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**INTERNATIONAL PEOPLE'S TRIBUNAL ON  
HUMAN RIGHTS AND JUSTICE IN INDIAN-ADMINISTERED KASHMIR (IPTK)**[www.kashmirprocess.org](http://www.kashmirprocess.org)***Fake Encounters and State Terror in Kashmir: A Brief*****By:**

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*[Sources used below are documented and available at [www.kashmirprocess.org/machil](http://www.kashmirprocess.org/machil)]*

**Indian Armed Forces: Discourses of "Terrorism" and Fake Encounters**

The spectre of death and state violence haunts Kashmiri civil society each day. Violence is anticipated, experienced, and intimate to lives. There are those that are its direct targets and others that are concomitantly affected. Violence permeates daily life, regulates bodies and conditions behaviour...

On April 29-30, 2010, the Indian Armed Forces executed Shahzad Ahmad, Riyaz Ahmad, and Mohammad Shafi in a fake encounter in Kupwara district, claiming them to be "foreign/infiltrating militants" from Pakistan. On April 14, 2010, a 70-year-old panhandler was killed in a fake encounter, identified as a militant, in Kupwara district, by army personnel. In mid-May, a former Special Police Officer and Army informant, Imran Ahmad Joo, was arrested for kidnapping Shariq Ahmad Mir and Zahoor Ahmad Malik offering them paid employment, with the intent of auctioning them to the Indian Armed Forces in Keran, Kupwara district, so they may be used in fake encounters. Police apprehended Ahmad and rescued the youth. After 15 days in police custody, a Kupwara court sentenced the accused, Imran Ahmad, to 10 days judicial remand. What demand does the Indian Army have for civilian youth, to implicate and use them in fake encounters? How are these demands communicated through informal networks within the military and paramilitary? What consequences result for Kashmiri civilians? What "rewards" are negotiated for security personnel? What is the role of the Government of India in maintaining silence or feigning incomprehension, and enabling impunity?

IPTK released *BURIED EVIDENCE: Unknown, Unmarked, and Mass Graves in Indian-administered Kashmir* in December 2009. Authored by Angana Chatterji, Parvez Imroz, et al., *BURIED EVIDENCE* documented 2,700 unknown, unmarked, and mass graves, containing 2,943+ bodies, across 55 villages in Bandipora, Baramulla, and Kupwara districts of Kashmir.

(For report, photographs, and video clips, see [www.kashmirprocess.org](http://www.kashmirprocess.org).) The Government of Jammu and Kashmir and the Government of India have not undertaken investigations into the findings of *BURIED EVIDENCE* or acted on its recommendations. Such action may have generated constructive interventions into the continuing chain of extrajudicial executions by the Indian military and paramilitary.

In the absence of intervention into extrajudicial killings, violence continues. Extrajudicial actions of the Indian Armed Forces in Indian-administered Kashmir have been accompanied by inflammatory discourses in April-May 2010, presenting insurgency, militancy, and terrorism as escalated threats to national borders and nationalized populations, charting collaborations between external and internal enemies (Muslims of Pakistan and Muslims of Indian-administered Kashmir), arguing for greater state control over mechanisms of “security” and “freedom.”

Cross-Line of Control (LoC, between India and Pakistan) movements, infiltrations, and insurgency into Indian-administered Kashmir are real and significant issues. The Indian state exaggerates these realities in order to create national and international sanction to escalate militarization, by linking “foreign terror” to local Kashmiri civilians, in a context where large sections of civil society are discontent with Indian rule. Such claims enable the Indian state’s administration of Kashmir to proceed with impunity.

The Northern Command of the Armed Forces recorded that 335 militants were killed in 2008 and 236 militants were killed in 2009. *Rising Kashmir* reported that, according to sources, “*During past one and half year, only three militants killing on LoC and international border have been identified*” (Khalid, 2010). All information about encounters are assembled, disbursed, and regulated by the Indian Army, as the press corps is not permitted to travel to encounter locations near the LoC and international border zones. Patterns indicate that, since 2008, the location of encounter killings has moved from the interiors of Kashmir to the LoC and the international border zone.

Through April-May 2010, military and paramilitary spokespersons stated that Indian security forces have subverted various infiltration attempts by foreign insurgents. The Indian Armed Forces stated to have killed over 20 militants in different “encounters” in April and May 2010, each reported to be “infiltrating” from Pakistan.

Between early and mid-April, it was stated that security forces have identified militants training across the LoC in Pakistan-administered Kashmir, where there are 42 training camps, and that increased infiltration into Indian-administered Kashmir was expected during the summer months of 2010. Brigadier Gurdeep Singh, Brigadier General of Staff, 16 Corps, Indian Armed Forces, as reported by the *British Broadcasting Corporation* (April 4, 2010), stated that: “*2,000 to 2,500 armed militants in Pak[istan] training camps [are] ready to infiltrate into Jammu and Kashmir.*” Of this, it was stated that: “*200-300 are staged bang on the LoC in launching pads in Jammu region for infiltration.*” On April 3, 2010, security personnel stated that the bombing of (a foot of) railway tracks at Galbug, near Kakapora railway station, Pulwama district, had been undertaken by suspected militants, and that such incidents are a casualty of troop reduction. It was also stated that increased high-level infiltrations were en route, and that any further troop reduction would be determined after a six-month assessment period.

In April 2010, the Ministry of Home Affairs of the Government of India stated that encounters were taking place in remote/uncharted areas, thereby rationalizing the reallocation of troops withdrawn (scheduled beginning May 1, 2010) from schools, colleges, and other government

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facilities in populated areas to remote locations, thereby maintaining enhanced troop presence throughout rural and less populated regions.

Between mid- and late April, it was stated that there were increased encounters in forest areas in Kashmir, and intelligence presented on the possibility of militants using economically disenfranchised members of local communities as human shields or guides. In early May, the uncovering of hideouts was reported, alluding to “evidence” of militant presence and their mobilization of increased support and infrastructure. It was also stated that search cordons are effective in locating militants, thereby justifying the efficacy of search operations, cordons, and enhanced militarization of public spaces as necessary for “freedom” and “security.”

Between mid- and later May, it was stated that militants are utilizing “Over Ground Workers” (OGWs, civilians) who were providing them with support, and that such actions must be severely punished. This serves to implicate larger Kashmiri civil society with militancy. It was also stated that youth were being rescued by army personnel from militants, and stated that these youth had made mention of militants tempting youth from economically weaker sections of Kashmir with money. This serves to legitimate increased surveillance of the poor and portray youth as a group readymade for alliance with cross-border insurgents, thus requiring more intensive military monitoring.

On May 21, 2010, it was announced that approximately 100 Village Defence Committees (VDCs) had been constituted from Akhnoor to Lakhanpur in Jammu as fortification against increased infiltration. VDCs are made operational by security forces and supported by the state. VDC members are recruited by Hindu nationalist/militant groups, and are organized as civilian “self-defence” campaigns and militias. In the understanding of local communities these campaigns are staged as retribution for “anti-national” activities. A network of VDCs has been instituted throughout the Jammu region and in certain parts of Kashmir. VDC personnel are predominantly of Hindu and Sikh descent, and in some instances include Muslim villagers deemed “trustworthy” by VDC personnel. On May 22, 2010, it was announced that government and military installations and minority (Hindu) community members were a primary target of militants.

This serves to portray the conflict as a communal one, reducing Kashmiri's to religious identities that are then assumed to correlate with political affiliations and sensibilities. It also links militarization to securing the rights of local minorities that obscures the relations of the Indian state to Hindu cultural dominance.

#### **Extrajudicial Executions at Machil**

On April 30, 2010, Indian Armed Forces claimed that three “foreign/infiltrating militants” (from Pakistan) had been killed in an “encounter” in Machil sector of Kupwara district, along the LoC. Kupwara borders the Line of Control to the north and west. This is one of the most heavily militarized zones in Kashmir, about 95 kilometres from Srinagar. Encounter killings are where persons alleged to be involved in armed confrontation with state forces are killed. The Army reported that these killings thwarted infiltration attempts by armed combatants.

The killings were undertaken by personnel of the 4 Rajputana Rifles Unit of the Indian Armed Forces at Kalaroo in Kupwara district. Rajputana (meaning: son of a king) Rifles is the highest-ranking rifle regiment of the Indian Army.

On May 10, 2010, the families of Shahzad Ahmad, Riyaz Ahmad, and Mohammad Shafi filed

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Missing Persons Reports with the Panzulla Police Station. On May 20, Showkat Ahmad Khan, brother of Shahzad Ahmad, filed a written report at the Panzulla Police Station, stating that Shahzad Ahmad had been kidnapped by Bashir Ahmad Lone, a local state-sponsored militia/counter-insurgent personnel (First Information Report, FIR, No. 23/2010 RPC 364). They reportedly stated seeing Shahzad Ahmad board the Tata Sumo with Bashir Ahmad Lone, heading for paid work with the 4 Rajputana Rifles Unit in Kupwara. Some stated that they had seen photographs of the deceased in newspapers.

The Chief Minister of Jammu and Kashmir, Omar Abdullah, authorized a magisterial probe on May 27, 2010. The public do not have the right to participate freely in these inquiries, and until that is enabled, such inquiries do not support truth and justice in Kashmir, where a substantial section of the judiciary has been severely compromised through twenty years of militarized governance.

On May 28, 2010, three bodies were exhumed in Kupwara district in Indian-administered Kashmir. These bodies were identified as three male Muslim youth, Shahzad Ahmad (27 years of age), Riyaz Ahmad (20 years), and Mohammad Shafi (19 years). The three bodies were identified to be those of civilians, not militants, who were residents of Nadihal village in Rafiabad area, Baramulla district, in Indian-administered Kashmir. The bodies were identified by next of kin, and recorded as bearing partial facial mutilations. On May 29, 2010, families undertook burial rites for Shahzad Ahmad, Riyaz Ahmad, and Mohammad Shafi.

The exhumations were followed by widespread and pro-freedom protests in Kashmir, as women and men took to the streets, as is customary, dissenting egregious human rights violations committed by institutions of state. Since the armed struggle of the 1990s abated between 2004-2007, again becoming nonviolent resistance, peaceable protest is habituated practise in present day Kashmir, in response to fear, rage, and grief, and as agency.

The deaths of Shahzad Ahmad, Riyaz Ahmad, and Mohammad Shafi have since been authenticated as “fake encounter” killings. Fake encounter killings are extrajudicial killings of civilians, often while they are in the custody of state forces, recorded by officials as resulting from an armed confrontation with state forces alleged to be instigated by the recently deceased.

It has been learned that Shahzad Ahmad, Riyaz Ahmad, and Mohammad Shafi were recruited to work as labourers for the Indian Army. Shahzad Ahmad, Riyaz Ahmad, and Mohammad Shafi were persuaded to leave their homes in Nadihal village, Baramulla district, for the 4 Rajputana Rifles Unit camp in Kalaroos, Kupwara district, with the promise of employment moving arms and ammunition along the LoC. They were promised 2,000 (Indian) Rupees each per day.

The three youth were persuaded and contracted by Bashir Ahmad Lone and Fayaz Ahmad Gazi, together with Abdul Hameed Bhat, Army informant, and Abbas Hussain Shah, a personnel from the Baramulla district's unit of the 161 Battalion of the Territorial Army (volunteer, civilian based, unit mobilized to assist in national defence).

Police investigations have recorded that Shahzad Ahmad, Riyaz Ahmad, and Mohammad Shafi were previously known to the Army. Shahzad Ahmad had reportedly acted as a witness on behalf of the Army in the killings of two civilians in Bomai, Baramulla district, in 2009.

On April 27, 2010, the three youth boarded a Tata Sumo vehicle for Machil sector with Bashir Ahmad Lone, Abdul Hameed Bhat, and Abbas Hussain Shah. At the 4 Rajputana Rifles Unit camp in Kalaroos, a Major [operating under the name Upendar] had stated to them, it has been

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reported since, that prevailing weather conditions were not conducive to work that day, and asked that they return on April 29. [Note: The names of armed forces personnel are often masked, and not reported to the press.]

On April 30, 2010, Lt. Col J. S. Brar of the Indian Armed Forces reported that three militants had been killed in a shootout at Sona Pindi on the night of April 29-30. The Army stated that three AK-47 (Avtomat/automatic Kalashnikov) rifles, one made-in-Pakistan pistol, ammunition, cigarettes, chocolates, dates..., two water bottles, a Kenwood radio, and 1,000 Pakistani Rupees had been recovered from the militants.

In the instance of the Machil killings, police investigations, unlike in the numerous other instances across Kashmir, uncovered important information. This in itself would be critical to investigate, given the extensive human rights violations in Kashmir by police and armed forces personnel. In the Machil case, police, for example, analyzed the call details of mobile phones of Bashir Ahmad Lone, as well as missing persons, Shahzad Ahmad, Riyaz Ahmad, and Mohammad Shafi, and traced the same to Kalaroos. The police also reported that bullets had been aimed at the heads of the murdered, and noted that Army spokespersons "*insisted [that the police] register them [victims] as infiltrators killed in a joint operation with the police*" (Naseer, 2010).

#### **Disappearance, Murder, Profit Motive**

From the evidence available, it can be stated that Shahzad Ahmad, Riyaz Ahmad, and Mohammad Shafi were lured, kidnapped, involuntarily disappeared, and murdered by members of the Indian Armed Forces.

It is noteworthy as well that the fake encounter that killed Shahzad Ahmad, Riyaz Ahmad, and Mohammad Shafi was staged close to the time when the 4 Rajputana Rifles Unit at Kalaroos was marked for transfer out of Kashmir, the reasons for which are undisclosed.

The Machil murders, it has been reported, were also motivated to secure cash rewards. Reportedly, the Armed Forces has been offering cash rewards of between 50,000 Rupees and 200,000+ Rupees to police or armed forces personnel for the killing of a militant. It has not been made public whether the relevant armed forces officers have claimed 150,000+ Rupees in award monies for the staged encounter killings of Shahzad Ahmad, Riyaz Ahmad, and Mohammad Shafi.

It is noteworthy that cash rewards are routinely offered Indian Armed Forces personnel for carrying out violence, including staged encounters. Perpetration of violence, and becoming violent, in fact, is rewarded. It has been reported (see Human Rights Watch, 2006, 65-6) that acts of suppression and violence have been deemed as "acts of service," and compensations and promotions awarded to security forces personnel for killing presumed insurgents. The obfuscation of such acts, and the failure to prosecute perpetrators, incentivizes state forces to act with impunity, attesting to the fluid boundaries between "legality" and "illegality." The regularized state of exception/exemption that is accorded to, and expected by, security forces promotes violence.

It must also be noted that often when the armed forces are implicated in crimes in Indian-administered Kashmir, official discourse asserts that individual security forces personnel have committed crimes for reward, acting on their own initiative, against regulations. This disguises the reality that the policy of the Armed Forces mandates and rewards brutality.

Abbas Hussain Shah, with the 161 Battalion of the Territorial Army in Baramulla, testified to police interrogators that he, and the other three personnel involved, “*were offered the cash and liquor for arranging the three men, for what he says he believed to be a trip across the Line of Control ‘to trap militants’*” (Jaleel, 2010). Further, Shah stated that he had acted under the orders of Major Upendar at the 4 Rajputana Rifles Unit at Kalaroos. It must be noted that Major Upendar had been formerly stationed at the Army Divisional Headquarters Baramulla, and had supervised Abbas Hussain Shah. Upon transfer to Kupwara, Major Upendar maintained contact with Abbas Hussain Shah, and Shah had introduced Major Upendar to Bashir Ahmad Lone and Abdul Hameed Bhat. As well, Major Upendar's Commanding Officer, Colonel Pathania, was reportedly involved in the case.

Major Upendar asked Shah to arrange a few men to work as paid labourers across the LoC carrying weapons and tracking suspected militants that the Army was looking to apprehend. In soliciting Abbas Hussain Shah, Major Upendar informed Shah that he would speak with Shah's current supervisor to enable Shah's travel to Kupwara.

On April 30, 2010, the 4 Rajputana Rifles Unit filed an FIR, describing the events at Kalaroos as an “encounter” between armed forces personnel and infiltrating militants and noting the recovery of arms (FIR No. 67/2010 under Ranbir Penal Code 307 and 7/27 Arms Act). The 4 Rajputana Rifles Unit, however, did not turn over the arms, ammunition, and Pakistani currency it had purportedly recovered. How did they come by such articles in what was a fake encounter, and if the 4 Rajputana Rifles Unit is in possession of items such as Pakistani currency, how did they acquire them? Are fake encounters a shield for illegal trade in arms?

Also on May 30, 2010, 15 Corps Commander Lt. Gen N. C. Marwah of the Indian Armed Forces ordered an inquiry into the Machil case, after receiving the report of the probe undertaken by the Jammu and Kashmir Police. Bashir Ahmad Lone, Abdul Hameed Bhat, and Abbas Hussain Shah were taken into detention and arrested by the police between May 21-27, 2010, and charged under Ranbir Penal Code Section 302 (murder), 364 (kidnapping), and 120b and 34 (conspiracy).

Further, Senior Superintendent of Police Baramulla, Shakeel Ahmed Beigh, stated that Abdul Qayoom Lone had been arrested. Abdul Qayoom Lone, a Special Police Officer working with the Special Operation's Group of Jammu and Kashmir Police, and brother of Bashir Ahmed Lone, had reportedly played a part in the disappearances and killings of the three youth.

The police charged Major Upendar, 4 Rajputana Rifles Unit at Kalaroos, along with three others in the 4 Rajputana Rifles Unit, with criminal conspiracy and kidnapping. Police also lodged a murder case against Major Upendar and three others in the 4 Rajputana Rifles Unit (FIR No. 23/2010 under Ranbir Penal Code Section 302 for murder). The Civil Administration of Jammu and Kashmir offered next of kin ex gratia payments of 100,000 Rupees per family.

Forensic samples were collected from the exhumed bodies of three victims and their next of kin, and sent to the Central Forensic Laboratory. No independent investigations were solicited. This is of concern in Kashmir, where, in the past, forensic texts have been mismanaged and falsified by state agencies responsible for undertaking them.

As well, the reportage on fake encounters evidence problematic linkages between institutions of state and the press corps, impeding investigative and detailed coverage. In Indian-administered Kashmir, military and paramilitary institutions have established relations with various journalists and media houses, and routinely furnish media persons with information that is reported by

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newspapers without contestation.

**Investigation and Obfuscation?**

This is the first instance in which a unit of the Indian Armed Forces has transferred charge over officers, even while Kashmir Police have chargesheeted other officers in various fake encounter cases in the past. Chief Minister Abdullah stated that: *"This time the assurance of full cooperation has come from no less than the Defence Minister [A. K. Antony]"* (Jaleel, 2010).

Why this exception? Is it the start of transparency and accountability, the beginning of the end of the twenty-year conflict? Or, are these strategic steps in a game calculated to isolate these events from the larger context of military rule and immunity with the intent to subdue sustained public outcry. If the former, then all responsible agencies and institutions must be transparently investigated, all recorded encounters must be examined for malpractice, all extrajudicial killings must be examined for any linkages to enforced disappearances; and all unnamed, unknown, and mass graves be investigated. If it is the latter, "business as usual" and the routine violence of everyday life can be expected to continue unabated.

The Senior Superintendent of Police of Kupwara district, Mohammad Yousuf, stated that, following the Kalaroos fake encounter, police were inquiring into others. *"We can't say that every encounter that happened on the LoC is fake. But we are a bit concerned now"* (Ehsan, 2010).

Fake encounter killings in Indian-administered Kashmir are utilized to create/enhance the supposition of national threat and cross-border terrorism. Such threat facilitates the Indian state's national interest through strategies of militarization, enabling a more aggressive role for India within the Afghanistan-Pakistan-Kashmir region, expanding considerably India's influence as an international force who must be reckoned with as a leader when forming policy and establishing alliances.

*BURIED EVIDENCE*, IPTK's 108-page report, was released in December 2009, authored by Angana Chatterji, Parvez Imroz, et al. *BURIED EVIDENCE* documented 2,700 unknown, unmarked, and mass graves, containing 2,943+ bodies, across 55 villages in Bandipora, Baramulla, and Kupwara districts of Kashmir.

Of the graves documented in *BURIED EVIDENCE*, 2,373 (87.9 percent) were unnamed. Of these graves, 154 contained two bodies each and 23 contained more than two cadavers. Within these 23 graves, the number of bodies ranged from 3 to 17.

Exhumation and identification of unknown graves documented in *BURIED EVIDENCE* have not occurred in sizeable cases. Where they have been undertaken, in disproportionate instances, "encounter" killings across Kashmir have, in fact, been authenticated as "fake encounter" killings, accompanied by the rhetoric of infiltration and arms capture. In instances where, post-burial, bodies have been identified, two methods have been used prevalently. These are 1. Exhumation; and 2. Identification through the use of photographs.

*BURIED EVIDENCE* also examined 50 alleged "encounter" killings by Indian security forces in numerous districts in Kashmir. Of these persons, 39 were of Muslim descent; 4 were of Hindu descent; 7 were not determined. Of these cases, 49 were labelled militants/foreign insurgents by security forces and one body was drowned. Of these, following investigations, 47 were found killed in fake encounters and one was identifiable as a local militant.

The Government of Jammu and Kashmir and the Government of India have not responded to IPTK's report, even as various human rights and other organizations have urged the same. It is reasonable to contend that the 8,000+ enforced and involuntary disappearances since 1989 would correlate to the number of bodies found in unknown, unmarked, and mass graves across Kashmir. Lawyers have reportedly filed 15,000 petitions since 1990, inquiring, largely unsuccessfully, into the location and health of detainees and the charges against them.

In Baramulla district, IPTK investigated 33 villages, documented 1122 graves with 1321 bodies, of which 1013 (90.3 percent) were unnamed, and 140 graves held two bodies each, and 17 graves held more than two bodies (with more than 76 bodies). The graveyards were located in Zandfaran-Budmulla & Fatehgarh, Kichama Sheeri A, Kichama Sheeri, Peerniyar Gondabal, Chehal Bimyar, NHPC Road [National Hydroelectric Power Corporation], Boniyar Near Police Station, Trikanjan, Banali, Parro Gagar Hill, Chottali, Army Brigade Headquarters Rampur-Uri, Gingal, Bijhama, Lachipora A (3 graveyards) + Lachipora B (4 graveyards), Dashewara, Mayan (2 graveyards), Gharkote, Hathlonga, Ahteshampora, Dangiawacha Rafiabad, Bahrapore, Zethan Rafiabad, Mondej Rafiabad, Hamam Markote, Pringal Nowgam and Azadpora, Zamboor Payeen, Gantamulla Payeen, Khadenyar, Ziyarat Ameer Sahib-Sheeri, Raja Mohalla-Main Uri, Quazipora (Patti-1)-Bijhama, Mir Mohalla-Kichama, and Nullah Nigley-Leyan Marg Gulmarg.

In Kupwara district, IPTK investigated 14 villages, documented 1453 graves with 1487 bodies, of which 1278 (87.9 percent) were unnamed, and 8 graves held two bodies each, and 4 graves held more than two bodies (with 30 bodies). The graveyards were located in Trehgam, Regipora, Sedarpora Kandi, Kralpora, Sogam Lolab, Chandigam Lolab, Wilgam Martyr Graveyard, Tumina Chak Chowkibal, Marsari Chowkibal, Kalarus Main (Martyrs) Graveyard, Kanenar Kalarus Graveyard, Lada Kalarus, Kharbagh, and Bigulsar Lolab.

In Bandipora district, IPTK investigated 8 villages, documented 125 graves with 135 bodies, of which 82 (65.6 percent) were unnamed, and 6 graves held two bodies each, and 2 graves held more than two bodies (with 6 bodies). The graveyards were located in Batmohalla Sumbal, Waripora Pahlipora, Hajam Mohalla Safapora, Koalpora Manasbal, Chewah, Safapora, Bazipora-Ajas, Ajas Main, and Chrewan Gujjar Patti-Ajas.

The Indian Armed Forces and the Jammu and Kashmir Police routinely claim the dead buried in unknown and unmarked graves to be "foreign militants/terrorists." They claim that the dead were unidentified foreign or Kashmiri militants killed while infiltrating across the border areas into Kashmir or travelling from Kashmir into Pakistan to seek arms training. Official state discourse conflates cross-LoC militancy with present nonviolent struggles by local Kashmiri groups for political and territorial self-determination, portraying local resistance as "terrorist" activity.

The actions of military and paramilitary forces in Kashmir inflict terror on the local population, disbursed through "extrajudicial" means and those authorized by law. In the enduring conflict, 6,67,000 military and paramilitary personnel act with impunity to regulate movement, law, and order across Kashmir. Between 1989-2009, the actions of India's military and paramilitary forces in Kashmir have resulted in 70,000+ deaths, including through extrajudicial or "fake encounter" executions, custodial brutality, and other means. Disproportionately, those killed are men, whose death renders vulnerable women, children, and other gender identified groups.

### **Recommendations**

Mass and intensified extrajudicial killings have been part of a sustained and widespread offensive

by the military and paramilitary institutions of the Indian state against civilians of Jammu and Kashmir. The Indian state has used torture, death, and discipline as techniques in governance in Indian-administered Kashmir. Kashmiri civil society lives daily with the affect of military presence, surveillance, punishment, and fear, of not just death, but murder. Violence in Kashmir is both “extrajudicial” and authorized by law. The methodical and planned use of killing and violence in Indian-administered Kashmir constitutes crimes against humanity in the context of an ongoing conflict.

IPTK asks that the evidence put forward by its own report, and other cases, be examined, verified, and reframed as relevant by credible, independent, and international bodies, and that international institutions ask that the Government of India comply with such investigations.

The Machil investigations must be accompanied by sustained, transparent, and independent inquiries into kidnappings, enforced disappearances, torture (including sexualized violence), and extrajudicial killings by the Indian military and paramilitary in Indian-administered Kashmir.

Matters of investigation and redress must adhere to the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions [E.S.C. Res. 1989/65, Annex, 1989, U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989)], also see the Minnesota Protocol.

In instances where local civilians and militants are killed in alleged “encounter” killings, relevant international human rights and humanitarian law must be applied in matters of redress. In instances where non-local persons are killed in alleged “encounter” killings, relevant international human rights and humanitarian law must be applied in matters of redress. In instances of alleged cross-border infiltration, and large-scale infiltration, international human rights and humanitarian law must be applied to the civilians caught in the crossfire.

The photographs of each person that henceforth allegedly dies in an “encounter” killing must be rendered into the public domain and widely circulated so that claimants may identify their kin/community members and pursue any claims. The legal status of alleged “combatants” of all previous or forthcoming alleged “encounter” killings must be identified and rendered into the public domain. The rights of alleged “combatants” must be guaranteed. The rights of dead “combatants,” and fulfilling legal obligations toward them, must be guaranteed.

Each alleged “encounter” killing henceforth must be followed by a post mortem and the report of the post mortem must be rendered into the public domain. Each body from an alleged “encounter” killing henceforth should not be buried for a determined and agreed upon period, for example, seven days, so that claimants may identify their kin/community members and pursue any claims. Each grave henceforth should be marked with corresponding identification, including photographs.

The premise, as stated by security personnel communiqué and published in newspapers in Jammu and Kashmir, and Delhi on July 12, 2008, that it is not possible to identify each and every militant that dies in alleged “encounter” killings must be held in contention. Investigation into every alleged “encounter” killing must take place as of value in itself, as well as a means to question the basis for repeated killings without substantive evidence as to the identities and activities of those killed.

Each instance of an alleged “encounter” killing henceforth must be followed by a magisterial inquiry in which the public must have the right to participate freely. The report and findings of

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the inquiry must be rendered into the public domain, and such evidence used to seek justice through the sentencing of criminals and other judicial and social processes. Implicated officers should be immediately suspended and sanction given for their prosecution, and they should be expeditiously prosecuted.

Credible and independent investigations must be undertaken into all enforced disappearances and staged killings since the conflict began. The names of those disappeared between 1989-2009 should be rendered into the public domain. The details of any investigations undertaken into these disappearances should be rendered into the public domain. Further, a full-scale investigation must be commissioned under provisions of the Commissions of Inquiry Act, 1952, and/or other relevant laws, to inquire into the disappearances within a stipulated and reasonable timeframe. As well, on the matter of disappearances, we also note that certain militants who have surrendered to the security forces have been disappeared in violation of Habeas Corpus, and that the chain of violations in these cases should be investigated.

There are connections between the number of persons involuntarily disappeared and unmarked, unidentified, nameless, and unknown graves. The Government of India and Government of Jammu and Kashmir must offer to protect the sites of unknown, unmarked, and mass graves to not permit their desecration or destruction. The photographs and first information reports pertaining to those buried in unknown, unmarked, and mass graves across Jammu and Kashmir that are reportedly kept in police custody must be rendered into the public domain so that claimants may pursue their claim.

Police personnel must be required to assist persons seeking to file first information reports. Victims/survivors and witnesses testifying to disappearances and killings must be guaranteed protection, including claimants and security forces personnel that wish to testify.

Legal cases that have been pending in courts, and those that have not been filed, must be promptly dealt with and the perpetrators brought to justice. We ask that the Government of Jammu and Kashmir follow the cases pending for sanctions before the Government of India's Ministry of Home Affairs under Section 7 of Armed Forces Special Powers Act, 1958. We ask that the state make public the number of cases in which sanctions have been sought from the Government of India, and the number of cases in which the same have been granted.

The Supreme Court of India must follow up on the actions and investigations initiated by them or appeals for action submitted to them on the matter of unknown, unmarked, and mass graves and the matter of enforced disappearances. The Supreme Court of India must examine its enshrinement of the impunity of the Armed Forces Special Powers Act, 1958, into written law through its judgment in the Masooda Parveen case (2007), adjudicating that security forces personnel could not be prosecuted for committing custodial killings if the individuals killed in custody were alleged militants.

Civil society groups must be consulted in defining the conditions, terms, and parameters for reparation and compensation related to disappearances and killings. All those affected by the process, such as "half-widows," must be taken into account.

The Government of India must commit to, and enable, an independent and transparent inquiry into the actions of its military and paramilitary forces. All special laws and provisions of immunity that authorize the military and paramilitary forces to act with impunity must be revoked unconditionally.

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Security related legislation that is in contravention of international humanitarian laws and norms must be revoked and withdrawn. Special laws, regulations, and restrictions are enforced in Jammu and Kashmir, as well as the Ranbir Penal Code (XII of 1989 [Act XII of 1932]). These laws provide legal immunity to security forces for international crimes, and enable continued impunity, and in turn authorize the continued perpetration of crimes. The Armed Forces Special Powers Act, 1958, enacted in Jammu and Kashmir in 1990, the Disturbed Areas Act, 1976, enacted in Jammu and Kashmir in 1992, the Jammu and Kashmir Public Safety Act, 1978, and the Unlawful Activities (Prevention) Act, 1967. Continued criminal proceedings using the Prevention of Terrorism Act, 2002, and the Terrorist and Disruptive Activities (Prevention) Act, 1985, 1987, must be revoked. Matters of safety and security of citizens must be prioritized, and, in so doing, certain national security laws that are used to proscribe political dissent and deny freedom of expression, freedom of speech, and freedom of assembly, and deny the democratic right to peaceful mobilization, must be revoked.

These and other laws permit security personnel to raid houses, question, and detain without chargesheets, overlook intimidation and torture, and permit security forces to shoot and kill on the basis of unauthenticated suspicion. Certain national security laws, in the name of retributive justice, have been used to perpetrate state violence, subvert due process of law, undermine civil liberties and freedom of the press, erode rule of law, permit torture and sexualized violence on those in state custody, criminalize innocent persons, and, in effect, undermine the safety and security of citizens. The use of these laws and the practices they enable must immediately cease. All laws of Jammu and Kashmir must incorporate the premise of the United Nations Declaration on the Protection of All Persons From Enforced Disappearance, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

International organizations must be allowed access to report on disappearances, torture, and unknown, unmarked, and mass graves in Jammu and Kashmir. We note that only certain international organizations, such as the ICRC (International Committee of the Red Cross), Médecins Sans Frontières, Human Rights Watch, Save the Children, and Action Aid International have been permitted selective access to Indian-administered Jammu and Kashmir. International Committee of the Red Cross (ICRC) has a very limited mandate of reporting on the conditions of detainees. Unlike in other countries, ICRC has no mandate on reporting on disappearances, torture, and unknown, unmarked, and mass graves in Jammu and Kashmir. In conjunction, detention and torture centres, including in army camps, must be identified, made public, and dismantled. All detention and torture centres must be prohibited. We ask that international institutions, such as the ICRC, be permitted to visit the above places to assess the situation independently. Further, the use of torture by military and paramilitary forces is widespread in Jammu and Kashmir and must be prohibited.

The Government of India must ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which it has been a signatory since October 1997. The Government of India must ratify the International Convention for the Protection of All Persons from Enforced Disappearance, to which it has been a signatory since February 2007. The Government of Jammu and Kashmir must institute a comprehensive ban on practises of torture as defined by international law and humanitarian ethics.

#### **International Humanitarian Law and the Use of Force**

We note that the actions and escalated militarization across the Af-Pak border zone and the Indo-Pak border directly effect the security and integrity of lives in Indian-administered Kashmir. The

United Nations Human Rights Committee, European Court of Human Rights, and the Inter-American Commission and Court of Human Rights have used international human rights law in contexts of non-international armed conflict as well as in areas under occupation and disputed areas. International human rights law explicitly states that states may apply lethal force only in situations where such use is imperative and necessary to contend with the amount of force being perpetrated. International humanitarian law urges the adoption of a law enforcement framework, and the mandate to make arrests whenever possible. The United Nations Human Rights Committee asks that the right to life be protected by law (Article 6, UN Doc. HRI\GEN\1\Rev.1 at 6 [1982]; University Centre for International Humanitarian Law, 2005). Even with respect to proportionality and the use of disproportionate force on persons perpetrating force, international human rights law argues that a state must respect the right to life. Fake encounter killings in Indian-administered Kashmir repeatedly break this agreement.

The existence of these disappearances and extrajudicial killings, and how they came to be, may be understood as indicative of the effects of militarization, and the issues pertaining to militarization itself must be addressed seriously and expeditiously. The Indian state itself, through its legal, political, and military actions, has demonstrated the existence of a state of continuing conflict within Indian-administered Jammu and Kashmir. Indian-administered Kashmir must, therefore, be internationally recognized as a conflict situation in a heavily militarized and nuclear zone, requiring the focused attention of the international community in addressing the dangers, violences, and injustices endemic to Indian rule. We ask that the international community, the United Nations, United States, and members of the European Union act, in the course of permissible bilateral actions/negotiations, to halt the Indian state's militarization of Kashmir.

*[Sources used are documented and available at [www.kashmirprocess.org/machil](http://www.kashmirprocess.org/machil). In addition, IPTK was offered information by persons whose names are withheld for security reasons.]*

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