

INDIA

Impunity must end in Jammu and Kashmir

1. Introduction

- ❑ On 27 March 1996, the dead body of human rights lawyer Jalil Andrabi was found in the river Jhelum, 19 days after he had been seen taken away by military personnel.¹ His killers remain free.
- ❑ On 30 March 1996, 23 members of the faction of the Jammu and Kashmir Liberation Front led by Amanullah Khan were killed when police fired mortar shells at their office in Srinagar.² Their killers remain free.
- ❑ On 18 September 1997, 11 people, including women and children, were killed by mortar shelling at Arin Bandipora. The killers remain free.
- ❑ In January 1998, nine people, including a woman and child, were killed in Kadrana village, Doda district, when army soldiers opened fire on people protesting an earlier arrest. The killers are free.
- ❑ In July 1998, 40 people, including women and children were killed in and near Surankote. The killers remain free.
- ❑ On 28 June 1999, fifteen members of two Muslim families, including women and children, were shot dead at Surankote, Poonch district, by unidentified gunmen wearing army uniforms who shot two more women as they fled. The killers remain free.
- ❑ On 20 March 2000, 36 Sikhs were shot dead in Chittisinghpora; on 25 March 2000, five men were unlawfully killed who were implicated in the earlier killings. On 3 April 2000, seven people demonstrating against the earlier two incidents were shot dead by police. The killers of these 48 people remain free.
- ❑ On the night of 1 August 2000, at least 105 people were shot dead in several different incidents. The killers remain free.
- ❑ On 15 February 2001, six people were shot dead in Haigam during protests at an earlier death in custody when security forces and/or police opened fire on them. The killers remain free.

¹For details, see: *India: Jammu and Kashmir: Remembering Jalil Andrabi*, AI Index: ASA 20/10/97.

²For details see: *India: Human rights abuses in the election period in Jammu and Kashmir*, AI Index: ASA 20/39/96.

This list is by no means exhaustive. Many more such incidents have come to Amnesty International's attention and others must be assumed to go unnoticed and unreported. The unlawful killings described above all involve a large number of victims. Almost daily, unlawful killings of one or two individuals are reported in Jammu and Kashmir as well. Amnesty International recorded 70 deaths in custody and extrajudicial killings in the period January to August 2000 alone. The cease-fire in force since 28 November 2000 has not improved the human rights situation in the state as deaths in custody, extrajudicial executions by state agents and unlawful killings by armed groups continue unabated. Between the beginning of the cease-fire and mid-February 2001, some 23 extrajudicial executions have been reported in the media, in 15 of which the Special Operations Group have been implicated.³

Common to all of these instances is that the perpetrators of unlawful killings are free. Many of the unlawful killings in Jammu and Kashmir have been perpetrated by armed opposition groups who have failed to distinguish between combatants and non-combatants and to spare the physical integrity and lives of non-combatants as required by international humanitarian standards. Amnesty International has repeatedly urged armed groups in Jammu and Kashmir to act in consonance with minimum standards of humanitarian law and today reiterates this appeal.⁴ Other unlawful killings have been carried out by agents of the state, including state police, central police force and military or paramilitary forces.

Many reports of unlawful killings in Jammu and Kashmir make it impossible for observers to decide who the perpetrators were. For instance, in the case of the killing of 36 Sikhs in Chittisinghpura in March 2000 (see below for details), observers and investigators have provided widely varying interpretations, alleging that government agents, former militants or armed opposition groups carried out or instigated the killings. In the absence of hard fact resulting from independent inquiries, rumour and speculation about who might have profited or expected to profit from a killing flourish. Such speculation may sometimes be taken for fact and result in further violent action to avenge an assumed action. The uncertainty about the identity of the perpetrator also gives other people who consider the use of violence the confidence that they would not be held to account.

Amnesty International calls on the Government of Jammu and Kashmir to take seriously its obligations under international human rights law to stop the unlawful killings by anyone, be they state agents or members of armed opposition groups and to end the impunity with which they are committed. Impunity, the freedom from punishment, is crucially responsible for

³According to official sources, 133 encounters took place between the beginning of the cease-fire and mid-February 2001; in these, 119 civilians, including surrendered militants, and 78 militants were killed.

⁴*India: Appeal to armed opposition groups in Jammu and Kashmir to abide by humanitarian law*, AI Index: ASA 20/38/97.

further unlawful killings as past and potential perpetrators assume that they will get away with murder as did others before them. In the cases listed above, the perpetrators have not have not been arrested and criminally charged, or if police or members of the security forces, been suspended from their posts, and may continue to enjoy impunity for their actions.

Impunity is one of the main contributing factors for the continuing patterns of human rights violations the world over. By bringing perpetrators to justice, governments send a clear signal that such violations will not be tolerated and that those found responsible will be held fully accountable. When there is failure to investigate human rights violations and those responsible are not punished, a self-perpetuating cycle of violence is set in motion resulting in continuing violations of human rights.

Following the fifth anniversary of the killing of Jalil Andrabi and the first anniversary of the killings at Chittisinghpora, and indeed the daily anniversary of many other victims' deaths and suffering, Amnesty International urgently calls on the Government of Jammu and Kashmir to break the cycle of impunity and further human rights violations by undertaking the following measures in accordance with the United Nations (UN) Principles on the Prevention and Investigation of Extra-legal, Summary and Arbitrary Executions:

- **take all appropriate measures to prevent unlawful killings;**
- **set up prompt, independent and impartial inquiries into every incident of unlawful killing to ensure that the truth about the killings is revealed without further delay;**
- **ensure that these inquiries fully conform to the requirements of the Principles of the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions;**
- **ensure that the results of inquiries are promptly made publicly accessible;**
- **provide commitments that perpetrators will be held to account and that sanction for prosecution will not be withheld;**
- **improve training for all police and law enforcement agencies in the lawful use of force in accordance with international standards and that those who breach international standards will be held accountable;**
- **ensure transparency and openness by permitting international human rights groups like Amnesty International and human rights mechanisms of the United Nations regular access to the state.**

Amnesty International also calls on the armed groups in Jammu and Kashmir to abide by international humanitarian standards which prohibit the killing of civilians and to take action against those of their members who ignore them.

Amnesty International urges all sides to refrain from using the human rights of people in Jammu and Kashmir for political ends and from seeking to gain political advantage through

abuses of human rights. The political space provided by the cease-fire should be used by all sides to the conflict as an opportunity to reflect on the high cost to human lives of the conflict and to seek ways to better protect human rights in the state. Amnesty International calls on all sides to make firm commitments to abide by the international standards by which they are bound which protect human rights.

2. Impunity in Jammu and Kashmir

Amnesty International is deeply concerned about the disregard for the lives and physical integrity of people in Jammu and Kashmir shown by all sides in the state. The right to life is laid down in major international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) which India has ratified, and in the Indian Constitution. Article 6(1) of the ICCPR says: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Likewise, Article 3 common to the four Geneva Conventions of 12 August 1949 strictly forbids the killing of anyone "taking no active part in 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".

Amnesty International believes that the language publicly used by state officials in Jammu and Kashmir both betrays and strengthens disregard for the most fundamental of all rights, the right to life. Chief Minister Dr Farooq Abdullah is on record frequently to have called for the 'elimination' of militants and the 'sanitization' of areas of militants' presence. Responding to local residents' protest that the five victims of the shooting on 25 March 2000 at Panchalthan were their relatives and not foreign militants, he said in early April 2000: "I assure you that if the charge that the victims were ordinary civilians and not foreign militants, as claimed by the forces, is true, I will take stern action against those responsible. I will skin them."⁵ On 15 January 2001, following a physical attack on him, the Chief Minister reportedly said that "militants should be shot down at any cost" and directed police to shoot militants at first sight as "there is no more room left for them in jail".⁶ Amnesty International believes that such language incites further violence and contributes to an atmosphere of impunity in which state agents may feel entitled to commit extrajudicial executions on the assumption that they will not be held accountable.⁷

⁵*Outlook*, 17 April 2000

⁶*The Hindu*, 16 January 2001.

⁷Amnesty International cannot judge if the quotes mentioned here represent state policy. Some observers believe this to be the case and some media reports convey the same message. For instance, a *Times of India* article quoted unnamed sources as saying: "'As for the BJP's call for giving us a free hand', said an officer, 'we are doing fine.' He said that with foreign mujahids and even with local militants caught in cordon-and-search operations, the security forces are ruthless. 'Please don't quote me', he said, 'but the unwritten policy is that we avoid taking prisoners.'" Siddharth Varadarajan, "No hot pursuit, we'll wait in ambush: Army", in: *Times of India*, 18 August 2000.

Many of the killings allegedly perpetrated by armed opposition groups in Jammu and Kashmir have been marked by a failure to distinguish between legitimate targets and civilians whose lives and physical integrity must be spared. Frequently women and children and members of minorities have died in indiscriminate shootings. On 10 February 2001, 15 members of three families in Kot Chalwal, Budhal tehsil, were reportedly deliberately shot dead by members of armed groups when they refused to provide food and shelter to them. Among the dead were three women and seven children. In the same month, leader of the Hizbul Mujahideen, Syed Salauddin is reported to have said, "If killings continue we may be compelled to take the unpleasant step of targeting families of Indian troops so that they understand the anguish and pain of relatives of civilians slain by them."⁸ Suicide bombers of armed groups are a new phenomenon in Jammu and Kashmir; such attacks have cost a large number of civilian lives.

Impunity in Jammu and Kashmir is not restricted to the commission of unlawful killings; rape, torture and 'disappearance' in the custody of the state are also perpetrated with impunity. This report, however, focuses on unlawful killings as Amnesty International has observed an upsurge of custodial deaths and extrajudicial killings by agents of the state as well as unlawful killings by armed groups in recent months and believes that the impunity surrounding this particularly grave violation of human rights needs to be urgently addressed by the Government of Jammu and Kashmir.

The general climate of impunity in Jammu and Kashmir may be seen both as facilitating and encouraging further violations of human rights by security forces and police in the state. Repeated expressions of concern by Amnesty International about the rising number of incidents of custodial deaths and extrajudicial executions and calls for independent inquiries have met with consistent silence by the state authorities. Government authorities have so far not allowed Amnesty International or the human rights mechanisms of the United Nations to visit the state and independently investigate human rights violations. The denial of access to international scrutiny also feeds the climate of impunity.

If thorough and independent inquiries are not carried out as required by international human rights standards, the impression may arise that the Government condones the abuses described. This would exacerbate the concerns which Amnesty International has about these unlawful killings. The speedy and transparent investigation and trial of those responsible for unlawful killings are not only important because justice always needs to be done and needs to be seen to be done but also because this would signal that the government is committed to ending impunity in the state. Residents in Jammu and Kashmir would regain confidence that human rights protection is a reality to which the government is committed.

Many of the killings listed above were portrayed by the authorities as occurring in the context of 'encounters' between the security forces and police on one hand and militant groups on the

⁸*Kashmir Times*, 19 February 2001.

other. Witness statements often conflict with official accounts and judicial investigations have in some cases revealed that officials of the state were indeed responsible for such killings.

There appears to be a perception on the part of the authorities that governments may or may not conduct independent inquiries. Following the killings in Pahalgam and other places in the night of 1 August 2000, Chief Minister Farooq Abdullah said on 9 August 2000 before the press in Humhuma: "We have nothing to hide. If people feel there is need to hold a judicial inquiry, we will definitely hold it." The debate in both Houses of the Indian Parliament focussed for several days on whether a judicial probe into the killings on 1 August in Anantnag district would be politically advisable, in conformity with security considerations, or constitutionally possible. When several members of the *Lok Sabha*, the lower house of the Indian parliament insisted on a judicial inquiry, Home Minister L.K. Advani said, "a probe at this stage would only create doubt in the minds of the people at a time when Pakistan has launched a high-pitched propaganda, accusing the Indian security forces and the Jammu and Kashmir Chief Minister of masterminding the killings". Besides, he said, a probe would demoralize the armed forces.

Prompt, independent and impartial inquiries into grave human rights violations are, however, not a favour a government may bestow or withhold, nor dependent on public demand or a matter of political expediency: they are a matter of legal obligation which governments are bound to uphold. Governments are under an international obligation to prevent human rights abuses and to ensure that if allegations are brought that they have been committed, they are independently and impartially investigated with a view to trying perpetrators in a court of law in accordance with international standards for fair trial.

Yet, the majority of deaths in custody, extrajudicial executions and deaths when law enforcement personnel resort to excessive or indiscriminate use of force are never investigated; they are blatantly ignored by the authorities. Family members of six young men reportedly unlawfully killed on 15 May 2000 in Sopore demonstrated for days and blocked roads after the victims' bodies had been hurriedly buried in Karnah, some 15 km from Sopore, but police reportedly used teargas to disperse the crowds and imposed and enforced curfew in the area. The bodies were eventually disinterred and re-buried in their home communities. Relatives of the six young men stated that they had been arrested by security forces on 14 May at Tangdar, Sopore while congregating and preparing to preach their faith. Political leaders who attempted to travel to the area to indicate their sympathy were placed under house arrest. No inquiry was set up and no action taken to prevent a recurrence of the killings.

The killing of 36 Sikhs at Chittisinghpura (see below for details) has not been investigated, despite national and international expressions of concern. On several occasions, inquiries were publicly announced but in early 2001 the likelihood of any inquiry into the killings taking place appears remote.

In some of the instances of unlawful killings mentioned above, inquiries were announced - usually following a public outcry which necessitated some official response. However, many did not actually take place or if begun, did not fulfil their objective of revealing the truth.

Following mortar shelling of houses in Arin Bandipora on 18 April 1997, in which at least 11 people, including women and children were killed, Chief Minister Dr Farooq Abdullah expressed his shock at the incident and ordered a magisterial inquiry to be completed within a month. Accordingly the District Commissioner of Baramulla constituted a single member inquiry commission but to date, it is not known if it ever began its work and nobody appears to have been questioned. Local residents blamed the Border Security Force (BSF) for the incident but BSF officials held the Rashtriya Rifles (RR) responsible.

Similarly following the killing of 17 people, including three women and nine children at Surankote on 28 June 1999, Chief Minister Abdullah assured the aggrieved families that no effort would be spared to punish the culprits. A magisterial inquiry was to probe the incident. Officials claimed the killings had resulted from group rivalry within the Hizbul Mujahideen. The dead were relatives of two commanders of that group but local people suspected security forces' involvement in the killings. The inquiry does not appear to have been carried out.

Again, on 23 November 2000, the Government of Jammu and Kashmir ordered a magisterial inquiry into the killing of four Sikh and one Hindu truck drivers and wounding of six others by unidentified gunmen wearing police uniforms on two different places on the Srinagar-Jammu highway near Banihal two days earlier. The official announcement came after days of persistent protests and strikes by truckers who brought Jammu and adjoining towns to a standstill. The inquiry does not appear to have begun. According to information from Jammu and Kashmir, nobody has been questioned in connection with the incident. An earlier killing of several Hindu truck drivers at Qazigund on 29 February 2000 appears not to have been investigated either.

When investigations of human rights violations do take place officials have obstructed the course of the investigation by withholding evidence or refusing to obey court orders to attend hearings. The process of legal redress sought by relatives of the five men killed at Panchalthan has ground to a halt as the government has reportedly refused to pay for DNA tests which are indispensable in establishing the identity of the victims.

In other instances, key witnesses and complainants have received threats to their lives if they appear in court. Amnesty International is aware of several cases in which it has required extraordinary courage by victims and witnesses to approach police and seek legal redress as their protection is not guaranteed. Peer Noor-ul Haq, arrested in June 1999 after he lodged a bribery complaint against police officers was detained for ten days in police custody during which he was subjected to torture but also became a witness to torture of three other men who subsequently died. A case was brought against police officers for the killing of the three men but Peer Noor-ul Haq, the main witness in the case, was repeatedly threatened by police that

he would be killed if he did not withdraw from the case. Both the State Human Rights Commission and the High Court of Jammu and Kashmir ordered that protection be given to him and his family but no action was taken. When renewed threats were issued as the day of the trial on 28 March 2001 approached, Amnesty International again expressed fear for his safety to the authorities and urged them to take adequate measures to protect his and his family's lives.

The few inquiries that have taken place have been surrounded by secrecy and their findings have not been made public. The Pandian Commission of Inquiry into the shooting incident on 3 April at Brakpora is so far the only inquiry set up under the Commission of Inquiry Act which has completed its work. The government summarized its findings; this summary was then presented to the public by the Chief Minister of Jammu and Kashmir who posed for cameras showing this report and that of the inquiry into the unlawful killings at Pahalgam on 1 August (for details see below). Neither report has been made available to the public.

Secrecy particularly surrounds internal army inquiries. In such cases, it is not known what their outcome has been and if anyone has been held to account. According to eye-witnesses, army personnel in the night of 30 January 1998 surrounded a mosque in Kadrana village demanding that the congregation hand over two suspected members of an armed group allegedly hiding in the mosque. When the villagers protested, soldiers reportedly opened fire without provocation as people came out from the mosque, apparently deliberately shooting to kill them. Nine persons were killed and at least 10 injured. According to some reports, as many as 17 people died as a result of the shooting. A defence spokesperson stated that local residents protested against the area being searched and threw stones at troops and injured three soldiers whereupon soldiers opened fire in self-defence.

A senior army spokesperson later expressed "deep anguish" over the "unfortunate incident" and said an army inquiry had been launched and "any official found guilty will be punished strictly by military law". However, given the contradictory statements of events by army and eyewitnesses, and the alleged involvement of army personnel in the possible extrajudicial executions, Amnesty International does not believe it advisable to entrust such an inquiry to army personnel as there is a high risk that such inquiry will not be impartial.

Army sources have on a number of occasions in past years published numbers of army personnel said to have been demoted, reprimanded or punished following trial by court martial for human rights violations; however, the nature, place and date of occurrence of the offences for which they were held to account, and the names of perpetrators and victims have never been revealed. Court martials are usually held *in camera*; this process, according to human rights observers in Jammu and Kashmir, puts many people off testifying as they feel exposed to retaliatory action without a possibility of public support and solidarity.

To restore the confidence of people in Jammu and Kashmir, justice must be seen to be done. There have been reports that findings of investigations into unlawful killings were deliberately withheld in the interest of the morale and image of the security forces. Following

a probe into the killing of 19 men at village More Bachai in Poonch district on 1 April 1999 which apparently exonerated members of armed groups from the responsibility originally ascribed to them for the killings, a National Conference legislator reportedly raised the issue in the Legislative Assembly. The Chief Minister was reported to have told the House that on account of the security forces bringing great sacrifices while fighting militants, nobody should raise an accusing finger against them. Similarly when on 6 March 2000, the Chief Minister was reportedly questioned by a legislator of his own party about the promised inquiry into the killing of 17 people at Surankote on 28 June 1999, he is reported to have admitted that a security agency had been responsible for the incident but refused to divulge details as this would go against the national interest.

The argument that greater transparency and accountability would undermine the morale of the army does not convince Amnesty International. The obligation to protect and promote human rights is of overriding importance and cannot be put on hold for a presumed effect on subjective motivation. Moreover, shielding an offender from exposure and shame cannot be a means to strengthen morale -- on the contrary it will send a signal that the military leadership tolerate abuses and cover them up, irrespective of law, morality and the need for discipline in the armed forces.⁹ Punishment for grave human rights violations can only act as a deterrent against future human rights violations if it is known to have been imposed and if the offence has been exposed.

In the few cases where perpetrators have been identified in inquiries, no consequences have been drawn to punish the perpetrators. The person responsible for the killing of Jalil Andrabi (see case description below) in March 1996 was identified in the following year yet five years later he remains free. Again, the Pandian Commission of Inquiry submitted its findings to the Government of Jammu and Kashmir in October 2000 in which it identified those responsible for the killings on 3 April, but they remain free. An investigation into the killings on 1 August 2000 in Pahalgam by a team headed by the security adviser to the government, Lt.-Gen. J.R. Mukherjee, submitted its findings identifying perpetrators but no decisive action appears to have been taken to hold them to account.

⁹“Although it sometimes raises political temperatures to get to the truth, it has its dividends. Terrorism cannot be fought by the Army and police indulging in excesses but by a system that is seen to be scrupulously fair because fighting the terrorists also involves winning the local people to the cause.” in: *The Indian Express*, 2 November 2000.

In cases where security personnel are believed to be responsible for human rights violations, the state needs to give sanction for prosecution.¹⁰ Amnesty International has described in detail how this requirement forms a serious impediment to bringing security personnel to justice in the case of ‘disappearances’¹¹. The same obstacle prevails in the case of unlawful killings. For instance, the person identified in the official inquiry as the key suspect in the killing of Jalil Andrabi has several charges pending against him for the killing of ten persons. These allegations emerged in the course of the investigation of the killing of Jalil Andrabi; in most of the cases sanction to prosecute was sought in late 1998 but had not been given by March 2001.

Specific laws in force in Jammu and Kashmir also contribute to the prevalence of impunity. The Jammu and Kashmir Armed Forces Special Powers Act, 1958, in force in the state since December 1990, gives security forces sweeping powers which facilitate arbitrary arrest and detention and extrajudicial executions and reinforce the impunity of offenders acting under it. Section 7 of the Act specifies that “no prosecution ... shall be instituted, except with previous sanction of the Central Government against any person in respect of anything done or purported to have been done in exercise of the powers conferred by this Act”.

3. Cases

a. The unlawful killing of Jalil Andrabi in March 1996

Jalil Andrabi (36), a prominent lawyer and human rights activist was taken away on 8 March 1996 by members of a paramilitary Rashtriya Rifles (RR) unit led by a Sikh major; while a *habeas corpus* petition filed by the Jammu and Kashmir Bar Association was pending in the High Court, his dead body was found on 27 March. A year after his death, Amnesty International noted in March 1997 that one year of delays in investigating Jalil Andrabi’s death appeared to indicate the administration’s intention to consign his fate to oblivion. That intention appears to persist.

A Special Investigation Team (SIT) under the Deputy Inspector General of Police set up on High Court orders, first to investigate the “disappearance”, then the death of Jalil Andrabi, was subsequently reprimanded by the state’s High Court for not having done enough and for arbitrarily having changed its composition and lines of reporting. The judge also reminded the state of its responsibility for the safety of every citizen. In response to the SIT naming several persons suspected of being involved in the killing, the High Court on 13 August 1996

¹⁰Public servants are protected from criminal prosecution for acts ‘done in good faith’; relevant provisions are contained in sections 45 and 197 of the Code of Criminal Procedure which require that the state explicitly provides permission or ‘sanction’ for prosecution.

¹¹India: “If they are dead, tell us” - “Disappearances” in Jammu and Kashmir, AI Index: ASA 20/02/99.

directed all police and security forces “to make joint efforts for the arrest of the persons who according to [the] investigating agency are suspects in the case and are required by them. The concerned authorities should ensure the arrest of concerned persons ... within three weeks from today and hand them over to ... [the SIT] for investigation”. It also directed that the post mortem report be handed over to the SIT within one week. The names of the suspects were not made public. In late autumn 1996, the Special Investigation Team was reported to have complained that neither the Rashtriya Rifles nor the army was co-operating with it, making its task very difficult. An order of the Jammu and Kashmir High Court in late 1996 noted the fact “that the functionaries of the Union of India have not been cooperating with the Investigating Team in a proper manner. We are sad to find that after eight months, [the] post mortem report has not been furnished to [the] Investigating Team.”

An intervention by the National Human Rights Commission did not contribute to the resolution of the case. Using its discretionary powers¹² it had sent a senior officer of its investigation division to Jammu and Kashmir to investigate the case. Subsequently the Commission decided to make the inquiry report resulting from the visit available to the High Court in Srinagar.

¹²The Protection of Human Rights Act 1993 does not mandate the NHRC to investigate allegations of human rights violations by the armed forces.

Amnesty International repeatedly called on the Government of India to ensure a prompt and impartial investigation into Jalil Andrabi's death with a view to bringing perpetrators to justice. In September 1996, the Government of India said¹³: "The allegations of [a] Government hand in the killing of human rights activists in J&K have been made earlier also. In all incidents of killings of so-called human rights activists, Government has made available clinching evidence showing that they were targets of one or other militant organization, whose ideology did not match with theirs. It is also pertinent to ask to what extent it would be justified to call them human rights activists, whose apparent leaning or sympathy with particular terrorist groups have earned them the wrath of other similar groups." It said the SIT was continuing its task, "monitored closely and exclusively by the High Court, [so] it is difficult to make further comments" but then reiterated its view that "it is common practice that these terrorist outfits precipitate a major incident or the killing of a prominent person just on the eve of international conferences in order to gain propaganda mileage¹⁴." Given the constructive part played by Jalil Andrabi in securing human rights protection in the state and given the eye-witness accounts of his arrest, Amnesty International cannot consider this response to be meaningful.

In April 1997, the SIT presented its findings to the High Court; it identified a named army Major of 103 unit of the Territorial Army, based at Ludhiana, Punjab, as *prima facie* responsible for the death of Jalil Andrabi. A representative of the army told the court that the Major had been engaged for a specific period of time and had been 'disembodied' [sent away after serving his term of contract] on 7 November 1996; moreover he had not committed the offence in his official capacity. The SIT team further said its investigation was complete and it could submit its *challan* - the charge sheet submitted by police to the court - even in the absence of the accused. The government subsequently said the Major could not be traced. On 1 January 1999, the military record of the accused was produced in court; on that occasion, the lawyers for Jalil Andrabi requested copies of the final charge sheet, the post mortem report, and other relevant documents which they had not been able to obtain.

Four and a half years after the killing of Jalil Andrabi, the case was finally reactivated when on 11 October 2000, the SIT handed in its inquiry report and the High Court ordered a copy of the report to be handed over to the lawyers representing Jalil Andrabi. The post mortem report was also made available then; it detailed the injuries found on Jalil Andrabi's body and gave the cause and approximate time of his death. On 18 October 2000 the High Court of

¹³The letter of September 1996 was in response to Amnesty International's report *India: Human rights abuses in the election period in Jammu and Kashmir*, AI Index: ASA 20/39/96 which inter alia expressed the organization's concern about the killing of several human rights activists, including Jalil Andrabi and Ghulam Rasool Sheikh.

¹⁴Jalil Andrabi was to have represented the Kashmir Commission of Jurists before the United Nations Human Right Commission in Geneva on 18 March 1996; in January 1996, Andrabi had told newsmen that he knew he was on the government hit list since attending the Commission in Geneva the year before.

Jammu and Kashmir issued orders to the Head of the SIT to place the *challan* in case FIR 139/96 under several sections of the Ranbir Penal Code including section 302 [murder] before the court of competent jurisdiction and to the commanding officer of the Major to render all possible assistance to produce the accused before the court.

An order issued by the head of SIT, Doda, Udhampur Range of 30 November 2000 addressed to the Commanding Officer 968 RLY Eng. Regt. (TA) Ludhiana where the Major is reported to be serving, required the unit to bring the accused before the court of the Chief Judicial Magistrate (CJM) Budgam on 11 December 2000 when the *challan* would be produced; a further letter of the SIT on 16 December 2000 directed the Commandant of the unit to hand over the suspect to the SIT. An order of the SIT of the same date, repeated on 22 December, directs the Additional Director General of the Territorial Army to hand over the Major to the SIT to produce him before the CJM Budgam.

On 26 December 2000, the *challan* was presented in the court of the CJM Budgam in the absence of the accused; the court noted that repeated requests had been ignored by army authorities to bring the suspect to court. It noted that since the *challan* was complete, section 125 of the Army Act¹⁵ and section 549 Code of Criminal Procedure¹⁶, presented army authorities now with the options to try the suspect by court martial or in a civilian court. On 22 January 2001, the Chief Judicial Magistrate received a letter from the army stating the suspect was to be tried under the Army Act, i.e. by court martial. On the same day, the High Court Bar Association submitted a writ petition seeking court direction that the accused should be tried in a civilian court. The Bar Association argued that earlier court orders had not been complied with as the Major had not been brought before the court as directed, and that the CJM, not being the trial court, had no jurisdiction to hand over the case to a court martial; moreover the original *habeas corpus* petition was still pending in the Jammu and Kashmir High Court and as such the case could not be tried. The CJM then suspended the handing over of case materials to the court martial till 31 January 2001. On that date the CJM granted the request of the High Court Bar Association for adjournment up to 26 February 2001, then 15 March as the petitioner had not obtained the requested high court direction yet. Meanwhile the High Court has taken cognizance of the petition and the court martial has been stayed pending a High Court decision.

¹⁵“When a criminal court and a court martial have each jurisdiction in respect of an offence, it shall be within the discretion of the officer commanding the army, army corps ... in which the accused person is serving ... to decide before which court the proceedings shall be instituted, and if that officer decides that they should be instituted before a court martial, to direct that the accused person shall be detained in military custody.”

¹⁶If a person who is to be tried by court martial, is brought before a magistrate, the “magistrate ... shall deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment ... to which he belongs ... for the purpose of being tried by court martial.”

Meanwhile the army officer is reportedly free and does not appear to have been suspended from service.

b. The unlawful killings at Chittisinghpora on 20 March 2000 and connected killings

In the evening of 20 March 2000, some 15 to 17 unidentified gunmen, some in army uniforms, shot dead 36 Sikh men at Chittisinghpora in Anantnag district. The Indian government held two armed groups, the *Lashkar-e-Taiba* and the *Hizb-ul Mujahideen* responsible but their spokesmen denied any involvement. Shortly after assertions of the Government of Jammu and Kashmir that every effort would be made to find the men responsible for the killing on 20 March, a joint unit of army personnel and the Special Operations Group (SOG) of the state police killed five men in Panchalthan village, Anantnag district, claiming that the men were foreign militants responsible for the earlier killings at Chittisinghpora. Despite high level praise for the elimination of the “butchers responsible for the Chittisinghpora massacre”¹⁷ and a Zonal Police Headquarters statement on 25 March that “the militants killed were involved in the Chittisinghpora killings”, local observers doubted the official account claiming that the five men were local villagers picked up between 21 and 24 March and deliberately killed.

The local administration offered to have DNA tests done to identify the dead men. The Chief Judicial Magistrate (CJM) ordered an investigation of the killings to be conducted by the Deputy Superintendent of Police, Anantnag. During the hearings that followed, the SSP Anantnag who had initially welcomed the inquiry, said that he had nothing to do with the operation which had been carried out by the army. He asserted that he had announced that the men killed in the incident were foreign militants involved in the Chittisinghpora killings only after the army had suggested he provide that explanation. The police inquiry submitted its three-page report to the CJM on 2 May 2000, describing the exhumation and identification of victims of the shooting at Panchalthan.

Earlier, in late March, when the promised exhumations of the five men killed at Panchalthan were delayed, public protests grew daily more strident. On 3 April, several thousand demonstrators marched to Anantnag to present a petition to the Deputy Commissioner to speed up the exhumation. When the agitated demonstrators reached Brakpora, members of the SOG and the Central Reserve Police Force (CRPF) opened fire, apparently indiscriminately, killing seven people outright and injuring at least 15 others, one or two of whom died later. On 4 April, amidst angry demands of legislators for a probe, Chief Minister Farooq Abdullah ordered the setting up of a judicial inquiry into the shooting incident and also announced an inquiry into the Chittisinghpora incident. It appears that an additional magistrate was eventually entrusted with the inquiry into the Chittisinghpora killings. Nothing has been heard of any findings by it.

¹⁷Union Home Minister L.K. Advani during his visit to the state in March 2000.

The Commission of Inquiry under Justice S.R. Pandian was notified on 20 May 2000; it was entrusted solely with the inquiry of the Brakpora shooting incident. State police officers present at the site of the shooting and senior police officers had been suspended after the incident.

The Commission under Justice Pandian submitted its inquiry report on 27 October 2000 to the Government of Jammu and Kashmir.

Following a cabinet meeting on 31 October 2000 which accepted the Pandian Commission report, Chief Minister Dr Farooq Abdullah presented the government's summary of its findings saying that the Pandian Commission had held three men of the SOG and four Central Reserve Police Force (CRPF) personnel responsible for using excessive force in 'unprovoked' and 'unjustified' firing at Brakpora. At the same time he presented the findings of the report of the three member commission under Lt.-Gen. J.R. Mukherjee which inquired into the incident at Pahalgam on 1 August 2000 (see below) in which at least 33 people, including 23 pilgrims had been killed. It held 17 SOG and CRPF personnel responsible for using excessive force in the face of assault by two militants.

The Chief Minister said that the cases relating to the CRPF would be referred to the central government for appropriate action. Murder charges would be brought against the three SOG personnel identified by the Pandian Inquiry Commission and those identified by Lt.-Gen. J.R. Mukherjee's investigation, and a special team would be set up to prepare cases against them. On 19 March 2001 he said before the Legislative Assembly that the three SOG officers has been placed under suspension 'for their negligence' and that criminal charges had been brought against them.

Dr Farooq Abdullah said on 30 October 2000 that the Government of Jammu and Kashmir had decided to order a judicial inquiry into the Chittisinghpura and the Panchalthan incidents which the Pandian inquiry had linked to the Brakpora shooting incident. "We are requesting Justice Pandian to head the judicial probe into those killings as well. My Law Minister is proceeding to Madras to request Justice Pandian to accept the request". Justice Pandian meanwhile said before the press that he had not been approached.

In February 2001, newspapers in the state said the promised probe of the Chittisinghpura and Panchalthan incidents had been "finally buried".¹⁸ The *Kashmir Times* said that "According to the grapevine in New Delhi, the decision to order the probe was reversed after a meeting between the Prime Minister and the Chief Minister at New Delhi in the middle of November 2000."¹⁹ However, on 19 March 2001, Chief Minister Dr. Farooq Abdullah told the

¹⁸*Kashmir Times*, 7 February 2001.

¹⁹It added, "while details of what transpired at this meeting are not available, Vajpayee was reportedly furious at Farooq's pronouncement. He is understood to have told the Chief Minister that his action has embarrassed the Union Government." *ibid.* This analysis is also found in Praveen Swami,

Legislative Assembly that his government was approaching the central government for instituting a probe into the Chittisinghpura incident.

Meanwhile, the results of DNA tests of the bodies of victims of the unlawful killing at Panchalthan remain unknown. According to information received from Jammu and Kashmir, the DNA analysis was completed but has not been delivered as the government has failed to pay the expenses for carrying out the tests. Clearly such medical analysis is indispensable to establishing the identity of the victims and subsequently to establishing the truth about their deaths.

Despite local demands to make the Pandian Inquiry Commission report public, it remains inaccessible to the public except in the form of a summary presentation by the government. To Amnesty International's knowledge, none of those identified in the Pandian Commission of Inquiry have been formally charged with criminal offences and arrested.

c. The unlawful killings at Pahalgam and other places on 1 August 2000

One week after an unconditional three-month unilateral cease-fire offer by the largest armed group in Jammu and Kashmir, the Hizbul Mujahideen, some 105 civilians were killed by unidentified attackers within 24 hours in the night of 1 August 2000 in seven separate incidents. In village Pogal Peristan in Doda district, 14 Hindus were shot dead in the evening as they were called to come out of their homes by armed attackers. Eight members of a village defence committee were shot dead in Dachan area of Doda district; a former militant and six members of his family, including women and children were shot dead in Baramulla district. Five Hindu labourers were shot dead in village Sund Achabal.

In the largest of the incidents, 33 people, including 23 Hindu pilgrims were shot dead in Pahalgam when armed men swooped on a market and threw hand grenades and opened automatic fire. In the early hours of 2 August, 19 migrant Hindu labourers, mostly from Bihar and Madhya Pradesh, were shot dead in a brick kiln making community in Mir Bazaar village in Anantnag district; the men were asked to come out of their dormitory to help with a truck stuck on the road. As they came out, they were gunned down. Shortly afterwards, some six miles from Mir Bazaar, seven labourers from Madhya Pradesh were shot dead. More than 60 people are reported to have been injured in the attacks, some critically and some subsequently died of their injuries.

Several of the eyewitnesses of the firing at Pahalgam stated that security personnel may have panicked after an initial attack by two armed men and indiscriminately fired into the crowd. A delegation of local people told the Prime Minister visiting the scene on 3 August that the two gunmen who started firing at the pilgrims were shot dead within 15 minutes by security personnel but that the shooting continued for another half hour leading to more deaths and

“Massacres and mysteries”, in: *Frontline*, 8 December 2000.

injuries. Many of the victims were apparently fired upon from positions where the attackers could not have been. Post mortem reports confirm these allegations. At least 20 of the victims died of injuries caused by bullets only used by the CRPF.

An indefinite curfew was imposed in several areas including Pahalgam and Hindu majority areas in the south of the state. Some of the families of the victims were reportedly given relief. On 9 August 2000 the Government of Jammu and Kashmir reportedly released 60,000 rupees as *ex-gratia* relief to be disbursed to the next of kin of victims killed at Pahalgam, Mir Bazaar and Sund-Achabal.

Several armed groups which had rejected the earlier unilateral cease-fire offer denied responsibility for the killings. A three-member inquiry committee set up by the state government and headed by Security Adviser to the state government, Lt. Gen. J.R. Mukherjee investigated the killings at Pahalgam. It identified 17 personnel, including four of the SOG and 13 of the CRPF as responsible for the killings when they used excessive force in retaliation against assault by two militants in a community kitchen for the pilgrims. The inquiry also identified lapses in communication between police and the other agencies which led to CRPF resorting to excessive firing. It said the CRPF men had fired blindly into the crowd after the militants had stormed the kitchen. In March 2001, Chief Minister Dr. Farooq Abdullah said before the Legislative Assembly that action had been initiated against the state police officers identified in the report 'for dereliction of duty'.

Despite popular demand, the report was not made public.²⁰ No criminal charges are known to have been brought against any of those identified in the inquiry and no one appears to have been arrested. To Amnesty International's knowledge none of the other killings of 1 August have been subjected to an inquiry.

d. The unlawful killings at Haigam on 15 February 2001

Amnesty International's latest call for an inquiry addressed to the Government of Jammu and Kashmir relates to the killing of six people at Haigam. On 15 February 2001, over a thousand protesters blocked the Baramulla-Srinagar highway accusing the security forces of arbitrarily detaining and killing a resident of the village, Jalil Ahmad Shah, the day before. According to local residents, he had been arrested from his home in the night of 13 February by men of the 22 Rashtriya Rifles, 8 JAK Rifles and members of the Special Operations Group (SOG). His dead body was found 14 hours later near Jahama village. Police described Jalil Ahmad Shah as a commander of the *Harkat-ul Jihad Islami* and said that he had been shot dead in an encounter with security forces at Jahama near Sopore. A spokesperson of the Jammu and Kashmir Liberation Front denied this, saying that Jalil Ahmad Shah had been the district secretary of his party which since 1994 has advocated non-violent political struggle.

²⁰See Praveen Swami: "A dubious document", in: *Frontline*, 8 December 2000, for an analysis of contents of some of the three volume materials and his speculation about the political context of the report.

Demanding that the dead body of Jalil Ahmad Shah be handed over to the relatives for burial and protesting against his death, local demonstrators blocking the highway reportedly threw stones at an army convey. Soldiers then reportedly opened fire without warning, killing two people on the spot and injuring at least 26 others. Two of the injured, a teenaged girl and her mother, died on the way to the hospital, another injured person died later that night.

During further protests on 16 February at the killings in Haigam, 15-year-old Javid Ahmad Nath was shot dead in Maisuma, Srinagar. According to police statements, an identified army intelligence officer sitting in a car which young men threw stones at, opened the window and shot at the crowd at random, killing Nath and injuring several others. According to some reports, three of the army men were arrested and handed over on the following day to the army for further investigation after a First Information Report (FIR) was lodged; the Director General of Police A.K. Suri publicly denied this. Several political activists were arrested when they protested against the shootings at Haigam and Maisuma.

Following initial confusion about who had initiated the shooting at Haigam, Commander of 15 Corps, Lt.-Gen. J.R. Mukherjee, who is also Security Adviser to the government, on 18 February told a news conference that the army had opened fire in both Haigam and Maisuma and regretted the loss of seven lives in these incidents. He said that police had helped clear the road of protesters for an army convoy; as it began to move, the demonstrators turned violent and threw stones. The commander then exercised his right to protect the convoy and in self-defence ordered five men to open controlled fire in the air so the convoy could move on. At Maisuma, intelligence personnel of 15 Corps had run into an unruly mob; their car was attacked and the driver opened fire in self defence.

Lt.-Gen. J.R. Mukherjee said those responsible for the deaths would be held accountable and that an internal army inquiry would be undertaken: "I give you my solemn word that those of my men who are blameworthy will be brought to book and be dealt with according to law." He said he hoped that the two incidents would not present a setback for the peace process but that the army's accountability would restore the faith of the people.

A judicial probe into both incidents to be headed by the District and Sessions Judge Baramulla was set up by the Government of Jammu and Kashmir on 15 February; an FIR was registered with Sopore police station under section 302 RPC [murder] naming Rashtriya Rifle personnel as suspects. To Amnesty International's knowledge, the inquiry has yet to begin its work. There is no official commitment to have the inquiry report made public.

On 20 February 2001, the government appointed Justice O.P. Sharma of the Jammu and Kashmir High Court as a one-man commission of inquiry to investigate the firing on the procession of inhabitants at Haigam and to ascertain the causes and circumstances which led to the firing, to inquire if the firing was justified and to fix responsibility for possible excessive use of force. It is to submit its report in two months. The commission was notified

under section 3 Jammu and Kashmir Commission of Inquiry Act, 1962. There is no official commitment to publish the findings of the inquiry.

4. Human rights obligations of the Government of Jammu and Kashmir

Amnesty International believes that the Government of Jammu and Kashmir has not lived up to its obligations under international human rights law with regard to the prevention of unlawful killings and has not taken adequate measures to prevent impunity for these acts.

The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (the Principles), adopted by the United Nations Economic and Social Council in resolution 1989/65 of 24 May 1989 clearly state that “Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity ...” (Principle 1) The Principles list a range of preventative measures including the establishment of clear chains of command and the prohibition of orders authorizing or inciting others to carry out such acts.

Amnesty International calls on the Government of Jammu and Kashmir to take all appropriate measures to prevent unlawful killings in the state and effectively protect the right to life. It should also to inform all security personnel that violations of human rights will not be tolerated in the state.

Many unlawful killings in Jammu and Kashmir are not investigated at all or subjected to internal inquiries which may not be fully impartial or to inquiries whose composition and terms of reference are not made known. This conflicts with requirements of the Principles and other international human rights standards.

The Principles define the obligation on states to carry out prompt and impartial inquiries of all extra-legal, arbitrary and summary executions and explains their objective. Principle 9 says: “There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-judicial, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. ... The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about the death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses...” Principle 11 states that in cases in which established investigative procedures are inadequate, “Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such commission shall be chosen for their recognized impartiality, competence and independence

as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of inquiry...”

Amnesty International urges the Government of Jammu and Kashmir to ensure that security concerns in Jammu and Kashmir never override its obligation to respect fundamental rights, particularly the right to life and the security of the person. International standards have declared these rights to be non-derogable under any circumstances. Amnesty International urges the Government of Jammu and Kashmir to ensure that all allegations of unlawful killings are investigated promptly by fully independent and impartial inquiries and that these inquiries fully conform to the requirements of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

Both complainants and witnesses have not been adequately protected against threats and the use of force by those connected with the perpetrators under investigation. This contradicts the requirements of Principle 15 which says: “Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.”

Amnesty International calls on the Government of Jammu and Kashmir to ensure that complainants and witnesses can contribute to the finding of the truth about unlawful killings without fear and harassment.

The findings of inquiries that have taken place in Jammu and Kashmir have not been made public. This contravenes Principle 17: “A written report shall be made within a reasonable period of time on the methods and findings of such investigation. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.”

Amnesty International urges the Government of Jammu and Kashmir to make all findings of inquiries public without delay.

Inquiries are but a first step towards ending impunity and must be followed by criminal prosecution of those identified by the inquiry as the perpetrators of a human rights violation. Amnesty International has long been concerned about the fact that enquiries into so-called ‘encounter’ killings and firing incidents in Jammu and Kashmir have not been followed by action taken against the perpetrators. This contravenes Principle 18 of the Principles on the

Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which says that governments shall ensure that persons identified by the investigation as having participated in such unlawful killings are brought to justice.

Amnesty International urges the Government of Jammu and Kashmir to publicly commit itself to bringing to justice all those involved in human rights violations, by actively participating in them, ordering or inciting them or permitting the truth to be covered up.

Payment of compensation for loss of a family member who was unlawfully killed has been sporadic in Jammu and Kashmir. Amnesty International believes that adequate compensation should be given to the relatives of all victims of unlawful killings in accordance with the recommendations of the National Human Rights Commission as also in accordance with Principle 20 which requires such compensation to be paid "in a reasonable period of time".

Amnesty International urges the Government of Jammu and Kashmir to ensure that relatives of all victims of unlawful killings are given compensation within a reasonable period of time.

Several of the instances in which people were unlawfully killed appear to have occurred when police and security forces resorted to excessive use of force in dealing with protesters. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials state that force may only be used in exceptional circumstances, only when strictly necessary if non-violent means remain ineffective, and for the purpose of prevention of crime and effecting or assisting lawful arrest. Principle 5 states that whenever the lawful use of force and firearms is unavoidable, officers shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimize damage and injury, and respect and preserve human life.

Amnesty International is concerned that existing practices in Jammu and Kashmir appear to fall far short of international standards as set out in the Basic Principles which are underpinned by the principle that the absolute minimum force should be used and that there be full accountability for any action taken resulting in the loss of life. Principle 9 strictly prohibits the use of firearms:

"...except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life... and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

In addition, Article 22 of the Basic Principles requires that "...In cases of death or serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control."

Indiscriminate shooting by security personnel also contravenes international standards governing the lawful use of force as for example laid down in the United Nations Code of Conduct for Law Enforcement Officials. Article 3 of the Code of Conduct says that force may only be used 'when strictly necessary'. The official Commentary to the Code of Conduct says that the use of force should be 'exceptional', that force should only be used 'as it is reasonably necessary under the circumstances', and that it should only be used for two purposes, viz. 'the prevention of crime' and 'effecting or assisting in the lawful arrest of offenders or suspected offenders'. The Code of Conduct says that the force used should be proportional to the objective, i.e. it should only be used 'to the extent required' for the performance of law enforcement officials duties.

Amnesty International urges the Government of Jammu and Kashmir to ensure that law enforcement personnel are fully trained in the lawful use of force in accordance with international standards and that those who breach international standards are held to account.

5. Obligations of armed groups to abide by minimum standards of humanitarian law

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

"In the case of an 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 execution without previous judgement pronounced by a regularly constituted court affording all judicial guarantees which are recognized as indispensable to civilized peoples ..."

A fundamental principle of the law of armed conflict is the principle of distinction. Parties to a conflict shall at all times distinguish between the civilian population and combatants and spare civilian populations. Amnesty International now reiterates its call made many times before to armed groups 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 obligation to respect the basic principles of humanitarian law to all their subordinates and to ensure full adherence to these principles.

Amnesty International urges the armed groups operating in Jammu and Kashmir to ensure that all their members are made fully aware of the principles of international humanitarian law and are properly supervised in meticulously applying them. In case of any lapses armed groups should take action against those of their members who are responsible for them.

Earlier relevant publications by Amnesty International include:

India: Torture continues in Jammu and Kashmir, AI Index: ASA 20/33/95;

India: Torture and deaths in custody in Jammu and Kashmir, AI Index: ASA 20/01/95;

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;

India: A trail of unlawful killings: Chittisinghpura and its aftermath, AI Index: ASA 20/24/00;

India: Open letter to Chief Minister of Jammu and Kashmir, Dr. Farooq Abdullah. AI Index; ASA 20/42/00.