

INDIA

Open letter to Chief Minister of Jammu and Kashmir, Dr Farooq Abdullah

Dear Chief Minister,

Amnesty International has over the past months written to you on several occasions urging you to ensure that judicial inquiries are held into grave human rights abuses which have been carried out in Jammu and Kashmir. Only in a few instances have inquiries been set up and these have often been internal non-judicial inquiries which have not led to perpetrators being held criminally accountable. Today we wish to reiterate our call for independent and impartial inquiries into all human rights abuses committed in the state.

Amnesty International is concerned that two weeks after the unlawful killing of 105 people, by unidentified gunmen in different parts of Jammu and Kashmir on 1 and 2 August, steps have not been taken to independently and impartially investigate the incidents with a view to bringing the perpetrators to justice.¹ Those killed were mostly Hindu civilians and included women and children.

Amnesty International urges your Government once again to set up independent and impartial investigations into these incidents as well as all other extrajudicial killings and deaths in custody which have been reported in increasing numbers from Jammu and Kashmir in recent months to break the cycle of impunity and prevent further abuses.

You are reported to have said on 9 August before the press in Humhama: “We have nothing to hide. If people feel there is need to hold a judicial inquiry, we will definitely order it.” In both Houses of the Indian Parliament, the *Lok Sabha* and the *Rajya Sabha*, the debate for many days focussed on whether a judicial probe into the incidents on 1 and 2 August in Jammu and Kashmir should be set up by the Union Government and whether such inquiry was politically advisable, in conformity with security considerations or constitutionally possible.

Independent and impartial investigations 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 on governments which India is bound to uphold.

¹ Several other mass killings have not been investigated. In March 2000, 36 Sikhs were killed at Chittisinghpora; five men allegedly involved in the killing, were subsequently killed by security forces in highly suspicious circumstances. When their relatives demonstrated protesting their innocence, seven men were shot dead by security forces. Only the latter incident is currently being investigated by a retired Supreme Court judge, Justice Pandian. See *India: A trail of unlawful killings in Jammu and Kashmir: Chittisinghpora and its aftermath*, AI Index: ASA 20/24/00, issued in June 2000.

Governments are under an international obligation to prevent human rights abuses and to ensure that if 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.

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."

The Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions spell out in detail the obligations of governments to conduct inquiries into unlawful killings. Such inquiries should seek to determine the cause, manner and time of death, the person(s) responsible, and any pattern or practice which may have brought about the deaths. They should include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. In accordance with Principle 17, written reports shall be made within a reasonable time on the methods and findings of the inquiry. These shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate the evidence as well as conclusions and recommendations based on findings of fact and on applicable law.

Your Government on 8 August constituted a three-member committee to conduct an internal inquiry to probe the sequence of events that led to the attack on the pilgrims at Pahalgam on 1 August and to ascertain whether there were any security lapses or derelictions of duty by any government functionary. The committee will be headed by Corps Commander of the Srinagar based 15 Corps, Lt. Gen. J.R. Mukherjee who is the ex-officio security advisor to the state government. The other committee members are Principal Secretary (Home), C. Phonsong and Deputy Commissioner Anantnag, G.A Peer. The Committee is to submit its findings within three months and suggest measures to prevent such incidents in the future.

Amnesty International is concerned that an internal inquiry made up of army and government officials does not fulfil the requirements of international human rights standards which require that the investigation be impartial; the terms of reference of the inquiry have not been made known and there are no assurances that its findings will be made public nor that those found responsible will be held criminally accountable for their actions.

Amnesty International urges your Government to set up independent and impartial inquiries into the unlawful killings of 1 and 2 August 2000 and to ensure that these

inquiries fully conform to requirements of the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions.

Amnesty International has long been concerned about the fact that inquiries into so-called ‘encounter’ killings and firing incidents in Jammu and Kashmir have not always been followed by action against the perpetrators. This contravenes Principle 18 of the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions which says that governments shall ensure that persons identified by the investigation as having participated in unlawful killings are brought to justice.

It also violates provisions of the International Covenant on Civil and Political Rights (ICCPR) which India has ratified. Article 2(3)(a) says that state parties to the ICCPR are obliged to “ensure that any person whose rights or freedoms ... are violated shall have an effective remedy ...”.

Amnesty International urges your Government to publicly commit itself to bringing the perpetrators to justice and provide assurances to give sanction for prosecution if required. Similarly, the Union Government should provide assurances of giving sanction for prosecution if security personnel falling in its jurisdiction should be found to have been involved.

Several of the eyewitness accounts of the firing in Pahalgam on 1 August suggest that security personnel may have panicked after the initial attack 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 on the pilgrims were shot dead within 15 minutes by security personnel but the shooting continued for another half hour leading to a large number of deaths and injuries. Many of the victims were apparently fired upon from positions where the attackers could not have been. Post mortem reports appear to confirm these allegations. At least 20 of the victims reportedly died of injuries caused by bullets of the Central Reserve Police Force, not the type of weapons used by the gunmen.

Incidents in which security forces have resorted to indiscriminate firing on civilians, including women and children in apparent panic, have been increasingly reported from Jammu and Kashmir in recent months and point to insufficient training and defective chains of command and control.²

²For instance, on the night of 19 to 20 May 2000, Mohammad Yaseen Rather walked fast in the area of Regal Chowk in Srinagar to visit his brother recently admitted to hospital. Two members of the 26 Bn. Border Security Force (BSF) in a bunker near Nowpora Bridge reportedly shot him dead without warning, apparently assuming that he was a militant. In another incident on 10 August, 16-year old Tanvir Ahmed Khan was shot dead and two other schools students injured when, after returning

from a school outing their bus broke down and all the students walked in the darkness past bunkers manned by the BSF at Samarwani camp, near Bandipur. Soldiers at one checkpost had checked the students' identity and let them pass. When the students began to run, soldiers from another checkpoint who were apparently nervous after an earlier firing incident, reportedly opened fire without warning.

Indiscriminate shooting by security personnel 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 your Government to ensure that law enforcement personnel is fully trained in the lawful use of force in accordance with international standards and that those who breach international standards are held to account.

While firing in panic by security personnel speaks for institutional failures of training, communications and control, the official policy in Jammu and Kashmir appears for some time to have been to kill rather than arrest and bring to trial members of armed groups. Official announcements use the revealing terms 'eliminating' militants, 'sanitizing' areas and 'search and destroy missions' of security forces. Statements about security operations consistently mention the number of killed militants as part of the achievements of security forces in Jammu and Kashmir. There are also reports that members of the Special Task Force, a police force with counter-insurgency duties, are given cash awards based on the number of militants killed and arms recovered which may have contributed to the upsurge in killings in Jammu and Kashmir. This approach was also evident after the killings on 1 and 2 August. Local media reported a defence spokesperson as saying searches would continue until 'the ultras were traced and killed'.

Amnesty International urges your Government 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.

We urge your Government to implement the recommendations in this open letter in order to end the cycle of impunity and further abuses. Impunity, the freedom from punishment, is known to directly contribute to a climate in which more and more human rights violations are committed. By setting up independent and impartial inquiries and ensuring criminal prosecution of those found responsible, your Government will give a message to the people in Jammu and Kashmir that abuses will not be tolerated in future and that fundamental rights will be fully protected.

We would appreciate receiving your comments on the matters raised in this letter.

Yours sincerely,

Vincent del Buono
Deputy Secretary General