

## INDIA

Appeal to armed opposition groups in Jammu and Kashmir to abide by humanitarian law

Armed opposition groups involved in the armed conflict in Jammu and Kashmir have over the years been responsible for many human rights abuses, contravening basic principles of humanity. The rules of international humanitarian law prohibit hostage-taking, torture and the deliberate or indiscriminate attack on civilians and those not taking direct part in hostilities and place obligations on armed groups to take concrete steps to avoid such attacks.

The abuses committed by armed opposition groups in Jammu and Kashmir have included torture and deliberate and indiscriminate killings of unarmed civilians. Armed opposition groups have also harassed and intimidated civilians with the threat of such abuses. The targets of such abuses have included civilian men, women and children, journalists, members of the Hindu minority and civilian officials whose public function is not directly related to the conduct of hostilities.

Amnesty International unconditionally opposes hostage-taking, torture and deliberate and arbitrary killings of civilians or those taking no direct part in the hostilities by armed opposition groups. The killings in a situation of armed conflict which Amnesty International opposes are deliberate, not accidental - for instance when a person not taking part in the hostilities is targeted individually or as a part of a particular group or in a random attack of the civilian public at large. Amnesty International also opposes killings in armed conflict which are indiscriminate as when the attacking force either intentionally or recklessly disregards the likely impact an attack may have on civilian lives. Such killings are arbitrary in that they are not countenanced by any internationally recognized standard of law. They flout even minimum standards of humane conduct applicable to governments and armed opposition groups alike. Their arbitrary character distinguishes them from killings in self-defence or the defence of others from an immediate threat, and from a range of killings in armed conflict which may occur as a consequence of an attack or the defence of a military objective, such as killings in the course of clashes between violent opposing forces, killings in cross-fire, or attacks in general on military targets and security personnel.

The principle of distinction, a provision of customary international law, obliges armed groups at all times to distinguish between people who take no active part in the hostilities and those who do. Civilians must be distinguished from military personnel and others who are directly involved in hostilities, may influence the course of the conflict, or who offer a permanent threat of violence and harm to their adversaries. The deliberate killing of people taking no part in hostilities and offering no immediate threat of violence is clearly arbitrary. Similarly, the deliberate killing of anyone who has been detained, incapacitated, or - having ceased to offer resistance - seeks to surrender is always arbitrary.

Amnesty International appeals to armed opposition groups in Jammu and Kashmir to respect these basic principles of humanitarian law in the conduct of hostilities.

## Background

Kashmir has long been a disputed territory between India and Pakistan which have gone to war over Kashmir twice. Armed opposition groups in Jammu and Kashmir, some of which favour accession of the area to Pakistan while others advocate independence, intensified their activities in the Valley of Kashmir in late 1989. India has consistently claimed that Pakistan provides military support and training to secessionist groups operating in Kashmir while Pakistan has equally consistently denied such claims. There is, however, considerable evidence that Pakistan has indeed provided men and military support to groups seeking accession of Kashmir to Pakistan.

The Government of India responded to frequent attacks by armed opposition groups with a policy which has resulted in hundreds of arbitrary arrests, torture including rape, leading to hundreds of deaths in custody, extrajudicial executions and "disappearances". These widespread and grave human rights violations have been perpetrated by law enforcement personnel, including police, paramilitary forces, the army and by the so-called renegades, former members of armed opposition groups who now side with the government and reportedly carry out human rights violations with the acquiescence or connivance of, or on orders by state agents. Its victims have been people alleged to be members of armed opposition groups, people assumed to sympathize with them, their friends and relatives as also lawyers and journalists monitoring human rights violations. Despite a stated commitment to human rights protection and promotion, the Government of India and authorities in Jammu and Kashmir have permitted state agents to perpetrate violations with impunity by failing to bring perpetrators to justice and by not amending or withdrawing special laws operative in the state which facilitate such violations.

Amnesty International has repeatedly addressed the Government of India and authorities in Jammu and Kashmir on these concerns and urged them to fully and meticulously adhere to their obligations to promote and protect human rights in the state (see: India: An unnatural Fate: "Disappearances" and impunity in the Indian states of Jammu and Kashmir and Punjab, AI Index: ASA 20/42/93; India: Torture and deaths in custody in Jammu and Kashmir, AI Index: ASA 20/01/95; India: Analysis of the Government of India's response to Amnesty International's report on torture and deaths in custody in Jammu and Kashmir, AI Index: ASA 20/05/95; India: Human rights abuses in the election period in Jammu and Kashmir, AI Index: ASA 20/39/96; India: Jammu and Kashmir: Remembering Jalil Andrabi, AI Index: ASA 20/10/97).

Jammu and Kashmir Minister of State for Home Affairs, Ali Mohammad Sagar, stated in April 1997 that there are some 178 armed opposition groups operating in the state. The media usually speak of two dozen such groups. Figures about the number of unarmed civilians tortured, abducted or killed by armed opposition groups in Jammu and Kashmir, especially since late 1989 when the armed struggle intensified, vary widely. According to official figures released in January 1997, a total of 16,698 people were killed between January 1990 and December 1996; these are stated to include 7,727 civilians killed by members of armed opposition groups (The Sentinel, 20 January 1997). Other observers believe that the total number of deaths in "militancy-related" incidents lies in the range of 50,000. Such reports are difficult to verify given that few independent observers, including national and international human rights organizations, have been permitted access to the area to research human rights abuses, whether committed by state agents or by armed opposition groups.

#### Human rights abuses perpetrated by armed opposition groups

Many attacks on civilians are perpetrated by unidentified armed groups making it difficult to assign responsibility; the pattern and circumstances of such killings usually strongly suggest that they are not attributable to criminal groups but to politically motivated armed groups (see below).

In several instances, however, specific groups have claimed responsibility. Before Lok Sabha (people's assembly, the federal parliament) elections in 1996, seven named armed opposition groups issued a statement on 11 May threatening to kill any official who carried out election duties in the state. The statement was signed by Hizbul Mujahideen, Tehrik-ul-Mujahideen, Al-Jihad, Al-Barq, Hezbollah, Al-Umer and Hizb-ul-Momineen. A few days later, on 18 May, Hezbollah spokesman Kalim Siddiqui said that government personnel flown in from other states of the Indian Union to

supplement local staff in election duties should leave Kashmir within four days or else "our groups will kill them and their families". The Jammu and Kashmir Islami Harkatul Mohmineen had in April issued an ultimatum to election candidates to withdraw from the contest or be killed along with their families. Several such killings were carried out before and during elections. Before the elections to the state legislative assembly in the autumn of 1996, such threats were repeated and again several candidates, members of their families and supporters were killed by armed opposition groups. Subsequently, the Jamiat-ul-Mujahideen have claimed responsibility for several bomb attacks which killed civilians.

Members of armed opposition groups in Jammu and Kashmir have increasingly targeted civilian officials who perform a public function but one that is not directly related to the conduct of hostilities. These have included politicians, parliamentarians and party workers. Over a dozen legislators and scores of political workers have been abducted and killed since 1990 in Jammu and Kashmir.

During the night of 30 May 1997, Ghulam Rasool Wani, a leader of the National Conference was kidnapped by unidentified armed persons at gunpoint and shot dead near his home in Kaskot, in the Banihal area of Doda district. Janata Dal leader Abdul Samad Vakil was shot dead in Ramban area by unidentified men from close range in his car on 21 April 1997. Former National Conference member of the legislative assembly, Ghulam Rasool Bhat and his brother-in-law, Ghulam Nabi Wani were shot dead by armed persons on 3 March 1997 near Sopore. Unidentified armed men on 18 May 1997 forced their way into a house in Mahore area of Udhampur district where sheep development officer S.D. Nayyar and his technical assistant Rattan Singh were staying and shot them both dead. No armed opposition group claimed responsibility for any of the killings.

Civilians have also been killed in what appear to be indiscriminate attacks - that is where armed opposition groups have disregarded their obligation to distinguish between military and civilian targets. Considering the nature of the attacks, often by time bombs or car bombs, those responsible for using them must have been aware of, and accepted, that they put a large number of civilians at risk. On 29 March 1997, a car bomb explosion in a crowded bus station in Jammu, possibly meant to target officials attending a concert nearby, killed 16 civilians and injured some 70 others; the victims included women and children. On 3 January 1997, a bomb hidden in an auto rickshaw placed at some distance from the Chief Minister's residence injured some 10 guards on duty but killed four civilian pedestrians. According to reports the Jamiat-ul-Mujahideen claimed responsibility for this attack. On 24 February 1997, one civilian was killed and nine injured when militants threw a grenade at a bus stand in Batamalo in Srinagar possibly intended for a security patrol nearby.

Other victims targeted by armed opposition groups have included journalists, members of the Hindu minority and civilians refusing shelter to members of armed opposition groups. Several journalists whose reporting was seen to be critical of armed opposition groups in Kashmir have been abducted, tortured, threatened or killed by these. Journalist Saidian Shafi and his personal security guard were shot dead by unidentified militants on 16 March 1997 as they were driving home in Shafi's car in Srinagar. Saidian Shafi had been producing reports for the "Kashmir File" of the state-run television channel Doordarshan and been given protection by the state authorities after reportedly receiving death threats from unnamed opposition groups. At the time of Shafi's death, Kashmir had been without newspapers since 1 March when the Shoura-e-Jehad (Council of Holy War) comprising seven groups opposed to Kashmir's accession to India had imposed a ban on five leading newspapers, following which other newspapers closed down in solidarity. Earlier, on 1 January 1997, newsreader Aftab Ahmad Fakhtoo was shot dead by unidentified gunmen in a restaurant in Srinagar, allegedly for defying a ban imposed by opposition groups on Kashmiris not to work for state run media.

Among the civilian population, Hindus have frequently been targeted by armed opposition groups. An estimated 250,000 to 300,000 Hindus have fled the Kashmir Valley since armed opposition group activities intensified in late 1989 and taken refuge either in the Hindu majority area, Jammu or in camps in and around New Delhi. Those that have stayed behind in Kashmir have been subjected to frequent abuses by armed opposition groups; dozens of killings have been reported over the past few years. On 21 March 1997, seven Hindu men were killed in Sangrampura in Budgam district; unidentified members of an armed opposition group reportedly surrounded their homes late at night, asked the men to come out and shot them dead at close range. Several Hindus left their homes after the incident to seek refuge in Jammu. On 15 June 1997, six Hindu passengers were reportedly forced by armed men from a bus near the village of Gool Gulab Garh, some 180 km northeast of Jammu, three of whom, including a principal of a government school and two teachers were then shot dead. On the same day a Hindu doctor was shot dead by an armed person in Udhampur district.

Civilians who refuse to shelter members of armed opposition groups have also sometimes been abducted, tortured or killed. Abdul Rehman, his wife and 12-year old son were shot dead in April 1997 in Wanpora village in Gandermal, when the head of the family reportedly did not agree to accommodate unidentified members of armed opposition groups for the night. When members of such groups could not find a person wanted by them they have reportedly killed that person's relatives. On 2 November 1996, armed men on entering a house in village Sangli in Poonch district could not find Mohammad Azam and instead shot dead those present: his brother Mohammad Shafi, his wife and two children.

Sometimes armed opposition groups appear to engage in deliberate killings of civilians solely to intimidate them. At least 31 worshippers, including nearly a dozen children were injured on 26 February 1997 when members of an unidentified armed opposition group reportedly threw a hand grenade into a shrine in Bahugund village.

#### Obligations of armed opposition groups to abide by minimum standards of humanitarian law

The Government of India is entrusted by the country's constitution with the task of upholding the rule of law and of securing for every citizen equal protection of their rights. In addition the Government of India has international obligations to promote and protect human rights and abide by international standards, including those human rights treaties ratified by the Indian government.

Armed opposition groups also have an international legal obligation to respect fundamental rights. All parties to a conflict, including armed opposition groups, are bound by the provisions of Article 3 common to the four Geneva Conventions of 1949 which states:

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. ... "

A fundamental principle of the laws of armed conflict is the principle of distinction. Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian populations

Amnesty International now reiterates its call issued many times before to armed opposition groups involved in the armed conflict in Jammu and Kashmir to abide at all times by the minimum standards set down in the provisions of Common Article 3 reproduced above. To this end all those exercising command are called upon to convey the obligations to respect the basic principles of humanitarian law to all their subordinates and to ensure full adherence to these principles.

In particular, armed opposition groups should take the following steps:

- instruct all combatants under their command in the rules of humanitarian law;
- order these combatants to treat humanely prisoners, the wounded and those seeking to surrender, whether such people are civilians or members of armed forces, and never to kill them;
- prohibit deliberate and arbitrary killings and indiscriminate killings of non-combatants under any circumstances;
- conduct proper investigations into alleged abuses by their combatants in order to determine responsibility;
- ensure that individuals suspected of committing or ordering deliberate and arbitrary killings are removed from any position of authority or duties which bring them into contact with prisoners or others at risk of abuse.