



October 17, 2007

Working Group on Enforced and Involuntary Disappearances
OHCHR, Palais des Nations
8-14 Avenue de la Paix
CH-1211 Geneva 10
Switzerland

RE: General Allegations and Individual Case Submissions on Enforced Disappearances in Punjab, India

Dear Working Group:

Ensaaf, The Redress Trust (REDRESS), and the Center for Human Rights and Global Justice at New York University School of Law (CHRGJ) submit the attached 32 cases to the United Nations Working Group on Enforced and Involuntary Disappearances (WGEID). These cases are representative of “disappearances” that were perpetrated in the state of Punjab, India from 1984 to 1995 and have not been submitted to the WGEID on prior occasions. We have received the direct consent of the victim families to submit these cases.

Despite a lapse of over twelve years, the Government of India has failed to clarify the fate of these “disappeared” individuals. Further, the National Human Rights Commission of India (NHRC), established to implement India’s international human rights obligations, has refused to accept these cases as part of its inquiry into police abductions ending in mass secret cremations in Punjab. As the NHRC is likely close its inquiry this year, we further submit general allegations regarding the lapses of the NHRC inquiry into enforced disappearances, as well as the absence of other domestic remedies to address enforced disappearances.

India’s judicial and human rights institutions have systematically failed to provide truth, justice, and reparations to victims and survivors of enforced disappearances in Punjab, India. The government has instead denied accountability for these abuses, and has refused to take effective legislative, judicial and administrative measures to end enforced disappearances. Over the past twelve years, the Government of India has refused to conduct investigations into these “disappearances,” withheld the names of perpetrators, and failed to provide reparations or guarantees of non-recurrence to survivors.

As a first step towards compelling India to fulfill its obligations to the victim families under international law, we request the WGEID to intervene to help clarify the fate and whereabouts of the “disappeared” persons whose cases are submitted for your consideration. We also request an opportunity to make a presentation before the WGEID at the November session on general allegations of the systematic “disappearances” that occurred in Punjab and the continuing impunity for these “disappearances.” We further encourage the WGEID to request an invitation to visit India to examine these “disappearances.” The Working Group’s attention to this matter would create critical public awareness in India and expedite the investigation and clarification of “disappearances” in Punjab. Without international pressure and censure, India will not investigate these “disappearances” or otherwise provide an effective remedy to the survivors.

Information on groups submitting the cases:

Ensaaf is dedicated to ending impunity and achieving justice for mass state crimes in Punjab, India, by documenting and exposing violations, holding perpetrators accountable through legal action, and organizing survivors to advocate for their rights. Ensaaf is in regular contact with families of those “disappeared” in Punjab. The 32 families represented in this submission have requested that Ensaaf present their cases to the Working Group as a means of compelling the Indian government to assist them in determining the fate of their loved ones. Unfortunately, the

families lack the capacity to submit their cases directly. We can readily provide follow up information to the families or facilitate contact between the WGEID and the families.

The Center for Human Rights and Global Justice at New York University School of Law (CHRGJ) and The Redress Trust (REDRESS) join in this submission to further bring attention to the situation of the families of the “disappeared” in Punjab. Both CHRGJ and REDRESS have engaged in advocacy relating to “disappearances” in Punjab, including assisting with the mass cremations litigation, efforts at international accountability, and educating the international community about these abuses.

CHRGJ has been at the forefront of addressing impunity for human rights abuses in India through its research, reporting, and advocacy work on caste discrimination and violence against Dalits or so-called untouchables, and communal violence in the state of Gujarat. The Center has also played a critical and leading role in addressing U.S.-led “disappearances,” including through advocacy, investigations, public reporting, and representation of individuals who have been extraordinarily rendered in the “War on Terror.” Through its Project on Extra-Judicial Executions, the Center provides rigorous analysis of international law protecting the right to life and to support the work of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions Philip Alston, the Center's Faculty Director and Chair. Our work in these areas has been internationally recognized and relied upon by a number of U.N. human rights mechanisms including the U.N. Committee on the Elimination of Racial Discrimination, the U.N. Committee Against Torture, and a number of U.N. special rapporteurs and special representatives. Founded in 2002, CHRGJ is co-directed by Professors Philip Alston, Smita Narula, and Margaret Satterthwaite. Jayne Huckerby is research director. All publications and statements of the Center can be found at its website: www.chrgj.org.

REDRESS is an international nongovernmental organisation with a mandate to seek justice and reparation for victims of torture and other international crimes, and to make accountable all those who perpetrate, aid or abet these acts. It fulfils its mandate through a variety of means, including providing legal advice and assistance to survivors to help them gain both access to the courts and redress for their suffering; providing information, advice, training and mentoring to improve access to justice and reparation in national contexts; promoting the development and implementation of national and international law and standards and institutions capable of providing effective and enforceable civil and criminal remedies for victims of crimes under international law; and increasing awareness of the challenges faced by victims in their efforts to secure remedies and redress. REDRESS' expertise on access to justice and reparation has been internationally recognised and its comparative study on reparation for torture in 31 countries worldwide was submitted by the United Nations Special Rapporteur on Torture to the United Nations General Assembly for its consideration (UNGA Res. A/58/120). It has also been one of the principal advocates behind the recent adoption of the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.¹

Background

According to domestic and international human rights groups, between 1984 and 1995 Punjab security forces killed thousands of Sikhs as part of a brutal counter-insurgency operation characterized by systematic and widespread human rights abuses, including torture, extrajudicial executions, and “disappearances.”² In 1995, human rights activist Jaswant Singh Khalra uncovered proof of the “disappearances” and extrajudicial executions perpetrated by the Punjab police: municipal records demonstrated that police officers had secretly cremated thousands of bodies in three crematoria in the district of Amritsar—then one of 13 districts in Punjab. The Punjab police abducted, illegally detained, and tortured Khalra, killing him in late October 1995.³

Soon after police abducted Jaswant Singh Khalra, the Supreme Court ordered the Central Bureau of Investigation (CBI) to investigate the mass cremations. The December 1996 report by the CBI disclosed 2,097 secret cremations

¹ Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

² See, e.g. Ensaaf and Human Rights Watch, *Protecting the Killers: A Policy of Impunity in Punjab, India*, (New York: Human Rights Watch, 2007) (“*Protecting the Killers*”), p.13.

³ *Protecting the Killers*, p. 64, citing *State (CBI) v. Ajit Singh Sandhu & Others*, Additional Sessions Judge Bhupinder Singh, Patiala, Session No. 49-T of 9.5.1998/30.11.2001, Judgment, November 18, 2005.

at three cremation grounds of Amritsar district. However, this number does not accurately represent the total number of individuals illegally cremated in Amritsar. Interviews with cremation ground workers disclosed that multiple bodies were often cremated with the firewood normally required for completely burning one body, and Khalra himself documented over 6,000 cremations in Amritsar district. Further, the CBI arbitrarily limited its investigation to cremations from 1984-1994, ignoring secret cremations that occurred outside of this range.

The Punjab police falsely reported many extrajudicial executions, custodial deaths, and “disappearances” as “encounters” or “escapes” from custody, to conceal the extrajudicial violence committed against these individuals.⁴ The vast majority of the “disappearances” began with illegal detention and torture. Prior to “disappearing” the victims, Indian security forces failed to properly acknowledge detentions, provide family members with information regarding the illegal detention or “disappearance” of the victim, or present detainees before magistrates within 24 hours, as required by Indian law. Hundreds of perpetrators, including all of the major architects of these abuses, have escaped accountability⁵.

Individual Case Submissions

The 32 cases being submitted to the Working Group exhibit the general characteristics of “disappearances” in Punjab discussed above. In 28 of the 32 cases being submitted, witnesses report that the “disappeared” individual was taken by police and detained prior to the “disappearance.” Many of the families report that police officials told them that their family member had escaped from police custody and then denied knowledge of their whereabouts. Punjab police officials, in a few instances, have informally told the families that their relative was killed with no clear information or proof to support their claim. In the past, the Indian government has also alleged that “disappeared” individuals had gone abroad, or were militants killed in police encounters or due to inter-group rivalry, despite no evidence of prior militant affiliation and affidavits testifying to the victim’s illegal police detention prior to “disappearance.”

We respectfully request the WGEID to seek a thorough clarification of the whereabouts of the “disappeared.” Given the government’s record of fabricating the whereabouts of “disappeared” individuals, government admissions do not give the victim families adequate information as to the fate of their loved ones.⁶ These families, in addition to the mandate of the WGEID, demand thorough investigation and independent evidence to support the Indian government’s claims. Whenever possible, dates and case numbers of habeas corpus petitions, communications to authorities, and newspaper articles have been noted in each submission to aid the WGEID and the Indian government in investigating each case.

Inadequate Government Response/Absence of Domestic Remedies- Punjab Mass Cremations Case

In 1997, in response to the CBI’s investigations into secret cremations in Punjab, the Supreme Court appointed the NHRC as its *sui generis* body in the Punjab mass cremations case to examine all issues raised by the petitioners, granting it the extensive powers of the Supreme Court under Article 32 of the Indian Constitution to redress fundamental human rights violations.⁷ Unfortunately, over the past ten years, the NHRC has consistently refused to adjudicate the full extent of rights violations associated with the practice of “disappearances” in Punjab.⁸ The Commission’s major failings in the Punjab mass cremations litigation include:

⁴ *Protecting the Killers*, pp. 13-14, citing US State Department, Bureau of Democracy, Human Rights, and Labor, “Country Reports on Human Rights Practices—1993: India,” January 31, 1994, http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_sasia/India.html (accessed April 13, 2007).

⁵ *Protecting the Killers*, p. 14, citing US State Department, Bureau of Democracy, Human Rights, and Labor, “Country Reports on Human Rights Practices—2006: India,” March 6, 2006, <http://www.state.gov/g/drl/rls/hrpt/2006/78871.htm> (accessed April 13, 2007).

⁶ For example, In February 2006, the then-Director General of Punjab police, S.S. Virk, admitted that the Punjab police had faked the deaths of over 300 militants who later became informers, cremating innocent civilians in their place (who remain unidentified). *Protecting the Killers*, p. 36, citing “DGP Fears Threat to Sukhi’s Life,” Tribune (Chandigarh), February 20, 2006, <http://www.tribuneindia.com/2006/20060220/main4.htm> (accessed October 10, 2007).

⁷ The Supreme Court reiterated the vast powers afforded to the NHRC in 1999. Order of the Supreme Court dated September 10, 1998, Criminal Misc. Petition Nos. 6674 of 1997 and 4808 of 1998, Writ Petitions (Crl.) Nos. 497 and 447 of 1995.

⁸ See, e.g., NHRC Order dated November 11, 2004, Reference Case No. 1/97/NHRC,

- 1) Limiting its mandate to the narrow issue of the procedural correctness of secret cremations, ignoring the violations of the right to life and liberty and excluding cases in which bodies were disposed of by other methods, such as dumping the bodies in canals;
- 2) Territorially restricting its mandate to three crematoria in Amritsar district, one of then-13 districts in Punjab, thus ignoring “disappearances” and killings throughout the state ; and
- 3) Refusing to investigate a single “disappearance,” killing or cremation, thus never hearing any evidence from survivor families, and, instead relying on police admissions to determine the status of the victims.

Despite repeated objections from the petitioners and an extensive mandate from the Supreme Court, the NHRC disregarded the evidence of systematic “disappearances” and killings brought before it. Thus, thousands of cases of enforced disappearance remain outside of the jurisdiction of the NHRC. The 32 cases being submitted to the Working Group, for example, originate from outside the district of Amritsar, and thus have never been considered by the NHRC.

After ten years of proceedings, the NHRC has offered arbitrary compensation to the next of kin of 1,051 individuals for the wrongful cremation of the decedent, where the Punjab police did not follow the rules for proper cremations, and 194 individuals for the violation of the right to life, with no admission of liability or identification of perpetrators. In its October 9, 2006 order, which effectively closed the case, the NHRC also appointed a one-man commission to identify the remaining 814 bodies under its consideration, if possible, within eight months. This commission, which concluded its hearings at the end of June 2007, continued the practice of discarding investigations in favor of police admissions establishing the name, parentage, and address of those “illegally cremated.” It rejected relevant evidence offered by victim families.⁹

After more than a decade of proceedings that have excluded victim participation, relied solely on police admissions, failed to identify responsible officials, and offered only arbitrary and meager compensation to a small subset of victim families, many victim families now feel the government condones the abuses and the denial of justice.

The vast majority of families affected by enforced disappearances do not have the means to institute separate legal proceedings on their own. The persistent physical and emotional burdens that these family members experience are compounded by significant economic hardship resulting from the loss of the income of the individual “disappeared,” the destruction of property by law enforcement officials, the inability to resume work activities because of police intimidation and/or disabilities related to reported abuses, and relocation costs associated with flight from persecution.¹⁰ Moreover, those that have instituted other domestic proceedings, such as *habeas corpus* petitions, are almost always denied relief.¹¹

<http://nhrc.nic.in/Punjab.htm#Reference%20made%20by%20the%20Supreme%20Court> (accessed October 10, 2007): “the scope of the Commission’s jurisdiction was confined to matters relating to the alleged ‘unlawful cremation’ of the 2097 bodies in the police districts of Amritsar, Tarn Taran and Majitha only and rejected the plea raised by Learned Counsel for the petitioners.”

⁹ See, e.g., Bhalla Commission order dated April 28, 2007. Reference Case No. 1/97/NHRC and CI/NHRC/2006 (stating that it is not the scope of the Commission to determine the fate of the survivor’s son and what happened to the victim’s dead body).

¹⁰ A six-member investigative team from Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture conducted a torture and trauma study in Amritsar, Punjab in May and June 2005, finding startling rates of current and past psychological and physical suffering among the families of individuals “disappeared.” During this study, the authors observed the financial toll taken on these families due to the “disappearance” of their family member. Physicians for Human Rights (PHR) and the Bellevue/NYU Program for Survivors of Torture (Bellevue), “Evaluation of Litigants Pertaining to Writ Petition (Crl.) No. 447/95 Committee for Information and Initiative on Punjab v. State of Punjab,” October 24, 2005, <http://www.ensaaf.org/pdf/reports/PHR-Bellevue.pdf> (accessed October 10, 2007), pp. 20-21.

¹¹ Among the individual case submissions, six families filed *habeas corpus* petitions, with none resulting in the whereabouts of the “disappeared” individual. See also Jaskaran Kaur, “A Judicial Blackout: Judicial Impunity for Disappearances in Punjab, India,” *Harvard Human Rights Journal*, vol. 15 (2002), p. 269. This article analyzes how the Punjab and Haryana High Court disposed of *habeas corpus* petitions filed on behalf of the disappeared from 1990 to 1997, as well as the personal experiences of the victims’ families, lawyers and justices involved. The study draws from 90 *habeas* petitions, as well as 30 interviews with survivors and 30 interviews with lawyers and retired and sitting justices.

Role of the WGEID

We respectfully request the WGEID to urge the Government of India to conduct investigations into the cases submitted as well as the general allegations regarding the Punjab mass cremations case, discussed above. These investigations should not only uncover the whereabouts of the victims, but also the manner in which they came to their fate, supported by independent evidence, so that the victim families can then take full advantage of the recourses available to them under Indian law.

Thank you for the opportunity to give an oral presentation to members of the WGEID at the November 2007 session in order to provide further information on the systematic “disappearances” in Punjab. We would like to reserve one hour of the WGEID’s time: ½ hour for the oral presentation and ½ hour to respond to the WGEID’s questions. We hope that in response to the individual submissions and general allegations presented at this session, the WGEID will request an invitation to visit India in order to gain a firsthand assessment of the situation and provide recommendations to the Indian government in implementing its international obligations with respect to enforced disappearances. The Working Group is uniquely qualified to intervene in this case because of its experience in dealing with situations of mass “disappearances” and its uncompromising humanitarian mission to assist families affected by enforced disappearances.

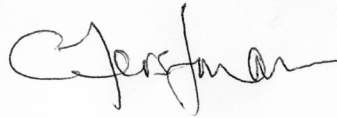
The WGEID offers the best hope to the victim families seeking to clarify the fate of their loved ones and pursue avenues for redress. Having fallen outside of the protection of India’s premier human rights institution, the families of those disappeared by the Punjab government do not have effective means of addressing the enforced disappearance of their relatives without this international intervention.

Thank you for your consideration.

Sincerely,



Sukhman Dhama
Co-Director
Ensaaf



Carla Ferstman
Director
The Redress Trust



Smita Narula
Faculty Director
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Enclosures (2):

Forms to Submit a Communication on 32 Victims of Enforced or Involuntary Disappearance (32 collated forms)

Ensaaf and Human Rights Watch, *Protecting the Killers: A Policy of Impunity in Punjab, India*, (New York: Human Rights Watch, 2007)