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India should investigate all allegations of enforced disappearances in Jammu and Kashmir following reports of mass graves

Amnesty International urges the Government of India to launch urgent investigations into hundreds of unidentified graves discovered since 2006 in Jammu and Kashmir. The investigation must be independent, impartial and follow international standards. The grave sites are believed to contain the remains of victims of unlawful killings, enforced disappearances, torture and other abuses which occurred in the context of armed conflict persisting in the state since 1989. The graves of at least 940 persons have reportedly been found in 18 villages in Uri district alone.

Unlawful killings, enforced disappearances and torture are violations of both international human rights law and international humanitarian law, set out in treaties to which India is a state party and in customary international law. They also constitute international crimes. Amnesty International calls on the Government of India to comply with its international obligations in this regard, as well as act on the commitment displayed through its signing of the United Nations' Convention for the Protection of All Persons from Enforced Disappearances on 6 February 2007 by ordering prompt, thorough, independent and impartial investigations into all past and current allegations of enforced disappearances

A report issued on 29 March 2008 by the Srinagar-based Association of the Parents of Disappeared Persons (APDP), *Facts under Ground*, indicated the existence of multiple graves in localities which, because of their proximity of the Line of Control with Pakistan, are not accessible without the specific permission on the security forces. In response to the report army spokespersons again claimed that those found buried were armed rebels and "foreign militants" killed lawfully in armed encounters with military forces. However the report detailed testimonies from local villagers saying that most of those buried were local residents hailing from the state. These are serious allegations that must be fully investigated.

While the report alleges that more than 8,000 persons have gone missing in Jammu and Kashmir since 1989, the central and state authorities state that the total amounts to less than 4,000, and that most of these went to Pakistan to join armed opposition groups. In 2006 a state police report confirmed the deaths in custody of 331 persons and also 111 enforced disappearances following detention since 1989.

Since the early 1990s, Amnesty International has issued a series of reports and statements on the human rights situation in Jammu and Kashmir detailing arbitrary detentions by the security forces and the state police and enforced disappearances.¹ The organisation has also consistently opposed human rights abuses perpetrated by armed opposition groups, repeatedly appealing to them to abide by minimum standards of international humanitarian law which prohibit hostage-taking, torture and

¹ For instance, see *India: 'An unnatural fate' - "Disappearances" and impunity in the Indian States of Jammu and Kashmir and Punjab*, AI Index: ASA 20/042/1993; *India: "If they are dead, tell us": "Disappearances" in Jammu and Kashmir*, AI Index: ASA 20/002/1998; *Open Letter to Chief Minister Mufti Mohammed Sayeed*, AI Index: ASA 20/020/2002 and *India: Armed groups in Jammu and Kashmir targeting civilians*, AI Index: ASA 20/016/2005.

killing of people taking no active part in hostilities including members of the Hindu community and issued several statements documenting the same.

Amnesty International reiterates its grave concern that the state has failed to take responsibility to ascertain the fate or the whereabouts of a majority of the disappeared persons, especially in response to habeas corpus petitions filed in the state's courts.

In addition, while Amnesty International has welcomed efforts of the judiciary in a number of high profile cases - including the Chattisingpura case in which a series of court hearings established that the security service had extrajudicially executed five local residents while claiming lawful use of force against suspected "foreign militants" - the organization remains concerned that judicial inquiries into individual complaints are rare and the rights of victim to justice and redress remains unfulfilled.

In the light of the above, Amnesty International urges the Government of India to:

- unequivocally reiterate condemnation of enforced disappearances in Jammu & Kashmir;

- ensure that prompt, thorough, independent and impartial investigations into all sites of mass graves in Jammu and Kashmir are immediately carried out by forensic experts in line with UN Model Protocol on the disinterment and analysis of skeletal remains; make available adequate resources; and seek and accept offers of assistance and cooperation from international experts, both in carrying out the work itself, and in training local personnel engaged in the work. As an immediate step, the grave sites must be secured in order to preserve the evidence;

- ensure that all past and current allegations of enforced disappearances are promptly, thoroughly, independently and impartially investigated and that, where there is sufficient evidence, anyone suspected of responsibility for such crimes is prosecuted in proceedings which meet international fair trial standards;

- ensure that all victims of unlawful killings, enforced disappearance and torture are granted full reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;

- consider assigning the civilian prosecutor's office with the jurisdiction to investigate all cases of suspected enforced disappearances, whichever military, security or law enforcement agency is suspected of being involved; and provide the civilian prosecutor's office with the mandate and authority necessary to be able to effectively investigate all such cases;

- create a single authoritative and comprehensive database of the names and details, including where possible DNA information, of all individuals who have gone missing, who have been subjected to enforced disappearance, or abducted in Jammu and Kashmir since 1989, and create a single official database logging details of all unidentified bodies found in Jammu and Kashmir. Make both databases public and accessible to relatives of these people;

- ratify without delay and without any reservations the UN Convention for the Protection of All Persons from Enforced Disappearance, make declarations pursuant to Articles 31 and 32 recognizing the competence of the Committee on Enforced Disappearances to receive communications from individuals and states, enact effective implementing legislation and implement it in practice;

- Ratify the Rome Statute of the International Criminal Court;

facilitate the long-standing requests for visits to India including Jammu and Kashmir, by the UN Special Procedures, in accordance with their long-established terms of reference for missions, in particular the UN Special Rapporteur on torture, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, and the UN Working Group on Enforced or Involuntary Disappearances by setting dates for them to undertake missions in the near future.

Amnesty International urges the state authorities to support the actions of the Government of India and

ensure all detentions in the state are carried out in accordance with proper procedures, meeting the strict requirements of international law and standards, including by ensuring detaining officials are identifiable by wearing visible ID numbers and for the registration numbers of vehicles to be clearly visible; ensuring all detentions are properly logged; providing medical examination of detainees on entering, transfer and release from detention, ensuring all detainees have prompt access to family members, lawyers and independent courts where they may challenge the lawfulness of their detention, and ensuring accountability for any violations of such procedures;

ensure no one faces reprisals for seeking the truth about the fate of their disappeared relative; establish safeguards against reprisals in order to protect all complainants, victims and witnesses in accordance with international standards;

work with the Union government authorities and international experts to exhume the sites of mass graves in Jammu and Kashmir in accordance with international standards. Ensure the sites are protected from any interference pending such exhumation;

work with the Union government authorities to create a comprehensive database of the names and details of all individuals who have gone missing, who have been subjected to enforced disappearance, or abducted in Jammu and Kashmir since 1989 and to create a single official database logging details of all unidentified bodies found in the state;

provide full reparation, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition, to the victims and their families.

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