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# India

## Open Letter to the Chief Minister of Jammu and Kashmir on the failed promises of the Common Minimum Program

2 December 2003

Dear Chief Minister,

November 2003 marked the first anniversary of the Peoples Democratic Party (PDP) - Congress coalition government coming to power in Jammu and Kashmir. During the election the PDP - Congress promised the Kashmiri people that there would be an end to human rights violations in the state and offered a remedy to their problems through a Common Minimum Program published soon after the elections. A fundamental objective of the Common Minimum Program was to restore the rule of law in Jammu and Kashmir and to protect the people of the state from violence. The much publicized "healing touch policy" generated a new era of hope for the Kashmiri people and all those in the international community concerned with protection and promotion of human rights that there would be a possible end in sight to illegal arrests, custodial killings, "disappearances," torture; and rape and the prospect of relief for the victims of violence in the state.

No serious cases of human rights violations were reported from the state during the first month in power of the PDP - Congress administration, raising hopes that human rights violations in Jammu and Kashmir would be a thing of the past. However, soon afterwards there were reports from Baramulla district that security forces opened unprovoked and indiscriminate fire killing one person and injuring two others. Since then, human rights abuses by the security forces and police have continued to be reported almost daily.

Over the last year human rights abuses by armed political groups have also persisted at a high level in Jammu and Kashmir with a reported 344 civilians killed in a targeted and indiscriminate way. Torture, including rape, and beatings of the civilian population by members of armed opposition groups also continued to be reported throughout the year. Armed opposition groups failed to abide by standards of international humanitarian law and many civilians were killed as a result of indiscriminate violence during attacks on security forces. Militants were also reportedly involved in criminal activities including extortion. Amnesty International condemns without reservations these serious human rights abuses and has called repeatedly on these groups to abide by international humanitarian law.

As you know in November 2002 we welcomed many measures set out in the Common Minimum Program. We made several recommendations for the effective implementation of a full range of measures to protect and promote human rights in the state. We regret that to date we have not received a response.

Set out below are Amnesty International's observations on the implementation so far of seven of the key human rights commitments contained in the Common Minimum Program. While appreciating the tough challenge facing the government to maintain law and order in the face of continuing violence by armed opposition groups we urge the government to implement commitments made to the people of Jammu and Kashmir by the state government in November 2002.

**Common Minimum Program Point 17: The Government considers that there are enough laws in existence to deal with militancy. Therefore it will not implement POTA in the state.<sup>1</sup>**

**Common Minimum Program Point 3: The government shall review the cases of detainees being held without trial for long periods. It shall release all detainees held on non-specific charges, those not charged with serious crimes and those who have been held on charges that are such that the period spent in jail exceeds their possible sentence.**

Amnesty International welcomes the fact that the Prevention of Terrorism Act, 2002 (POTA) has not been used to arrest Kashmiris over the last year but remains concerned that scores of people who were arrested under POTA under the previous government continue to be held in detention without any hope for release or review of their cases in the foreseeable future. These people are arbitrarily detained in violation of Article 9 (4) of the International Covenant on Civil and Political Rights (ICCPR) to which India is state party.<sup>2</sup>

During the election campaign the state government promised the release of all detainees against whom there were no charges and that those who had been released by the courts would not be rearrested. Soon after the state government came into power, a few political prisoners, including Yasin Malik one of the leader[s] of the Jammu and Kashmir Liberation Front (JKLF), were released creating hope that others being detained without charge outside the state of Jammu and Kashmir would be released.<sup>3</sup> Several other political activists were released on bail but no other releases have occurred to date.

The state government has failed to live up to another commitment made during the election to release a large number of detainees being held outside Jammu and Kashmir in violation of the amendments to the Jammu and Kashmir Public Safety Act, 1978 (PSA) which

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<sup>1</sup> Prevention of Terrorism Act.

<sup>2</sup> Article 9 (4) of the ICCPR states that "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

<sup>3</sup> The JKLF is now seen as the leading pro-independence political organization. In 1989 it began an armed pro-independence campaign but in 1994 the group renounced violence and began to campaign politically for Jammu and Kashmir's independence.

provides that Kashmiris cannot be detained outside the state. In addition, those detained under Terrorism and Disruptive Activities (Prevention) Act, (TADA) which was enforced in the state in 1987, continue to be behind bars even though the law lapsed in Jammu and Kashmir in 1995.<sup>4</sup> TADA continues to be applied retrospectively in the state.

A screening committee to review the cases of political prisoners and militants, which began working in January 2003 met a few times early this year. Only a few political prisoners were released because the committee failed to meet consistently throughout the year. The state government's agreement with the central government that the screening committee would include an officer of the Union Ministry for Home Affairs and would vet candidates for release from jail not only raised serious doubts about the release of political prisoners which is at the heart of the "healing touch" policy but changed the nature of the screening itself because the central government were able to determine which candidates were released.<sup>5</sup>

**Common Minimum Program Point 10: The government reaffirms that the return of the Kashmir Pandits to their mother land is an essential ingredient of Kashmiriat. The government will seek the cooperation of all elements in the society to create an atmosphere conducive to their safe return, will take all necessary steps to ensure their safety and devise effective measures of their rehabilitation and employment.**

The state government promised a dignified return for the estimated 200,000 Kashmiri Pandits who have left the state since the outbreak of the insurgency.<sup>6</sup> The state government failed to protect the Pandit community at a time when it was making efforts to persuade the Pandits to return to their homes. In March 2003, 24 Kashmiri Pandits including 11 women and two children were killed by unidentified gunmen in Nadimarg.<sup>7</sup> Prior to these killings

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<sup>4</sup> TADA lapsed in May 1995 and was not renewed following widespread criticism by national and international human rights organizations. Cases can still be filed under TADA under section 14 which provides that it can be applied to ongoing trials in various courts before its expiry and to defendants tried in future in connection with offences alleged to have been committed before its lapse. See *India: Punitive Use of preventive detention legislation in Jammu and Kashmir* (AI Index: ASA 20/10/00) of May 2000 and *India: The Terrorist and Disruptive Activities (Prevention) Act: The lack of "scrupulous care"*, (AI Index: ASA 20/39/94) of November 1994.

<sup>5</sup> Previously district level screening committees existed in Jammu and Kashmir and the central government was not involved in the vetting of candidates for release.

<sup>6</sup> Kashmiri Pandits are Hindu by religion. They are regarded by some Kashmiris as having strong links with the rest of India because they are Hindu and because they hold a large percentage of government posts in the state. In 1991, several prominent members of the Pandit community were allegedly killed by militants causing the migration of about 150,000 Pandits from the Kashmir valley. Those who were wealthy or had relatives in New Dehli moved there while the rest were relocated in camps for internally displaced set up by the government around Jammu and New Dehli.

<sup>7</sup> For more details, see Amnesty International's public statement: *India/Kashmir: Safeguard the lives of civilians* (AI Index: ASA 20/013/2003) of March 2003.

leaders of the Pandit community had met with local authorities and requested additional security as they felt that the level of security was inadequate, but their request had been rejected.

Fifty-four people from nine families were living in Nadimarg and had not migrated despite several massacres that had been carried out in the area in the past. Since these killings a further 160 of the estimated 700 Pandit families who continued to live in Kashmir fled due to fears of being targeted. Seven constables of the Jammu and Kashmir police were dismissed from service following an inquiry into the role of the policemen deployed on guard duty at Nadimarg on the day. Investigations have not revealed the individuals responsible for the killings.<sup>8</sup>

Amnesty International urges the state government to abide by the commitment it made in the Common Minimum Program that it would ensure that religious minorities in the state are able to enjoy all their constitutionally guaranteed rights and that further impartial and independent investigations will be conducted into the killings at Nadimarg with a view to bringing to justice those responsible.

**Common Minimum Program Point 8: The government shall implement special schemes to rehabilitate former militants who have forsworn violence and rejoined the mainstream.**

Amnesty International welcomes the rehabilitation program for former militants, initiated by the state government in July but urges the state government to ensure that former militants who are assimilated into the security forces are vetted for involvement in serious human rights abuses and receive training on human rights standards.

**Common Minimum Program Point 5: All cases of custodial killings and violations of human rights shall be investigated and persons responsible for them will be identified and punished appropriately.**

During the election campaign the state government promised to investigate all allegations of human rights violations in the state, a promise reflected in the above commitment of the Common Minimum Program. On several occasions the state government has instituted an initial investigation into alleged human rights violations but no action has been taken to bring the perpetrators to justice.

On 16 May Mohammad Ashraf Malik was handed over to the 41st Rastriya Rifles (RR) by his uncle after the soldiers said that they needed him for questioning. The family were assured by the Senior Superintendent of police of Kupwara district that he would be released after questioning. However, after three days, on 19 May, the family of Mohammad

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<sup>8</sup> On 29 March Mumbai police killed three individuals who were suspected of being involved in the Nadimarg Massacre. These allegations are denied by the family of the three as well as local resident in their villages in Kashmir.

Ashraf Malik were informed he was killed in a landmine explosion while he was leading the police to a militant hideout. His family received 40 grams of his flesh as his remains. A First Information Report (FIR) was not registered and an investigation into his death has not been conducted. The family believe that the police are responsible for his death.

A carpet weaver, Mohammad Hussain Ashraf who was reportedly arrested on 24 May by an army patrol believed to be members of the 7<sup>th</sup> RR based at Khrew army camp near Sampore. Later the same day, his parents learned of his detention and immediately went to Khrew camp, where army personnel initially admitted that he was in their custody and assured them that their son would soon be released. The army now deny knowledge of the whereabouts of Mohammad Hussain Ashraf and claim that he was released. To date his family have been unable to establish his whereabouts despite promises by the Inspector General of Police and the state government to look into the case.<sup>9</sup>

The state government needs to be seen to make the security forces more accountable for their actions. We are concerned by reports that a police officer involved in five extrajudicial executions at Patribal in March 2000 was honoured by your government in August this year despite an initial recommendation by your government for his dismissal from the service.

Amnesty International urges your government to promptly, independently and impartially investigate all incidents of human rights violations and bring to justice those found to be responsible. In addition, Amnesty International urges the state government to ensure that security forces be given comprehensive training in existing human rights standards, including the United Nations (UN) Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials to ensure the right to life is upheld at all times.

**Common Minimum Program Point 6: The Government shall strengthen the State Human Rights Commission to make it an effective instrument for addressing the grievances of the people of the state.**

Promises made by the state government in the Common Minimum Program to strengthen the Jammu and Kashmir State Human Rights Commission (SHRC), set up in 1997 and make it an effective instrument to eradicate human rights abuses in Jammu and Kashmir were welcomed by Amnesty International but to date we believe that these promises have not been fulfilled.

In October Amnesty International wrote to Justice A M Mir, the new chair of the SHRC and welcomed his commitment for the SHRC to take *suo motto* cognizance of human rights abuses and publish details of all human rights violations reported to it.

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<sup>9</sup> For more details, see Amnesty International's Urgent Action Appeal, AI Index: ASA 20/019/2003, 17 July 2003.

Amnesty International remains concerned that the SHRC is largely ineffective because it continues to lack any real power and authority to take action against those found guilty of human rights violations in the state. Amnesty International believes that the role of the SHRC is limited by its statute. The Jammu and Kashmir Protection of Human Rights Act (J&K PHRA) contributes to the wide-scale impunity prevailing in the state because it prevents the SHRC from independently investigating allegations of human rights violations by members of the army and paramilitary forces. Furthermore, the SHRC only has powers to make recommendations to the government, many of which are ignored.

In addition, the SHRC is hindered by the fact that the security and armed forces enjoy special powers because their actions do not come under the responsibility of the state government.<sup>10</sup> The Jammu and Kashmir Disturbed Areas Act; Armed Forces Special Powers Act, 1958 and the Public Safety Act, 1978 all provide discretionary powers to the armed forces, effectively enabling them to resort to human rights abuses. These security forces are mainly involved in fighting militancy in the state. It is therefore, imperative for any improvement in the human rights situation in Jammu and Kashmir that the SHRC is given the powers to investigate any reports of human rights violations by the army, paramilitary forces as well as the police.

We urge the state government to ensure that the police and all other relevant authorities report cases of custodial deaths to the National Human Rights Commission (NHRC) as required in all other states in India where it is mandatory for the superintendents of police and deputy commissioners to report custodial deaths to the NHRC. Amnesty International further believes that the SHRC is understaffed and under-equipped and recommends that the state government allocate more resources to the SHRC to facilitate more effective investigations.

**Common Minimum Program Point 16: A Commission will be set up to make recommendations for reform of the police administration to make it a more effective and humane institution for investigation of crimes and for enforcement of law and order. The government will ensure that personnel in the Special Operations Group (SOG) are assimilated /relocated within the regular police establishment.**

Amnesty International has been concerned for many years at the high level of reported human rights violations perpetrated by the Jammu and Kashmir police and the widespread impunity which surrounds them. The organization welcomed the government's commitment to set up a Commission to recommend reforms. However, it is disappointed that no such Commission has been created.

Amnesty International in November 2002 welcomed the assurance in the Common Minimum Program that the Special Operations Group (SOG), a division of the police dealing with armed insurgency which has persistently been accused of wide-scale human rights

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<sup>10</sup> National Human Rights Commission, Amnesty International's recommendations for effective protection and promotion of human rights, AI Index: IOR 40/007/2001, September 2001.

violations, would be disbanded. We are concerned however that to date there have been no signs of such a process being initiated. On the contrary, it was reported that on 5 January 2003 that the SOG would be “reoriented”. We are seeking clarification on the government’s plans for the reform or disbanding of the SOG. Amnesty International is aware that there have been investigations into incidents of human rights violations involving the SOG and that 25 of its members were removed from duty but no further action was taken against them.<sup>11</sup>

In the meantime, reports of human rights violations by the SOG are continuing, making it all the more imperative for the government to address the future of the SOG at the earliest. On 12 November 2003 the Kashmir Times carried a report that the SOG raided the home of Bashir Ahmad Sheikh, who was allegedly killed in a “fake encounter” in July 2003, and beat his mother and sisters. The SOG also beat other residents resulting in 13 people having to be hospitalised.

In January the state government announced that a 1000 member state volunteer force to assist the police to tackle militancy in the state would be set up. Amnesty International believes that a state volunteer force can place the civilian population in grave danger because it would seriously compromise their neutrality. In addition, without appropriate supervision, training and clearly defined mechanisms for accountability, there is a clear risk that the creation of a state volunteer force could lead to an increase in human rights violations carried out with impunity. Those refusing to join it are likely to be seen as tacitly supporting the militants.

Amnesty International urges the government of Jammu and Kashmir to abide by its commitments to restore the rule of law and protect the human rights of the population of the state as promised in its Common Minimum Program of November 2002.

I look forward to receiving your response to our recommendations.

Yours sincerely,

Irene Khan  
Secretary General

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<sup>11</sup> The removal from duty of the 25 SOG personnel was announced by Muzaffar Hussain Beig, Minister for Law and Parliamentary Affairs on 4 June 2003.