

INDIA

Open letter to Law Minister Jana Krishnamurthi about the forthcoming trial of Abdul Rehman Geelani and three others

8 July 2002

Dear Minister,

Amnesty International is concerned that, in the forthcoming trial of four persons who are charged with various crimes relating to the attack on the Indian parliament on 13 December 2001, international standards for fair trial which India is bound to observe as a state party to the International Covenant on Civil and Political Rights (ICCPR) may be disregarded. Pre-trial proceedings appear to have been flawed and the scheduling of hearings of the forthcoming trial, due to commence on 8 July 2002, indicates that the speed at which the trial is to be conducted may violate the defendants' right to present a full defence. Moreover the special legislation under which the accused are to be tried is flawed and likely to facilitate an unfair trial. Amnesty International is particularly concerned that the accused could be sentenced to death if found guilty of the crimes with which they are charged. Amnesty International opposes the death penalty in all cases as a violation of the right to life.

While acknowledging the obligation of states to uphold law and order and to protect their populations from violent criminal acts such as the attack on the Indian parliament on 13 December 2001, Amnesty International is concerned that in this context human rights protection is all too often relegated to second place. United Nations High Commissioner for Human Rights Mary Robinson said on 20 March 2002: AI am particularly concerned that counter-terrorism strategies pursued after September 11 [2001] have sometimes undermined efforts to enhance respect for human rights.@

Amnesty International is concerned about the right to a fair trial of all four accused, Mohammad Afzal, Shaukat Hussain and his wife Najot Sandhu and Abdul Rehman Geelani. Under international human rights law, as under the Constitution of India, the right to a fair trial applies to all accused persons; those accused of violent political acts must not be discriminated against and have the right to enjoy equality before law and equal protection of law.

Amnesty International in this letter concentrates on the case of Abdul Rehman Geelani whose case details are given in the appendix, to indicate its concerns about the

forthcoming trial which may affect the rights of all the four accused to a fair trial; his case shows that those working in the criminal justice system appear willing to suspend even minimum safeguards available under special anti-terrorist legislation which is itself grossly defective. Amnesty International fears that the trial due to start on 8 July 2002, apparently one of the first in India under the Prevention of Terrorism Act 2002 (POTA), will have a signal effect for scores of other cases being brought under POTA in India and believes that it should therefore be subjected to very careful scrutiny. First indications in the present case are very negative as pre-trial procedures have already involved a range of abuses.

Amnesty International's concerns relate to:

1. Unfair pre-trial procedures

Amnesty International believes that POTA in several of its provisions violates international standards for fair trial and is particularly concerned that even the minimal safeguards contained in POTA have not been implemented in the case of Abdul Rehman Geelani.

POTA provides in section 52 for the preparation of a custody memo to record relevant dates and times of custody. However, the official record of arrest of Abdul Rehman Geelani is faulty; it records the date of arrest as 15 December 2001 he was arrested a day earlier and taken to an undeclared place of detention where police allegedly subjected him to torture including beating and hanging upside down and verbal abuse. Amnesty International fears that Geelani's right not to be subjected to torture was violated, and this was facilitated by his being held in incommunicado detention in an unauthorized place of detention. The safeguard of a custody record to ensure proper treatment of prisoners provided by POTA was violated.

Section 32(4) of POTA provides that a detainee is to be brought before a magistrate within 48 hours of the confession having been made. Under section 32(5) the detainee can report to the magistrate if he or she has been subjected to torture during interrogation in police custody. This is important as section 32 of POTA allows confessions to be admitted as evidence in court.

This important safeguard was disregarded in the pre-trial process. Abdul Rehman Geelani stated that he, along with the three other accused, was brought before the Additional Chief Metropolitan Magistrate (ACMM) on 22 December 2001 who asked the police inspector present if the statement of the accused had been recorded.

He did not give an opportunity to the accused to report if they had been tortured. The presence of police would in itself been sufficiently intimidating to make the accused hesitate to report any ill-treatment they may have been subjected to. The charge sheet incorrectly reports this significant omission when it states that Geelani was brought alone, in the absence of any police officer, before the ACMM and stated before the ACMM that he had not been tortured when his statement was recorded by police (see case details below).

Abdul Rehman Geelani filed an application to the Additional Sessions Judge on 31 May 2002 requesting that the discrepancies contained in the charge sheet be clarified before charges were framed. This application was placed on record but was not taken into account before charges were framed on 4 June 2002.

There is little apparently evidence to link Abdul Rehman Geelani to the offence; the charge sheet merely states that his phone number was found on the mobile phone of the main accused and that in a telephone conversation recorded on 14 December 2001, Abdul Rehman Geelani was heard to comment positively on the attack on the Indian parliament. These are not recognizable criminal offences under Indian law. One of the other accused, Mohammad Afzal, stated at a press conference that Abdul Rehman Geelani had not been involved in the offences. Human rights activists in India have publicly expressed their concern that the available evidence does not warrant the serious criminal charges brought against Geelani and a trial under anti-terrorist legislation.

Amnesty International is concerned that media coverage of the arrests and concerning the person of Abdul Rehman Geelani during the pre-trial period has been extremely prejudicial to his case and that the Government of India has not taken any steps to halt this. The media coverage which largely presented Geelani as guilty before the trial had even begun, must be presumed to impact negatively on Abdul Rehman Geelani's right to be presumed innocent as required by Article 14(2) of the ICCPR and on the impartiality of the POTA court which is to hear the case from 8 July 2002. Reports have alleged that Abdul Rehman Geelani had bought a house in New Delhi with unaccounted for money (*Hindustan Times*, 17 December 2001), indoctrinated students in terrorism (*Hindustan Times*, *The Hindu*, both 17 December 2001) and participated in activities of the now banned Students Islamic Movement of India (*Times of India*, 20 December 2001); human rights activists in India have pointed out that these allegations are untrue. Moreover reports appeared in the media quoting from Geelani's confessional statement which imply his guilt despite the fact that he did not

make a confessional statement (*Hindustan Times*, 21 December, *Sunday Times*, 23 December 2001).

On 21 December 2001, police paraded the four accused before the press. Subsequently the press conference was broadcast on national television; during the press conference only accused Mohammad Afzal was allowed to speak; he reportedly admitted to the attack on the parliament. The other accused were not allowed to speak nor was the press permitted to question any of the accused. Mohammad Afzal during the press conference reportedly declared that Abdul Rehman Geelani had not been involved in the attack. On 2 July 2002, Mohammad Afzal filed a statement in court withdrawing his confessional statement which he declared had been written by the Deputy Commissioner of Police.

Amnesty International believes that parading accused before national media during which they are made to incriminate themselves violates their right to be presumed innocent until convicted according to law in the course of fair proceedings and their right not to be compelled to testify against themselves or to confess guilt. These rights are provided in Articles 14(2) and 14 (3) (g) of the ICCPR respectively.

2. Restriction of the right to present a full defence

Amnesty International fears that the hearings will be conducted in great haste. There are some 180 witnesses to be examined and the schedule presented to the lawyers of the defendants lists 10 witnesses to be heard on 8 July 2002, 11 witnesses on the next day and so on, with all witnesses to be heard on consecutive days within two weeks. Such speed is unprecedented in judicial proceedings in India and may seriously violate the right of the defendants to present a full defence and adequately and fully cross examine prosecution witnesses, as required by Article 14(3)(e) of the ICCPR to which India is a state party.

3. Conditions of detention

At least since the beginning of January, Abdul Rehman Geelani was held in solitary confinement in Tihar Jail, New Delhi; he has not been allowed to leave his cell to walk in the open air and has been denied other facilities that other detainees are permitted to enjoy. An application to the POTA judge was filed in early February and eventually most of these restrictions were withdrawn.

Moreover, Abdul Rehman Geelani had expressed fears in the early weeks of his detention that he may be attacked or killed in jail with the connivance of prison authorities; while in Tihar Jail he had observed other Muslim prisoners being ill-treated solely on account of their religious background. Apparently, these fears have now reduced since Geelani has ceased to be held in solitary confinement.

4. Application of POTA

Human rights groups in India and international human rights bodies, including Amnesty International, have on a number of occasions raised concern about defects of POTA¹; several petitions challenging POTA are pending in the Indian Supreme Court. It has been shown to violate many of the human rights guarantees relating to the rights to liberty and security of the person, to freedom from torture, to a fair trial and to expression, association and redress contained in the Constitution of India, Indian statutory law and international human rights commitments undertaken by India, for instance its ratification of the ICCPR.

Amnesty International is particularly concerned that several provisions of POTA undermine the principle of presumption of innocence: Section 4, under which Geelani is charged, raises an irrebuttable presumption that if a person is found in unauthorised possession of explosive substances, such possession is automatically connected with "terrorist acts" and the offence, normally punishable under the

¹See: *India: The Prevention of Terrorism Bill 2000: Past abuses revisited?* AI Index: ASA 20/22/00, June 2000. Following the lapse of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) in 1995, the Government of India in 1999 requested the Law Commission to undertake a fresh examination of the issue of a suitable legislation for combatting terrorism and other anti-national activities in response to which the Law Commission in April 2000 presented a draft legislation, the Prevention of Terrorism Bill 2000. Civil liberty groups criticised the bill as facilitating violations of numerous human rights which the Government of India is obligated to safeguard. In the wake of the attacks in Washington and New York on 11 September 2001, and a US-led war on terrorism, the Indian Union cabinet on 15 October 2001 approved a new Ordinance, the Prevention of Terrorism Ordinance (POTO) which gives substantial powers to police and executive officials in the fight against terrorism. POTO was signed by the President of India on 24 October 2001 and came into force at once. (See: *India: Briefing on the Prevention of Terrorism Ordinance*, AI Index: ASA 20/049/2001, November 2001) Civil society at large and human rights and civil liberties organizations, minority groups and political parties had not been consulted before the promulgation of the Ordinance but expressed their opposition to it. The National Human Rights Commission, too, criticised the Ordinance and said that existing legislation, if properly implemented, was sufficient to combat all kinds of terrorist activities and that there was no need for an additional law. On 30 December 2001, the Ordinance was re-promulgated and on 26 March 2002, the Indian parliament passed the corresponding bill, which contained only minor changes, which came into effect at once. Scores of cases have since then been brought under the Prevention of Terrorism Act, 2002 (POTA), the majority against Kashmiris.

Explosive Substances Act, becomes triable under the POTA's special provisions, where few legal safeguards and heavier sentences upon conviction apply. However, the organization believes that the possession of a weapon or of an explosive substance cannot imply the involvement of its owner in an offence unless this is proved by the prosecution. Similarly, section 49(6) and (7) of the Act provides that no person accused of an offence should be released on bail unless the public prosecutor has been given an opportunity to oppose the application for such release and that where the public prosecutor opposes bail, it should not be granted unless "the court is satisfied that there are grounds for believing that the accused is not guilty of committing such offence". The granting of bail thus becomes effectively dependant on a *prima facie* assessment of guilt or innocence by the court and the failure of a court to grant bail can be considered as an assumption of guilt. This happens at a stage in the proceedings when the prosecution are not obliged to disclose evidence against the accused. Amnesty International believes that all courts must conduct trials without previously having formed an opinion on the guilt or innocence of the accused.

Amnesty International is concerned that in POTA the act of inviting support for a terrorist organization is made an offence, without a definition of what this act may include. The organization notes that inviting support may not involve any encouragement to commit violent and criminal acts. On the contrary it might include the peaceful, private discussion of political ideas. The Act therefore is potentially leading to violations of the rights of freedom of expression established in article 19 of the ICCPR. Amnesty International believes that, in the interest of legal certainty, prohibited acts must be recognizably criminal offences - so that everyone can modify their behaviour or know whether this behaviour is lawful or not - and avoid the application of criminal laws from being extended by analogy.

Amnesty International believes that section 32 of POTA, providing for confessions made to a police officer to be admissible in trial, subverts standards for assessing evidence set by Indian statutory law and upheld in the Indian Evidence Act, which clearly excludes such confessions from evidence at trial. Expressing its view on an identical section contained in the Prevention of Terrorism Bill, 2000, the NHRC stated that:

This would increase the possibility of coercion and torture in securing confessions and thus be inconsistent with Article 14(3) (f) of the ICCPR which requires that everyone shall be entitled to the guarantee of not being compelled to testify against himself or to confess guilt.

Other sections of POTA legislate the interference of the executive in judicial matters: Section 23(3) of the Act, for example, provides that determination of issues relating to the jurisdiction of Special Courts is decided by the executive and not by law or the judiciary. The provision for "Review Committees" contained in Section 60 does not ensure sufficient independent supervision of the procedures established by the Act as envisaged in international standards. The Review Committees, in fact, make decisions about the denotification of terrorist organizations and the interception of communications, which have a bearing on assessments of guilt or innocence and the admissibility of evidence and thus should be subject to all the guarantees of independence applicable to the judiciary. Section 60 does not contain detailed guidelines concerning the operation of these committees. It appears that they are made up of personnel appointed by the executive and that there is no mention of the right of the detainee to make a representation before a Review Committee. In addition, there are no provisions setting out the powers of such Committees, including for instance whether or not they would have the power to review whether the application of the Act is justified in terms of the objectives or lawful in terms of procedure. No periodicity is established for their reviews and it is not clear whether they would have the powers to discontinue a case if they consider it necessary.

Principle 3 of the Basic Principles on the Independence of the Judiciary states that "The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law."

Amnesty International believes that anti-terrorist legislation such as POTA has undermined the safeguards which India, as a state party to the ICCPR, is obliged to uphold, thus encouraging law enforcement officials and those working in the criminal justice system to assume that legal safeguards and norms of judicial procedures may be suspended in the pursuit of anti-terrorism. Amnesty International calls on the Government of India to strictly adhere to its own constitutional human rights safeguards and international human rights law and standards. They require that all people against whom there is a suspicion of involvement in criminal activities be treated strictly in accordance with law. To discriminate against those suspected of terrorist offences by subjecting them to custodial violence and denying them their right to a fair trial, violates the principle of equality of law and equal protection of law which are fundamental rights recognized in the Constitution of India.

Amnesty International urges the Government of India to take all possible care to ensure a fair trial to the accused in the present case and to investigate, promptly,

effectively, independently and impartially, the violations of rights of these four accused which appear to have taken place in the pre-trial period, and particularly the allegation that Abdul Rehman Geelani was tortured in police custody. Amnesty International also urges once again that the Government of India consider bringing POTA into conformity with international standards for fair trial.

I look forward to receiving your response to the issues raised in this letter. We intend to make this letter publicly available.

Yours sincerely,

Irene Khan
Secretary General

Cc: L. K. Advani, Home Minister
Cc: Justice Verma, Chairman, National Human Rights Commission

Appendix: Case details

Abdul Rehman Geelani, a 32-year-old Kashmiri from Baramulla in Jammu and Kashmir and a lecturer of Arabic at a New Delhi college since 1997, was arrested on 14 December 2001 at around 1.15 p.m. at a bus stop in New Delhi, one day after the bomb attack on the Indian parliament which killed several people. Police in plain clothes took Geelani away in a van in which they allegedly abused and threatened him with dire consequences if he did not confess to his involvement in the bomb attack. He was then taken to a farm house where he was allegedly beaten and hung upside down in the presence of some named senior police officers to force him to confess to the crime. Geelani insisted throughout that he had no connection with the bomb blast. He was, however, forced to sign some blank pages.

Geelani was held in the farm house up to the morning of 16 December 2001 when police brought him before a judge at her residence where police obtained remand of Geelani. He was then taken to the Lodhi Road police station where his wife, two children (10 and 5 years old) and younger brother continued to be held without charges for three days.

At the end of the police remand period, Geelani was transferred to jail custody. In Tihar Jail, New Delhi, he was initially held in a cell which he shared with other

accused in Ward No 8 but after some three weeks he was transferred to a cell in another ward where he was held in solitary confinement; in late January he was returned to ward No 8 but continued to be held in solitary confinement in a cell measuring about 10 feet by 7 feet. He was not allowed to leave his cell and come into the open air as other detainees are allowed to do, could not make use of the canteen facility, was not given fruits that his family brought to the prison and could not use the prison library. An application filed with the POTA court in early February led to his being transferred to a regular cell and other restrictions were withdrawn as well.

Geelani was implicated in First Information Report (FIR) No 417 of 13 December 2001 which lists offences under sections 121, 121A, 122, 124, 120B, 186, 353, 332, 333, 302, 307 of the Indian Penal Code (IPC), sections 25 and 27 of the Arms Act and sections 3, 4, 5 and 6 of the Explosive Substances Act for allegedly conspiring to attack the Indian parliament. The FIR did not mention any names of suspects. The other accused arrested are Mohammad Afzal, Shaukat Hussain and his wife Najot Sandhu who at the time of arrest was seven or eight months pregnant and gave birth in jail after being denied bail. She appears to have been charged with the range of offences solely because she is the wife of another accused. All the four accused come originally from Jammu and Kashmir.

According to the details contained in the charge sheet, on 19 December 2001, police added charges of >terrorism= under sections 3 [commission of terrorist act], 4 [possession of arms], 5 [enhanced penalty], 20 [membership in a terrorist organization], 21 [support for a terrorist organization], 22 [fundraising for a terrorist organization] of the Prevention of Terrorism Ordinance, 2001 (POTO, now POTA).

On 14 May 2002, police submitted the charge sheet. The only evidence against Geelani mentioned in the charge sheet is that of his telephone number was found on the mobile phone of the main accused and in a recorded phone conversation on 14 December, before his arrest, Geelani is reported to have commented positively on the attack on parliament.

Geelani=s lawyer showed the charge sheet to his client on 20 May 2002; Geelani then pointed out several inaccuracies which were summarized in an application submitted to the Additional Sessions Judge, Delhi, on 31 May 2002 with the request to clarify the discrepancies in the charge sheet before framing charges. Its main points are:

-- The charge sheet states that Geelani did not make any statement before the Deputy Commissioner of Police on 21 December 2001 and signed a paper to that effect

on the same date; that Geelani was brought before the Additional Chief Metropolitan Magistrate (ACMM) on 22 December 2001 alone, without police personnel being present and that he stated before the ACMM that he had not been tortured to make his statement before police and had no complaint against the police officer. Geelani pointed out that in fact, all the four accused were brought early in the morning of 22 December 2001 to the ACMM court; while still in police custody in a police van outside the court, a named inspector forced Geelani to write and sign the statement as per the dictation of police. The four accused were then taken together to the ACMM who asked the police inspector present if their statements had been recorded; none of the accused persons who were brought in handcuffs before the magistrate, were given an opportunity to make any statement nor were they asked if they had been tortured.

-- One of the other accused, Mohammad Afzal, stated at the press conference that Geelani had not been involved in the commission of the offences for which the four persons are being held. This statement was arbitrarily not recorded in the charge sheet

-- The date of arrest was recorded in the charge sheet as 15 December 2001 whereas Geelani was taken into custody and held in an undeclared place of detention on 14 December 2001.

This application was placed on record. On 4 June 2002 the charges were framed; some further charges were added; these include charges under section 123 IPC against Najot Sandhu which makes it an offence for a person who has knowledge of a planned criminal offence not to inform relevant authorities.