

INDIA

A vital opportunity to end impunity in Punjab

Measures taken by Governments to open independent and impartial investigations with a view to identifying and bringing to justice those responsible for human rights violations constitute one of the main pillars of the effective protection of human rights. Consequently, a climate of impunity for human rights violators contributes to a great extent to the persistence of -- and sometimes even an increase in -- human rights abuses in a number of countries.

[UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 1993 report, paragraph 686]

I. Introduction

Amnesty International has on many occasions urged the Government of India to order impartial investigations into allegations of a widespread pattern of “disappearances” and extra-judicial executions in the state of Punjab between 1984 and 1994. On 12 December 1996, an important step was made towards that goal. In response to two petitions filed in the Supreme Court containing allegations of a pattern of human rights violations in Punjab and linking these to research which found evidence of illegal cremations by Punjab police, the Court gave an order requesting the National Human Rights Commission¹ (NHRC) to examine the allegations.

However, over two and a half years have passed since the Supreme Court made its request to the NHRC and there has still been no comprehensive or consistent investigation into the allegations of human rights violations contained in the petitions. After a protracted debate about the role that the NHRC should play in carrying out the Supreme Court’s order the NHRC issued an order on 13 January 1999 which focuses solely on the allegations of illegal cremations by police in one district of Punjab and would restrict the Commission’s role to awarding monetary compensation to only those families who can prove that their relatives were illegally cremated by police in that district between 1984 and 1994.

¹ The National Human Rights Commission was established under the Protection of Human Rights Act enacted by the Government of India in 1993 “for better protection of human rights”. It is a statutory body with investigative and recommendatory powers presided over by a Chairperson who must be a retired Chief Justice of the Supreme Court.

The original petitioners in the Supreme Court case are now going back to the Supreme Court to ask that it clarify its original order or give further directions to the NHRC.

The directions given to the NHRC by the Supreme Court represent a vital opportunity to address past human rights violations in Punjab. What the NHRC has itself proposed is the minimum role that it could play in response to those directions. Amnesty International believes that the Supreme Court order provides a basis for a full and thorough investigation by the NHRC of the pattern of “disappearances” and extra-judicial executions in Punjab and an opportunity to provide redress and reparation to victims and their relatives. It hopes that by going to the Supreme Court for clarification of its original order and further directions, the petitioners will secure the opportunity for full investigation and redress.

In the event that the NHRC does not pursue a thorough investigation, Amnesty International believes that the Government of India has the responsibility to appoint some other body with powers to impartially investigate past human rights violations referred to in the petitions before the Supreme Court in accordance with the state’s international obligations to investigate allegations of human rights violations and ensure full redress and reparation to victims. Amnesty International has been encouraged by steps towards ending impunity made in other countries of the region in recent years including the establishment of Presidential Commissions in Sri Lanka to look into “disappearances”. We are taking this opportunity to urge the Government of India to take similar steps towards ending impunity in India.

II. Background to the current concerns

In 1983, an armed campaign was launched for an independent Sikh state in the Indian state of Punjab. Between 1983/4 and 1994 armed groups were responsible for widespread human rights abuses, including the deliberate and arbitrary killing of thousands of civilians and hostage-taking. This was met by a security crackdown and the use of special legislation providing extensive powers to security forces to arrest, detain, and shoot those suspected of involvement in violent activities. During this period there were widespread allegations that police were responsible for illegally detaining, torturing, “disappearing” and extra-judicially executing hundreds of young men. Relatives of those suspected of being members of armed groups including women and the elderly were also targeted. Amnesty International and other human rights organizations documented many of the cases of human rights violations, including torture, illegal detention, extra-judicial

execution² and “disappearance”³. Human rights organizations, including Amnesty International, which attempted to raise incidents of human rights violations throughout the period of violence, were branded as “terrorist” sympathisers.

By the beginning of 1993 much of the violence in Punjab had abated. The police had captured or killed many leaders of armed secessionist groups. The apparent success of the Punjab police in dealing with this armed campaign for independence was and still is used by the state as an excuse for covering up human rights violations and forgetting about the fate of hundreds of individuals, many of whom had no connection with armed groups⁴. Instead of fulfilling its obligations to investigate allegations of human rights violations, the Indian state has sought to justify its actions and actively prevent relatives and human rights activists from pursuing avenues of redress.

² An extra-judicial execution is an unlawful and deliberate killing carried out by order of a government or with its complicity or acquiescence.

³ A “disappearance” occurs whenever a person has been deprived of their liberty by agents of the state (directly or indirectly, including by acquiescence) and the authorities deny that the victim is in custody or fail to provide information about the person thus concealing their whereabouts or fate. The community of nations has recognised that the “disappearance” of a person is an offence to human dignity and a grave violation of the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights. The “disappearance” of a person violates the guarantees of the right to recognition as a person before the law, the right to liberty and security of the person, the right not to be arbitrarily detained and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

⁴ An article published in *Frontline* magazine (29 November 1996) states: “It would be ridiculous to pretend that extra-judicial killings did not take place in Punjab. High-level terrorists were often eliminated to avoid kidnappings for their release; torture used to lead to rapid information on weapons locations; and innocents did on occasion die. These crimes took place in a context where the state, for all practical purposes, had ceased to exist: courts did not function, politicians had fled, the bureaucracy had vanished. The police were given the task of restoring state control of civil society, a war that cost 1,800 of its own personnel’s lives”.

In the aftermath of the violence, many relatives of victims came forward to pursue redress in the courts through the filing of petitions in cases of “disappearance” and other human rights violations. The courts responded to many of these by ordering judicial inquiries and inquiries by other investigative bodies. Many of those have held police officials responsible for torture, illegal detention, “disappearance” and extra-judicial execution and have recommended prosecution⁵. However, in attempting to pursue redress through the courts, many families have faced direct harassment from the police and long delays in the judicial process. Human rights defenders in Punjab continue to be at risk of harassment for their activities.

In January 1995, the Human Rights Wing of the Shiromani Akali Dal (a political party) published the findings of research it had conducted into illegal cremations by police. The organization produced records from cremation grounds in Amritsar district, showing how several hundred “unclaimed” bodies had been cremated by police. In several cases it claimed to have evidence to show that the bodies were those of individuals who had “disappeared” following arrest by police and alleged that its findings suggested that Punjab police had illegally cremated the bodies of many of those who had “disappeared” and who had subsequently been extra-judicially executed.

The cases of disappeared persons has been a source of constant concern for all human rights groups working in the Punjab. An estimated 2000 families from the district of Amritsar alone, wait agonisingly for the return of their near and dear ones. Some families, who cannot bear the uncertainty any more, just want to know if their son, brother, husband or daughter is dead or alive so that they can perform the last religious rites and accept the tragedy as the will of God.

[extract from press release of the Human Rights Wing of the Shiromani Akali Dal dated 16 January 1995 which formed the basis of the High Court and Supreme Court petition]

A petition filed in the High Court of Punjab and Haryana by the Human Rights Wing calling for further investigations into the allegations was rejected. In September 1995, one of those who conducted the research -- Mr Jaswant Singh Khalra -- was picked up by Punjab police and subsequently “disappeared”. Before his “disappearance”, Mr Khalra reportedly received threats from members of the Punjab police that it “was easy to make one more disappear”. *Several police officers are currently on trial on charges of kidnapping Mr Khalra whose fate remains unknown.*

⁵ In 1997 there were said to be over 1,000 cases of human rights violations pending in the High Court of Punjab and Haryana and the Supreme Court. A report in The Times of India dated 9 June 1997 reported that there were 85 Central Bureau of Investigation inquiries and 91 judicial inquiries being carried out on the orders of the courts. 30 police officers were in jail serving sentences following conviction, 100 were on bail and 140 others were facing prosecution.

In reaction to the failure of the state to meet its obligations to at least investigate these allegations, human rights activists approached the Supreme Court as the guarantor of fundamental rights. Evidence that those who had “disappeared” in Punjab had been illegally cremated by police after being extra-judicially executed along with allegations that this was part of a pattern of human rights violations and official cover-up were contained in a petition (Writ Petition (Crl.) No.447/95) filed in the Supreme Court in April 1995 by the Committee for Information and Initiative on Punjab (CIIP), a human rights organization based in Delhi. Similar allegations were also contained in a habeas corpus petition (Writ Petition (Crl.) No.497/95) filed on behalf of Paramjit Kaur, wife of Jaswant Singh Khalra, concerning his “disappearance” and referring to the research he had carried out into illegal cremations.

III. The Supreme Court's directions

Taking serious note of the allegations contained in these petitions, the Supreme Court ordered an inquiry to be carried out by the Central Bureau of Investigation (CBI) ⁶ into the allegations of illegal cremations⁷. The CBI filed a series of reports with the Court as a result of its investigations. By December 1996, it had initiated investigations into the cremation of 2,097 bodies in Amritsar district and identified 585 bodies. It indicated that it was ready

⁶ The CBI is a central state investigative agency. Its Director is appointed by the government.

⁷ A CBI inquiry was also ordered into the “disappearance” of Jaswant Singh Khalra. The inquiry led to the filing of charges against nine police officials.

to initiate prosecutions against police officials in several cases but its reports remained sealed⁸. On producing its fifth report the CBI pleaded its inability to continue investigations to determine criminal responsibility in such a large number of cases and suggested that the inquiry be continued by the Punjab police. However, the Supreme Court, on 11 December 1996, ruled that this option was unacceptable for reasons of impartiality, and asked the CBI to continue its investigations, to register cases where necessary and to submit quarterly reports on the progress of its investigations. The CBI is reported to be continuing its investigations to date and to have filed up to a dozen chargesheets.

Commenting that the findings of the CBI indicated "flagrant violation of human rights on a mass scale", the Supreme Court sought a means of further investigating these violations. In an order of 12 December 1996, the Court requested the NHRC to "have the matter examined in accordance with law".

We request the Commission through its Chairman to have the matter examined in accordance with law and determine all the issues which are raised before the Commission by the learned counsel for the parties. Copies of the order dated November 15, 1995 and all subsequent orders passed by this Court along with the copies of all the CBI reports in sealed covers be sent to the Commission by the Registry... Since the matter is going to be examined by the Commission at the request of this Court, any compensation awarded by the Commission shall be binding and payable. If any approval or further assistance from this Court is necessary, the same may be sought by the Commission.
[extract from order of the Supreme Court dated 12 December 1996]

The Supreme Court's order has been the subject of much debate since. Amnesty International believes that such an open order gave the NHRC an opportunity to investigate comprehensively a suspected pattern of human rights violations in Punjab and to set in place measures for providing reparation to victims and their relatives. This would be consistent with the duty granted to the Supreme Court under Article 32 of the Indian Constitution to enforce fundamental rights. At no point has the Supreme Court itself disputed this broad interpretation.

IV. The response of the National Human Rights Commission

⁸ All of the CBI's reports have remained sealed at their request. The CBI argued that their disclosure could hamper further investigation for the determination of criminal responsibility, and would cause considerable "embarrassment" to many people.

On 28 January 1997, the NHRC held a preliminary hearing on the Supreme Court's order and asked the CIIP as chief petitioner, to submit in writing its views on the terms of reference of the role of the NHRC before the next hearing of 15 February. Officials of the Ministry of Home Affairs were also requested to submit their views. In its submission to the NHRC, the CIIP argued that the Commission was bound not only to look into the issue of compensation but also to look at the causes and implications of these massive violations and the culpability of the state. This would include looking at the correlation between the complaints about missing persons, police abductions, illegal detentions and false "encounters" prevalent in Punjab and the illegal cremations. The CIIP has maintained this position throughout the subsequent proceedings.

The NHRC initially sought clarification on whether it was to act as a statutory body under the Protection of Human Rights Act 1993, or as a designate of the Supreme Court. This was particularly significant because if acting strictly under the Protection of Human Rights Act, section 36(2) of that Act would bar any inquiry by the Commission into events more than a year old⁹. The State of Punjab and the Union Government of India argued that section 36(2) applied and that therefore the Supreme Court's order was invalid. After many months of deliberation, the NHRC, in an order of 4 August 1997 stated that it would be acting *sui generis* and that therefore section 36(2) was not applicable. Reacting angrily to this, the Union Government of India went to the Supreme Court for clarification of its original order of 12 December. A year later, on 10 September 1998, the Supreme Court clarified that the NHRC should indeed act *sui generis* stating: "The Commission would function pursuant to the directions issued by this Court and not under the Act under which it is constituted. In deciding the matters referred by this Court, National Human Rights Commission is given a free hand and is not circumscribed by any conditions".

Having finally settled this issue, the NHRC moved to the parameters of its role in investigation and provision of compensation. In its 4 August 1997 order, the NHRC had indicated how it might proceed: "... the appropriate procedure might be to invite, by public notice, claims in an appropriate pro-forma from those who are aggrieved and such cases shall be enquired into to ascertain whether the death and subsequent cremations or both were the results of acts which constituted violation of human rights or constituted negligence on the part of the State and its authorities in preventing such violations and if either of these questions is answered in the affirmative, then the basis for the quantification of compensation".

⁹ Section 36(2) states: *The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.* This section has been criticised by many human rights organizations as well as members of the Human Rights Committee.

The NHRC has clearly been wary of taking on the task of investigating a potentially unlimited number of complaints of “disappearance” and extra-judicial execution in Punjab. Following the Supreme Court’s judgement on the preliminary issues of 10 September 1998, the NHRC reportedly began speaking of the need for filters to limit the number of complaints. The petitioners [CIIP] have consistently argued that the NHRC should not limit the scope of its investigations and gave detailed suggestions for how their work might be carried out through the circulation of questionnaires to elicit information from individuals throughout Punjab on the basis of which investigations could be carried out. The state and central governments on the other hand argued that the NHRC’s role should be limited to investigating claims made by individuals who believed that their relatives were illegally cremated in Amritsar district and providing compensation where possible.

On 13 January 1999, the NHRC gave an order indicating that it would limit its jurisdiction “to matters relating to the alleged unlawful cremation of the 2097¹⁰ bodies in the police districts of Amritsar, Tarn Taran and Majitha” and that it would invite claims in order to award monetary compensation. It continued: “The Commission has bestowed anxious thought to this argument which was articulated in strong and emotional terms. The Commission should not be understood as belittling the seriousness of the question and issues raised by the learned counsel [for CIIP]; but... On a careful consideration, the Commission is unable to subscribe to the expansive interpretation of the scope of its task suggested by the petitioners”.

Shocked by this restrictive attitude towards the NHRC’s role, the CIIP filed a review petition with the NHRC on 28 January. The CIIP argued: “Human Rights Tribunals, the world over, have considered that redressal, when large scale violations of human rights are established, includes not only compensating those affected but also suggesting measures to ensure that such instances do not recur. As a remedy in public law, it is essential that this Commission document an understanding of the State’s public law role that is implied by the large-scale cremations in Punjab”.

The CIIP’s review petition was dismissed by the NHRC on 24 March which argued: “If the Commission had, otherwise than through the order of the Supreme Court, jurisdiction to go into the aforesaid issues, the argument that the Commission unfairly restricted its own powers would be meaningful. But the Commission, in view of its statutory limitations, has to draw its jurisdiction from the remit and mandate of the Supreme Court.”. The Commission indicated that the CIIP’s only recourse was to move the Supreme Court for further clarification of its order. This it is now doing.

¹⁰ This was the number investigated by the CBI.

The 13 January order also revealed that the NHRC had asked the state government of Punjab to explain each case of cremation. Specifically it had asked the state to file before the Commission a list of all cremations carried out by the police in respect of “unclaimed/unidentified bodies” in the crematoria of Police Districts of Amritsar, Majitha and Tarn Taran between June 1984 and December 1994, by or on 10 March 1999. This has reportedly been done.

Public notices were issued on 30 and 31 January 1999 in one national daily newspaper and three newspapers available in Amritsar district (in English, Hindi and Punjabi). The public notices called for claims from the legal heirs of those illegally cremated between 1984 and 1994 in Amritsar district. 10 March was fixed as the last date for receipt of claims. The Commission in March announced that it was appointing three Commissioners of Inquiry of the rank of retired judges of the High Court to examine the claims made to the Commission, make inquiries, make recommendations and propose relief. It is reported that as of June 1999, the NHRC has received only around 80 claims for compensation from people in Punjab in response to their public notice of January 1999.

V. Amnesty International’s concerns about the NHRC’s interpretation of the Supreme Court’s orders

In February 1999, Amnesty International wrote to the Chair of the Human Rights Commission, calling on him to review the order of 13 January as a matter of urgency. The organization argued that the Supreme Court’s order provided the NHRC with a unique opportunity to investigate a suspected pattern of grave human rights violations by the state and to ensure redress to hundreds of victims. Looking exclusively at only those cases where there is proof of illegal cremation by police would exclude a vast number of human rights violations which have been reported from the state and which were referred to in the original petitions.

Amnesty International believes that inquiries by the NHRC should begin from the complaints of relatives alleging the “disappearance” or extra-judicial execution of family-members. Many relatives have no information on the fate of individuals subsequent to the moment of arrest by police. This information should be set against information provided by the police, records of those reported as “missing”, records of encounter killings and records of cremations. The inquiries should ideally not be limited to Amritsar district as the NHRC has laid down, but be broadened to all areas of Punjab as it is clear that allegations of human rights violations were not restricted to just one

district during the period 1984 to 1994. In a report released on 22 July 1999, the Committee for Coordination on Disappearances in Punjab published the results of a study they had carried out of cremation grounds in Faridkot, Kapurthala, Ludhiana, Mansa, Moga and Zira districts¹¹. The study claims to show similar patterns of illegal cremations as those in Amritsar district.

Amnesty International is further concerned that the NHRC appears to have restricted its role to that of awarding monetary compensation to relatives of victims of human rights violations. Amnesty International acknowledges that compensation is a vital part of the provision of redress to victims of human rights violations and their relatives.

¹¹ “Enforced disappearances, arbitrary executions and secret cremations: Victim testimony and India’s Human Rights Obligations”, Interim report of the Committee for Coordination on Disappearances in Punjab, published July 1999.

However, adequate and effective reparation for victims¹² should in Amnesty International's view incorporate the following¹³:

1. *Restitution*: steps should be taken to restore the victim to the situation they were in before the violation occurred, including restoration of their legal rights, social status, family life, place of residence, property and employment;
2. *Compensation*: steps should be taken to compensate for any economically assessable damage resulting from violations including physical or mental harm, emotional distress, lost educational opportunities, loss of earnings, legal and/or medical costs
3. *Rehabilitation*: steps should be taken to ensure medical and psychological care if necessary as well as legal and social services.
4. *Satisfaction and guarantees of non-repetition*: steps should be taken to ensure cessation of continuing violations, public disclosure of truth behind violations, official declaration of responsibility and/or apologies, public acknowledgement of violations, as well as judicial or administrative sanctions, and preventive measures including human rights training.

The components of redress are clearly identified in Article 2 of the ICCPR as well as several other international standards including Article 19 of the UN Declaration on the Protection of All Persons from Enforced Disappearance.

Amnesty International is concerned that the NHRC should not ignore other vital components of redress and reparation and undermine the intention of international standards on which the Commission's work is based by focussing only on monetary compensation.

The NHRC's statute gives it the task of inquiring into negligence on the part of any public servant in preventing violations. The Supreme Court itself has referred to this role in the course of the current proceedings: "The NHRC is a body *sui generis* created under an Act made by the Parliament for examining and investigating the questions and complaints relating to violation of human rights, as also the negligence on the part of any public servant in preventing such violations"¹⁴.

¹² A "victim" may also be a member of the immediate family or a dependent of the direct victim.

¹³ These points are based on the Draft Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law which are currently under discussion at the UN.

¹⁴ Order of the Supreme Court dated 10 September 1998 in Criminal Misc. Petition Nos. 6674/ and 4808 of 1998 in Writ Petitions (Criminal) Nos. 497 and 447 of 1995.

While we understand that the CBI under the orders of the Supreme Court, has been directed to initiate prosecutions against those suspected of being responsible for illegal cremations in Amritsar district, there is a wider issue of state responsibility for a pattern of human rights violations which must be addressed if there is to be an end to impunity. The awarding of compensation does not relieve the state of the need to admit responsibility for human rights violations and to bring perpetrators to justice. Similarly, it does not bring to an end the ordeal of the relatives of the victim who, in the absence of justice for those responsible, may continue to face harassment and further human rights violations. Amnesty International believes that the NHRC has a vital role to play in assisting the state to establish responsibility for past violations and making recommendations for their prevention in the future.

In Amnesty International's view, the Supreme Court's direction to the NHRC in December 1996 in this matter marked an important juncture in the life and stature of the NHRC. It provided the Commission with an opportunity to contribute to the protection of human rights by investigating impartially patterns of human rights violations, making far-reaching recommendations on the basis of its investigations to prevent future widespread violations of human rights, and establishing mechanisms for dealing with large numbers of complaints and ensuring full reparation to victims.

Amnesty International is concerned that by its order of 13 January 1999, the NHRC has indicated that it is unwilling to take up this opportunity.

VI. India's international obligations and the reality

India's obligations under international law to investigate allegations of human rights violations are clear. Article 2 of the **International Covenant on Civil and Political Rights** (ICCPR -- to which India is a party) sets out the obligation of the State of India to respect and ensure to all individuals within its territory and subject to its jurisdiction all of the rights set out in the ICCPR including the right to life and the prohibition against torture and arbitrary detention, without discrimination of any kind and to provide remedies to victims of human rights violations. These obligations imply the duty to initiate independent and impartial investigations into allegations of human rights violations. Specifically Article 2(3) of the ICCPR deals with the issue of redress:

Each State Party to the present Covenant undertakes:

a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

When commenting on the state's implementation of its obligation under the ICCPR to ensure protection of the right to life enshrined in Article 6 of the ICCPR, the Human Rights Committee has referred specifically to the issue of "disappearances" as a violation of the right to life and the need to establish "*effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life*"¹⁵.

Other international standards also refer to the obligations to investigate human rights violations including Articles 13 and 14 of the **UN Declaration on the Protection of All Persons from Enforced Disappearance** which require that investigations are carried out into all allegations of enforced disappearance and those allegedly responsible prosecuted as well as the **Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions**, Articles 9-14 of which set out comprehensive guidelines for the investigation of extra-judicial executions. Notably, Article 11 states:

In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar

¹⁵ General Comment of the Human Rights Committee on Article 6 of the ICCPR (the right to life), at its sixteenth session, 30/07/82:

... 3. *The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that State parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.*

4. *States parties should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life. Furthermore, States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life...*

procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

Against the backdrop of these international standards, Amnesty International has been concerned at consistent attempts by both the State Government of Punjab and the Central Government to impede investigation, prosecution and reparation for past human rights violations in Punjab. Many of the obstructive actions of the state and central governments as well as the police have been documented by Amnesty International in the past¹⁶.

In July 1997 at the examination of its fourth report to the Human Rights Committee¹⁷ on implementation of the ICCPR, the Attorney General of India stated: “The task of ensuring accountability for human rights violations which took place during the difficult period of terrorist violence [in Punjab] has not been neglected. A State Human Rights Commission has been set up and action to deal with human rights abuses of the past is ongoing. Under direct supervision the Supreme Court is using the NHRC and the Federal Central Bureau of Investigation to examine all cases brought before it”. At around the same time the Attorney General was making this statement in Geneva however, counsel on behalf of the Union Government of India was filing objections before the NHRC questioning its powers to investigate human rights violations in Punjab. The Government of India continues to ignore the recommendation made by the Human Rights Committee in its Concluding Observations that Section 36(2) of the Protection of Human Rights Act be removed, thereby allowing the NHRC and State Human Rights Commission to investigate allegations of human rights violations over a year old¹⁸.

In response to the Supreme Court’s order of December 1996, the State Government of Punjab and Union Government of India both argued that the NHRC did not have powers under the Protection of Human Rights Act 1993 to perform the role that the Supreme Court

¹⁶ See in particular: “*India: Determining the fate of the “disappeared” in Punjab*”, October 1995, AI Index: ASA 20/28/95.

¹⁷ The Human Rights Committee is a body of international experts which monitors states’ implementation of their obligations under the ICCPR.

¹⁸ Concluding Observations of the Human Rights Committee, India, CCPR/C/79/Add.81, dated 04/08/97, para 22.

was asking of it. They referred to its role as a recommendatory body only, thereby questioning its ability to make binding orders for compensation (as the Supreme Court had directed it should) and limitations on its ability to investigate past human rights violations under Section 36(2) of the Act. In its petition to the Supreme Court filed in October 1997 seeking clarification of the 12 December 1996 order, the Union Government of India argued: “If the order of this Hon’ble Court is read in the manner which it has been made by the Commission then it shall be tantamount to a complete goby to the scheme, spirit and object of the Protection of Human Rights Act, whose entire thrust is to make National Human Rights Commission, a body recommendatory and not otherwise”.

The Supreme Court gave its judgement on this issue in an order of 10 September 1998. It noted the attitude of the parties appearing before the NHRC “which we are constrained to say, is not a healthy attitude and does not represent the effort to assist the Commission for a quick conclusion of the proceedings”. It expressed disapproval of the Union government’s action in petitioning the Court, commenting that the issue had remained pending for 10 months before the Court “during which period the Commission could have disposed of the whole matter”.

Impunity: not about the past but a concern for the future and respect for the rule of law and justice

“... a just society cannot be built on tolerance for the most egregious acts of violence that occurred in the past, and ... a society cannot heal and achieve new levels of unity and solidarity by turning away from the plight of those who suffered, and are still suffering”

[extract from a statement of the Secretary General of the United Nations to the ceremony for the submission of the report of the Historical Clarification Commission of Guatemala, in Guatemala City, 25 February 1999]

Human rights organizations calling for the need to address human rights violations and in particular to bring the perpetrators of human rights violations to justice have been widely criticised in India. In particular, with reference to Punjab, their calls have been seen as an attempt to undermine the rule of law which the police were enforcing in the face of violence by armed groups. Amnesty International acknowledges the extremely difficult task faced by security forces in dealing with violence by armed opposition groups. The organization condemns the human rights abuses of these groups which led to the death of many civilians in Punjab. However, it is this very need to uphold the rule of law which leads the organization to demand that human rights violations perpetrated by security forces are also addressed.

If the criminal justice system fails to bring to justice people who have been responsible for human rights violations, the rule of law and foundations of justice are dangerously undermined. Security forces cannot be above the law, even when dealing with extreme situations¹⁹. Granting immunity to members of the security forces who have been responsible for human rights violations only serves to undermine the rule of law they are meant to uphold.

Furthermore if human rights violations carried out by security forces are not thoroughly investigated and those suspected of being responsible brought to justice, there is reason to fear that the system under which they were able to carry out those crimes will remain intact and they and others will remain free to repeat them. In the case of Punjab, Amnesty International continues to receive regular reports of illegal practices by police, notably illegal detention and the use of torture. Without a systematic investigation into past illegal practices and a commitment by the state to end impunity for them [literally, exemption from punishment], Amnesty International is concerned that such practices will continue.

¹⁹ Article 4 of the ICCPR makes it clear that states cannot use a state of emergency as a reason to derogate from Article 6 (the right to life). In addition, Article 7 of the Declaration on the Protection of All Persons from Enforced Disappearances states: *Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions.*

This viewpoint is widely shared by the international community. For many of the reasons stated above, the United Nations has incorporated the need to provide an effective remedy to victims of human rights violations and to end impunity into international covenants and other human rights instruments²⁰. As stated earlier in this report, Article 2 of the ICCPR is clear on the need to provide effective remedies to victims. In addition, the Declaration on the Protection of All Persons from Enforced Disappearance (Article 4: *All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness*) and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Article 1: *Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences; and Article 18: Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed*) provide further guidelines on the need to bring those suspected of being responsible for human rights violations to justice.

When states ratify human rights instruments, as India has done in becoming a state party to the ICCPR, they commit themselves to fulfilling obligations contained within them. This must not be a hollow commitment. India has the legal framework and institutions which should allow it to live up to its responsibilities in international human rights law. The Supreme Court of India, charged with enforcing fundamental rights, has set precedents for enforcing international covenants in its domestic jurisdiction whether or not national legislation is in line with those covenants. The National Human Rights

²⁰ Recent initiatives to establish an International Criminal Court have demonstrated international recognition of the importance of ending impunity for human rights violations.

Commission was established by the Government of India in 1993 with a definition of human rights as “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”. Amnesty International is appealing to the NHRC and the Union and State governments to ensure this opportunity for truth, justice and redress for victims of human rights violations in Punjab is not lost.

Amnesty International's recommendations

- The Government of India should fully implement its obligations under international law with respect to allegations of human rights violations in Punjab committed between 1984 and 1994. Specifically it should ensure independent and impartial investigation of all allegations of human rights violations; the right of victims to receive redress and reparation; and that those identified as being suspected of perpetrating human rights violations are brought to justice in trials which meet international standards for fairness.
- The Union Government of India and the State Government of Punjab should make every effort to facilitate and cooperate fully with investigations into human rights violations by the NHRC as well as the ongoing investigations by the CBI.
- The Union Government of India and the State Government of Punjab should take steps to ensure non-repetition of past violations. In addition to bringing those suspected of perpetrating human rights violations to justice, this should involve provision of systematic and continuous training in human rights for police and security forces.
- The State Government of Punjab should make a commitment that illegal practices carried out by the Punjab police in past years will not be tolerated and that those suspected of such practices will be prosecuted in accordance with law;
- The State Government of Punjab should ensure that action is taken against police or administrative officials who attempt to subvert the process of investigation.
- Those participating in the investigation of human rights violations including the complainant, counsel, witnesses and those conducting the investigation, should be given protection against ill-treatment, intimidation or reprisal.
- Bearing in mind that the NHRC was established under the Protection of Human Rights Act 1993 to protect human rights (as defined in international covenants) and has been requested by the Supreme Court of India to look into issues of human rights violations in Punjab, it should be given powers to accept complaints from any individual in the state of Punjab whose relative has been missing since last seen in the custody of the police. These would include cases of “disappearance” and extra-judicial execution as recognised under international law.

- The NHRC must be given all necessary resources for investigating these complaints.
- The NHRC should look beyond monetary payment and ensure that compensation to victims includes restitution, rehabilitation, satisfaction and guarantees of non-repetition.
- The government should ensure that recommendations of the Human Rights Committee made in 1997 -- that *the restrictions on the powers of the NHRC including the time limit for its investigations be removed and that the Commission be authorized to investigate all allegations of violations by agents of the State -- be implemented immediately.*