

IN THE EUROPEAN COURT OF HUMAN RIGHTS

IN THE MATTER OF:

Case 70/1995/576/662

Application No. 22414/93

THE CHAHAL FAMILY

- and -

THE UNITED KINGDOM

WRITTEN COMMENTS OF AMNESTY INTERNATIONAL

Introduction

Amnesty International appreciates the opportunity to submit its comments on this case by permission of the President of the Chamber of the European Court of Human Rights ("the Court") pursuant to Rule 37(2) of the Rules of Court "A".

The present case raises important issues concerning the protection given by the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention) to refugees and others who have reason to fear their return or *refoulement* to places where they risk serious violations of their human rights, such as extrajudicial executions, "disappearances", torture and arbitrary detention. The pronouncement of the Court in the present case is likely to be of significance for the interpretation and application of these vital guarantees not only in Europe but also by other international courts and treaty bodies outside of Europe and in national courts throughout the world.

Amnesty International sought and was granted permission to submit comments on the following matters:-

"issues raised in the Commission's report under Articles 3, 8 and 13 of the Convention only with reference to the scope of the obligation of *non-refoulement* and related procedural rights in relation to persons who are at possible risk of torture or other serious human rights violations in the country to which return is being considered...

submissions, based on [Amnesty International's] research and experience, concerning the risk faced by prominent Sikh separatists suspected of being linked to armed groups in the Punjab of extrajudicial execution, "disappearance", torture and arbitrary detention".

The comments which follow are divided into two parts. Part I sets out Amnesty International's comments on Articles 3, 8 and 13 of the Convention.¹ Part II summarizes Amnesty International's conclusions, based on its research and experience, on the risk faced in India by prominent Sikh separatists, many of whom are perceived by the authorities as being linked to armed groups in the Punjab. In accordance with its request to the Court and the indication given in the letter from the Court of 28 November, neither part of these written comments addresses the specific facts of the case before the Court.

PART I - LEGAL COMMENTS

A. Article 3 of the Convention

Amnesty International concurs with the unanimous opinion of the Commission that the legal submissions presented on Article 3 by the Respondent Government should be rejected. The paragraphs below supplement the Commission's reasoning in particular by reference to other international instruments and authoritative interpretations by courts and treaty monitoring bodies.

1. Construing Article 3 as prohibiting the return or *refoulement* of a person to a country where he or she is at risk of torture or ill-treatment accords with established international standards as well as the case law of the Court.

The relevant Court case law is outlined in the Commission's Report. Established international standards include Article 3 (1) of the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture).² That article provides expressly:

"No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".

Article 7 of the International Covenant on Civil and Political Rights ("ICCPR")³ has been authoritatively construed by the Human Rights Committee to contain the same prohibition:

"In the view of the Committee, States Parties must not expose individuals to the danger of torture or cruel, inhuman or degrading punishment upon return to another country by way of their extradition, expulsion or *refoulement*. State Parties should indicate in their reports what measures they have adopted to that end".⁴

¹ Amnesty International was assisted in preparing Part I of these written comments by Barristers Richard Plender QC LLD and Peter Duffy. Richard Plender practises from 20 Essex Street, London WC2R 3AL. Peter Duffy practises from Essex Court Chambers, 24 Lincoln's Inn Fields, London WC2A, 3ED; he was formerly a member and Chairperson of Amnesty International's International Executive Committee.

² Adopted and opened for signature by the UN General Assembly in Resolution 39/46 of 10 December 1984.

³ Article 7 states:

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation".

⁴ General Comment 20 (44), para. 9, Report of the Human Rights Committee, UN Doc. A/47/40 (1992).

Accordingly, the Human Rights Committee has declared admissible and examined the merits of a number of individual communications under the Optional Protocol to the ICCPR challenging extradition that would expose the individual to capital punishment.⁵ The plenary Court has noted that Article 7 of the ICCPR is in "similar terms" to Article 3 of the Convention, which "enshrines one of the fundamental values of the democratic societies making up the Council of Europe" and "is generally recognised as an internationally accepted standard".⁶

The Committee against Torture, the body of experts responsible for monitoring implementation of the UN Convention against Torture, considered the Respondent Government's second periodic report in November 1995. It stated that Article 3 of the Convention against Torture imposes a duty not to *refouler* anyone where *refoulement* would be in breach of that provision. The final statement of the Committee expressed concern about the Respondent Government's "practice of *refouling* asylum-seekers in circumstances that may breach Article 3" and recommended that the Government should review its practice in this regard.⁷

The prohibition of *refoulement* of persons to states where they are in danger of torture is consistent with international principles prohibiting *refoulement* in cases where the person would be at risk of other serious human rights violations within the scope of Article 3 of the UN Convention against Torture and Article 7 of the ICCPR. Principle 5 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (UN Principles on Extra-legal Executions) prohibits *refoulement* of anyone to a country where he or she risks extrajudicial execution:

"No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country."⁸

Similarly, Article 8 of the UN Declaration on the Protection of All Persons from Enforced Disappearance (UN Declaration on Disappearances) prohibits the *refoulement* of anyone to a country where he or she risks being subject to a "disappearance":

"(1) No State shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds to believe that he or she would be in danger of enforced disappearance.

(2) For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."⁹

⁵ *Kindler v. Canada*, Communication No. 470/1991 (1993), reprinted in 14 HRLJ 313 and *Ng v. Kindler*, Communication No. 469/1991(1994), reprinted in 15 HRLJ 149.

⁶ *Soering v. United Kingdom*, Series A No. 161, judgment of 7 July 1989, 11 EHRR 439, para. 88.

⁷ Conclusions and recommendations of the Committee against Torture 3 (advance copy).

⁸ UN Economic and Social Council Resolution 1989/65 of 24 May 1989, welcomed by the UN General Assembly in Resolution 44/159 of 15 December 1989.

⁹ UN General Assembly Resolution 47/133 of 18 December 1992.

The Convention is a living instrument to be construed, *inter alia*, in the light of present day conditions¹⁰ and the Court has regularly had regard to pertinent international standards in so doing.¹¹ The Court has explicitly determined that Article 3 of the Convention is to be so construed.¹²

"In addition, the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective."¹³

The Court has explicitly determined that Article 3 should be construed in the same way.¹⁴

2. The Respondent's assertion that a duty of *non-refoulement* involves "extra-territorial effect" of Article 3 of the Convention is erroneous.¹⁵

The basis of the Respondent's assertion is false. Extra-territorial effects do not arise. The failure to respect the individual's rights in such cases occurs *within* the territory and jurisdiction of the Contracting State concerned when it fails to take account of the risk of serious human rights abuse when ordering *refoulement*.

The above point is made expressly by the Human Rights Committee in its decisions on extradition to face a risk of capital punishment:

"...what is at issue is not whether Mr Ng's rights have been or are likely to be violated by the United States, which is not a State party to the Optional Protocol, but whether by extraditing Mr Ng to the United States, Canada exposed him to a real risk of a violation of his rights under the Covenant. States party to the Covenant will also frequently be parties to bilateral treaty obligations, including those under extradition treaties. A State party to the Covenant must ensure that it carries out all its other legal commitments in a manner consistent with the Covenant. The starting point for consideration of this issue must be the State party's obligation, under Article 2, paragraph 1, of the Covenant, namely to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant. The right to life is the most essential of these rights.

If a State party extradites a person within its jurisdiction in such circumstances that as a result there is a real risk that his or her rights under the Covenant will be violated in another jurisdiction, the State party may itself be in violation of the Covenant".¹⁶

¹⁰ See, most recently, the Grand Chamber in *Loizidou v. Turkey*, Series A No. 310, judgment of 23 March 1995, 20 EHRR 99, para. 71.

¹¹ For example, in *Marckx v. Belgium*, Series A No. 31, judgment of 13 June 1979, 2 EHRR 330, para. 41.

¹² *Tyrer v. United Kingdom*, Series A No 26 judgment of 25 April 1978, 2 EHRR 1, para. 31.

¹³ *Loizidou*, judgment at para. 72.

¹⁴ *Soering*, *supra* note 6, para. 87.

¹⁵ Government's Submission as recorded at paragraph 92 of the Commission's Report.

¹⁶ *Ng v. Canada*, *supra* note 4, 15 HRLJ at 156, paras 14.1 and 14.2.

In *Ng*, the Human Rights Committee found, in relation to execution in the gas chamber, that:

"Canada which could reasonably foresee that Mr Ng, if sentenced to death, would be executed in a way that amounts to a violation of Article 7, failed to comply with its obligations under the Covenant by extraditing Mr Ng without having sought and received assurances that he would not be executed."¹⁷

Article 1 of the Convention (read with Article 14 of the Convention) mirrors Article 2 (1) of the ICCPR. The construction of Article 1 by the Court confirms that the position under the Convention is identical to that under the ICCPR:

"By substituting the words 'shall secure' for the words 'undertake to secure' in the text of Article 1, the drafters of the Convention also intended to make it clear that the rights and freedoms set out in Section I would be directly secured to anyone within the jurisdiction of the Contracting States."¹⁸

3. The Respondent's assertion that Article 3 should be construed as subject to implied limitations is erroneous and dangerous.¹⁹

Amnesty International agrees with paragraphs 102 to 105 of the Commission's report and asks the Court to endorse this part of the Commission's report. Rejection of the implied limitation submission is supported by other international standards, including Article 7 of the ICCPR, Article 2 (2) of the UN Convention against Torture, the UN Principles on Extra-legal Executions and the UN Declaration on Disappearances. The Human Rights Committee has stated:

*"The text of Article 7 [of the ICCPR] allows of no limitation. The Committee also reaffirms that, even in situations of public emergency such as those referred to in Article 4 of the Covenant, no derogation from the provision of Article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of Article 7 for any reason..."*²⁰

Article 2 (2) of the UN Convention against Torture provides that "no exceptional circumstances whatsoever... may be invoked as a justification for torture". Mr Peter Burns, *rapporteur* on the United Kingdom under that Convention, stated in November 1995 that Article 2 (2) "by necessary implication means that no state can refole someone to another state for national emergency reasons".²¹

¹⁷ *Id.* at 157, para. 16.4.

¹⁸ *Ireland v. United Kingdom*, Series A No. 25, judgment of 18 January 1978, 2 EHRR 25, para. 239.

¹⁹ As recorded at paragraph 97 of the Commission's Report.

²⁰ General Comment 20 (44), *supra* note 3, para. 2 (emphasis added).

²¹ Verbatim notes of Amnesty International's researcher. According to the Summary Records, Professor Burns stated that no State which had ratified the Convention could return anybody to another State where they might be tortured for alleged reasons of national emergency. (Summary Record of Committee against Torture consideration of reports submitted by States Parties under Article 19 of the Convention (234th mtg, 17 November 1995, UN Doc. CAT/C/SR.234, 1995).)

Similarly, the prohibitions of extrajudicial executions in the UN Principles on Extra-legal Executions and of "disappearances" in the UN Declaration on Disappearances are absolute prohibitions which admit of no limitations or exceptions. Principle 1 of the UN Principles states:

"Exceptional circumstance including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification for such executions."

Article 7 of the UN Declaration on Disappearances contains a similar statement:

"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."

4. **The Court should reject as dangerous and legally unsound the Respondent Government's submission that it cannot be the role of the national courts or the Convention organs to make any searching judicial scrutiny of national security matters, once raised by the Member State in good faith.**²²

Amnesty International's research and experience cause it to regard the above submission of the Respondent Government as profoundly dangerous. If endorsed, it would remove any effective judicial protection (whether national or international) from Government action restricting individual rights when national security is invoked. It is frequently when national security is invoked by a Government that the risk to individuals' rights is greatest, including incidents of torture, arbitrary detention and unlawful killing. If the Court were to accept the Respondent Government's submission on this issue and if such judgment were followed and applied internationally, the consequences for human rights observance worldwide would be appalling.

The Respondent Government's submission is also unsustainable as a matter of law. When ruling on measures adopted in the interests of national security and the fight against terrorism and serious crime, the Court has stressed that Contracting States do not enjoy unlimited discretion:

"The Court, being aware of the danger... of undermining or even destroying democracy on grounds of defending it, affirms that the Contracting States may not, in the name of the struggle against espionage and terrorism, adopt whatever measures they deem appropriate".²³

The Court stated that it must be satisfied as to the existence of "adequate and effective safeguards against abuse".²⁴ Referring to the values of a democratic society in the context of Article 8 (2), the Court further stated that:

"The rule of law implies, *inter alia*, that an interference by the executive authorities with an individual's rights should be subject to an effective control which should normally be assured by the judiciary, at least in the last resort,

²² As recorded at paragraph 99 of the Commission's Report.

²³ *Klass v. Germany*, Series A No. 28, judgment of 6 September 1978, 2 EHRR 214, para. 48.

²⁴ *Id.* at para. 49.

judicial control offering the best guarantees of independence, impartiality and a proper procedure."²⁵

The position taken by the Court accords with that taken by other international courts and Commissions. European Community ("EC") Treaty Articles 223 and 224 deal with national security. In *Johnston v. Royal Ulster Constabulary*,²⁶ the Court of Justice of the European Communities ("ECJ") ruled that EC Treaty Articles 223 and 224 are of "limited character" and "do not lend themselves to a wide interpretation".²⁷ Mrs Johnston alleged that she had been the victim of unequal treatment because of the policy of not having armed women in the RUC. The Respondent invoked national security. Domestic law provided that a certificate signed by or on behalf of the Secretary of State that an act was done for the purpose of safeguarding national security was to be conclusive evidence that it was so done. Referring to Articles 6 and 13 of the Convention,²⁸ the ECJ ruled that it was "contrary to the principle of effective judicial control" for the certificate "to be treated as conclusive evidence so as to exclude the exercise of any power of review by the courts."²⁹ The ECJ further indicated that it was the duty of the national court to ensure that the principle of proportionality was observed³⁰ notwithstanding that national security had been invoked by the State authorities:

"It must be borne in mind that, in determining the scope of any derogation from an individual right such as the equal treatment of men and women provided for by the Directive, the principle of proportionality, one of the general principles of law underlying the Community legal order must be observed. That principle requires that derogations remain within the limits of what is appropriate and necessary for achieving the aim in view and requires the principle of equal treatment to be reconciled as far as possible with the requirements of public safety which constitutes the decisive factor as regards the context of the activity in question."³¹

The pronouncements of the Court in *Klass* have been consistently followed and applied by the Court. Those pronouncements were made in relation to Article 8 of the Convention, which permits limitations "in the interests of national security" and is derogable. *A fortiori*, those pronouncements apply to the protection required always to be given to certain fundamental rights, in particular the protection of the right to life and against torture. Limitations to Article 3 are not permitted in the interests of national security and the protection afforded is non-derogable under Article 15 (2) of the Convention.

²⁵ *Id.* at para. 55.

²⁶ [1986] ECR 1651, Case No. 222/84.

²⁷ *Id.* at para. 26.

²⁸ *Id.* at para. 18.

²⁹ *Id.* at paras 20 and 21.

³⁰ *Id.* at para. 39.

³¹ *Id.* at para. 38.

5. There is no case for re-opening the case law established in *Soering and Vilvarajah*

The Court "usually follows and applies its precedents" and only departs "from an earlier decision if it was persuaded that there were cogent reasons for doing so".³² The Court is asked to apply its established test and accordingly reject the Respondent Government's submission that the Court's decisions in *Soering* and *Vilvarajah* are to be re-opened.

No reasons exist for departure from the Court's case law. On the contrary, cogent reasons exist for affirming it. Amnesty International respectfully endorses the statements, made unanimously by the plenary Court, in relation to Article 3 at paragraph 88 of *Soering*. Acceptance of the Respondent Government's contrary submission would be incompatible "with the underlying values of the Convention"³³ and Amnesty International concludes, based on its research and experience, that this would have unacceptable, grave consequences for human rights protection worldwide.

B. Article 8 of the Convention

Amnesty International concurs with the proposition, accepted by all parties to the present case,³⁴ that the *refoulement* of a person so as to rupture strong and settled ties with family members residing in a Contracting State constitutes an interference with family life which is prohibited by Article 8 (1), unless justified under Article 8 (2) of the Convention.

No separate analysis of the points under Article 8 (2) will be required if the Court upholds the unanimous finding of the Commission that there has been a breach of Article 3 in the present case. Conduct established to be in violation of Article 3 is contrary to "one of the fundamental values of the democratic societies making up the Council of Europe".³⁵ By definition, such a *refoulement* measure found contrary to Article 3 cannot be "necessary in a democratic society" under Article 8 (2). This conclusion is re-enforced when consideration is given to the grave concern and mental anguish that would be caused to the close family members of an individual subjected to *refoulement* contrary to Article 3. In some circumstances, the severity of the mental suffering so caused may be such as to establish an independent violation of Article 3 towards the family members concerned. In no circumstances, however, can it be justified as "necessary in a democratic society" under Article 8 (2) to cause mental suffering to family members by the *refoulement* of an individual in circumstances which violate Article 3 of the Convention.

Moreover, a State may not adopt whatever measure it deems appropriate to restrict rights guaranteed under Article 8 (2) when the interests of national security are invoked. It is the role of the Courts to be satisfied that adequate and effective safeguards against abuse exist. The Government's legal submission that its invocation of national security should be immune from any effective judicial scrutiny is contrary to established case law and principle. Amnesty International's research and experience lead it to conclude that adoption of the Respondent Government's submission would have unacceptable, grave consequences for human rights

³²*Cossey v. United Kingdom*, Series A No. 184, 27 September 1990, 13 EHRR 622, para. 35.

³³ *Soering*, *supra* at para. 88.

³⁴ Commission Report, paras 131, 133 and 134.

³⁵ *Soering*, *supra* note 6, para. 88.

protection. The arguments in Part I.A.4, particularly with regard to the requirement of respect for the principle of proportionality, apply here.

Amnesty International asks the Court to include in its ruling on Article 8 a re-affirmation that the requirement of adequate and effective safeguards against abuse, including effective judicial scrutiny of the national security claim, be guaranteed. The Court's established case law concerning Article 8 indicates that these requirements are inherent in the condition that interferences with respect for family life should only be made when "necessary in a democratic society". Assessment of the adequacy of judicial control by the domestic courts is not only (nor even primarily) an Article 13 issue; in Amnesty International's submission, it is an integral aspect of the protection of the right to respect for family life under Article 8 of the Convention.

C. Article 13 of the Convention

Amnesty International agrees with the unanimous legal conclusion of the Commission that the level of review described at paragraphs 149 and 150 of its Report falls short of that required to provide an "effective remedy" under Article 13 of the Convention.

In finding in *Vilvarajah* that judicial review proceedings "provide an effective degree of control over the decisions of administrative authorities in asylum cases and are sufficient to satisfy the requirements of Article 13",³⁶ the Court noted that the domestic courts:

"...have stressed their special responsibility to subject administrative decisions to the most anxious scrutiny where an applicant's life or liberty may be at risk."³⁷

In national security cases, however, the approach of English courts is quite different from that considered by the Court in *Vilvarajah*. In the Court of Appeal, in the present case, Staughton LJ stated, with regard to the national security assessment, that:

"...we cannot determine whether the Secretary of State was right, after considering the report of the advisory Committee to reach those conclusions. Nor can we review the evidence... We have to accept that the evidence justified those conclusions."³⁸

In another case in which national security was invoked, Sedley J noted the impossibility of applying the "anxious scrutiny" level of judicial review³⁹. The position was put as follows by the Rt. Hon. Lord Woolf and Professor Jeffrey Jowell QC in the leading work on Judicial Review:

"...a *Wednesbury* safeguard will usually be nugatory, since the court will *ex hypothesi* not have before it the evidence upon which the minister has come to his decision; it will accordingly be very difficult for the court to come to the

³⁶ *Vilvarajah v. United Kingdom*, Series A No 215, judgment of 30 October 1991, 14 EHRR 248, para. 126.

³⁷ *Id.* at para. 125.

³⁸ *Chahal v. Secretary of State for the Home Department*, [1994] Imm AR 107 at 111.

³⁹ *R. v. Secretary of State for the Home Department ex parte McQuillan*, [1995] 4 All ER 400 at 422e to 423j.

conclusion that the minister's decision was not within the band of rational decisions".⁴⁰

Of the balancing exercise to which reference was made in the Court of Appeal judgment in the present case, the distinguished learned authors stated:

"It remains the case at present, however, that the balancing exercise is effectively unsupervised by the courts".⁴¹

This situation cannot be described as providing the remedy required by Article 13. This is so in view particularly of the importance of effective safeguards when credible evidence exists that an individual's *refoulement* may result in unlawful killing, torture or other grave human rights violations. Furthermore, it would be inconsistent with the position taken by the Court under other Convention provisions for the Court to hold that Article 13 is satisfied by the non-existent review exercised by United Kingdom courts in cases in which national security is invoked. Reference is made in particular to the position taken by the Court under Article 5 (1) (c).⁴² The importance of effective review is surely at least as pressing when Article 3 is in issue as it is when liberty is at stake under Article 5.

PART II - PROMINENT SIKH SEPARATISTS FACE "DISAPPEARANCE", DETENTION WITHOUT CHARGE OR TRIAL, TORTURE AND EXTRAJUDICIAL EXECUTIONS IN INDIA

Prominent Sikh separatists, many of whom are perceived by the Indian authorities as having links to armed groups, face a serious risk of "disappearance", detention without charge or trial, torture in such detention or extrajudicial execution. In most cases these violations are the responsibility of the Punjab police. Although the leadership of the police force has changed recently, Amnesty International is not aware of any change in policies or practices of the Punjab police which would suggest that the risks to prominent Sikh separatists have diminished.⁴³

A. The risk of "disappearance"

Those who have "disappeared" after arrest by the police in the Punjab are often people arrested on mere suspicion that they are linked to armed secessionist groups.

Nearly all "disappearances" are attributed to the Punjab police. Usually no explanation about the reason for an arrest is given and arrests are not registered at the local police station. Victims have been abducted by police in plainclothes and police travelling in unmarked cars.

⁴⁰ de Smith Woolf & Jowell, *Judicial Review of Administrative Action* (5th edition, 1995), 481-482, para. 10-011.

⁴¹ *Id.* at 482.

⁴² *Fox, Campell and Hartley v. United Kingdom*, Series A No. 182, judgment of 30 August 1990, 13 EHRR 157, paras 31 to 36.

⁴³ For the convenience of the Court, Amnesty International has provided the Registrar with three copies of its publications concerning human rights violations in the Punjab: *India: Determining the fate of the "disappeared" in Punjab*, October 1995 (AI Index: ASA 20/28/95); *India: Punjab police: beyond the bounds of the law*, May 1995 (AI Index: ASA 20/08/95); *India: 'An Unnatural Fate': 'Disappearances' and impunity in the Indian States of Jammu and Kashmir and Punjab*, December 1993 (AI Index: ASA 20/42/93).

State complicity in such practices is evident from a clear pattern of official cover-up. This involves officials routinely ignoring numerous letters expressing anguish for the life and safety of the "disappeared". Police regularly deny the arrest of "disappeared" persons in court following the filing of *habeas corpus* petitions by relatives. In these circumstances it is difficult for the courts to take further action and the authorities have persistently failed to order independent and impartial inquiries into allegations of "disappearance".

In December 1993, Amnesty International published a report, *India: An Unnatural Fate: "Disappearances" and impunity in the Indian states of Jammu and Kashmir and Punjab (AI Index: ASA 20/42/93)*. The report documented a pattern of "disappearances" in Punjab and listed 80 cases of "disappearances" between 1990 and 1993. Amnesty International expressed concern that the authorities in Punjab had ignored appeals to clarify the fate of the "disappeared", in particular by ignoring court orders to produce people before the courts and by failing to order investigations into their whereabouts. This situation has continued. The government failed to respond to the organization's recommendations to halt "disappearances" or to issues raised and specific cases listed in the report. Amnesty International has continued to document reports of "disappearances" in the state, indicative of the absence of a serious commitment by the state and central government to bring this practice to an end. Recent judgments made by the Punjab & Haryana High Court and the Supreme Court have condemned Punjab police for abducting and killing individuals but these have been in only a handful of cases. Grave concerns remain as to the fate of almost all those who have "disappeared". In October 1995, Amnesty International published *India: Determining the fate of the "disappeared" in Punjab (AI Index: ASA 20/28/95)*, in which it highlights the absence of a serious commitment by the state and central government to address the problem of "disappearances" in the state of Punjab.

The UN Working Group on Enforced or Involuntary Disappearances stated in its 1994 report that according to reports it received from relatives of missing persons or from non-governmental organizations, the missing persons include persons suspected of belonging to separatist groups. As stated in its 1995 report, the Working Group transmitted several cases of disappearance to the Government of India during 1994. The majority of the newly reported cases occurred in the Punjab and included two journalists believed to have disappeared because of their alleged links with secessionist movements.⁴⁴

B. Detention without trial and fair trial concerns

For those whose detention is acknowledged, there is special legislation in operation in Punjab which in Amnesty International's view and the view of the Human Rights Committee, contravenes fundamental rights provided in the ICCPR. Although the Terrorist and Disruptive Activities Act, about which the organization had several concerns, lapsed on May 23, other special legislation remains. It is likely that a prominent Sikh separatist suspected of links to armed groups would be subject to such other special legislation if charged. The National Security Act, 1980 permits people to be detained without charge or trial for up to two years to prevent them from acting "in any manner prejudicial to the defence of the security of India", thus denying the right of anyone who is arrested to "be informed, at the time of arrest, of the reasons for his arrest and [to] be promptly informed of any charges against him" guaranteed by Article 9(2) of the

⁴⁴ Report of the Working Group on Enforced or Involuntary Disappearances UN Doc. E/CN.4/1995/36 paras 216-222; Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. E/CN.4/1994/26 paras 237-254.

ICCPR.⁴⁵ The prolonged delay denies suspects their right to a prompt trial guaranteed by Article 14(1) of the ICCPR.⁴⁶

The law requires that persons held under its provisions be brought before an Advisory Board -- consisting of persons qualified to sit as High Court judges -- within seven weeks, but numerous detainees have complained that they were never brought before the Board or did not appear before it within the period stipulated by law. There is no right under the National Security Act, however, to access to a court in this two-year period, thus denying suspects their right under Article 9(3) of the ICCPR to "be brought promptly before a judge or other officer authorized by law to exercise judicial power".⁴⁷

After the recent killing of the state's Chief Minister, Mr Beant Singh, scores of Sikhs in and outside the state are reported to have been picked up for interrogation without charge.

C. Torture

Amnesty International has received numerous reports of the torture of detainees in Punjab. Methods of torture have included beating including with fists, lathis (canes), leather belts and straps and rifle butts. Methods have also included being suspended by the wrists or ankles during beatings, as well as electric shocks. Reports have also indicated the use of a thick wooden roller rolled slowly over the thighs or calves with a policeman standing on it. This method has destroyed muscle tissue in the legs. These methods have been documented in cases of Sikh asylum-seekers in the UK. Such torture is said to be widely used during interrogation, often by senior officers. In most cases, torture has occurred while detainees were denied access to the outside world and were held in unacknowledged detention.

The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated in his 1995 report that he had submitted several cases of alleged custodial torture by the police, including that of Kanwar Singh Dhani, the leader of a Sikh separatist organization, and his pregnant wife Kuldip Kaur and their six-year-old son in Punjab. Kanwar Singh Dhani is reported to have been illegally detained for months before police acknowledged his arrest. The Special Rapporteur stated in his report that "it is apparent that few incidents, in what is credibly alleged to be a widespread, if not endemic phenomenon, are prosecuted and even fewer lead to conviction of the perpetrators"⁴⁸. In relation to the case of Kanwar Singh Dhani, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions sent an urgent appeal calling on the Indian authorities to ensure protection of the right to life and physical integrity of him and his wife and child, as they were apparently

⁴⁵Article 5(2) of the Convention contains a similar guarantee:
"Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

⁴⁶This is similar to the right of everyone under Article 6(1) of the Convention to "a fair and public hearing within a reasonable time" in "the determination of his civil rights and obligations or of any criminal charge against him".

⁴⁷Article 5(3) of the Convention contains a similar guarantee.

⁴⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. E/CN.4/1995/34, paras 331, 379.

thought to be in danger of being killed in custody. In its response the Indian Government reportedly stated that they had been arrested for their involvement in terrorism and violence.⁴⁹

D. The risk of death in custody and extrajudicial execution

Amnesty International has received many reports that detainees, particularly those suspected of having links with with armed opposition groups, have been killed in custody in the past. It is feared that many of those who have "disappeared" have in fact been killed in custody after torture or extrajudicial execution. Most commonly, people are taken into custody and then killed in "encounters". Police claim that the individual was a member of an armed secessionist group who was killed in an encounter between the group and the police. Alternatively, police have claimed that individuals simply escaped from custody and have not been seen since. Even in a situation where armed conflict seems to have subsided considerably, as in the case in the state of Punjab, Amnesty International remains concerned about this practice. Recent documentation of the cremation of hundreds of "unclaimed" bodies by Punjab police had fuelled concerns that police have detained individuals, killed them in custody after torture and disposed of their bodies without informing relatives. None of these cases have been promptly, thoroughly and impartially investigated as required by international standards, such as the UN Principles on Extra-legal Executions.

As stated in his 1994 report, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions has acted on reports received referring to deaths in the custody of the Indian security forces as a result of torture. Among the cases concerning which the Special Rapporteur sent urgent appeals to the Government of India, in which he expressed concern for the lives and physical integrity of several individuals, was that of Umrao Singh (allegedly suspected of terrorist activities), who was reportedly held in unacknowledged police detention by Punjab police.⁵⁰ After reviewing the reports of deaths in custody and extrajudicial executions in the Punjab and the rest of India, the Special Rapporteur on extrajudicial, summary or arbitrary executions stated in his 1995 report that he

"remains concerned about persistent allegations of violations of the right to life, particularly of deaths in custody as a consequence of torture or killings which, according to the authorities, occur in armed encounters. Such reports, which have been received consistently over the past three years, suggest the existence of patterns of violations of the right to life in certain areas of the country, without, however, there being any indication of systematic investigations in these patterns with a view to identifying their causes and adopting the necessary steps to bring them to a halt".⁵¹

E. No possibilities for "internal flight"

Amnesty International is concerned that if Karamjit Singh Chahal were returned to live in an area outside the state of Punjab, he would still be at risk of grave human rights violations. Amnesty International's May 1995 report, *India: Punjab Police: beyond the bounds of the law (AI Index:*

⁴⁹ Report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/1995/61, para 158.

⁵⁰ Report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/1994/7, para. 332.

⁵¹ Report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/1995/61, para.171.

ASA 20/08/95), documents a pattern of human rights violations committed by officers of the Punjab police acting in under-cover operations outside their home state. These operations have included abducting wanted Sikh suspects who have subsequently "disappeared" or been killed in custody.