

INDIA

A trail of unlawful killings in Jammu and Kashmir: Chithisinghpura and its aftermath

Amnesty International is calling on the Government of Jammu and Kashmir to meticulously implement public assurances given by Chief Minister Dr Farooq Abdullah that a recent series of unlawful killings in the state would be promptly subjected to independent and impartial inquiry conducted by a member of the higher judiciary with a view to holding the perpetrators to account.

Amnesty International believes that the three incidents described in this report are closely linked and should be investigated by one or more judicial inquiry/inquiries whose terms of reference should be made known to the public. To Amnesty International's knowledge a judicial inquiry has been set up only with respect to the third of the events described below. Those holding inquiries should be given full access to all records, witnesses and material evidence. The results of all inquiries should be promptly made accessible to the public. All those identified in the inquiries as bearing responsibility for the killings should be held to account without undue delay and tried promptly and fairly in a regular court of law. If convicted, they should not be given the death penalty as this punishment contravenes the right to life and the prohibition of cruel, inhuman or degrading treatment or punishment. Amnesty International seeks assurances from the Government of Jammu and Kashmir and from the Union Government that state sanction, should it be required for criminal prosecution of those found responsible, will indeed be given.

In the first of the three incidents, perpetrated on 20 March 2000 in Chithisinghpura, it is not known if armed opposition groups, renegades¹ or state agents are responsible for the unlawful killings of 35 men². The evidence in the second incident on 25 March in which five people in Panchalthan were unlawfully killed, points to state responsibility. In the latest incident on 3 April, seven demonstrators were shot dead in Brakpora by security forces who reportedly used excessive force to control an agitated crowd.

¹Renegades are former members of armed groups who have joined the side of the government. Renegades usually act on orders of or with the knowledge of police or security forces but are believed to also have committed abuses on their own initiative.

²Some reports mention 36 victims.

Unlawful killings in Chithisinghpura on 20 March 2000

On the evening of 20 March 2000, 15 or 17 unidentified gunmen, some in Indian army uniform, entered village Chithisinghpura in Anantnag district, ordered the Sikh men to assemble and systematically from close range, shot dead 34 Sikh men. Several men were injured by gun shots; of these one man³ died later from his injuries. A unit of paramilitary Rashtriya Rifles (RR) stationed close to the village failed to intervene and only visited the place of the incident on the following morning.

The Sikh population of Jammu and Kashmir is estimated to be between 70,000 and 90,000 out of a total population of some 8 million inhabitants of the state, spread over 130 villages. They are engaged in agriculture and transport and are centred around Anantnag, Tral and Baramulla. Whereas members of the Hindu minority⁴ have frequently been targeted by armed groups⁵, Sikhs and Muslims have lived in harmony with not a single attack on Sikhs reported before March 2000 since the flare-up of the conflict a decade ago. The fact that many members of the army and central police force stationed in Jammu and Kashmir are Sikhs did not in the past negatively impact on relations between the Muslim majority and the small Sikh minority. After the incident, Muslims pleaded that Sikhs - many of whom felt insecure - should not leave Jammu and Kashmir. During his visit to the area, Union Home Minister L.K. Advani on 26 March 2000 promised special protective measures to the Sikhs of the state but local Sikhs reportedly rejected the protection plan, with some of their spokespersons saying that the Muslim majority had not been hostile to them before and that no protection was needed.

³Some reports speak of two men succumbing to their injuries later.

⁴Hindus inhabit mostly the southern part of the state but also lived as a minority in the Kashmir Valley; several hundred thousand Hindus left the area when the unrest intensified and settled in camps in Jammu and around New Delhi. In 1998 and 1999, several dozen members of the Hindu minority, including women and children, died in targeted killings, possibly carried by armed opposition groups.

⁵There are over a dozen armed groups operating in Jammu and Kashmir with a variety of objectives, including secession of the Jammu and Kashmir from India and accession to Pakistan, independence or merely greater autonomy. While the Pakistan Government claims to merely lend moral, political and diplomatic support to such groups, there is strong evidence that Pakistan or groups within Pakistan provide arms, training and men as well.

To date it is not known who was behind the unlawful killings which took place on the eve of US President Clinton's visit to the subcontinent⁶; the attack was condemned by him, as by the Indian and the Pakistani governments. Despite the fact that an official inquiry let alone its outcome had not been announced, the Indian Government and the Jammu and Kashmir Government held two armed Islamist groups, Lashkar-e-Taiba and Hizb-ul Mujahideen responsible. Director General of Police, Gurbachan Jagat is reported to have said the "incident is a clear indicator of the militants' plan to turn Kashmir into a single-religion entity". The Indian media have echoed Prime Minister Vajpayee's characterization of the incident as a 'fresh ethnic cleansing'⁷ or a 'communal massacre'⁸.

Several Kashmiri groups, such as the All Parties Hurriyat Conference (APHC), a conglomerate of 23 parties, have claimed that the government was responsible for the deaths, perpetrated in an effort to discredit the 'azadi' [freedom] cause and to portray its supporters as 'terrorists' and religious fanatics prior to the Clinton visit. Spokespersons of both the groups held responsible for the killing by the government have meanwhile denied their involvement.⁹ Hizb-ul Mujahideen leader Syed Salahuddin Ahmad said: "Mujahideen have nothing against the Sikh community which sympathizes with our struggle. We assure them that there never was and there will never be any danger to Sikhs from Kashmiri freedom fighters."

⁶Clinton later said that these Sikhs "were murdered because I was there. ... People who don't want their
turmoil eased used my trip there as a pretext to highlight the difficulties.
And somebody, we don't know who, killed perfectly innocent people - who, I
might add, had never before been targeted in all the conflict in Kashmir."

⁷*India Today*, 3 April 2000

⁸*Frontline*, 14 April 2000

⁹Minister of Home Affairs, L.K. Advani said: "Till now the militants had targeted the Hindu community and tried to see that the Kashmir Valley is cleansed of that particular community. Now the objective is to see to it that Sikhs also begin a process of migration and this purpose must be understood, this design must be recognized." (*The Hindu*, 21 March 2000)

Three human rights activists from Punjab¹⁰ in mid-April investigated the incident. They found that between 15 and 20 Urdu-speaking armed men had come to the village several times prior to the massacre and mixed freely with the villagers. According to the local population, they were careless with their arms, hanging them on trees while playing cricket with local boys. Several of these earlier visitors were reportedly recognized as the attackers of 20 March. However, some local observers told the activists that they did not believe the attackers to be 'foreign mercenaries'¹¹ as they had returned repeatedly to the village and handled their arms very casually which is unusual for paid fighters.

The attackers wore uniforms of the armed forces and were led by a tall man whom they addressed as Commanding Officer (CO). All Sikh men were rounded up, ostensibly to check their identities, and made to sit on the ground in two groups against the walls of the *gurdwaras* [Sikh temples] a few hundred metres from each other; they were shot at point blank range. As the attackers withdrew, they reportedly shouted Hindu slogans. A small bottle of liquor was left behind by them.¹²

The human rights activists also spoke to two surviving men. Karamjit Singh, a teacher, had been stopped by the attackers at the start of the attack but had managed to slip away after warning a neighbour, Nanak Singh that he feared trouble. Nanak Singh who was injured by the gunfire, pretended to be dead and so escaped the killing as well. Both subsequently left the village with their families.

The human rights activists concluded that dress, language, careless handling of arms and behaviour are all factors that speak against the security forces'

¹⁰They included Justice (retd.) Ajit Singh Bains, Chairman of the Punjab Human Rights Organization (PHRO), Sardar Inderjit Singh Jajjee, Convener of the Movement Against State Repression (MASR) and Lt.Gen. Kartar Singh Gill, Advisor, PHRO and MASR.

¹¹Some of the local armed groups are believed to be supported and reinforced by armed groups including by paid fighters from other countries, including Pakistan, Afghanistan and other Muslim countries.

¹²The fact of the perpetrators speaking Urdu in a Kashmiri speaking environment, of shouting Hindu slogans and drinking alcohol has been variously and inconclusively interpreted by local observers as pointing to Islamist groups' responsibility for the killing and as their ploy to direct suspicion elsewhere or conversely as a ploy to implicate Islamist groups by imitating their assumed behaviour.

involvement in the unlawful killing. In view of the presence of the paramilitary Rashtriya Rifles (RR) close to the village, the human rights activists considered it improbable that armed opposition fighters had been involved. Armed groups would not have openly visited the village several times. The inquiry team concluded that renegades were the likely perpetrators. Some villagers had told the human rights activists who were investigating the killing that the nearby RR unit knew about the attack on the Sikhs in advance and had done nothing to stop it - which again, given the patronage of renegades exercised by some paramilitary forces, may speak for the renegades' involvement in the massacre.

Another organisation, the Ludhiana based International Human Rights Organization (IHRO) in late March released its own inquiry report which reportedly reached the same conclusion.

Unlawful killings in Panchalthan-Pathribal on 25 March 2000

Shortly after assertions of the Government of Jammu and Kashmir that every effort would be made to find the men responsible for the killing of 20 March, a joint unit of army personnel and Special Operations Group (SOG) killed five men in Panchalthan-Pathribal village, Anantnag district. Official spokespersons claimed that the victims were 'foreign militants' responsible for killing the Sikhs. According to reports, the unit after a gunfight blew up a thatch-roofed hutment on a hilltop near the site of the earlier massacre in which the 'militants' were hiding and later recovered five bodies charred beyond recognition; the bodies were buried in different places by the army without a post mortem examination.

Chief Minister Dr Farooq Abdullah said before the State Assembly that a man arrested on 24 March had revealed the location of the suspected militants involved in the massacre of 20 March. He claimed that all the men were 'militants in combat uniforms' responsible for the massacre. Director General of Police Gurbachan Jagat said on television that the arrested suspect had given the names of five local people and 11 or 12 foreigners involved in the 20 March killings.¹³ Union Home Minister

¹³Praveen Swami in a *Frontline* article of 14 April gave details about the confessions by Mohammad Yakub Magray, a Hizbul Mujahideen activist, arrested and 'broken' by the 'ruthlessly efficient' Special Operations Group. Magray reportedly admitted to having accompanied a Lashkar-e-Taiba group led by a Pakistani national code-named Abu Maaz in the night of the incident. According to the article, "Magray's continuing interrogation seems to be delivering at least some retribution ... the elimination of five members of Abu Maaz's unit at Panchal Thal".

L.K. Advani during his visit to the state congratulated the Anantnag police for “eliminating the butchers responsible for the Chithisinghpura massacre”.

Local observers, however, disbelieved the official account; they pointed out that if armed men hidden in a hut on a hilltop had indeed been involved in a gunfight as claimed by the authorities, they would have injured some of the security force personnel attacking them from the valley - but none was injured. Moreover, security forces could have exchanged fire until those trapped in the hut ran out of ammunition and then arrested them instead of using heavy weapons to blast the hut killing those inside. This would have enabled the security forces to gain more information about the massacre on 20 March.

Many political activists in Jammu and Kashmir publicly expressed doubts about the genuineness of the ‘encounter’. In the Lok Sabha, National Conference MP [member of parliament] Ali Mohammad Naik stated that the Defence spokesperson and the Prime Minister’s Office had told a ‘white lie’ on March 25 when they claimed that five men involved in the killing of the Sikhs had been shot dead in an encounter. He stated: “They were just innocent citizens and I tell you with authority that none of the killers of Sikhs have been eliminated or apprehended as claimed by the forces.”¹⁴ On 2 April, Democratic Freedom Party Chairman, Shabir Shah staged a sit-in in Anantnag to protest against the ‘fake encounter’. When police tried to arrest him, he resisted and was injured but then taken into custody. He was released in the evening. In Srinagar, former chairman of the All Parties Hurriyat Conference, Mirwaiz Moulvi Umer Farooq was placed under house arrest to prevent him from going to Anantnag to participate in the protests against the ‘encounter’ killings.

On the following days, local people held protest demonstrations claiming that the dead men were ordinary civilians, labourers or petty traders, from the villages Braringam, Mominabad and Halam who had nothing to do with militant activities or the killing of the Sikhs on 20 March. There were rumours that altogether 17 men had been picked up and ‘disappeared’. Demonstrators have claimed that the five men the authorities claimed had been killed in the hut were ordinary villagers who had in fact been picked up by the Special Task Force under the Senior Superintendent of Police of Anantnag between 21 and 24 March and had gone missing since. In at least one case, a First Information Report (FIR)¹⁵ had reportedly been filed about the ‘disappearance’.

¹⁴*Kashmir Times*, 21 April 2000

¹⁵The initial complaint to police after which police investigation starts.

On 29 March, the district administration offered to conduct DNA tests of the five bodies buried after the incident on 25 March to set the protesters' minds at rest about the alleged killing of their relatives. However, in spite of this assurance, demonstrations and strikes escalated in Anantnag district and on 30 March, Chief Minister Dr Farooq Abdullah told the State Assembly that he had directed the DGP [Director General of Police] and ADGP [Additional Director General of Police] to inquire into the alleged 'disappearance' of the five civilians in Anantnag district.

On the same day, Anantnag Chief Judicial Magistrate (CJM) Abdul Waheed directed police officers from Acchabal to register a case of murder and abduction (sections 302 and 364 Ranbir Penal Code). He also ordered an independent investigation to ascertain whether the victims were civilians or armed fighters after receiving a petition from 14 residents of Braringam, Anantnag district, who claimed that two of their relatives had been picked up by security forces on 24 March and were among those killed on 25 March on the pretext that they were armed fighters. The CJM appointed Deputy Superintendent of Police (DSP) Sheikh Abdul Rehman to conduct the investigation, adding that it should be done impartially and without submitting to any pressure. The inquiry was to submit its report on 6 April to the magistrate's court.¹⁶ The Senior Superintendent of Police Anantnag, Farooq Khan welcomed the court orders to conduct an inquiry, saying that this would remove suspicion from people's minds. On the same day, the Deputy Commissioner agreed in principle to having the bodies of the five men exhumed. At that time, the spokesperson of the 15th Army Corps categorically stated: "Genuine terrorists have been killed. Do not give credence to these reports about a fake encounter. People are expert at twisting facts."¹⁷ Chief Minister Dr Farooq Abdullah reportedly said on 3 April that if those killed were found to be innocent civilians, those responsible for their deaths would be severely punished.¹⁸

Unlawful killings at Brakpora on 3 April 2000

¹⁶CJM Abdul Waheed was subsequently transferred to Kupwara.

¹⁷*Times of India*, 31 March 2000

¹⁸*Outlook* reported Chief Minister Dr. Farooq Abdullah as saying to protesting villagers: "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."

When local residents did not see any action being taken regarding the promised exhumations and inquiries, public protests grew more strident. On 3 April, a procession of several thousand demonstrators flanked by Special Operations Group (SOG) personnel marched on Anantnag intending to submit a memorandum to the Deputy Commissioner demanding the exhumation of the bodies of the five men killed on 25 March and information about the fate and whereabouts of the 17 people allegedly picked up by security forces after the 20 March massacre and ‘disappeared’ since. In the course of the march, some youths threw stones at a police post. After police resorted to *lathi* charge (beating with sticks), many protesters withdrew. Some 3,000 to 4,000 people reached Brakpora, three kilometres before Anantnag where stones were reportedly thrown at the SOG camp. After another brief *lathi* charge, SOG men and members of the Central Reserve Police Force (CRFP) opened apparently indiscriminate fire, killing seven people outright and injuring at least 15 others. A melee ensued in which more participants were injured. After the crowd dispersed, an indefinite curfew was imposed and shoot on sight orders were issued in the entire district. According to some reports, one or two men injured in the firing died later.

Zonal police headquarters in the evening stated that members of armed groups had accompanied the protesters and had opened fire on the protesters leading to the deaths. It claimed that a case had been filed against violent protesters and that investigations had started. Another official statement quoted in the *Kashmir Times* said that the protesters had resorted to stone pelting and as firing in the air did not stop them, security forces opened fire on them. Participants in the march denied that there were any members of armed groups participating in the demonstration.

On 4 April, members of the State Assembly condemned the police firing and angrily demanded an inquiry and punishment of those responsible for the police shooting of seven demonstrators. Chief Minister Farooq Abdullah pointed to Pakistan for the rising militancy and said: “My government does not want to shed the blood of innocent persons here. Try to understand the tricks of the enemy.” However, he ordered a judicial inquiry by a High Court judge into the firing incident and also reportedly admitted that excessive use of force had occurred without provocation: “Non-lethal options were not chosen to control the crowd.” Similarly Union Home Minister L.K. Advani reportedly admitted: “It was a tragic incident. It should not have happened.” The state government reportedly transferred the Deputy Commissioner Anantnag and suspended the Deputy Inspector General and the Senior Superintendent of Police Anantnag as well as some 20 police officers involved in the shooting incident on 3 April.

On 5 April, Chief Minister Dr Farooq Abdullah directed the exhumation of the bodies of the five victims of the alleged ‘encounter’ of 25 March in Panchalthan after popular demands for it mounted leading to further demonstrations despite indefinite curfew and as members of oppositional political parties backed these demands.

Starting on 6 April, the five charred bodies were exhumed in the presence of senior government officials Minister of State for Home, Mushtaq Ahmed Lone and the Deputy Commissioner of Anantnag. When the first body was exhumed on 6 April in Pathribal, villager Roshan Jan reportedly recognized the body of her husband, Juma Khan: “I can say for sure that it is the body of my husband. I have spent my entire life with him.” She stated that her husband had been arrested on 24 March. Her son stated that Juma Khan’s turban and identity card had been found on 28 March in the village. Other bodies were exhumed on 7 April and identified by relatives by the rings, clothes, teeth etc as those of the men arrested earlier; the bodies were charred and could not be recognized easily. When the relatives protested, the bodies were finally handed over to them and buried with some 4,000 people attending the burial despite the curfew. More security forces were sent to the area to prevent further demonstrations which might take place despite the strict curfew imposed since the ‘encounter’.

Four members of staff, headed by Dr Bilquis Kour, of the forensic department of the Government Medical College took samples of the five bodies for DNA testing. The samples were to be sent to the Central Forensic Laboratories in Calcutta and Hyderabad. The team took blood samples of relatives within a day of the exhumation. One of the experts was quoted as saying that of the five bodies, four were charred beyond recognition and one was partially burned. While four bodies had bullet marks, one was without bullet injuries. The skull of one of the four bodies presenting bullet marks had been blasted off and the jaws of another one had been destroyed by bullets.

The police meanwhile denied that the bodies had been conclusively identified. Kurshid Ahmed Ganai, Divisional Commissioner of Kashmir, said on 8 April: “All the five bodies have been recognized by the family members. The government is waiting for tests to be conducted before saying anything on the issue.” He reportedly said that the bodies were handed over subject to the understanding that the “correctness of the identification will depend on the DNA tests as the bodies were charred, disfigured and not recognizable.” The directors of the forensic laboratories

in Hyderabad and Calcutta confirmed that on 13 and 14 April respectively, tissue samples were received. The result of the analyses is not known.

Inquiries

Throughout this period, the setting up of inquiries was announced to look into the incidents. Chief Minister Farooq Abdullah reportedly announced on 5 April before a joint meeting of Muslims and Sikhs of Kupwara and Baramulla that a judicial inquiry by a sitting Supreme Court judge would investigate the Chithisinghpura killing as well as the Brakpora killing of seven protesters. On 6 April, Jammu and Kashmir Minister for Law, P.L. Handoo informed the State Assembly that Justice Pandian had been appointed to head a Commission of Inquiry into the Chithisinghpura and the Brakpora incidents. It now appears, however, that an additional magistrate has been entrusted with the investigation of the Chithisinghpura killings of the 35 Sikhs but it is not known if this investigation has actually started, nor what its terms of reference are. It does not appear to have been set up under the Jammu and Kashmir Commission of Inquiry Act, 1962.

A one-man inquiry Commission of Inquiry consisting of retired Supreme Court judge Justice S.R. Pandian was set up on 17 April 2000 and notified on 20 May 2000. It has been entrusted with investigating the Brakpora firing incident under the Jammu and Kashmir Commission of Inquiry Act, 1962. The terms of reference of his inquiry are (a) to inquire into the causes and circumstances leading to the firing incident, (b) to establish whether the ‘use of force used in firing on the crowd was justified’, (c) to ‘fix responsibility for using excessive force, if any’, and (d) to make suggestions for preventing a recurrence of such events in future. The first sitting of the Commission of inquiry was on 7 June 2000. So far about a dozen witnesses have appeared before it; all have apparently testified that the firing was unprovoked.

On 2 May, the police Special Investigation Team constituted to investigate the Panchalthan ‘encounter’ submitted its first 3-page report to the CJM Anantnag; members of the local Bar Association were present when the report was submitted by the Senior Superintendent of Police to the CJM. It reportedly follows step by step the team’s observations of the exhumation and identification and describes the circumstances in which the bodies were handed over.

Meanwhile, a Joint Action Committee consisting of local doctors, teachers and members of the Anantnag Bar Association has formed to investigate the allegation of the earlier ‘disappearance’ of the five men shot dead on 25 March. Its

brief apparently now extends to all the three incidents. It filed complaints with police with respect to each of the incidents.

Lack of response of the Government of Jammu and Kashmir to concerns expressed by Amnesty International

Amnesty International submitted a draft of this report to the Government of Jammu and Kashmir on 24 May 2000¹⁹ requesting to be informed of what steps the Government had taken to investigate the incidents. The organization urged that all three incidents be fully investigated by an independent and impartial judicial inquiry and that its terms of reference be made public. Amnesty International said that the results of all inquiries should be made accessible to the public and urged the Government of Jammu and Kashmir to provide assurances that state sanction, should it be required for criminal prosecution of those found responsible, would indeed be given. No response was received by the time this report was printed in the third week of June.

Other expressions of concern by Amnesty International about the rising incidence of custodial deaths and extrajudicial executions in the state have met with similar silence. Amnesty International wrote to the Government of Jammu and Kashmir on 5 and 13 June expressing its concern about the rising number of custodial deaths²⁰. The organization issued an urgent action in early June relating to the arrest of two men²¹ in May and expressed its fear for their safety and physical integrity. No reply was received in either case.

¹⁹See press release ASA 20/021/2000 of 24 May 2000: *India: Inquiries into Jammu and Kashmir killings must go ahead.*

²⁰In its letter of 5 June, Amnesty International sought assurances that the deaths of six young men on 15 May 2000 in Sopore in what was described as an 'encounter' would be investigated; a list of some 30 people who allegedly died in custody between 1 and 20 May was appended with a request for investigation. On 13 June, Amnesty International wrote to the Government of Jammu and Kashmir urging investigation of the custodial deaths of three men, Abdul Hamid Mir, Abdul Qayoom Ganai and Rafiq Bakal who had died in different incidents in late May and early June.

²¹Mohammad Salim Bhat and Shabir Ahmed Khan were arrested in late May and their relatives feared they would be killed. Mohammad Salim Bhat's younger brother, Irshad Ahmad died in custody on 5 May 2000.

Official responses when they are received, are often inadequate. In mid-April 2000, the organization submitted a draft report to the Government of India about the punitive use of preventive detention legislation in the state of Jammu and Kashmir with the request for comment and information. No response was received and the report was published a month later. On 1 June, Amnesty International received an ‘interim response of the Government of India’ from the High Commission of India in London, consisting of a two-page sheet listing sections of the Public Safety Act which partly safeguard the rights of detainees. The letter did not respond to Amnesty International’s concerns about abuses of the Act, its contravening international human rights standards nor to the concern that many people are detained in Jammu and Kashmir without reference to any law. The Government of Jammu and Kashmir has not responded to a comprehensive report on hundreds of ‘disappearances’ in the state published in February 1999.

Amnesty International’s concerns and recommendations

Amnesty International is deeply concerned about the disregard for the lives and physical integrity of people in Jammu and Kashmir shown in these incidents. 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 which is one of the international humanitarian standards applicable to conflicts of a non-international character such as the one in Jammu and Kashmir, 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”.

With regard to the incident at Brakpora, the organization is also concerned that the right to peaceful protest may have been violated and that security personnel appear to have contravened international standards governing the lawful use of force as for example those laid down in the UN Code of Conduct for Law Enforcement Officials (Code of Conduct). The conduct of SOG and CRFP personnel on 3 April does not appear to have conformed to Article 3 of the Code of Conduct which 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 calls on the Government of Jammu and Kashmir to urgently set up prompt, thorough and impartial judicial inquiries into all three incidents whose terms of reference should be made known to the public. While welcoming that an inquiry has begun to investigate the circumstances of the firing incident at Brakpora, the organization believes that this is not enough as there are serious human rights concerns about the other two incidents as well. Moreover, the organization would like to obtain assurances that the inquiry into the Brakpora firing incident fully complies with requirements of the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions.

In accordance with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, the 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. While welcoming the exhumations of the bodies of the victims of the ‘encounter’ of 25 March, Amnesty International would also like to be informed of the autopsy report and as to whether qualified staff of the International Committee of the Red Cross were involved.

In accordance with Principle 17 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, written reports shall be made within a reasonable time on the methods and findings of each inquiry. These 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 reports shall describe in detail specific events that were found to have occurred, and the evidence on which such findings were based.

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 the organization has about these unlawful killings.

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 always 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. The Government of Jammu and Kashmir should publicly commit itself to bringing the perpetrators to justice and provide assurances to give sanction for prosecution. Similarly, the Union Government should provide assurances of giving sanction for prosecution if security personnel falling in its jurisdiction should be found involved.

The organization also urges the Government of Jammu and Kashmir to establish the fate and whereabouts of the 17 persons whose “disappearance” and subsequent custodial killing has been alleged. Compensation should be given to the relatives of all the victims in accordance with National Human Rights Commission recommendations as also in accordance with Principle 20 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

WHAT YOU CAN DO:

Address concerns set out above about the trail of unlawful killings in Jammu and Kashmir to members of the Jammu and Kashmir Legislative Assembly.

You can address the above concerns to:

Dr Farooq Abdullah
Chief Minister of Jammu and Kashmir
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Mr P L Handoo
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