

Physicians for
Human Rights



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**Using Science and Medicine to
Stop Human Rights Violations**

Physicians for Human Rights Submission to the Office of the High Commissioner for Human Rights Universal Periodic Review: India, 27th Session – September 22, 2016

About Physicians for Human Rights

Physicians for Human Rights (PHR) is a global organization that uses medicine and science to document and call attention to mass atrocities and severe human rights violations. PHR was founded in 1986 on the idea that health professionals and forensic experts, with their specialized skills, ethical duties, and credible voices, are uniquely positioned to stop human rights violations. PHR shared the Nobel Peace Prize in 1997 for its work on the treaty to ban landmines.

PHR has extensive experience conducting investigations on the use of excessive force during demonstrations and, particularly, the health effects of the use of tear gas and rubber bullets for crowd control. PHR studies have documented severe injuries due to birdshot and rubber bullets in Egypt, Palestine, Panama, and the United States, and abuse of tear gas posing risks to health in Bahrain, South Korea, and Turkey. PHR also has extensive experience defending doctors who come under threat because of the duties of their profession and in documenting violations against medical neutrality – the longstanding principle which obligates states and armed groups to protect medical personnel and compels health care providers to treat all individuals regardless of religion, race, ethnicity, or political affiliation.

Executive Summary

1. In this submission, PHR provides information regarding access to medical care for protesters, and use of excessive force against protesters in Jammu and Kashmir by Indian state security forces since July 2016. Obstacles to accessing medical care include credible reports of harassment of medical personnel by security forces, attacks on ambulances, and the presence of police officers in hospitals. Reports of mass injuries and deaths during protests illustrate a use of excessive force against protesters that may amount to cruel and degrading treatment, as well as violations of the right to life. In particular, the use of the “pellet gun” by Indian authorities, a “non-lethal” weapon adopted in Kashmir for crowd control in 2010, appears to have contributed to the hundreds of seriously and permanently injured protesters. In fact, the terms “non-lethal” and “pellet gun” to describe the weapon used by Indian security forces for crowd control in Kashmir is incorrect and misleading. “Pellet guns” is a term generally used to refer to compressed air guns, also known in the United States as “BB guns.” The “pellet guns” used by Indian security forces are, in fact, 12-gauge pump action shotguns loaded with No. 9 shotgun cartridges carrying lead alloy pellets, a shotgun cartridge also known as “birdshot.”¹ The findings of a systematic review of medical literature carried out by PHR on the use of metal pellets, and plastic and rubber bullets for crowd control indicate that these types of weapons cause serious injury, disability, and death. The weapons are inherently indiscriminate when fired at a distance and are likely to strike vulnerable body parts or cause injuries to bystanders; and depending on the distance from which they are fired, likely to be lethal.^{2,3}

Background

3. Since India’s last periodic review by the Human Rights Council in 2012, there has been little legislative progress in addressing its human rights obligations, including in Jammu and Kashmir. Indian authorities’ failure to adhere to international human rights norms and to undertake legislative reforms supporting India’s commitment to human rights continue to enable the prevailing culture of impunity for use of excessive force by security forces, including force amounting to cruel and degrading treatment, and violations of the rights to life, free expression, and assembly. India has failed to ratify the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), despite signing in 1997.⁴ It has also neglected to sign or ratify the CAT’s additional protocol. Domestically, torture is not codified as a criminal offence in India’s penal code, and the Prevention of Torture Bill, 2010, a piece of legislation meant to bring India closer in line with the CAT, fails to meet international standards.⁵ Amendments to the bill proposed in 2013 have yet to be tabled before Parliament.⁶

4. Police reform and better training on crowd control for all security forces charged with law enforcement remains a particularly crucial issue for Jammu and Kashmir.⁷ In addition, training in human rights standards, including on the right to health in situations of violence and unrest, remains inconsistent. Special security legislation, including the Armed Forces Special Powers Act (AFSPA) and the Public Safety Act (PSA), remain in force in Jammu and Kashmir. The AFSPA allows for the use of lethal force against assemblies of more than five people, and the PSA allows for detention with charge or trial for up to one year. Both the AFSPA and PSA have been used to target protesters in Jammu and Kashmir, and have encouraged use of excessive force and arbitrary detention with impunity. The AFSPA and PSA have been widely criticized by the international community, and both violate India’s obligations under the International Covenant on Civil and Political Rights to protect life and to guarantee freedom from arbitrary deprivation of liberty, freedom of expression, and freedom of assembly.

5. The mass injuries and deaths that occurred in Jammu and Kashmir during ongoing protests that began in July 2016 are unprecedented, even considering the deaths of at least 110 protesters and injury of 200 others during the summer of 2010.⁸ To date, at least 80 people have been killed and more than 10,000 injured in Jammu and Kashmir as a result of the unrest. A significant contributing factor to the high number of injuries and deaths has been lack of respect for human rights standards – including standards on the use of minimum force by law enforcement.

Use of Excessive Force: Injuries and Extrajudicial Killings

A. Overview

6. In 2012, the Department of Ophthalmology at the Government Medical College in Srinagar, Jammu and Kashmir, conducted a study of those injured by 12 gauge shotguns loaded with No. 9 shotgun cartridges during the 2010 riots, during which the crowd-control weapons were introduced. In 2010, 60 people were injured by 12 gauge shotguns. In contrast, between July 9, 2016 and August 15, 2016 alone, the Government Medical College in Srinagar recorded that 443 patients had been treated for eye injuries inflicted by 12 gauge shotguns at the Department of Ophthalmology at Shri Maharaja Hari Singh Hospital (SMHS).⁹ The SMHS figure does not include the number of injuries caused by 12 gauge shotguns to other parts of the body apart from the eyes. In 2010, six people were killed from injuries inflicted by 12 gauge shotguns.¹⁰ Accurate estimates are currently unavailable for the number of people killed or injured since 2010 from 12 gauge shotguns, including during the ongoing protests. However, on July 18, 2016, the Advocate General Jahangir Iqbal informed the Jammu and Kashmir High Court that of the 1,900 people injured during protests between July 9 and July 18, 2016, 595 were due to pellets.

7. In response to the use of 12 gauge shotguns against protesters since July 2016, the Ministry of Internal Affairs in Delhi constituted a six-member Expert Commission to review the use of 12 gauge shotguns and recommend alternatives. The recommendations of the Commission mirror those of a similar commission constituted after the riots of 2010. Both commissions recommended the use of alternatives to 12 gauge shotguns, such as chemical irritants like tear and pepper gas, rubber or plastic instead of lead pellets, and better training for police personnel in Jammu and Kashmir. However, the recommendations were never implemented.¹¹ The manufacturer of the 12-gauge shotguns and No. 9 “birdshot” – the weapons used against protesters in Jammu and Kashmir between July and September 2016 – stated in a letter to the Director General of Police in September 2013 that, regarding the lethality of shotguns, the weapons and ammunition had never been tested “vis-à-vis the effect of the Bore ammunition on the human body.”¹² In addition, the Central Reserve Police Force (CRPF), in its response to the High Court in Srinagar, Jammu and Kashmir in August 2016, stated that “the ammunition – Shot No. 9 is the least lethal among the shots produced by the Ordnance Factory Board. Its shots are the smallest with size of only 2.02 mm. The Ordnance Factory Board, indigenously produces both the weapons and its ammunition. It is further submitted that the pellets follow a definite path and, contrary to fire from a rifled weapon, do not remain together for a single point of impact but get spread out with distance and are designed to hit more than one protester in a non-fatal fashion. It is unfortunate that some of these pellets have happened to hit protesters in the eyes.”¹³

The response of the CRPF to the High Court in Jammu and Kashmir demonstrates the intentionality of security forces’ use of indiscriminate fire on protesters, and the acceptability of the use of excessive force against protesters. PHR’s work on the effects of rubber bullets, pellets, and other kinetic impact

projectiles shows that, contrary to the CRPF's statement that pellets are the "least lethal option," they are in fact, at times, lethal.

Violations of Medical Neutrality and the Right to Health

A. Overview

8. Credible reports show that Indian security forces deliberately obstructed access to urgent medical care for protesters and harassed medical workers attempting to deliver medical care, including by preventing doctors from reaching the hospitals where they work. Impositions of days-long curfews, attacks on ambulances, and police presence in hospitals receiving patients injured during protests all impeded access to medical care for those injured. It is clear that Indian authorities disregarded their obligations under international human rights law to ensure access to health care, even in situations of violence or civil unrest. The state has also failed to investigate reported incidents in which the right to health has been violated. According to the *Journal of Emergencies, Trauma, and Shock*, injuries inflicted by "less than lethal" weapons like pellets, rubber bullets, and shot guns, require early medical intervention to avoid permanent or debilitating injury, including loss of life. The article states that "pellet injuries from these weapons include a spectrum from superficial peppering of the soft-tissue to contusion of vessels, when used at close range, to perforation of bowel or other organs, transection of blood vessels ... while considered less lethal...the risk of serious injury from shotgun [pellet] wounds is well-known when used at close range."¹⁴

B. Testimonies from doctors harassed by security forces

9. Dr. B¹⁵ in Srinagar told PHR of being harassed by security forces: "Moving around, including trying to get to the hospital, has become so difficult. Despite all our identity cards, white coats, and stethoscopes, it is hard to get past the Indian security forces. I cannot even imagine how our patients get past them to reach the hospital.... During the first two days, we were conducting emergency surgeries, but it was a huge challenge because the police kept using tear smoke shells inside the hospital.... As for the ambulances, many of them arrived here with their windows shattered, and the drivers bleeding. I saw ambulance drivers driving with motorcycle helmets [to protect themselves when going out on duty].... We [also] know the policemen are here hanging around in plainclothes, and before we even get a patient into surgery, the police get their information – to arrest them later when they leave the hospital. So, that's why almost all the boys give us fake names when they come to the hospital."

10. Dr. Nisar ul Hassan, president of the Doctors Association of Kashmir, issued a statement on Facebook on August 19, 2016 following the shooting of an ambulance driver in Srinagar: "The Doctors Association of Kashmir (DAK) today expressed deep shock over the shooting of an ambulance driver by security forces in Srinagar. On Thursday night, Ghulam Mohammad Sofi, an ambulance driver, was ferrying patients to Srinagar hospitals when security forces fired on his ambulance. Despite sustaining severe injuries, he drove the ambulance to the hospital to drop the patients before he was taken for treatment. In the last few weeks we have witnessed repeated attacks on medical staff. These attacks on medical staff have become a routine now. This new pattern of attacks against medical personnel is a matter of serious concern."

Recommendations

- Ratify the United Nations Convention Against Torture and its Optional Protocol;
- Ensure that the amendments to the Prevention Against Torture Bill, 2010 adhere to international standards;
- Repeal the Armed Forces Special Powers Act and the Public Safety Act;
- Remove legislative obstacles to the investigation and prosecution of security force personnel accused of committing human rights violations, including the use of excessive force against protesters, in Jammu and Kashmir. This includes removing all requirements for prior executive permission for the prosecution of security force personnel in the Code of Criminal Procedure;
- Immediately halt the use of “pellet guns,” specifically 12-gauge shotguns firing No. 9 “birdshot” for crowd control;
- Any use of less than lethal weapons should be an absolute last resort when dealing with genuine and imminent threats to the safety of those present, and only after all other means have been exhausted;
- Authorities should ensure that police are adequately trained in the basic principles on the use of force and firearms as laid out in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. This should include training on human rights standards, including ensuring access to urgent medical care for those injured and effective protection of medical workers, as well as non-interference with delivery of medical care by security forces.
- Law enforcement should be properly equipped with protective gear in order to further decrease the need to use weapons of any kind.

Endnotes

¹ Jammu and Kashmir Bar Association versus Union of India. Response before the Jammu and Kashmir High Court from Respondents 1 and 4, Director General of Police Jammu and Kashmir, and CRPF, Srinagar to PIL No. 14/2016. August 2016. Paras 4, 5 and 6. Response from A. K. Agarwal, Additional General Manager for Indian Ordnance Factory in Khadki, Pune on lethality of 12 Bore Various Shot. Ref: J&K ltr. No

Arms/Certificate/TSM/05/2013-39012 dated 17 August 2013. Response dated 06 September 2013. Copies provided to Physicians for Human Rights in September 2016.

² Physicians for Human Rights, “Kinetic Impact Projectiles,” March 2016, https://s3.amazonaws.com/PHR_other/kinetic-impact-projectiles.pdf. For more information, see Physicians for Human Rights and INCLO, *Lethal in Disguise: the Health Consequences of Crowd Control*, https://s3.amazonaws.com/PHR_Reports/lethal-in-disguise.pdf.

³ This submission is based on analysis of documentation of injuries and deaths of protesters in Kashmir gathered by PHR through media, local human rights groups and lawyers, court documents, and individual testimonies.

⁴ United National Human Rights Office of the High Commissioner, Status of Ratification Interactive Dashboard, <http://indicators.ohchr.org/>.

⁵ Amnesty International, “Indian government should ensure torture law meets international standards,” October 14, 2010, <https://www.amnesty.org/en/latest/news/2010/10/la-legislacion-de-la-india-contrala-tortura-debe-cumplir-las-normas-internacionales/>.

⁶ Press Trust of India, “Amended draft of anti-torture Bill ready: Govt,” The Hindu, May 11, 2016, <http://www.thehindu.com/news/national/amended-draft-of-antitorture-bill-ready-govt/article8585596.ece>.

⁷ Excerpt: “In the event, though, police in Kashmir received almost no training in aiming the weapon at varying ranges – a key skill in preventing pellets from hitting the chest and face of targets. There were also no stocks of alternate ammunition for use at different ranges or in varied conditions. Police and CRPF in Kashmir, documents show, were meant to attend a seven-day course for all units deployed in the region for riot control, called the Joint Law and Order Training Module. The course included case studies, as well as hands-on instruction on the use of shotguns. The courses, however, ended in 2014, when floods and elections threw deployments into disarray.” Praveen Swami, “Kashmir: Non-lethal options to pellets were cleared in 2012 but file gathers dust,” *Indian Express*, August 30, 2016, <http://indianexpress.com/article/india/india-news-india/kashmir-non-lethal-options-to-pellets-were-cleared-in-2012-but-file-gathers-dust-3003276/>.

⁸ Government Medical College, Srinagar, Jammu and Kashmir, India, “Pattern of ocular injuries in stone pelters in Kashmir Valley,” May 2, 2012, *Saudi Journal of Ophthalmology*, 2012, pp. 26, 327-330, [http://www.saudiophthaljournal.com/article/S1319-4534\(12\)00063-X/abstract](http://www.saudiophthaljournal.com/article/S1319-4534(12)00063-X/abstract).

⁹ Jammu and Kashmir High Court Bar Association versus Union of India and Ors, “Reply for and on behalf of Respondent Nos. 26 & 28,” August 2016. Copy provided from Jammu and Kashmir High Court to Physicians for Human Rights.

¹⁰ Adil Akhzer, “Jammu-Kashmir’s ‘non-lethal’ pellet guns and the injuries, blindness they cause,” *Indian Express*, July 22, 2016, <http://indianexpress.com/article/explained/kashmir-protests-burhan-wani-death-pellet-guns-rajnath-singh-2928387/>.

¹¹ Praveen Swami, “Kashmir: non-lethal options to pellets were cleared in 2012 but file gathers dust,” *Indian Express*, August 30, 2016.

¹² Copy provided to Physicians for Human Rights through the High Court of Jammu and Kashmir in Srinagar in September 2016.

¹³ Copy provided to Physicians for Human Rights through the High Court of Jammu and Kashmir in Srinagar in September 2016.

¹⁴ Timothy C. Hardcastle, “What’s new in emergencies, trauma and shock? Pellets, rubber bullets, and shotguns: less lethal or not?” *J Emerg Trauma Shock*, 2013 Jul-Sep; 6(3): 153-154, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3746433/>.

¹⁵ All identifying information withheld for security reasons. Interview conducted by Physicians for Human Rights in September 2016.