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An open letter from Amnesty International to Members of the Jammu and Kashmir Legislative Assembly

As the session of the Jammu and Kashmir legislative assembly opens in Srinagar, Amnesty International is writing to all members of the legislative assembly (MLAs) to raise human rights concerns in the house and ensure that such issues are not ignored during the session.

Although there appears to be a consistent decrease in the overall numbers of members of armed groups operating in Jammu and Kashmir (J&K), human right violations continue to remain a significant and widespread concern in the state.

Amnesty International calls on all MLAs to raise human rights issues during the assembly session and call upon the state government to take immediate action required to remedy the situation. In particular, Amnesty International asks you to raise the specific issues below. While not an exhaustive list of human rights concerns in the state, discussion on these would indicate the commitment to human rights of the state legislative assembly and be an important step towards improving the human rights of all residents of Jammu and Kashmir.

Investigation into unmarked graves

Over 2700 unmarked graves have been identified by an 11-member police investigation team of the State Human Rights Commission (SHRC) in four districts of north Kashmir.

Despite claims of the local police that the graves contained dead bodies of “unidentified militants”, the report points out that 574 bodies have been identified as disappeared locals. The police report concludes that there is “every probability” that the remaining over 2100 unidentified graves “may contain the dead bodies of [persons subject to] enforced disappearances.”

On 16 September 2011, the SHRC directed that the bodies should be identified using all available means and techniques including DNA profiling and dental examination and other forensic pathology techniques. However recommendations of the SHRC have often been ignored by the state government in the past. It is therefore imperative that MLAs call upon the government to ensure that sufficient resources are provided on an urgent basis for such identification by an independent body.

The state government must also 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.

Repeal of the Public Safety Act

In March 2011, Amnesty International released a report in Srinagar calling for an end to administrative detentions in Jammu and Kashmir and a repeal of the Public Safety Act (PSA). In the previous session of the assembly the Chief Minister claimed that the report would be studied thoroughly, the suggestions made in it would be examined carefully and amendments carried out in the law.

In mid July, state Law Minister Ali Muhammad Sagar reportedly told a press conference in Srinagar that the Law Department had approved amendments in the PSA. In August officials from the Home department confirmed that they were examining the issue, but Amnesty International is unaware of any legislation that has been introduced by the Government to amend or repeal the PSA. Detentions under the PSA continue on a regular basis and a number of political leaders and activists remain detained without charge of trial.

Amnesty International urges MLAs to call upon the state government to inform the assembly of the steps undertaken towards repeal of the PSA, along with any time frame that may have been set for it.

Amendment of the Juvenile Justice Act

A violation of human rights of particular concern noted in the Amnesty International report was the detention of children under the PSA – in particular boys above the age of 16 who are considered adults as per the Juvenile Justice Act (JJA). This is inconsistent with both the central juvenile justice legislation and the United Nations Convention on the Rights of the Child, to which India is a signatory.

On 20 April 2011 at a workshop on the Juvenile Justice System in Udhampur, the Chief Minister indicated that the gaps in the JJA would be filled and asked the Law Department to look into this issue. Officials of the Social Welfare department and the Law Department were also quoted in press reports in late June stating that a new legislation on juvenile justice was likely to be tabled in the September session of the state assembly.

These words must be translated into action. Amnesty International calls upon the MLAs to ensure that legislation is introduced to amend or replace the JJA, in order to bring it in line with international law and standards. In June 2011 Amnesty International initiated a global petition calling upon the J&K government to amend the JJA. Over 10,600 members and supporters of Amnesty International worldwide have signed the petition which has been sent to the Chief Minister.

The amendment of the JJA would be a step in the right direction, and its effective implementation – in particular the expeditious formation of Juvenile Boards / Courts in all districts – will ensure that all children and teenagers in Jammu and Kashmir in conflict with the law will have an opportunity to reform and be rehabilitated.

De-notification of “disturbed areas”, repeal of Disturbed Area Act and Armed Forces Special Powers Act

Press reports indicate that the state government is seeking to de-notify parts of the state previously notified as “disturbed areas” under the Jammu and Kashmir Disturbed Areas Act (DAA). The Indian Home Minister has also stated that the areas de-notified as disturbed areas by the state government would also be de-notified by the central government with respect to the Armed Forces (Jammu and Kashmir) Special Powers Act (AFSPA).

This would be a welcome first step to remove the operation of the DAA and AFSPA from parts of the state. However MLAs must further call for a repeal of both legislations as they violate international human rights law and standards.

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