

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.