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India: Act with restraint during elections in Jammu & Kashmir

In advance of the month-long elections to be held in the state of Jammu & Kashmir starting on 17 November and ending on 24 December, Amnesty International appeals to India's security forces to act with restraint and avoid excessive use of force, in the wake of recent volatility in the state.

At least 40 people were killed in the state in June-August this year when the Central security forces and the state police used force against protestors defying curfew restrictions as both Jammu and Kashmir regions witnessed demonstrations and counter-demonstrations. The protests in both regions have made the tasks of policing and ensuring safety of civilians wishing to exercise their right to vote even more critical.

Amnesty International is unaware of findings of any inquiry into the 11 August firing at Baramulla when Sheikh Abdul Azeez, a leader of the All Party Hurriyat Conference (APHC) and at least four others were shot dead during a procession. The security forces were unwarranted in their use of force at Baramulla and a few other places during the unrest. Also, two other issues highlighted by Amnesty International earlier this year - the discovery of unmarked graves brought to light by the Association of Parents of Disappeared Persons (APDP) in March and the subsequent attack, by suspected Central Reserve Police Force (CRPF) personnel, on human rights defender Pervez Imroz of the APDP in June – are yet to be fully investigated.

Various security legislation in force in the state - the Jammu & Kashmir Disturbed Areas Act, the Armed Forces Special Powers Act, 1958 and the state Public Safety Act, 1978 - facilitate impunity by providing discretionary powers to the armed forces and effectively enabling them to violate human rights. The State Human Rights Commission operates under a limited mandate which prevents it from independently investigating allegations of such violations and the state authorities often ignore the Commission's recommendations.

In the past elections in the state, violence and attacks, allegedly by armed groups who issued calls to boycott elections, have left scores of people dead. Violence or the threat of violence must not be used to intimidate or coerce voters, election workers or candidates.

India is obliged, under international treaties to which it is party, including the International Covenant on Civil and Political Rights, to respect and protect the right to life at all times. The state authorities must ensure that security forces comply with international human rights standards on law enforcement, in particular those relating to the use of force, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Under these standards, security forces may use force only when strictly necessary and only to the extent required for the performance of their duty. In particular

the security forces must not use firearms against persons except to defend themselves or others against an imminent threat of death or serious injury, to prevent a particularly serious crime involving a grave threat to life, or to arrest or prevent the escape of someone presenting such a danger and resisting their authority, and only when less extreme means are sufficient to achieve these objectives. Security forces must be fully informed of their obligations under these standards and given comprehensive training in applying them.

Amnesty International urges the authorities in India to

- address the culture of impunity prevalent in the Jammu & Kashmir, including during the recent unrest through a prompt, independent and impartial investigation by a competent authority into any injury or death caused by the use of force or firearms; arbitrary or abusive use of force and firearms by law enforcement officials.
- unconditionally repeal the Armed Forces (Special Powers) Act, 1958 and other state-level security legislation which contravene the country's international human rights obligations and that continue to pose grave threats to human rights.¹

Amnesty International appeals to all organisations

- including political parties and armed groups in the state of Jammu & Kashmir not to commit or condone acts of violence against political opponents, or make statements or undertake actions that would constitute incitement to such violence.

Amnesty International calls on armed groups

- to respect minimum standards of humanity set out in international law, reflected in Common Article 3 of the Geneva Conventions which sets out standards to be observed in armed conflict with regard to persons taking no active part in hostilities, including the prohibition on "violence to life and person, in particular murder of all kinds".

Background

Separatist organizations in the Kashmir-valley, including the All Party Hurriyat Conference and the Jammu and Kashmir Liberation Front (JKLF), have issued calls to boycott the elections. Since September, six leaders of both organizations have been arrested and charged under the state's Public Security Act.

Protest demonstrations commenced this year after the state authorities announced a proposal to transfer forest land to the Amarnath Shrine Board on 26 May, in order to accommodate the annual Hindu pilgrimage at the shrine. After ten days of protests in Muslim-dominated Kashmir valley, on 1 July, the authorities reversed this order, triggering counter-demonstrations organized by Hindu nationalist organisations including

¹ Amnesty International, *India: Amnesty International renews its call for an unconditional repeal of the Armed Forces (Special Powers) Act, 1958*, AI Index: ASA 20/034/2006, 18 December 2006; Amnesty International, *India: Briefing on the Armed Forces Special Powers Act, 1958*, AI Index: ASA 20/0135/2005.

the Bajrang Dal and the Viswa Hindu Parishad in the Jammu region and obstruction of traffic on the Jammu-Pathankot national highway, the main land route to Kashmir. Following this, Kashmir valley witnessed protests during which about 25 persons were killed in police firing. At least in one instance during July-August, the state authorities issued “shoot at sight” orders to the security forces after two persons were killed as a result of police firing in response to communal clashes in the town of Kishtwar, Doda district of Jammu region.

One year after the last elections held in October 2002, the Amnesty International, referring to the promises made in the Common Minimum Programme (CMP) of the Congress-People’s Democratic Party coalition government, had urged the state authorities to end the culture of impunity by ordering independent inquiries into human rights violations, including illegal detentions, torture, extra-judicial executions, enforced disappearances and sexual assault.²

² Amnesty International, *India: Open Letter to the Chief Minister of Jammu and Kashmir on the failed promises of the Common Minimum Program*, AI Index: ASA 20/033/2003, 2 December 2003.