

# Open Letter to Chief Minister Mufti Mohammad Sayeed

Dear Chief Minister,

I am writing to you on behalf of Amnesty International, the world's largest human rights organization with over a million members worldwide. It is an organization totally independent of any government, political ideology or religious creed. It works on all the countries of the world for the promotion and protection of the full range of human rights laid down in international human rights standards. We consider these rights to be universal, indivisible and interdependent. Amnesty International takes no position on political disagreements or territorial disputes between countries and, therefore, takes no position on the status of Jammu and Kashmir or political developments in the state.

Amnesty International welcomes the commitments of the new government of Jammu and Kashmir to restore the rule of law in the state and to guarantee everyone the enjoyment of the full range of human rights. The organization also hopes that a new era of openness will begin, in which national and international human rights organizations can freely exchange views with the new administration.

For years, Amnesty International has been gravely concerned at the high level of human rights abuses reported from the state. Those responsible have included the security forces, police and armed opposition groups. Torture, including rape, deaths in custody, extra judicial executions and "disappearances" have been perpetrated by agents of the state with impunity. Special laws in force in the state have been used to stifle political dissent. Landmines, increasingly laid by security forces and militant groups have killed and maimed many civilians. Armed groups have for many years harassed, intimidated, tortured and killed non-combatants. Their targets have included civilian men, women and children as well as journalists and, increasingly, members of religious minorities.

The civilian population of Jammu and Kashmir has paid a high price for the conflict; in 2001 an average of 100 civilians died every month as a result of either targeted or indiscriminate violence. Most families of all backgrounds have experienced some form of loss -- of livelihood, of a relative and of the sense of security of life and liberty and other fundamental human rights. Concerted and honest efforts to uphold human rights must be in everyone's interest in Jammu and Kashmir.

## THE COMMON MINIMUM PROGRAM

The Common Minimum Program announced by your government on 27<sup>th</sup> October 2002 contains many measures which Amnesty International welcomes.

**Common Minimum Program Point 3:** The government shall review the case of detainees being held without trial for long periods. It shall release all detainees held on non-specific charges, those not charged with serious crimes and those who have been held on charges that are such that the period they have spent in jail exceeds their possible sentence.

Over the past decade, thousands of people have been arbitrarily detained in the state, either by the use and abuse of special security legislation, under administrative detention or without reference to any law at all. Arbitrary detention, sometimes in undeclared places of detention where detainees are held incommunicado, has often provided the opportunity and the setting for torture and rape.

A judicial review of such cases with a view to releasing all those against whom there are no criminal charges and to providing compensation as required by article 9(5) of the International Covenant on Civil and Political Rights to which India is a State Party, is urgently required. Besides, measures need to be taken to ensure that members of the security forces who are responsible for such abuses are held to account and that arbitrary arrest and detention do not recur. To this latter end, existing legal safeguards and guidelines provided by the Supreme Court of India relating to arrest and detention must be meticulously implemented and an effective system of independent inspection put in place which ensures this adherence.

Amnesty International calls on you to ensure that people are arrested and detained strictly in accordance with law, in publicly recognized places of detention and that accurate information about their arrest and detention be made available without delay to the detainees, their families and lawyers.

**Common Minimum Program Point 4:** The government shall review the operation of all such laws that have been used in the past decade to deprive people of their basic rights to life and liberty, without due legal process. Where the government deems that some special powers need to be retained, it will ensure by instituting careful and transparent pre-screening and monitoring procedures, that such powers are used sparingly and those entrusted with them are held accountable for their misuse.

**Common Minimum Program Point 17:** The Government considers that there are enough laws in existence to deal with militancy. Therefore, it will not implement POTA<sup>1</sup> in the state

Several of the security laws in force in Jammu and Kashmir indeed directly curtail or violate the human rights of people in the state or facilitate their abuse. The Armed Forces (Special Powers) Act, 1958, empowers security forces to arrest individuals and enter property without warrant and to use force - including lethal force - to affect an arrest in areas declared as “disturbed” and to shoot to kill. The Act is widely believed to have facilitated grave human rights violations in areas where it is in force - in particular extra-judicial executions.

The Act allows for impunity for the perpetrators of such abuses; it requires that the state gives its consent before an agent of the state can be prosecuted for abuses but in practice this permission has been withheld as a matter of course. Domestic and international human rights bodies have recommended that this provision be abolished but so far this advice has been ignored.

The Jammu and Kashmir Public Safety Act, 1978 [PSA] has often been used to harass or punish political activists by holding them for long periods of time in administrative detention. Sometimes detainees are held outside the state making it difficult for families and lawyers to contact the detainees<sup>2</sup>.

The Prevention of Terrorism Act [POTA] falls short of a range of fundamental rights set out in the Constitution of India, specific domestic laws and international human rights standards. About three quarters of the total number of cases filed under the provisions of POTA in India have been brought in Jammu and Kashmir. The introduction of POTA was opposed by civil liberties groups in India as well as by the National Human Rights Commission of India. Your decision not to apply it will be widely welcomed<sup>3</sup>.

Amnesty International urges you to initiate a judicial review of all cases already brought under POTA and that those against whom no criminal charges exist be released.

The Terrorism and Disruptive Activities (Prevention) Act, 1987 was widely used in Jammu and Kashmir to arrest and detain people suspected of carrying out ‘terrorist’ offences. Such

<sup>1</sup> Prevention of Terrorism Act.

<sup>2</sup> *India: Punitive use of preventive detention legislation in Jammu and Kashmir*, AI Index: ASA 20/10/2000, May 2000.

<sup>3</sup> *India: The Prevention of Terrorism Bill 2000. Past abuses revisited?*, AI Index: ASA 20/22/2000, June 2000.

activities were defined extremely broadly and encompassed peaceful expression of political or other conscientiously held views. Less than five per cent of those accused under TADA were convicted whereas the rest were released, sometimes after long periods of detention, as no case could be made against them. The Act lapsed in 1995 but people in Jammu and Kashmir continue to be arrested and detained with reference to cases filed under TADA before its lapse.

A review of legislation and the way it has been applied with a view to amending law and practice to ensure their compatibility with fundamental rights guaranteed in the Constitution of India and internationally accepted human rights standards is an important stepping stone to the full promotion and protection of human rights. Amnesty International urges that such review be guided by India's international obligations with regard to the rights to life, liberty and fair trial. In particular the organization urges that anyone found to be unlawfully arrested, detained and tried under these laws be released and suitably compensated. Those responsible for abusing the laws should be brought to justice.

**Common Minimum Program Point 5:** All cases of custodial killings and violations of human rights shall be investigated and persons responsible for them will be identified and punished appropriately.

Prompt, independent and impartial inquiries into grave human rights violations and punishment of those responsible for them are part of a state's obligation under human rights treaties to secure an effective remedy for those who have suffered human rights violations. They are also important as they send a signal that governments do not condone violations. Impunity for abuses not only perpetuates them but also leads to a climate of fear. Justice both needs to be done and needs to be seen to be done to strengthen people's trust in the rule of law and their government's commitment to uphold it.

Every year, dozens of people die in military and police custody in Jammu and Kashmir, often reportedly as a result of torture; for instance of some 70 custodial deaths documented by Amnesty International between January and May 2001, most were reportedly the result of torture. Some 125 cases of deaths in custody and extrajudicial executions were reported to Amnesty International between November 2000 and September 2002. The real number of such violations may be much higher. The Government of Jammu and Kashmir admitted that 3,184 people had over the last 10 years 'disappeared' in the custody of the state<sup>4</sup>. Virtually none of the perpetrators of these grave human rights violations has been held accountable<sup>5</sup>.

Amnesty International urges you to ensure that the large number of human rights violations committed in the past be independently and impartially investigated, that findings of such investigation be made public and those found responsible be criminally charged and tried. Wherever state permission for prosecutions to be brought is required under existing legislation, it should be given so that the perpetrators are not protected against criminal prosecution. Amnesty International also urges you to make public the reports submitted by several commissions of inquiry to the previous government and to ensure that action is taken on their findings. The organization also requests you to consider inviting independent experts, such as the UN Special Rapporteurs on torture and on extrajudicial, summary or arbitrary executions to visit the state and assess the human rights situation.

Amnesty International further urges that public human rights awareness programs be conducted to ensure that citizens are aware of their right to remedy and the process to obtain it.

**Common Minimum Program Point 6:** The Government shall strengthen the State Human Rights Commission to make it an effective instrument for addressing the grievances of the people of the state.

<sup>4</sup> India: 'If they are dead, tell us': "Disappearances" in Jammu and Kashmir, AI Index: ASA 20/02/99, February 1999.

<sup>5</sup> India: Impunity must end in Jammu and Kashmir, AI Index: ASA 20/023/2001, April 2001.

The Jammu and Kashmir State Human Rights Commission [SHRC], created in 1997 under the Jammu and Kashmir Protection of Human Rights Act, remains an organization which is under-equipped, understaffed and whose orders are widely ignored by security forces and police. Human rights defenders have consistently told Amnesty International that the SHRC has failed to support their work in the most basic ways: the Commission's functions do not include the study of treaties and other international instruments on human rights and the making of recommendations for their effective implementation.

Human rights concerns are also articulated by human rights defenders. After the unresolved killing of several human rights activists in the state, those who continue to document abuses, support victims and their families and provide legal aid, undertake their legitimate work at great risk to themselves and their families.

Amnesty International appeals to you to ensure that the State Human Rights Commission is provided with adequate resources and given institutional independence to fulfil its mandate and to take measures so that individuals and institutions documenting and campaigning against abuses can do so without fear of attacks and intimidation, in accordance with the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms of 1999. The organization also urges you to commit your government to a policy of transparency and openness which would facilitate the dialogue with international human rights bodies and mechanisms and permit their access to the state.

**Common Minimum Program Point 7:** The Government shall formulate a comprehensive relief and rehabilitation package for those families affected by militant violence over the past decade.

Many people who have suffered the loss of a relative in the violence in Jammu and Kashmir are reported to have resigned themselves to the fact that legal redress will not be available to them. Providing them with compensation, while important, must never take the place of bringing to justice those responsible for abuses.

Even compensation, however, has not always been forthcoming in the past. According to local reports, over 2,000 thousand people were waiting for compensation in November 2002 while police and hospitals failed to promptly provide relevant information. The families of the 'disappeared' are currently particularly disadvantaged: for seven years – until a 'disappeared' person is legally declared dead, his widow cannot claim official compensation.

Amnesty International believes that there should be a statutory right to compensation for the victims or the families of victims of all human rights abuses perpetrated in Jammu and Kashmir by both security forces and armed groups. To implement it, an effective machinery should be set up to provide redress and rehabilitation to victims of torture and ill-treatment, including rape, and for relatives of victims of custodial killings or 'disappearance'.

**Common Minimum Program Point 8:** The government shall implement special schemes to rehabilitate former militants who have forsworn violence and rejoined the mainstream.

Former militants or 'renegades' are often targeted for unlawful killing by both the security forces and armed opposition groups even years after they have relinquished violence. Those who have become political activists appear to be particularly vulnerable. Amnesty International knows of virtually no instance where members of the police or the security forces have been brought to trial in a civilian court for the extra judicial execution of an ex-militant.

At the same time, reports abound about the abuses including torture, rape and arbitrary killings perpetrated by former militants acting either in conjunction or connivance with security forces or on their own, often to extract money from victims or their families.

Amnesty International urges you to ensure that ‘renegades’ who join the security forces receive training in human rights standards and that security forces maintain strict chain-of-command when working with former militants to prevent them committing abuses.

**Common Minimum Program Point 10:** The government reaffirms that the return of Kashmir Pandits to their mother land is an essential ingredient of Kashmiriat. The government will seek the cooperation of all elements in the society to create an atmosphere conducive to their safe return, will take all necessary steps to ensure their safety and devise effective measures of their rehabilitation and employment.

**Common Minimum Program Point 31:** All three regions of the state have got religious minorities which face special problems. The government shall give full protection to the minorities and safeguard their rights. A minority commission will be constituted to look after the interests of minority communities.

Following attacks on leading members of the community and anti-Pandit demonstrations, at least 150,000 Kashmiri Pandits left the Kashmir Valley in the early 1990s. A decade later, thousands still live in camps around Jammu and New Delhi. In recent years, Islamist militants have attacked and killed members of the Hindu minority including the elderly, women and children as well as Sikhs.

Amnesty International urges you to ensure that religious minorities can enjoy all their rights without fear and that abuses perpetrated against them are investigated with a view to punishing offenders.

**Common Minimum Programme Point 16:** A Commission will be set up to make recommendations for reform of the police administration to make it a more effective and humane institution for investigation of crimes and for enforcement of law and order. The government will ensure that the personnel in the Special Operations Group (SOG) are assimilated/relocated within the regular police establishment.

The police force in Jammu and Kashmir has systematically failed to uphold the rights of people with regard to arrest and detention and the rights to liberty and security of the person. Reasons for this disregard include corruption, political interference, ignorance and lack of training. Custodial torture, including rape, resort to excessive force in crowd control and deliberate killings have been rife. In cases of complaint and investigation, Amnesty International has observed police cover-ups, defiance of court orders and intimidation of complainants.

The Special Operations Group (SOG) has been particularly prominent in reports about human rights violations. Members of the SOG are known to have been awarded fast track promotions and bonuses for ‘eliminating’ militants and are feared by the civilian population for their unrestrained resort to force. Disbanding them will be widely welcomed but pending complaints against SOG staff should not be lost sight of in the process. They should be investigated and acted upon fully and promptly.

The commission to review the police should seek and consider the advice of the human rights movement in the state. Its recommendations should be made public and submitted to public scrutiny before being considered and implemented by the government without undue delay. The government of the state for its part should firmly commit itself to end the political use of the police.

Amnesty International urges you to ensure that current and newly recruited police officers be given comprehensive training in existing legal human rights safeguards and incorporate internationally accepted human rights standards, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The training should aim to make respect for human rights a part of daily police practice, ingrained in officers’ personal ethics and the culture of policing.

**Common Minimum Program Point 28** Keeping in view that women have borne the brunt of violence in more ways than one over the past decade, special welfare programs will be designed for women such as widow pensions, subsistence allowance for women headed households and self employment schemes for young women.

In January 2000 Amnesty International drew the attention of the UN Committee on the Elimination of Discrimination against Women to the trauma and helplessness that women experience when living in an atmosphere of indiscriminate violence perpetrated by both state agents and militants. Many women have seen fathers, husbands and sons shot dead, tortured or taken away, never to return; many have been raped in front of their children or seen their daughters raped. Psychologists report a high level of psychosomatic diseases among women in Jammu and Kashmir which is often compounded by traditional perceptions of women's roles and restrictions on their movements due to security concerns.

Many women and children are deprived of their economic and social rights in Jammu and Kashmir. Some 16,000 Kashmiri widows have to fend for themselves after their husbands were killed or 'disappeared' and many of their children cannot go to school but have to work to help sustain their families.

Amnesty International urges you to ensure that, as a matter of urgency, all women who have been widowed or otherwise seriously affected by militancy-related violence be awarded the necessary financial support and rehabilitation to ensure their continuing welfare and that of their children. Amnesty International also urges you to publicly condemn all violence against women and to ensure that all those perpetrating such violence be held criminally accountable.

We hope that the commitments made by you throughout the election campaign and in the Common Minimum Program will be fully implemented at all levels of the state.

I look forward to receiving your response to our concerns and recommendations.

Yours sincerely,

Demelza Stubbings  
Program Director, Asia and Pacific Program