amanullah Khan Group) had already been arrested and taken there. We were locked up for three days and not even presented before a judicial magistrate. No one was allowed to meet us for three days. We were cut off from the outside world. In the station the police were pressured by the ISI. The police know us. I am a lawyer—they may have arrested us, but they would not have held us incommunicado without ISI pressure.

During the time we were in the police station, our colleagues who demonstrated outside the police station for our release would also be arrested. We were then shifted to District Kotli Jail four hours away. This was on June 11 at 1 a.m. By the time we were moved to the jail,

around twenty-five of us had been arrested. We were kept in jail for one month. For one month there was no paperwork. Others were released a month later, but six to eight of us remained in jail and were served with ‘extension of remand’ under the Maintenance of Public Order act for another fifteen days. Once the election was over on July 5, the case was withdrawn but only after they told us to deposit bail bonds and we refused.

I don’t understand this. Even under their own laws, we may not be able to contest elections. But we surely are allowed to vote. But clearly, the government did not allow us to be part of the political process in any way. Is this not discriminatory? Is this not a gross violation of our rights? Do we have any rights at all?⁶⁴

Arif Shahid, current chairman of the APNA and JKLF secretary general, told Human Rights Watch,

Two days before the nominations closed, the ISI began its surveillance of us. My young nephews returning from school on June 4 were asked, ‘Where does your uncle sleep?’ I know the ISI was wanting to arrest or kidnap me, so I stayed away from home.

I was arrested on June 7 when the Deputy Commissioner Poonch Dr. Mehmoodul Hassan, lured us to his office in Rawalakot. Naseem Iqbal has described what happened. We did not resist arrest but that did not prevent them from baton charging us and beating us up. That should indicate the attitude of the authorities. They arrested me though I was not even a candidate in the election. I was just the secretary general of the Alliance. The details are irrelevant. There was no reason to arrest me. This is commonplace. Mohammad Abid, my

⁶⁴ Human Rights Watch interview with Sardar Naseem Iqbal, Rawalakot, July 27, 2005.

apolitical relative, brought me a change of clothes to the police station. He was also arrested.⁶⁵

Zahid Habib Sheikh, a prospective JKLF candidate, told Human Rights Watch,

I filed my nomination papers on June 1, 2001. On June 7, the papers were rejected because I had not signed the declaration supporting accession to Pakistan. The matter could have ended there. But the army was tense about our mobilizing public opinion against the election and engaging in political activity. On July 4, one day prior to the July 5 elections, we were all arrested. All JKLF candidates across Azad Kashmir and senior office bearers were arrested because we announced a boycott of the election.

On July 4 at 2:30 a.m. the local authorities headed by SHO [Station House Officer] Zahid Mirza entered my house. They jumped over the walls and into my house. They said, 'We will tell you the reason for your arrest at the police station.' About fifty police officers from the City Police Station Muzaffarabad were present.

I was taken to the police station and taken to the lockup and handcuffed. We are political activists but we were put in the same cells as common criminals. Once there, I discovered that there were seven other JKLF members present. In the morning, we were told by the police that the arrests had been made on orders of the GOC [corps commander in] Murree and the question of bail did not arise!

They said no FIR [First Information Report] would be filed and no arrest warrants were needed as the general had ordered the arrests. In the morning we were shifted to Muzaffarabad Central Jail along with criminals. We were released five days later. Even now, we are

⁶⁵ Human Rights Watch interview with Arif Shahid, Rawalakot, July 28, 2005.

constantly under surveillance. They keep asking my neighbors what I am up to. Why? I am not a criminal.⁶⁶

Ashiq Gillani, another prospective JKLF candidate, told Human Rights Watch,

On July 3, 2001, at 4 a.m., police vans and one ISI car came to my house. The police were in uniforms and the ISI in plainclothes. They surrounded the house and knocked on the door. There were about forty personnel in all. My mother was saying her *fajr* [early morning] prayers behind the door. She opened the door, and they pushed her, causing her to fall and injure her hand. Then they asked for me. She said I was present and asked them to wait a minute or so in order for the women of the house to remove themselves, but they ignored her. My mother came and woke me up, and the police came and dragged me out, hitting me with rifle butts and kicking me. They bundled me barefoot and clad in only my nightclothes into the van. They were abusing and swearing at me. They took me to City *Thana* [police station] in Muzaffarabad. They locked me up with various dangerous criminals. They told me that this was an order from their superiors. I was there for four or five hours. Then, I was handcuffed along with others and taken to Muzaffarabad Jail where I was locked up. I was released a month later without charge.⁶⁷

Mir Afzal Suleri, a Kashmiri nationalist, also described his experience in the run-up to the 2001 election:

They raided my house but I was not present. I was arrested on July 4 from Upper Adda [*Main Chowk*] of Muzaffarabad. Police and army intelligence arrested me because I was leading fifty to a hundred protestors against the crackdown on the JKLF and other nationalist parties. Our protest was raided by the police and baton charged. I was

⁶⁶ Human Rights Watch interviews with Zahid Habib Sheikh, Muzaffarabad, July 25, 2005.

⁶⁷ Human Rights Watch interview with Ashiq Gillani, Muzaffarabad, July 25, 2005.

arrested and taken to the City *Thana*, from where I was taken to the Central Jail. I was also released after five days. They arrested me the first time for chalking pro-independence slogans on walls in 1999. It is really strange. And they keep re-arresting me under the wall-chalking charge whenever it suits them. But of course, the jihadi groups, Lashkar-e-Toiba, Jaish and others can write whatever they want. No one ever arrests them. They [Pakistan] say they are our friends and India is our enemy. I agree India is our enemy but with friends like these who needs enemies?⁶⁸

The 2006 elections

About sixty pro-independence candidates belonging to the Jammu Kashmir Liberation Front, the All Parties Nationalist Alliance and some smaller groups filed nomination papers for the July 11, 2006 elections. All were barred from the contest by election authorities.

The elections that ensued resulted in the Islamabad backed-Muslim Conference maintaining power with an absolute majority of thirty-one members in a house of forty-nine, despite the incumbents and their backers in Islamabad having suffered tremendous political damage due to their mishandling of the post-earthquake situation. The elections were widely regarded as rigged to favor Islamabad-backed candidates: this view was shared by all opposition political parties including the pro-Pakistan opposition, and by independent observers and analysts. Demanding an impartial probe into alleged rigging and manipulation in these elections, former Pakistan-backed AJK Prime Minister Sultan Mehmood Chaudhry said,

Despite rigging, manipulation, use of force and violence and a carrot and stick policy, the ruling party secured far fewer votes than the Opposition parties who take the identical stance that these were bogus elections... We demand the establishment of a powerful

⁶⁸ Human Rights Watch interview with Mir Afzal Suleri, Muzaffarabad, July 25, 2005.

investigation authority that should comprise human rights activists, lawyers, journalists and international observers.⁶⁹

Pakistan's national opposition echoed these claims. Chief of the Islamist Jamaat-e-Islami, Qazi Hussain Ahmad, argued that the results of the "rigged" election in Azad Kashmir highlighted "what was to come in the general elections to be held under President Pervez Musharraf next year [2007]."⁷⁰

Pakistan's highly regarded daily newspaper *Dawn* summed up the 2006 elections as follows:

To no one's surprise, the ruling Muslim Conference (MC) has emerged as the largest party in Tuesday's elections in Azad Kashmir. Given the widespread charges of poll rigging and the fact that the party is known to enjoy the favours of the establishment in Islamabad, the results would have been easily predicted... Even more questionable was Islamabad's long established practice of disqualifying parties — two of them this time — which do not uphold Kashmir's 'accession' to Pakistan. This approach has been challenged by international human rights groups.... Whatever might be said about Azad Kashmir's politics, it is no secret that it is closely intertwined with the political ups and downs in Islamabad. It is no coincidence that the party in power in Muzaffarabad enjoys the blessings of the rulers in Islamabad... In the present situation, the challenge for Islamabad is to ensure an effective and stable coalition government in Azad Kashmir — while enacting the charade of an "independent" political process there. How much it helps the intra-Kashmir peace process is not very clear.⁷¹

⁶⁹ "AJK elections were rigged, says former PM," *Daily Times* (Lahore), August 12, 2006, quoting remarks by Sultan Mehmood Chaudhry at a press conference at the Karachi Press Club, [online] http://www.dailytimes.com.pk/print.asp?page=2006%5C08%5C12%5Cstory_12-8-2006_pg12_9 (retrieved August 24, 2006).

⁷⁰ "Qazi says 'rigged' polls in AJK a preview of upcoming elections," *Daily Times* (Lahore), July 16, 2006, [online] http://www.dailytimes.com.pk/default.asp?page=2006\07\16\story_16-7-2006_pg7_36 (retrieved August 30, 2006).

⁷¹ "Azad Kashmir Poll Results," *Dawn* (Karachi), July 14, 2006, [online] <http://dawn.com/2006/07/14/ed.htm#2> (retrieved August 24, 2006).

Rigging of elections in Azad Kashmir generally follows the same pattern as in Pakistan. It generally occurs in two stages. Pre-poll rigging involves ensuring—through transfers and postings—that bureaucrats, election administrators and law enforcement officers sympathetic to government-backed parties are in place in positions of authority well before a campaign gets underway. These officials are expected to put hurdles in the way of opposition parties' campaigning, such as denying them permission to hold rallies. On election day, these officials often instruct transport workers not to take opposition supporters to polling stations. Often polling stations in opposition strongholds are moved at the last minute and voter lists disappear, leaving voters unable to cast ballots. More traditional forms of poll rigging such as ballot-stuffing also take place when polling closes and ballots are taken away by government officials for counting.

All of the above constituted some of the allegations leveled about the conduct of the 2006 Azad Kashmir Legislative Assembly elections. Most crucially, through the above mechanisms, the government of Pakistan ensures that the twelve refugee seats that are voted for in Pakistani cities invariably are held by government-backed candidates. While it is often difficult to prove allegations of large-scale rigging, to date no party in Azad Kashmir that does not enjoy the backing of Islamabad has won an election, regardless of its apparent popularity or the evident unpopularity of the government-backed party that emerges as the winner.

Though the July 2006 elections were unrepresentative because of the ban on those refusing to support accession to Pakistan and there were widespread claims of poll rigging, physical abuses against candidates and their supporters were not in evidence. While there were threats of violence, which had to be taken seriously by recipients, there were few allegations of unlawful arrests, mistreatment and torture that have been previously used as part of government efforts to ensure election results to its liking. The post-earthquake international presence in Azad Kashmir acted as a deterrent to the use of violence usually employed by Pakistani authorities in dealing with the opposition. Amanullah Khan, leader of a faction of the JKLF that attempted to field over thirty candidates in the election, explained to Human Rights Watch,

Though we were still banned from taking part in the election, this time we have not been beaten and illegally detained. We were [candidates] threatened with beatings and arrests by the local administration but when the time came, the threats did not materialize into action. The reasons are quite evident. Post-earthquake Kashmir is less repressive than before simply because the organizational wherewithal for traditional levels of repression is still not in place. Also there are appearances to be maintained in front of donors and international actors engaged in relief and reconstruction. The fear is that the international community will leave and Pakistan will completely re-erect its control mechanisms. And Azad Kashmir will return to worse from bad. This is bad but what happened to us in 2001 was much worse and unless the world decides to remain engaged, we may return to the harassment, beatings and torture of the past. We were let off this time because they knew the world was watching. But what if the world moves on?⁷²

The Universal Declaration of Human Rights proclaims that “everyone has the right to take part in the government of his country, directly or through freely chosen representatives,” and “has the right to equal access to public service.”⁷³ In its General Comment on participation in public affairs and the right to vote, the Human Rights Committee stated,

Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or *by reason of political affiliation* [emphasis added].⁷⁴

⁷² Human Rights Watch telephone interview with Khan Amanullah Khan, July 20, 2006.

⁷³ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 21. The UDHR is considered reflective of customary international law.

⁷⁴ Human Rights Committee, General Comment No. 25, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996), para. 15.

VI. Torture and Other Forms of Mistreatment

Security force personnel continued to torture persons in custody throughout the country. Human rights organizations reported that methods included beating; burning with cigarettes, whipping the soles of the feet, prolonged isolation, electric shock, denial of food or sleep, hanging upside down, and forced spreading of the legs with bar fetters. —U.S. State Department’s 2005 Country Reports on Human Rights Practices on Pakistan⁷⁵

Human Rights Watch and others have long reported on the routine use of torture by the authorities in Pakistan, both in common criminal cases and against alleged political opponents. Politically motivated torture is typically used to compel politicians, political activists and journalists critical of the government to change their views or at least silence them.⁷⁶

Documenting torture, particularly that perpetrated by the Pakistani military and its intelligence agencies, can be particularly challenging in Azad Kashmir. However, Azad Kashmir is no exception to the pattern of torture and mistreatment by Pakistani authorities documented in the rest of the country. Civilian law enforcement and the military and its intelligence agencies commit torture and other mistreatment with impunity. Most incidents of politically motivated torture recorded by Human Rights Watch involved the ISI, or the police acting on the military’s behalf.

Very few of those who allege torture accuse the Azad Kashmir government of being responsible. To the contrary, some individuals reported ineffectual attempts by local

⁷⁵ U.S. State Department, Bureau of Democracy, Human Rights, and Labor, “Country Reports on Human Rights Practices – 2005: Pakistan,” March 8, 2006, [online]
<http://www.state.gov/g/drl/rls/hrrpt/2005/61710.htm> (retrieved August 24, 2006).

⁷⁶ “Torture is routinely used in Pakistan... against political opponents.... [A]cts of torture by military agencies primarily serve the purpose of ‘punishing’ an errant politician, political activist or journalist. Torture by the military usually takes place after the victim has been abducted; the purpose is to frighten the victim into changing his political stance or loyalties or at the very least to stop him from being critical of the military authorities. The victim is often let go on the understanding that if he fails to behave, another further abduction and mistreatment will follow. In this manner, the victim can be kept in a state of fear often for several years.” Human Rights Watch letter to President Pervez Musharraf, October 10, 2003, [online]
<http://www.hrw.org/press/2003/10/pakistan10103-ltr.htm>.

politicians and the bureaucracy to intercede to bring the torture to an end. In one incident, the victims also described attempts by the then prime minister to intercede with the army on their behalf.

Given the climate of fear that pervades the territory, only a fraction of those who described experiences of torture or ill-treatment to Human Rights Watch were willing to place them on the record. Only politically active Kashmiri nationalists and 1991 refugees from Jammu and Kashmir state were willing to be quoted.

Human Rights Watch has learned that there are large numbers of Kashmiri detainees being held for long periods by the Pakistani military in secret detention facilities in Azad Kashmir and in Pakistan. Human Rights Watch interviewed two groups, comprising dozens of individuals, who allege that they had been severely tortured, illegally detained for several years, and then released in designated clusters under continuing surveillance and told they were not allowed to return home or to their communities. Many of these men are or were militants, while others have no apparent connection to militant groups.

Human Rights Watch was only able to interview these individuals in secret under cover of darkness in the secluded and difficult to access residential camps where they were sent upon their release from illegal and secret detention facilities. The names and other specifics of the individuals who spoke to us have been withheld or altered in the testimony provided below in order to protect their identities and to prevent their further persecution by Pakistani security agencies.

One man, Adeel, explained to Human Rights Watch what happened to him and his militant friends:

I am from the Indian side [name of town withheld]. I am as religious as any other Kashmiri person. I joined a religious militant group [name withheld] in the 1990s not because I believed in a religious struggle but because it was the most effective platform to fight for the freedom of Kashmiris from the racist violent bastards that call themselves Indians. My sisters were sixteen and seventeen. The [Indian] army came looking

for the men of our family. They did not find us so they raped and killed my younger sister. They took away the older one. Probably they raped and killed her too but we never found the body so who knows? They killed our men. They raped our women. They usurped our rights and they still do. We thought Pakistanis would help us. We were wrong. So much has happened since that all this seems like many nightmares ago.

I crossed over to the Pakistani side with others in my group. Shahid here [name changed] and I have known each other since then. I did many operations from here into my part of Kashmir. I have killed Indian police and I am proud of that. I would still kill Rashtriya Rifles [Indian army] bastards if I could. But over a few months I noticed that we were ordered to attack our own people [fellow militants] in order to claim unofficial compensation from the Pakistani government that would be pocketed by our so-called leaders and Pakistani soldiers. Still I carried on. The cause was too important. But then we had to go on an operation where we killed our own people in order to keep the anger alive, we were told by the ISI. My anger came from the killing and rape of my family, my people. It was and is alive. It made no sense to me to try and keep it alive by killing my own people. I had an argument with my commander.

When we returned to this side [Azad Kashmir], we were summoned for debriefing by the ISI. Five of us had raised objections. Shahid and Wahid [names changed] are here with me; you can see. They are also from the real Kashmir. Two others, Sameer and Kaleem [names changed] are dead—they died not in a freedom operation but most probably as the result of the ‘love’ provided by the ISI.⁷⁷

Shahid explained what happened next:

⁷⁷ Human Rights Watch interview with Adeel (pseudonym), date and place withheld.

The ‘debriefing’ was more of a violent interrogation. About six or seven soldiers led by a major ran the proceedings, which lasted for about five days. The soldiers kept changing and ‘worked’ us in shifts. They started by making us do push-ups and sit-ups for hours, then beat us with rods and belts when we collapsed in exhaustion. They kept saying that we must admit that we had become ‘double agents,’ that we had crossed over to the Indian side because we were ‘Hindu lovers,’ that we were ‘shameless bastards who wanted to be raped by the rapists of our sisters and mothers.’ Initially, I and the others argued, told them they were wrong and what they were doing was wrong. But when you are beaten and bloodied, barely conscious, nothing really matters beyond a point. They decided to make a particular example of Sameer [name changed] who was the most vocal of us. In front of us, he was stripped naked and chillies were shoved up his rectum. He screamed and screamed and the more he screamed the more they beat him with batons and belts, kicked him, punched him. They would beat him unconscious, bring him back and then beat him unconscious again. He did not die in front of us. But it has been eight years and we never saw him again after those five days together so I think he is dead. He has to be. After what they did to him, it would be better for him too.

After the five days of what they called debriefing, we were locked together in the interrogation cells. These are small windowless rooms. They are unventilated and they stink. We were given *daal* [lentils] and *roti* [bread] to eat once a day and two glasses of water. Once a day we were taken one by one to the latrine at the end of the corridor. We were told that if we wanted to piss or shit at any other time, we could do it in the cell and live with it. I am ashamed to admit that we did that. The cell was cleaned once a month. This is when we were taken out for exercise, which consisted of being made to run by laughing soldiers. When we could not run, we would be kicked and laughed at by the soldiers.

During this period, we were summoned by a senior army commander only once. He told us that we were traitors to the Kashmir cause and would spend the rest of our lives in the cells. ‘Even your families will forget you existed,’ he said. There were the three of us in that one cell. There were others in other cells. The cells were in a row and there must have been about ten I think. We spent seven years in there. Then I don’t know what happened. The three of us and these four others were released and settled in this camp here. We were told that we were not to move from the camp or speak to anyone or we will be killed. Some of our former militant colleagues are in charge of getting food across to us. We are not allowed to move from here and we are told we are under surveillance all the time. Wahid [name changed], as you can see, is not really sane, poor fellow. Maybe Adeel [name changed] and I are mad too. We must be to tell you all this.⁷⁸

Such treatment by Pakistani security forces is not limited to errant former militants from Jammu and Kashmir state. Zamir, a resident of Azad Kashmir, described his experience:

I am a believer in the Kashmir cause. The liberation of Kashmir is a sacred duty for every Kashmiri. But what are we liberating Kashmir for? For the Kashmiris I think. Not for Pakistan. And that is all I said. But I guess I said it to the wrong person and at the wrong time. I belonged to a large militant organization—a very rich militant organization and one that made a lot of money from the ISI as well. When you are closely involved and your comrades start dying for no reason and there is money to be claimed for each corpse, you can add things up gradually. I felt that some of the boys we had trained for operations in occupied Kashmir had died in very mysterious circumstances. There were rumors that they had been killed at point-blank range by their own comrades. That they had been killed before they had crossed over [to the Indian side] and it had been said that they had become martyrs

⁷⁸ Human Rights Watch interview with Shahid (pseudonym), date and place withheld.

[*shaheed*] at the hands of Indian troops. And worst, the compensation that was the due of their families had not reached them or in some cases less than half the money had got to the families. Had our boys been martyred in an operation? Had they been killed for the price of their corpses? These were some of the questions I raised.

Because I raised these questions, I spent five years in a cell. I was kept there by the ISI, the army. Overnight, our allies turned into our tormentors. I was beaten every day for a month. Once a week for a few months. And once a month or so after that. I was always beaten by intelligence or army people. And my sin, as they told me themselves, was that I was a traitor. That I had questioned the jihad and I had tried to damage the cause.

How was I beaten? Initially the beatings were more severe. I was hung upside down, beaten with a stick, kicked and punched and threatened with death. For hours at a time. Then over the months the frequency and intensity of the beatings became less severe. I was just kept in the cell and let out to use the toilet etc. They kept telling me that my sin was grave and my punishment was that I spend the rest of my days in the detention center. Then I was let go with these people. My family know I have been released. They know where I am. But they have not been to see me. I don't want them to either. My children are five years older. I want them to keep growing and not see me in this state.⁷⁹

Shakir, another Azad Kashmir resident who claims never to have been involved in militancy, told Human Rights Watch,

I have never belonged to any militant organization. The truth is that I was not really interested in the struggle. I supported it but never felt the need to fight for it. I felt that it was the job of those under occupation to liberate themselves. If we were good hosts to them that was good enough. As my home was conveniently located, I played

⁷⁹ Human Rights Watch interview with Zamir (pseudonym), date and place withheld.

host to liberation parties traveling across to the other side. They were accompanied often by our army people who helped them. I grew to know many of these people. But one day in the late 90s, a fight broke out between two members of a militant group and their military minder. Before I knew it, one of the militants had been shot dead in my house. We had to dispose of his body. After this incident, I told the army people I did not want to perform this service anymore. They should find some other house. But they responded by throwing my belongings and my family, including the womenfolk, out of our house.

I was very angered by this and threatened to go public with everything I knew if my home was not returned to me. Of course, as I told them many times afterwards, I did not mean it. The army is very powerful. There is nothing someone like me can do against it, even if it takes away my home. I just said what I said in anger. But it was too late.

Three soldiers and one officer, a captain I think, took me to their detention center. There, they tied me up and whipped me until my skin tore and I was bleeding all over and then I passed out. They must have whipped me for a few hours before I passed out. I don't really know. I woke up in a dark cell. I kept calling for water but no one came. I passed out again.

When I woke up again, a soldier was there who gave me water. He was kind to me and gave me *daal* and *roti* to eat. The next day, I was brought out and I saw the soldiers with whom I had the altercation. They saw me and kicked, punched and beat me again. Afterwards, I was put in the cell. I was kept in the cell for three years. I was beaten only occasionally after the first few months when I was beaten often.

I was released and brought here [name of place withheld] and told that I was being watched and if I tried to leave I would be re-arrested. I

have not seen my family, have no news of them. They probably think I am dead.⁸⁰

Ilyas, who described himself as a former “clerk in the Azad Kashmir government” would not tell Human Rights Watch what had led to his detention and continued monitoring:

I am more lucky than the others you have met here as I was released after only six months. I have now been living here for about a year and I have been told that I may be allowed to leave in a few more months. I cannot spoil that by allowing you to tell the details of why I was picked up. Let us say, they felt I had become unreliable and may reveal information I know. The suspicion was enough for me to be scarred for life. See, I have scars all over my back from the whippings that went on for a month. The thing with whipping is that you can withstand quite a lot the first time. But after that when your wounds are raw, just one lash is enough to get you bleeding again and screaming in agony. Perhaps I am weak. But I have learnt my lesson. I just want to go home. And Inshallah I will and I will go with the blessings of my jailers. That is my aim and what I pray for.⁸¹

Non-militant political actors frequently experience or are threatened with torture and mistreatment. The experiences of various opposition activists arbitrarily arrested and ill-treated ahead of the 2001 elections are recounted above (see Chapter V). In another example, Aurangzeb Al-Maroofof, who is affiliated with the Jammu and Kashmir National Students’ Federation (JKNSF), described to Human Rights Watch his mistreatment by the ISI in mid-September 2003:

It was morning. My brother was driving and an ISI major on a motorbike swore at him. There was an altercation. I do not know the

⁸⁰ Human Rights Watch interview with Shakir (pseudonym), date and place withheld.

⁸¹ Human Rights Watch interview with Ilyas (pseudonym), date and place withheld.

details as I was not there myself but I can assure you that my brother would not have dared get physical with the man.

At 2:30 in the afternoon, eight to ten ISI personnel came to my house in a Land Cruiser. They were armed and barged in, and started breaking our household goods. They found me and blindfolded me. Then, they started beating me with iron rods— they beat me and dragged me to the Land Cruiser and continued beating me with iron rods. They took me someplace—I don't know where—and continued beating me. They kept telling me, 'You are anti-Pakistan. If you want money, tell us, but don't talk of independence.' After about three hours, I lost consciousness. The next day [as I discovered later], they dumped me at Neelum Bridge [in Muzaffarabad] where a rickshaw driver found me and took me to CMH [military hospital].

I realized later that they only dumped me because our political colleagues took out a protest demonstration—that was the only reason they released me. I tried to lodge an FIR [First Information Report] but the City Police Station refused to register the FIR. The deputy commissioner, Dr. Mahmoodul Hassan said, 'find a compromise.' I refused. I said that I wanted to know why I had been kidnapped and beaten by the Pakistan army like this. We [JKNSF] demonstrated all over AJK, especially in Rawalakot. But the FIR was never registered.

I do have my application to the police and they gave me a number, but they refused to register an FIR, stating that 'they will pick you up and you will never be seen again.' They [the ISI] use code names so we don't exactly know who the people [perpetrators of the beating] are.⁸²

A JKNSF activist who requested anonymity for fear of reprisal described an incident involving the ruling Muslim Conference apparently using the authorities to persecute their political opponents:

⁸² Human Rights Watch interview with Aurangzeb Al Maroof, Muzaffarabad, July 26, 2005.

On July 25, 2005, the Muslim Conference held a rally [*ja/la*] in Khowra area of Muzaffarabad. One of their boys was murdered in a firing incident. They blamed us as we had formed a unit there. We think the government itself is responsible for the firing in order to create tension to win votes. We are not violent and we are in no position to engage in such activity. They accused Raja Kashif (twenty-two years old), a JKNSF member, of the murder. Raja Kashif fled. Consequently, the Muzaffarabad police arrested his father, his brother and other JKNSF members—around ten or twelve. We were sent messages that unless he surrendered and took the blame, they would all be tortured.

Raja Kashif gave himself up, because he did not want his brother, father and friends tortured. As of now, nobody, including his father, brother or other JKNSF members have been released. This sort of incident is commonplace. It was reported in the newspapers.⁸³

Torture is also routinely used to extract confessions in common criminal cases in Azad Kashmir. Shahid Aziz, a laborer and resident of Muzaffarabad, described his experience to Human Rights Watch:

I was arrested in January 2004 for stealing jewelry from a house. This was a ridiculous charge as I was in Bagh at the time.... The police came to my area and picked me up from the market. I was taken to the city police station where three constables took me to the interrogation room. I was there for seven hours—from about eight in the evening to three in the morning. During this time, they punched me, kicked me and beat me with bamboo sticks. Finally, because my family arrived, they let me go. I was bruised all over, my skin was torn in many places and I had two broken teeth. I meet the policemen who did this around the city from time to time. If they are in the mood, they remind me of

⁸³ Human Rights Watch interview with JKNSF activist, Muzaffarabad, July 27, 2005.

the night. They expect me to fear them. I do. I don't want this to happen again.⁸⁴

Another man, Mohammad Adil Butt, told Human Rights Watch about his experience of an apparently entirely arbitrary beating:

I was picked up by the police on March 19, 2005, at 6 p.m. from my home in Muzaffarabad. When I asked the police why I was being taken, they said I should wait to get to the *thana* [police station] to find out. When we arrived there, they told me that I was a troublemaker who did not show the police enough respect. I was really confused as I have always been very respectful to the police and all other superiors. I asked them to explain how I had been disrespectful. The policemen got very angry at this. They started beating me. They used their fists and kicked me and beat me for at least two hours until I fainted. Then they threw me outside the station where I lay moaning until a stranger helped me get home. The strange thing is that I have no idea why this happened. They never told me why. I don't dare ask them. But I do know it can happen again.⁸⁵

⁸⁴ Human Rights Watch telephone interview with Shahid Aziz , January 17, 2006.

⁸⁵ Human Rights Watch telephone interview with Adil Butt, January 27, 2006.

VII. Discrimination and Abuse Against Post-1989 Refugees

According to the Azad Kashmir Rehabilitation Department, there are 29,932 registered refugees who crossed over from Jammu and Kashmir state in India in 1989-91.⁸⁶ Analysts suggest that there may be approximately another five thousand unregistered individuals, some of whom are former militants. Some of the refugees live in communities across Azad Kashmir, while others were housed, prior to the October 2005 earthquake, in refugee camps exclusively devoted to them (pre-earthquake figures indicated that there were 2,720 refugees in Manakpayan camp and 1,508 in Ambore camp, two of the largest such camps; current figures are difficult to ascertain).⁸⁷

The refugees were fleeing heightened conflict in Jammu and Kashmir state and serious human rights abuses by Indian security forces. As noted above (see Chapter II), the government of Pakistan and the Azad Kashmir authorities welcomed these refugees at the time with some fanfare. But many refugees have found life in Azad Kashmir to be difficult and are critical of the Pakistani government and its policies in Kashmir. Most of the refugees are secular nationalists and, as also noted above, culturally and linguistically distinct from the peoples of Azad Kashmir. A primary motive for the discrimination they report would appear to be that many of them do not share the vision of a unified Kashmir under Pakistani control. Some have experienced abuse including arbitrary arrest and ill-treatment for seeking to exercise their rights.

Ghulam Ali Khan is from Kupwara district in Jammu and Kashmir state. He joined JKLF (Amanullah Khan group) when he was twenty-one years old. He told Human Rights Watch,

⁸⁶ Official figure provided by the office of the rehabilitation commissioner, AJK government, to Human Rights Watch, August 2005.

⁸⁷ Official figures for Manakpayan and Ambore refugee camps provided by the office of the rehabilitation commissioner, AJK government, to Human Rights Watch, August 2005.

When the JKLF broke into two factions it had a devastating effect on the movement. I have two children and came into Pakistan in 1994. I have only seen my children grow up in photographs. The sad part is that our families in [Jammu and Kashmir state] are constantly interrogated by intelligence agencies and once we go back, we too will be viewed with suspicion as Pakistani agents.

We are not getting our basic rights as refugees. We are persecuted all the time. We are beaten. And because we do not support Pakistan's policy of indiscriminate murder, we are regarded as traitors to Kashmir. We are dying of hunger and lack of resources and the governments of Pakistan and Azad Kashmir are responsible for this situation. We are ready to be handed over to the [International Committee of the] Red Cross. The [United Nations High Commissioner for Refugees, UNHCR] has said that the Pakistan government has to be willing. The Pakistan Institute of Policy Studies recommended that members should be handed over to the U.N. or Red Cross. But they will not because of ego. We need help.

We support the peace process. We are the greatest supporters of the peace process. And why would we not be? We are the real divided families. Those who were divided in 1947 are dead and gone. We have parents, children, wives, brothers and sisters on the other side. There can be no peace without taking us into account.⁸⁸

On February 16, 2005, India and Pakistan announced an agreement to start a bus service between Muzaffarabad and Srinagar from April 7, 2005.⁸⁹ The refugees hailed the agreement and began to make preparations to welcome the first bus. In March, they succeeded in accessing the Indian media through Munizae Jahangir, a Pakistani journalist who freelances for the New Delhi-based NDTV.⁹⁰ They appeared on NDTV

⁸⁸ Human Rights Watch interview with Ghulam Ali Khan, Muzaffarabad, August 3, 2005.

⁸⁹ "Landmark Kashmir bus link agreed," BBC News Online, February 16, 2005, [online] http://news.bbc.co.uk/1/hi/world/south_asia/4268121.stm (retrieved August 24, 2006).

⁹⁰ Human Rights Watch interview with Munizae Jahangir, Lahore, March 27, 2005.

in a news segment in which they specified their renunciation of militancy and appealed to the Indian authorities to grant them safe passage back to Jammu and Kashmir state. The interviews were widely picked up by the Indian media.⁹¹

However, it soon became apparent to the refugees, as it did to their relatives in Jammu and Kashmir state, that the bus service was limited and appeared specifically not to be open to controversial persons or their families.⁹² Zahid Butt, a refugee explained to Human Rights Watch,

It became clear very quickly that the bus service was not open to Kashmiri nationalist refugees or their families—the real divided people in Kashmir. This is an understanding between India and Pakistan. Why? If we cannot go, at least our families should be allowed to visit us. But even that is not happening. We wanted to welcome the bus. But we were not even allowed to do that. Instead, we were arrested, jailed and tortured.⁹³

Jamil Mirza, formerly of the People's League (PL, a Jammu and Kashmir-based nationalist political group), added,

The bus is only taking tourists and distant relatives. The 1990 refugees are not being sent to J&K. Go and check for yourself. It is meant to be first come, first served. Yet how come those with form numbers 160 and 180 [their place in the queue] are not being allowed on while someone with form number 15,000 will be given a ticket? We want to go home. We are with the peace process and we support it. We want to go home.⁹⁴

⁹¹ "Former militants waiting to take bus back home," *NDTV.com*, April 4, 2005, [online] <http://www.ndtv.com/template/template.asp?template=Indopakfaceoff&slug=Former+militants+in+PoK+await+Indo-Pak+bus&id=70979&callid=1> (retrieved August 18, 2006).

⁹² "Kashmiris upset over bus permits," BBC News Online, March 4, 2005, [online] http://news.bbc.co.uk/1/hi/world/south_asia/4318445.stm (retrieved August 24, 2006).

⁹³ Human Rights Watch interview with Zahid Butt, Muzaffarabad, August 3, 2005.

⁹⁴ Human Rights Watch interview with Jamil Mirza, Muzaffarabad, August 3, 2005.

As the April 7 date for the first bus neared, the Jammu Kashmir United Haqiqi [Real] Movement (a refugee and former militant umbrella organization) stepped up preparations to welcome the bus. It published leaflets (examples of which are in the possession of Human Rights Watch) welcoming the bus, and began organizing a welcome procession comprising 1990 refugees.

Jamil Mirza described what happened on April 6, 2005:

We wanted to welcome those who were arriving on April 7. On April 6, about eight of us were called for a meeting by the Deputy Commissioner Raja Liaqat and the Deputy Superintendent of Police Gulfaraz. They told us, 'You cannot welcome the bus.' We said we support the bus. They said we will not give you permission: 'You will be our guests,' they said. They took us to the city police station just a few hours later—Kahori Police Station. Six of us were at the meeting, two were brought from home. I was there. We were locked up there for two days

At about four o'clock in the afternoon, two days later, we were shifted to Central Jail Muzaffarabad. We discovered that another twenty were also arrested. We were separated though we appealed to be kept together. We were divided into groups of eight and four. The room I was in held around thirty people. It was a large jail room with ventilation. But criminals were kept with us including murderers sentenced to death.

On April 7, we went on a hunger strike as we left Kahori Station. We made it clear that our strike was against the administration, not the jail authorities. Why have we been locked up for hailing and supporting the bus? We were held under 16 MPO [Maintenance of Public Order Ordinance].⁹⁵

⁹⁵ Section 16 of the Maintenance of Public Order (MPO) ordinance prohibits speech that "causes or is likely to cause fear or alarm to the public," or which "furthers or is likely to further any activity prejudicial to public safety or the maintenance of public order."

On April 10, at about 6 a.m., we were given breakfast. We refused. The jail authorities started beating us with sticks and metal rods. About fourteen or fifteen people were beating each person. All other criminal prisoners and the police present were included. The jail superintendent, Raja Aftab, was standing at the sentry post directing the prisoners to beat us. We were beaten badly. (It was pre-arranged between the other prisoners and the police.) One person had an eye torn out. One had several head injuries. Another had his hand broken. Everyone was bruised.

We were beaten for about two-and-a-half hours. This happened in all three cells between 6 a.m. to 8:30 a.m. Then the jailer came and said, 'If you don't eat, we will shove the food up your ass.' We agreed to eat under duress, as those who refused to eat were beaten very severely. Mohammad Ayub Butt refused to eat, so they cracked his spine.

Then they dipped the *roti* in water and gave it to us. They forced us to sign a statement stating that what had occurred was a fight between prisoners. We were told that if we told the truth, we would be beaten some more and jailed. So we were released on April 16 at 6 p.m. No case was registered.

Why did the Azad Kashmir government arrest us and beat us up? We were only supporting the stated policy of the Pakistani government. Is that not allowed? Or does Musharraf sitting in Islamabad not know what goes on in Muzaffarabad?⁹⁶

Independent journalists corroborated and supported the claims of the refugees and former militants.⁹⁷

⁹⁶ Human Rights Watch interview with Jamil Mirza, Muzaffarabad, August 3, 2005.

⁹⁷ Pakistan's largest circulation English-language newspaper, Dawn, wrote: "Affiliated with the Jammu Kashmir United Real Movement, the detainees, some of whom had married here and ran small shops to earn livelihood, were taken into custody on Wednesday evening — a day ahead of the launching ceremony of Srinagar-Muzaffarabad bus service — to avert what the officials claimed any law and order problem. Nineteen of them were kept in the city police station here and the rest in the nearby Kahori police station before being moved to the central jail on Friday. The JKURM had publicly celebrated the Feb 16

Mohammad Ayub Butt is a native of Budham district of Jammu and Kashmir state and now lives in Muzaffarabad. He is a former militant. He told us:

Most militants like me—actually from Kashmir—have been abandoned by their organizations, especially Hizbul-Mujahedin. But of course money for militant activities is still rolling in from Pakistan and the ISI but it is used for corruption—to line the pockets of the jihadi leadership and the corrupt ISI officers. The jihadi leadership has used the money meant for jihad for their own personal benefits. Have you seen their mansions?

But if India and Pakistan think they can strike a peace and forget about us, they are mistaken. I was injured while fighting Indian troops and now I find it hard to work. I face constant threats from Hizbul-Mujahedin, from the ISI and I cannot go back to my home. Is this fair? Musharraf says there will be peace with India. Peace in Kashmir. But where is the peace? You can see for yourself. All of Azad Kashmir knows that the jihadis are still active. Does Musharraf not know? I urge both the governments of India and Pakistan to resolve the issue of the 1990 refugees and the 450 former militants among them. We want to go home. My real jihad would have been to take care of my parents and bring up my kids. I am an uneducated man and I did not know what jihad meant at the time.⁹⁸

announcement by India and Pakistan to start the bus service between the divided Kashmiri capitals. It also strongly criticized those Kashmiri leaders who were opposed to the bus service. An official, who requested anonymity, told Dawn that the JKURM members were been arrested under 3 MPO (Maintenance of Public Order), after 'intelligence reports suggested that they could block the smooth movement of the trans-Kashmir bus.' However, a JKURM member showed a pamphlet to this correspondent issued by the group wherein it had asked its members and other residents of the capital to assemble near Domel at 10am on April 7 'to welcome the guests (arriving) from Srinagar (through the bus service)'. 'We just wanted to welcome the guests from Srinagar because we have publicly celebrated this historic development the time it was announced,' he said. 'The officials had assured that they would release them by Friday morning but instead of fulfilling their commitment they shifted them to the prison,' he lamented.... Officials had hinted that the detainees would be freed only after they 'provide a guarantee in writing that they would not create any problem in future'." "Five former Kashmiri fighters wounded," *Dawn* (Karachi), April 10, 2005, [online] <http://www.dawn.com/2005/04/10/top19.htm> (retrieved August 24, 2006).

⁹⁸ Human Rights Watch interview with Mohammad Ayub Butt, Muzaffarabad, August 3, 2005.

VIII. Detailed Recommendations

To the Government of Pakistan

- Release all individuals imprisoned or detained and withdraw immediately all criminal cases against anyone, including Kashmiri nationalists, for the peaceful expression of their political views, including that Azad Kashmir should be independent.
- End the practice of arbitrary arrest and detention, other forms of harassment, and torture and other ill-treatment of persons exercising their rights to freedom of expression, including those who peacefully oppose Kashmir's accession to Pakistan or demand greater autonomy for the territory.
- Repeal constitutional curbs on freedom of association, expression and assembly in Azad Kashmir so that the constitution and Azad Kashmir law are consistent with international human rights standards.
- Prosecute to the full extent of the law and in accordance with international fair trial standards those members of the armed forces, its intelligence agencies, government officials and police personnel implicated in serious violations of human rights, including arbitrary arrests and torture.
- Respect press freedom and allow full independent coverage of both past and ongoing events in Azad Kashmir. Remove formal and informal prohibitions on news gathering and reporting by the Azad Kashmir and Pakistani media, and accord all journalists full freedom of movement.
- End the practice of banning books and literature.
- Ensure that human rights organizations have freedom of movement throughout Azad Kashmir and allow them to carry out investigations and fact-finding missions free from intimidation or interference by military authorities.
- Ensure free and fair elections in Azad Kashmir. To this end, repeal part 7(2) of the Azad Kashmir Interim Constitutional Act of 1974, which bars from seeking elective office any person or political party in Azad Kashmir that seeks to "propagate against or take part in activities prejudicial or detrimental to the ideology of the State's accession to Pakistan," and remove chapter 3, 2(vii) of the Azad Jammu and Kashmir Legislative Assembly Ordinance 1970, which

bars from seeking elective office anyone who “defames or brings into ridicule... the Armed Forces of Pakistan.”

- Ensure that all members of the armed forces, ISI personnel, and law enforcement personnel deployed in Azad Kashmir, at every level, have received appropriate training in the fundamental principles of human rights law.
- Investigate allegations of human rights abuses by militant groups based in Azad Kashmir and fully and fairly prosecute those responsible.
- Respect the due process rights of all persons detained or accused of crimes. Hold all detainees only in officially recognized places of detention. Inform all detainees immediately of the grounds of arrest and any charges against them. Provide all detainees with immediate and regular access to family members and lawyers. Detainees must promptly be brought before a judge to review the legality of their detention.
- Make publicly available regularly updated figures on the number of individuals arrested or charged with crimes in Azad Kashmir with information on the nature of their alleged crimes and the places of their detention.
- Invite the U.N. special rapporteur on torture to visit Azad Kashmir, conduct free and unfettered investigations, and make appropriate recommendations.

To Azad Kashmir-based militant groups

- When participating in hostilities, take all necessary steps to ensure compliance with international humanitarian law, specifically common article 3 to the 1949 Geneva Conventions and customary international humanitarian law.
- Cease threatening civilians who do not cooperate with or support the activities of militant groups.
- Publicly denounce abuses committed by any militant group in Jammu and Kashmir state and call for accountability for such abuses on both sides of the Line of Control.
- Cease using anti-personnel landmines or otherwise conducting attacks that do not discriminate between military objectives and civilians.
- Immediately end all recruitment of persons under the age of eighteen and demobilize combatants under age eighteen. All adults recruited before age eighteen must be given the option to leave.

- Permit civil society organizations to undertake the full range of protection activities including investigations of abuses committed by militants.

To donors and other international actors

- Use every available opportunity to press for an end to impunity for perpetrators of human rights abuses, including members of the military, intelligence agencies, police and militant groups. Urge respect for international due process and fair trial standards and press for impartial inquiries into, and accountability for, cases of arbitrary detention and torture and other ill-treatment in detention.
- Bilateral donors and international lending agencies, including the World Bank and Asian Development Bank, should insist that the government of Pakistan commit itself to providing training in human rights law and norms to all law enforcement personnel, particularly its military forces in Azad Kashmir.
- Donors should provide assistance, through government agencies and NGOs, to promote the administration of justice.
- Ensure contracts for earthquake reconstruction are handled through proper procurement procedures that allow bidding by private agencies, and not just military entities.
- Ensure independent auditing of relief funds and materials to ensure transparency and accountability.
- Ensure greater civilian oversight of relief, rehabilitation and reconstruction efforts. Aid should be handled through a process that involves the Azad Kashmir government, as well as local, national and international NGOs, and civil society groups, particularly those working in the field.

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