

INDIA

@Determining the fate of the "disappeared" in Punjab

Introduction

"An act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subject to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life"

Scores of people are reported to have "disappeared" in the Indian state of Punjab. Their relatives and friends have not heard from them for months or years. Many were last seen being taken away by law enforcement agents in the state, yet the authorities have failed, in almost all cases, to account publicly for the fate of these victims.

Thousands of people have been arrested by police in Punjab since 1983 when armed Sikh opposition groups emerged demanding an independent Sikh state (Khalistan). These groups have been responsible for widespread abuses, including the deliberate and arbitrary killings of thousands of civilians, bombings, hostage-takings and assassinations. Successive Indian governments have opposed the creation of an independent Sikh state. In February 1992 elections to the state assembly were held in Punjab ending five years of continuous direct rule from Delhi. By the beginning of 1993 much of the violence had abated, the police having captured or killed many leaders of armed secessionist groups.

In December 1993, Amnesty International published a report entitled *'An Unnatural Fate: 'disappearances' and impunity in the Indian states of Jammu and Kashmir and Punjab*. The report was written "in an attempt to help those seeking to clarify what happened to hundreds of men and women who have 'disappeared' in two Indian states in recent years". Since the publication of the report, the whereabouts of only three people out of a total of 80 listed in the report as having "disappeared" from Punjab has been clarified. The government responded in June 1994 to some of the cases listed from the state of Jammu and Kashmir but failed to respond to "disappearances" in Punjab. The Government also failed to respond to the nine detailed recommendations made by Amnesty International to halt "disappearances" in the two states or to indicate that it was considering their implementation.

¹Article 1(2) of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance

In this report, Amnesty International describes the progress made by courts in Punjab to seek information and redress from state authorities on behalf of victims and their relatives. The report also highlights the failure of the Government of India and the authorities in Punjab to seriously address the issue of "disappearances" in the state in their refusal to investigate or clarify the whereabouts of individuals who are alleged to have "disappeared" or to take steps to bring those responsible to justice. Finally, the report documents cases of recent victims of "disappearances" in Punjab.

The fate of the "disappeared"

Apart from the handful of "disappearances" which have been clarified after inquiries ordered by the courts as described below, the fate of scores of individuals remains unknown. While it is clear that some are held in illegal detention, it is feared that many have been eliminated by police.

In recent months evidence has come to light which suggests that Punjab police have cremated as "unclaimed" the bodies of hundreds of individuals, many of whom police have claimed were killed in "encounters". Amnesty International is concerned that individuals reported to have "disappeared" in Punjab may have been killed in the custody of police and cremated as "unclaimed" in this way.

A report in the Indian Express of 3 February 1995 cited municipal records from Patti which showed that during 1994 at least 17 bodies were cremated as unclaimed. The newspaper claimed that in many cases, relatives of the deceased were not informed of their death or their cremation. The report went on to say that the families of those picked up by the Punjab police as suspected secessionists, "still nurture hope of their returning home. While some families have moved *habeas corpus* petitions in the high court, several others have not done so for fear of police reprisals". It quoted sources within the police as saying that while some of the "missing" persons may have been killed through torture by police, others may have been killed for witnessing such deaths in custody.

In January 1995, a petition was filed in the Punjab and Haryana High Court by the Human Rights Wing of the Akali Dal, a political party, concerning the deaths of hundreds of unidentified individuals and their subsequent cremation. The petitioners claimed that over 2,000 families in Amritsar district alone were waiting for the return of their missing relatives and produced records from cremation grounds in Amritsar district, showing how several hundred "unclaimed" bodies had been cremated during 1992. The petition was rejected on the grounds that the families concerned should file the petition. Amnesty International believes that this is unrealistic given that the bodies were "unclaimed" and unknown. The Human Rights Wing is believed to have taken the petition to the Supreme Court. In a disturbing development, on 6 September 1995, the General Secretary of the Human Rights

Wing, Jaswant Singh Khalra, was arrested from his home in Amritsar by members of the Punjab police. A *habeas corpus* petition has been filed in the Supreme Court by his wife concerning his "disappearance" but police have denied before the court that he is in their custody. The Supreme Court has directed the Punjab police to produce him in court which they have so far failed to do. Amnesty International is concerned for his safety, particularly in light of apparent threats against him by members of the Punjab police in recent months that it "was easy to make one more disappear".

In July 1995, Amnesty International wrote to the Chief Minister of Punjab, calling for an independent and impartial inquiry into the very serious allegations that persons whom the police claimed had been killed in "encounters" had been cremated as unclaimed by police in the state. So far, the organization has received no response from the government.

Allegations that police have cremated the bodies of suspected armed secessionists killed in fake "encounters" as unidentified and unclaimed are reinforced by evidence from an incident on 30 October 1993. On that day, police from Valhota police station in Punjab brought the bodies of two "unidentified" men to the mortuary of the Civic Hospital, Amritsar, for autopsy. Doctors conducting the autopsy found that one of the men was still alive. When he regained consciousness he gave his name as Sarabjit Singh and the doctor sent a message to his family informing them that he was alive and in hospital. However, when relatives reached the hospital, they saw Sarabjit Singh being taken away in a police van. A few hours later his dead body was brought back to the mortuary and cremated without the family being allowed to see the body.

Although the police claimed that Sarabjit Singh had been killed in an "encounter" with police on 30 October and that he had not been arrested, he was reportedly taken away by police in the presence of witnesses on 15 October and seen by a relative in Bhikiwind police station on 23 October. The Supreme Court has ordered the Central Bureau of Investigation (CBI) to investigate the case, a development which Amnesty International welcomes.

In November 1994, a former member of the Punjab police "Black Cat" commando force filed a petition at the Punjab and Haryana High Court alleging that in his presence police killed at least 11 suspected Sikh militants in fake "encounters" after torturing them. He stated in the petition that "some of the bodies were cremated without following the legal formalities".

The Director General of Police (DGP) in Punjab, Mr K.P.S. Gill, has persistently claimed that the "disappearance" of young men from Punjab could be explained by the fact that "a fairly large number of young boys have, for instance, gone abroad on forged passports". However, many of those reported to Amnesty International to have "disappeared" have been women and old men – often the relatives of suspected armed secessionists – many

of whom were arrested before eyewitnesses. At a press conference held at the Indian High Commission in London in June 1994, Mr Gill again gave this explanation for the "disappearance" of Harjit Singh, one of those listed in Amnesty International's report and the focus of a worldwide campaign by Amnesty International against "disappearances". It was pointed out to the DGP by a reporter that the Punjab police themselves had claimed that he had been killed in an "encounter" and had handed over what they claimed to be his ashes to his father. Harjit Singh's father and a clerk of the Punjab High Court claim to have seen him in custody subsequent to his alleged death in an "encounter".

Censure of Punjab police by the courts

"The Punjab and Haryana High Courts and the Supreme Court, are receiving a surge of petitions relating to the countless people who allegedly disappeared from police custody during the war on terrorism in the state. Hardly a day passes without a habeas corpus petition being moved either by the aggrieved families or as public interest litigation by human rights bodies... The Punjab High Court has so far taken cognisance of 58 petitions pertaining to 62 disappearances. And about a dozen petitions against the Punjab Police are listed in the Supreme Court."

In the past year the courts have made several judgements indicting the Punjab police for abductions and killings in Punjab. While these judgements have been made in only a handful of cases – the fate and whereabouts of most of the "disappeared" having yet to be officially clarified – Amnesty International welcomes them.

Action by the Supreme Court

In December 1994, the Supreme Court of India ordered a CBI inquiry into the "disappearance" of three brothers – Nishan Singh, Sukhdev Singh and Jagjit Singh – from Baryar village, Gurdaspur district, in December 1992. The police claimed that the missing men were in Pakistan. However the sister of the three men was a witness to their abduction by 15 police officers and the men were reportedly seen on 14 January 1993 at the Crime Investigation Agency at Kapurthala by a fellow inmate. He claimed that they were subjected to torture.

In May 1995, in a case of *habeas corpus* before the Supreme Court concerning the "disappearance" of seven members of a family, aged between 14 and 85, in October 1991, the Chief Justice commented:

²India Today, 15 December 1994

"It is a serious matter, people are being killed, their whereabouts and their dead bodies are not known... No doubt we will ensure that the law is maintained and its majesty is upheld. But what about the people who are being eliminated in this way. Who will be accountable for that?"³

The Supreme Court recommended the prosecution of a Deputy Inspector General of Police, a Special Superintendent of Police and a Deputy Superintendent of Police and eight other Punjab state police officers on charges of murder, abduction and illegal detention. Rs120,000 was awarded in compensation to the relatives of each of the missing persons. A CBI report had concluded that the members of the family had all been killed in custody. The report also noted that the Deputy Inspector General and the Senior Superintendent of Police had failed to act on a complaint made by the son of one of those who "disappeared" for several months. The Supreme Court also heard and rejected the plea of the Director General of Police, K.P.S. Gill, that he had not been informed of the case or received a written complaint. In defending the police officer the Additional Solicitor General had pleaded that the police had had to carry out their duties in exceptional circumstances in Punjab, and commented that "no judge in the state had the guts to refuse bail to terrorists" during the height of the campaign against armed secessionists. The court took exception to this comment, saying:

"You are asking for commendation from this court for police officers who eliminate persons. It is a most blatant thing I have heard from you... There is a limit to protecting these officers. You are trying to defend the impossible. You, being a law officer, owe a responsibility to this court. Seven people are dead - killed, and there is an evidence to it. The whole thing is very disturbing"⁴.

Action by the state High Court

In May 1995, it was reported that three persons, all aged in their seventies, had been found in police custody by a warrant officer acting on the orders of the Punjab and Haryana High Court following the filing of a *habeas corpus* petition. The three -- Ranjit Kaur, Niranjana Singh and Mohinder Singh -- along with other members of the family who were subsequently released, had been illegally detained since 1992 when they were picked up by police who were trying to force the surrender of one of their relatives, accused of being a member of an armed secessionist. They claimed to have been tortured while in custody. No action is

³June 1995 Bulletin of the People's Union for Civil Liberties, p.6.

⁴ibid.

known to have been taken against the police officers responsible for illegally detaining the three for three years.

In July 1994 a judicial inquiry ordered by the Punjab and Haryana High Court found Punjab and Haryana police personnel guilty of the illegal detention and subsequent killing of Maninder Singh Dalli in a fake "encounter" with police. The judge asked the High Court to start proceedings under section 302 (murder) of the Indian Penal Code against 11 Punjab police personnel. The judge further recommended that a CBI inquiry should be carried out and that compensation be paid to his parents. Maninder Singh Dalli was held in illegal detention by Haryana police from 2 to 14 March 1993. On 17 March he was produced before a magistrate and subsequently handed over to the Punjab police, to appear in court again on 23 April. The police claimed that he had agreed to show where weapons were hidden and while being taken there escaped.

On 17 March 1994 the Punjab and Haryana High Court directed the Punjab government to produce three men in court the following day. Two days before, on 15 March 1994, **Vinod Kumar**, a businessman from Ludhiana, had appeared at the Punjab and Haryana High Court concerning a petition alleging harassment by the Senior Superintendent of Police, Ludhiana. After his appearance in court he left for Ludhiana to collect the ashes of his father, who had recently died, and where he was supposed to meet his brother-in-law, **Ashok Kumar**. His driver, **Mukhtiar Singh**, and a Superintendent of Police from Ludhiana reportedly accompanied him. Neither Vinod Kumar, Ashok Kumar, nor Mukhtiar Singh have been seen since. Following the filing of a *habeas corpus* petition in the High Court, police officials reportedly filed affidavits stating that they knew nothing of the whereabouts of the three men. When the police failed to produce the three men by 24 March 1994, the High Court ordered a CBI investigation into their "disappearance". On 30 August 1995 the CBI submitted its report, saying that there was enough circumstantial evidence to suggest that four police officials were involved in the "disappearance" of the three men. On 14 September, the High Court directed the CBI to submit the report to the chief judicial magistrate's court in Ambala so that the prosecution of the four police officials could proceed promptly. The court also directed to Punjab government to pay Rs.200,000 to the relatives of the victims.

The response of the police and government authorities to the courts

"We are as much interested in looking for them [the "disappeared"] as Amnesty is"
(the Director General of Police, Punjab⁵)

⁵The Independent, New Delhi, 25 January 1994

The publication of Amnesty International's report in December 1993 prompted the above response from the Director General of Police. However, he has not backed up these words with actions. Allegations of "disappearances" have been consistently denied by police and state officials in Punjab. Although an increasing number of individuals have challenged these denials in the courts, many more have remained silent in fear of harassment by police. Officials have routinely ignored numerous letters expressing anguish for the life and safety of the "disappeared" and members of the police have consistently attempted to obstruct legal proceedings.

The United Nations Working Group on Enforced or Involuntary Disappearances, in December 1994, reported the response of the Indian government to allegations of "disappearances": "Scrupulous care had been taken to protect the rights of the individual under due process of law. Habeas corpus was available to all under the Indian judicial system in all circumstances. Wherever there was any suspicion of police excesses, action was taken... All cases of alleged disappearance which were brought to the attention of the police authorities were investigated"⁶. Amnesty International is concerned that in Punjab, this statement has little basis in fact.

In December 1994, a civil writ petition was filed before the Punjab and Haryana High Court by a lawyer. The lawyer was expressing concern at the presence of members of the Punjab police in the High Court premises in Chandigarh which had led to attempts to abduct witnesses and petitioners presenting *habeas corpus* writs in cases of alleged "disappearance". The petition went on to say:

"It is noticed that some intelligence officials of the Punjab State are on permanent duty at the High Court premises. They enter the registry of the High Court and keep on collecting the information of cases being filed against the state of Punjab specially writs of habeas corpus in which warrant officers are appointed or prayed for. By the time poor petitioner takes the warrant officer to the suspected place of confinement of the detenu, the police officer receives the wireless message that warrant officer is on the way and the detenu is shifted else where"⁷.

⁶Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/1995/36 of 30 December 1994, paragraph 222.

⁷Civil Writ Petition 8134 of 1994 in the High Court of Punjab and Haryana. Navkiran Singh, Member, Lawyer's Initiative c/o Bar Association of Punjab and Haryana High Court, vs State of Punjab and ors.

In February 1995 it was reported that the Home Minister, Mr Chavan, had written to several state governments including Punjab calling on them to thoroughly investigate every complaint of excesses, particularly against the police, and punish the guilty. He also asked the state government to make public the proceedings of all such cases and the corrective steps taken⁸. However, investigations ordered by the Punjab authorities in response to complaints of "disappearances" have proved far from effective. In May 1995, the Punjab and Haryana High Court ordered an inquiry by the CBI into the whereabouts of Bagicha Singh who reportedly "disappeared" in September 1992. The High Court judges found that an inquiry report presented by the government had been "manipulated" and pointed to claims made by Bagicha Singh's mother, Paramjit Kaur, that police had made her sign blank papers which were filled in later by police.

In November 1994 it was reported that in over 24 cases the courts had directed the CBI to conduct investigations "since the police's explanations were not found tenable"⁹. The National Human Rights Commission (NHRC), in July 1994, summoned the Punjab Home Secretary in person to seek an explanation for the abduction of four lawyers in Punjab, describing a report concerning their "disappearance" submitted by him earlier as "wishy washy". The NHRC made a brief visit to Punjab in April 1994. During the visit, the Chairman of the NHRC criticised the Chief Minister for failing to respond to six specific cases of human rights violations and was forced to intervene when a woman, whose seven relatives were taken away by police and "disappeared" was illegally detained by police when she tried to appear before the Commission. In its 1994-95 Annual Report, the NHRC made a general comment about the need to "revitalize the role of the civilian administration if the rule of law is to be effectively revived". The Commission referred specifically to Punjab, commenting that: "In Punjab, it means the restoration of the authority of magistrates and the judiciary over the police".

The Punjab police appear to have been so concerned about such judgements by the state high court and the Supreme Court that they have reportedly appealed to the Punjab government to intervene with the judiciary, reportedly arguing that these judgements were leading to demoralization in the police force. In doing so, they have reinforced concerns that the state allowed the abduction and killing of suspects by police in the fight against secessionists to go unpunished. A senior Punjab police officer was quoted as saying in 1994:

"Abnormal situations needed an abnormal approach to handle it. So, why put us in dock. Moreover, whatever the police did, they had the sanction of

⁸Telegraph, 22 February 1994

⁹Times of India, 14 November 1994

*the state. We operated within the framework of the state's policy for which we are individually being asked to pay*¹⁰

Rather than putting faith in the independent judiciary of which India is proud, the Chief Minister is reported to have shared the concern of police officers about the recent rash of court judgements and promised to take the matter up with the Prime Minister.

Perhaps of most concern have been reports that police officers have asked that extraordinary legislation be passed in the state to secure a cut-off date, which would mean that cases against the police relating to a certain period -- the height of the fight against armed secessionists -- could not be heard in the courts. Moreover, police officers have implied that petitions filed by relatives of armed secessionists should not be taken seriously since they were "naturally hauled up from time to time to give leads"¹¹. Amnesty International is gravely concerned at this reported statement. While the organization has persistently condemned abuses by armed secessionist groups in Punjab including deliberate and arbitrary killings, torture and hostage-taking, the grave abuses committed by such groups can never justify the security forces resorting to arbitrary detention, torture, extrajudicial executions or "disappearances". Many of those reported to have "disappeared" in Punjab have been relatives of those suspected of being members of armed secessionist groups. Many have been effectively held hostage by police in an attempt to force their relatives to surrender. Many of the people who "disappeared" in that way have been women.

Cases of "disappearance" in Punjab since 1994

Since the publication of its report on "disappearances" in December 1993, Amnesty International has received further reports of "disappearances" in the state. It has expressed its concern to the authorities and publicly about several of these. The arrest and subsequent "disappearance" of Jaswant Singh Khalra, General Secretary of the Human Rights Wing of the Akali Dal, on 6 September 1995, has been mentioned above as has the "disappearance" of Vinod Kumar, Ashok Kumar and Mukhtiar Singh. Several others are also reported to have "disappeared".

Sukhwinder Singh Bhatti was abducted by armed men on 12 May 1994. A lawyer, who had regularly defended young Sikh men detained in prisons in Punjab on political grounds, he is widely believed to have been abducted by members of the Punjab police. While Amnesty International welcomes reports that the Punjab and Haryana High Court ordered a CBI investigation into his "disappearance" in July 1994 following the filing of a

¹⁰ibid

¹¹Times of India, 14 November 1994.

habeas corpus petition, it is concerned that it appears that the investigation has not been completed over a year after his "disappearance".

On 13 July 1994, a correspondent of the Aj di Awaz newspaper, **Sukhpal Singh** alias Palli, son of S. Chhota Singh, was taken from his uncle's house in Chular Kalan village, Sangrur district, Punjab, by Punjab police in the presence of eyewitnesses. On the orders of the Supreme Court, which treated a letter concerning his "disappearance" as a public interest litigation, a magisterial inquiry in December 1994 found the Punjab police responsible for his abduction. In March 1995, the Supreme Court issued notices to the Home Secretary, Punjab, the Director General of Police and the Senior Superintendent of police, Sangrur. However, the whereabouts of Sukhpal Singh is still not known to date.

According to eyewitnesses, on 3 October 1994, **Raj Kumar** was dragged out of the Punjab and Haryana High Court by Punjab police. He had gone to the court to attend a hearing in connection with a judicial inquiry which had been ordered into his illegal detention by police a few months previously. He was produced by police at a press conference on 4 October where he denied reports that he had been abducted. However, he was taken away by police after the press conference and has not been seen since.

Jaswinder Kaur was arrested by members of the Ropar branch of the Criminal Investigation Agency on 26 February 1995, who were reportedly looking for her husband. The officials returned and arrested her father, **Darshan Singh**, on 6 March. He was subsequently released. Although police filed an affidavit in court denying the arrest of the two, Jaswinder Kaur's parents have reportedly been told unofficially by police that Jaswinder Kaur is being held in a private residence. Amnesty International continues to fear for her safety and is concerned that she remains in illegal detention.

Gurdeep Singh was arrested on 13 August 1995 by police from Hamidi police post, Barnala police station. Although the police denied in court that they had arrested Gurdeep Singh, they had reportedly harassed Gurdeep Singh's family and demanded payment in return for his release, threatening to eliminate him if his family do not comply with their demands. Gurdeep Singh had reportedly been picked up a few months previously and had been released when the family paid a Rs20,000 bribe to police.

The recurrence of "disappearances" highlights the urgent need for measures to prevent "disappearances" and unacknowledged detention. A key preventive measure is the investigation of past cases and the bringing to justice of those responsible.

Conclusion and recommendations

Amnesty International believes that the Punjab police have been allowed to commit human rights violations with impunity in the state. While the organization recognises that the Indian government has had to face ruthless and violent opposition in Punjab, it is totally unacceptable for government agents to resort to human rights violations themselves in their fight against these groups. The United Nations Declaration on the Protection of All Persons from Enforced Disappearance makes clear that "No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances".

The few investigations into "disappearances" which have been carried out have been on the orders of the courts, not of the state authorities. Attempts by relatives to seek redress through the courts have been frustrated by a lack of respect for the judicial process on the part of police and government authorities. While Amnesty International welcomes several recent judgements made by the state high court and the Supreme Court condemning Punjab police for abducting and killing individuals, it is concerned that in the absence of a serious commitment by the state and central government towards clarifying the fate of scores of persons who have "disappeared" and bringing those responsible to justice, such practices will continue. Amnesty International believes that this commitment should include an investigation into the very serious allegations that hundreds of bodies have been cremated by Punjab police in the state as "unclaimed". Independent and impartial investigations into all allegations of "disappearances" are essential if the truth is to emerge.

Amnesty International makes the following recommendations to the Government of India. If implemented, Amnesty International believes these recommendations will help end the pattern of "disappearances" and impunity in Punjab.

- The government should ensure that all complaints of "disappearance" are immediately investigated by an independent and impartial authority. Amnesty International specifically urges the government to investigate allegations of "disappearance" in Punjab detailed in the organization's December 1993 report;
- The government should order an independent and impartial inquiry into allegations that hundreds of bodies of persons who the police claim were killed in "encounters" with police were cremated as "unclaimed" by police to determine whether and how many of these persons died in the custody of police. The inquiring authority should have all necessary resources and powers to carry out its investigation effectively, including powers to compel witnesses to attend and to obtain documentary evidence. Witnesses should be granted adequate protection from harassment. The investigation should be conducted within a reasonable time and the results should

immediately be made public. Where possible, the families of individuals who are found to have been cremated as "unclaimed" should be informed immediately.

- The government should ensure that those found responsible by the courts for the "disappearance" of individuals are brought promptly to justice in order to demonstrate that such actions are not tolerated by the state and to bring an end to the sense of impunity enjoyed by police officers in Punjab. Officers who attempt to obstruct legal proceedings in cases of "disappearance" should also be brought to justice;
- The government should implement all the recommendations made by Amnesty International in its December 1993 report for the prevention of "disappearances" in Punjab (see Appendix).

APPENDIX

The following recommendations are based on those made in Amnesty International's report, *An Unnatural Fate: 'Disappearances' and impunity in the Indian states of Jammu and Kashmir and Punjab*, to which the Government of India has so far failed to respond.

I. The Government

Amnesty International recommends that the government take the following steps to clarify “disappearances” and prevent the occurrence of this gruesome form of human rights violations which, in the opinion of the United Nations Working Group on Enforced or Involuntary Disappearances, constitutes “the most comprehensive denial of human rights of our time”.

1. Commission to Protect Detainees

- ◆ The Government should establish a Commission to Protect Detainees in Punjab. The Commission should be a fully independent and impartial body composed of men and women known for their integrity and impartiality of judgment with a proven expertise and competence in human rights protection. They should have a mandate to effectively protect the rights of all those taken into custody. The formation of such a Commission should be widely publicized so that relatives and witnesses can submit information to it.
- ◆ The Commission should undertake prompt and thorough inquiries whenever there is *prima facie* evidence that a “disappearance” has occurred, and carry out exhaustive investigations to establish where the “disappeared” are and what happened to them.
- ◆ The Commission should have all necessary powers and resources to carry out effective investigations, including powers of immediate and unhindered access to all places where persons may be held in acknowledged or unacknowledged detention, powers to compel the attendance of witnesses and to see all relevant official records from detaining authorities and obtain other relevant documentary evidence. Failure to cooperate with the Commission should be an offence and the government should take immediate action against any official failing to do so.
- ◆ The Commission should take care to take all necessary measures to protect witnesses and relatives of persons reported to have “disappeared” from any form of ill-treatment, intimidation or reprisal, in recognition of their particularly vulnerable position.
- ◆ Inquiries should be speedily conducted and the results should be made public immediately. The Commission's findings should be automatically transmitted to the courts for appropriate legal action.

- ◆The Commission should be empowered to make recommendations for interim relief and appropriate redress to the victims of “disappearances” and their relatives.
- ◆The Commission should be asked to analyze the factors contributing to "disappearances" as well as the reasons why existing legal mechanisms including habeas corpus have failed, with rare exceptions, to provide effective remedies to protect the lives and safety of hundreds of people whose arrest and secret detention officials continue to deny. It should have a mandate to make specific recommendations to the government about how best to implement the UN Declaration on the Protection of All Persons from Enforced Disappearance in Indian laws and effective law enforcement practices.

2. Keep accurate and public records and inform relatives

- ◆The state government should maintain a central, up to date and accurate register of all persons arrested in the state and the place where they are being held.
- ◆The police making any arrests should be obliged to inform the central agency responsible for maintaining the register immediately whenever a person is arrested, the place, exact time of the arrest, by whom it was made, and where the arrested person is being kept or to whom he or she has been transferred. The exact time when a transfer took place and the name of the official to whom the detainee was transferred should also be recorded.
- ◆All police stations, detention centres and prisons should keep fully accurate and up-to-date records of these data as well as the reasons for the detention and the time and date of the person's entry and release.
- ◆Members of the judiciary, relatives of victims and their legal representatives as well as other relevant bodies and interested parties shall have immediate access to such information. Failure to comply with these requirements should attract prompt sanctions.
- ◆Relatives should be informed of any arrest or transfer of a detainee immediately and not later than twenty four hours. The government should consider introducing written and signed statements notifying the relatives of an arrest, the reason for the arrest and the place where the arrested person is being held.

3. Keep detainees in official places of detention

- ◆All persons should be held only in officially recognized places of detention, and the names of all prisons and detention centres where people may be detained should be widely publicized. Secret or ad hoc detention centres should be abolished.

4. Adopt an active policy to prevent “disappearances” and strengthen the legal machinery

- ◆ The government should make it clear through publicly stated commitments and through concrete actions that it will not tolerate “disappearances” under any circumstances.
- ◆ It should issue immediate instructions to police officers that arrests should always be made by law enforcement officials strictly following established legal procedures. They should be made by officers in uniform clearly showing their rank and the forces to which they belong and vehicles used by the police should have number plates clearly displayed at all times. The practice of abducting some people in unmarked cars should be strictly forbidden.
- ◆ The government should issue immediate instructions to officials to comply with all outstanding court orders regarding “disappearances” and bring prosecutions against officials who fail to cooperate with judicial investigations into “disappearances” or deny judicial officials access to places where “disappeared” persons are suspected to be held.
- ◆ The government should ensure that sufficient resources are made available to the state authorities and the judiciary to speedily and effectively clarify the fate or whereabouts of “disappeared” persons and protect their families from any intimidation and ill-treatment. Adequate funds should be available for legal aid, enabling relatives to promptly institute *habeas corpus* proceedings.

The UN Working Group on Enforced and Involuntary Disappearances emphasized in its 1992 report: "Concerned Governments must promote the indispensable changes needed to improve habeas corpus, introducing, if necessary, legal reforms to repair deficiencies. Such reforms should deal with expeditious process, availability or the procedure and unimpeded access of authorities to suspected places of detention".

5. Bring the perpetrators to justice and provide compensation

- ◆ The government should take immediate and effective steps to ensure that all those against whom there is evidence that they have participated in or sanctioned “disappearances” should be promptly brought to justice before the ordinary criminal courts. Those suspected of involvement in such practices should be suspended from active duty during the course of the investigation or at least be removed from any position where they can exercise power over victims, witnesses and relatives of the “disappeared”.
- ◆ The government should review all laws which prevent or seriously inhibit such prosecutions being brought and remove any provisions which do so from the relevant sections in the National Security Act, the Code of Criminal Procedure and the proposed Criminal Law Amendment Bill.

- ◆The victims of "disappearances" and their family should obtain redress and adequate compensation, including as complete a rehabilitation as possible.

6. Introduce a clear chain of command

- ◆The government should ensure strict supervision, including a clear chain of command, over all law enforcement officials responsible for apprehending, arresting and detaining people, as well as over all officials authorized to use force or firearms to prevent any of them from investigating or tolerating "disappearances".

7. Strengthen legal safeguards to prevent 'disappearances' and abide by international obligations and human rights standards

- ◆The government should ensure that all persons, whether arrested under special anti-terrorist laws or preventive detention laws, are brought before a judicial magistrate within 24 hours of arrest. They should have an effective opportunity to be heard promptly and have their detention supervised and reviewed by a judicial or other independent authority, as international human rights treaties to which India is a party, like the International Covenant on Civil and Political Rights, require.
- ◆The practice of keeping detainees in prolonged custody of the police should be abolished, as should legal provisions permitting such practices.
- ◆Relatives and lawyers should have prompt and subsequent regular access to detainees. Detainees should be examined by a doctor promptly after admission to any place of detention, and should have the right to be medically examined by a doctor of their choice.
- ◆Detainees should be promptly informed of any charges against them. Procedures for the supervision of interrogation should be introduced and records should be kept of the officials conducting the interrogation, other persons present, and the time between interrogation sessions.
- ◆Qualified individuals, independent of the police, should make regular unannounced visits to all places where arrested persons are held and be ensured prompt and unhindered access to all detainees held there and be able to communicate with them in private. Their findings should be made public.
- ◆In order to prevent unwarranted suspicions that releases of detainees are a mere simulation, the government should consider introducing procedures requiring releases of all detainees in the two states to be witnessed by the detainee's parents or close relatives, or, if they are not available, his or her lawyer, as well as a judicial official or local village leader. The release document should record the name of the

person to be released, the exact date and time of the release, the name and signature of the persons receiving the released detainee and their relationship to him or her, as well as the signature of the other witnesses present. Failure to abide by any of these procedures should attract prompt sanctions.

8. Train the police

- ◆ All police officers involved in making arrests should receive adequate human rights training to make them fully aware that “disappearances” involve the gravest violations of human rights and attract criminal sanction, in India as well as abroad. They should be trained to uphold international human rights standards, especially those laid down in the Declaration on the Protection of All Persons from Enforced Disappearance, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Code of Conduct for Law Enforcement Officials.

9. Increase cooperation with national and international bodies

- ◆ The government should respond to the observations and recommendations made by various civil liberties groups in India as regards human rights in Punjab.
- ◆ The government should allow international human rights and humanitarian bodies access to states where “disappearances” occur to enable them to share their experiences with the Indian Government to clarify and prevent “disappearances”. In particular, the government should invite the UN Working Group on Enforced or Involuntary Disappearances to visit Punjab.

II. Armed opposition groups

Amnesty International urges all armed opposition groups in Punjab to take the following steps:

Respect the basic standards of humanitarian law which require that all persons taking no active part in hostilities should at all times be treated humanely. All members of these groups should be trained about their obligation under Common Article 3 of the Geneva Conventions to uphold these basic minimum standards.