

ONGOING PROJECTS

November 13, 2004: ENSAAF will join community and human rights organizations in a commemorative event dedicated to the victims of communal violence in India. *Bridges to Justice & Harmony* will begin with an interfaith remembrance and a march across the Golden Gate Bridge. The event will include screenings of films on communal violence, as well as a panel of distinguished speakers. ENSAAF will discuss the findings of its report *Twenty Years of Impunity: The November 1984 Pogroms of Sikhs in India*, analyzing thousands of previously unavailable papers (see www.ensaaf.org/20years.html for sample papers). With a preface by retired *New York Times* reporter Barbara Crossette, the report also discusses the 1984 evidence within the framework of the international law of genocide and crimes against humanity.

Community Advocacy: ENSAAF believes that a human rights movement driven by survivors can challenge impunity at every level. Towards this end, ENSAAF is working to meet survivors, record their narratives, and encourage them to build an association of families in North America who have survived human rights violations in Punjab. Please read the letter on page 3 addressed to survivors.

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ABOUT ENSAAF

ENSAAF—a new U.S.-based organization launched to enforce human rights and fight impunity in India—works with survivors to engage in advocacy and outreach, documents violations, and educates the public about human rights abuses in India. ENSAAF has five programs: Community Advocacy, Human Rights Education, Legal Advocacy, Media and Human Rights, and United Nations. ENSAAF, which means Justice in many South Asian languages, acts to implement the international rights to knowledge, justice, and reparation. The board of directors comprises human rights lawyers Sukhman Dhami and Jaskaran Kaur, as well as Professor Peter Rosenblum of Columbia Law School.

OUR PRINCIPLES

Right to Knowledge. People have the right to know the truth about gross human rights violations and the people and institutions involved in the perpetration of these abuses. The State also has a duty to acknowledge and remember the violations suffered.

Right to Justice. All victims of human rights abuses possess the right to an effective remedy, including an investigation of the abuses and prosecution of perpetrators.

Right to Reparation. All victims of human rights violations and their beneficiaries have a right to reparation, including restitution, compensation, and rehabilitation.

Satisfaction and Guarantees of Non-recurrence. To prevent the recurrence of systematic human rights violations, governments must commit to guarantees of non-repetition, such as: full public disclosure and investigation of the facts; public acknowledgment and acceptance of State responsibility; and repeal of all laws that facilitate human rights abuses and abrogate guaranteed rights protections.

THE NHRC'S LATEST MOVE: ANOTHER FALSE START?

Background

In January 1995, Jaswant Singh Khalra, general secretary of the Akali Dal's human rights wing, and Jaspal Singh Dhillon discovered official cremation grounds records from Amritsar, which revealed that the Punjab Police had secretly cremated thousands of bodies as "unidentified/ unclaimed." They later matched these records with the identities of person who had "disappeared," and were thus able to establish the fate of many persons abducted by Punjab Police in the mid-80s to mid-90s. After publicly releasing their findings, Khalra filed a petition in the Punjab and Haryana High Court calling for an investigation into the mass cremations. His petition was dismissed for vagueness and lack of standing.

Before he could petition the Supreme Court, armed commandos from Punjab Police abducted Khalra on September 6, 1995. Paramjit Kaur, his wife, petitioned the Supreme Court to compel the authorities to produce Khalra, while the Committee for Information and Initiative on Punjab (CIIP) petitioned the Court to investigate Khalra's allegations of mass cremations. The Supreme Court ordered the Central Bureau of Investigation (CBI) to investigate Khalra's abduction, and directed the National Human Rights Commission (NHRC) to adjudicate the mass cremations cases. More than seven years later, the NHRC has failed to adjudicate even one of 2,097 admitted cases, and Khalra's killers continue to roam freely.

However, through the work of the Committee for Coordination on Disappearances in Punjab (CCDP), hundreds of "unidentified" bodies have been identified, proving that investigations into such violations are possible. Their report: *Reduced to Ashes: The Insurgency and Human Rights in Punjab* (www.punjabjustice.org) provides over 500 documented case summaries of police abductions leading to illegal cremations and analyzes the seven-year litigation before the Supreme Court and NHRC.

The NHRC's March Order and July Notice

On March 18, 2004, the NHRC ordered that public notice be issued soliciting claims from families whose members had been illegally cremated by Punjab

Police in Amritsar district. The order stated that: "[F]or proper adjudication of the rights and effective determination of compensation etc. . . .the Commission once again issues a public notice . . ." Thus, more than seven years after the NHRC took cognizance of the Punjab mass cremations matter by order of the Supreme Court, it is "once again" ready to adjudicate some of the gross violations that occurred in Punjab.

Human rights commissions from other countries with fewer resources and greater case burdens have adjudicated tens of thousands of disappearances and related violations in a fraction of the time. Some examples are: Argentina's National Commission on the Disappeared, which took 7,000 statements in 9 months; Chile's National Commission on Truth and El Salvador's Commission on the Truth, which investigated 34,000 cases in 8 months.

As the latest order alludes, this is not the first instance in which the NHRC has issued a public notice calling on victim families to submit claims. The first notice was issued on January 13, 1999. However, because the notice was defective, only 88 families responded. Of those 88 families, 18 were arbitrarily awarded a doll of \$1000. The 18 families unanimously rejected the award order because it explicitly failed to admit any liability or wrongdoing and it sought to dismiss the thousands of other cases from Amritsar and Punjab.

The second notice was published in print media in Punjab on July 18, 2004, four months after the NHRC's March 18, 2004 order. In response to this notice, the CIIP and other activists are collecting claims, focusing on Amritsar district, which will be submitted to the NHRC at the close of the two-month notice period on September 18, 2004.

The March 18, 2004 order further stated that the NHRC would serve personal notice to the 88 families who had originally submitted claims in response to the January 13, 1999 notice. It is important to note that these 88 claims came from various districts of Punjab.

However, the Commission has refused to

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COMMUNITY ADVOCACY PROGRAM: LETTER TO SURVIVORS

ਸਤਿਕਾਰਯੋਗ ਸੱਜਣ/ਪਰਿਵਾਰ ਜੀਉ:

ਇਸ ਚਿੱਠੀ ਰਾਹੀਂ ਅਸੀਂ ਤੁਹਾਨੂੰ ਇੱਕ ਨਵੀਂ ਕਾਰਜਨੀਤੀ (strategy) ਬਾਰੇ ਜਾਣਕਾਰੀ ਦੇਣਾ ਚਾਹੁੰਦੇ ਹਾਂ।

ਏਥੇ ਅਮਰੀਕਾ ਵਿੱਚ ਅਸੀਂ “ਇਨਸਾਫ਼” (ENSAAF) ਨਾਂ ਦੀ ਆਰਗੇਨਾਈਜ਼ੇਸ਼ਨ ਕਾਇਮ ਕੀਤੀ ਹੈ ਜਿਸ ਦਾ ਮਕਸਦ ਹੈ ਭਾਰਤ ਵਿੱਚ ਕਸੂਰਵਾਰ ਪੁਲੀਸ ਅਤੇ ਹੋਰ ਸਰਕਾਰੀ ਕਾਰਿੰਦਿਆਂ ਦੀ ਸ਼ੁਰੂਆਤ ਸਜ਼ਾ-ਮੁਕਤੀ (impunity) ਦੇ ਮਾਹੌਲ ਨੂੰ ਠੱਲ੍ਹ ਪਾਉਣ ਦੇ ਕਾਰਜ ਵਿੱਚ ਹਿੱਸਾ ਪਾਉਣਾ। ਅਸੀਂ ਪੀੜਤਾਂ ਦੀ ਜਥੇਬੰਦੀ ਅਮਰੀਕਾ ਤੇ ਕੈਨੇਡਾ ਵਿੱਚ ਸਥਾਪਤ ਕਰਨ ਦੀ ਕੋਸ਼ਿਸ਼ ਕਰ ਰਹੇ ਹਾਂ। ਇਸ ਜਥੇਬੰਦੀ ਦੀ ਸਥਾਪਨਾ ਤੇ ਇਸਦੀਆਂ ਸਰਗਰਮੀਆਂ ਲਈ ਪੂਰੀ ਮਦਦ ENSAAF ਦੇ Community Advocacy ਪਰੋਗਰਾਮ ਵਲੋਂ ਕੀਤੀ ਜਾਵੇਗੀ।

ਪੰਜਾਬ ਦੇ ਅਮਰੀਕਾ/ਕੈਨੇਡਾ ਵਸਦੇ ਪੀੜਤਾਂ ਦੀ ਇਸ ਜਥੇਬੰਦੀ ਦੇ ਸਿਧਾਂਤ ਹਨ: ਸੱਚ, ਇਨਸਾਫ਼ ਤੇ ਸਰਕਾਰੀ ਜ਼ਬਰ ਖਾਤਰ ਜਵਾਬਦੇਹੀ (accountability)। ਇਸ ਜਥੇਬੰਦੀ ਦੀ ਮੈਂਬਰੀ ਸਰਕਾਰੀ ਜ਼ਬਰ ਦੇ ਸ਼ਿਕਾਰ ਵਿਅਕਤੀਆਂ ਤੇ ਉਹਨਾਂ ਦੇ ਪਰਿਵਾਰਾਂ ਤੱਕ ਸੀਮਤ ਹੈ। ਮਨੁੱਖੀ ਹੱਕਾਂ ਦੀ ਪੈਰਵਾਈ ਲਈ ਸਰਗਰਮ ਬੰਦੇ ਤੇ ਅਦਾਰੇ ਇਸ ਜਥੇਬੰਦੀ ਨੂੰ ਪੂਰੀ ਮਦਦ ਤੇ ਲੋੜੀਂਦੇ ਸੁਝਾਅ ਦੇਣਗੇ। ਇਸ ਜਥੇਬੰਦੀ ਦੇ ਇਹ ਨਿਸ਼ਾਨੇ ਹਨ:

- ਪੀੜਤ ਪਰਿਵਾਰਾਂ ਨੂੰ ਇਕੱਠੇ ਕਰ ਕੇ ਵੱਖ-ਵੱਖ ਮੁਲਕਾਂ ਦੀਆਂ ਸਰਕਾਰਾਂ, ਗੈਰ-ਸਰਕਾਰੀ ਅਦਾਰਿਆਂ ਅਤੇ ਅੰਤਰਰਾਸ਼ਟਰੀ ਆਰਗੇਨਾਈਜ਼ੇਸ਼ਨਾਂ ਨੂੰ ਆਪਣੀ ਹੱਡ-ਬੀਤੀ ਬਾਰੇ ਜਾਣੂੰ ਕਰਵਾਉਣਾ।
- ਸੰਯੁਕਤ ਰਾਸ਼ਟਰ (United Nations) ਦੇ ਮਨੁੱਖੀ ਹੱਕਾਂ ਦੇ ਦਫਤਰਾਂ (human rights mechanisms) ਅੱਗੇ ਆਪਣੇ ਮਸਲੇ ਦੀ ਪੈਰਵਾਈ ਕਰਨਾ।
- ਪੰਜਾਬ ਵਿੱਚ ਵਾਪਰੇ ਸਰਕਾਰੀ ਜ਼ਬਰ ਤੇ ਇਸ ਦਾ ਸ਼ਿਕਾਰ ਹੋਏ ਵਿਅਕਤੀਆਂ ਤੇ ਪਰਿਵਾਰਾਂ ਦੀ ਹੱਡ-ਬੀਤੀ ਦਾ ਪੂਰਾ ਵੇਰਵਾ ਦਰਜ ਕਰਨਾ।
- ਪੰਜਾਬ ਦੀ ਪੀੜਤਾਂ ਦੀ ਜਥੇਬੰਦੀ Association of Families of the Disappeared in Punjab (AFDP) ਨਾਲ ਏਕੇ ਦੀ ਹਮੀ ਭਰਨਾ ਤੇ ਉਸਦੀ ਮਦਦ ਕਰਨਾ।
- ਤਸੱਦਦ, ਮਾਰ ਕੇ ਲਾਪਤਾ ਕਰਨ ਤੇ ਝੂਠੇ ਮੁਕਾਬਲਿਆਂ ਵਿੱਚ ਮਾਰ ਮੁਕਾਉਣ ਦੇ ਅਮਲਾਂ ਨੂੰ ਠੱਲ੍ਹ ਪਾਉਣ ਲਈ ਕਾਨੂੰਨ ਤੇ ਨੀਤੀਆਂ ਬਣਵਾਉਣ ਲਈ ਜਤਨ ਕਰਨਾ।

ਦੁਨੀਆਂ ਦੇ ਕਈ ਮੁਲਕਾਂ ਵਿੱਚ ਪੀੜਤਾਂ ਦੀਆਂ ਜਥੇਬੰਦੀਆਂ ਨੇ ਇਸ ਤਰਾਂ ਦੇ ਉਪਰਾਲੇ ਕਰ ਕੇ ਤੇ ਆਪਣੀਆਂ ਸਰਕਾਰਾਂ ਨੂੰ ਵੰਗਾਰ ਕੇ ਕੁਝ ਹੱਦ ਤੱਕ ਇਨਸਾਫ਼ ਹਾਸਲ ਕਰਨ ਵਿੱਚ ਸਫਲਤਾ ਪਾਈ ਹੈ। ਪੰਜਾਬ ਦੇ ਪੀੜਤ ਪਰਿਵਾਰ ਵੀ ਆਪਣਾ ਏਕਾ ਕਰਕੇ ਇਸ ਸਜ਼ਾ-ਮੁਕਤੀ ਦੇ ਮਾਹੌਲ ਨੂੰ ਖਤਮ ਕਰ ਸਕਦੇ ਹਨ।

ਅਸੀਂ ਤੁਹਾਨੂੰ ਬੇਨਤੀ ਕਰਦੇ ਹਾਂ ਕਿ ਸਾਡੇ ਨਾਲ ਟੈਲੀਫੋਨ ਰਾਹੀਂ ਅਮਰੀਕਾ/ਕੈਨੇਡਾ ਵਿੱਚ ਨਵੀਂ ਬਣਾਈ ਜਾ ਰਹੀ ਇਸ ਪੀੜਤ ਜਥੇਬੰਦੀ ਵਿੱਚ ਆਪਣਾ ਹਿੱਸਾ ਪਾਉਣ ਬਾਰੇ ਗੱਲਬਾਤ ਕਰੋ। ਅਸੀਂ ਉਮੀਦ ਕਰਦੇ ਹਾਂ ਕਿ ਤੁਸੀਂ ਏਸ ਕਾਰਜ ਵਿੱਚ ਸ਼ਾਮਲ ਹੋਵੋਗੇ ਅਤੇ ਮਨੁੱਖੀ ਹੱਕਾਂ, ਇਨਸਾਫ਼ ਤੇ ਸਚਾਈ ਲਈ ਜਦੋਜਹਿਦ ਵਿੱਚ ਹਿੱਸਾ ਪਾਉਗੇ।

NEWS FLASHES

Read ENSAAF's blog on human rights in India, at <http://www.blogs.law.harvard.edu/jaskaran>.

* The Nanavati Commission, investigating the 1984 pogroms of Sikhs in India, held its last hearing on August 27, 2004. In his affidavit, then Lt. Gov PG Gavai blamed Rajiv Gandhi's government for delaying the deployment of the Army, thus allowing the massacres to continue without interference. Gavai also claimed that the Misra Commission suppressed this evidence in its report.

* In order to guide the Home Ministry as it drafts a new law on communal violence, a group of activists, jurists, and others have released a draft model law titled the Prevention of Genocide and Crimes Against Humanity Act 2004. This law includes provisions recognizing the doctrine of command responsibility, new to India's domestic law. Problems regarding implementation must also be addressed. For example, prosecutions against perpetrators of the Sikh pogroms have failed because of government collusion with the police and protection of perpetrators, police failure to properly investigate and record abuses, destruction of evidence, harassment of potential witnesses, and manipulation and falsification of police records, among other practices.

* In the struggle for justice for survivors of the Gujarat pogroms of Muslims, the Supreme Court ordered the review of 2000 cases closed by the police; the additional-director general of police filed a 172-page affidavit demonstrating the complicity of the police with senior political party leaders in perpetrating the violence; the Maharashtra court postponed the Best Bakery retrial until September 8; the Supreme Court stayed the trial in the Dawood case; and the Indian Censor Board banned Rakesh Sharma's documentary on right-wing Hindu politics of hate in India, titled *Final Solution*.

* Widespread protests in Manipur have highlighted the draconian Armed Forces Special Powers Act and human rights abuses perpetrated by security forces on civilians. The protests began after security forces killed a young woman in detention.

THE AKALI GOVERNMENT: UNDERMINING JUSTICE FOR HUMAN RIGHTS ABUSES

The Rights to Knowledge, Justice and Reparation

During Congress power in Punjab, the state's security forces systematically violated the human rights of Sikhs, through executions, disappearances, torture, and arbitrary detention, among other horrific crimes. In the subsequent period of rule by the Shiromani Akali Dal (Badal), however, Sikhs could not turn to the "Sikh" party for justice. Instead of taking legal action against police officers responsible for the abuses, or investigating the violations, the Akali Dal promoted and protected the police, and suppressed information on the violations committed by the state's security forces. In so doing, the Akali government denied knowledge, justice and reparation to victim families, and systematically silenced them.

Right to Knowledge

People have the right to know the truth about gross human rights violations and the people and institutions involved in the perpetration of these abuses. An effective right to knowledge also includes the State's duty to acknowledge and remember the violations suffered by individual victims and victim communities.

Banning of the People's Commission

The Akali party returned to power in Punjab in late 1997, promising a truth commission to investigate human rights abuses committed by state security forces. In December 1997, the Committee for Coordination on Disappearances in Punjab (CCDP) called on the Akali government to fulfill this

election promise. After the Akali government of Chief Minister Prakash Singh Badal failed to act, CCDP announced the formation of the private People's Commission on Human Rights Violations in Punjab. A former Chief Justice of the Calcutta High Court chaired the Commission.

The first sitting of the Commission was held in August 1998 to a standing-room only crowd. People eagerly submitted petitions for examination by the panel. An advocate, however, filed a petition challenging the People's Commission. During the litigation, the High Court of Punjab & Haryana asked the Badal government whether it was willing to establish an inquiry commission to investigate the decade of human rights abuses. In its August 1999 response, the Akali government said it would not establish a commission. In December of 1999, the High Court banned the Commission for allegedly setting up a parallel judicial system.

Suppressing the Inquiry of Jathedar Kaunke

Jathedar Gurdev Singh Kaunke was serving as the Akal Takth Jathedar when the police arrested him from his home on December 25, 1992. The police later claimed that Jathedar Kaunke escaped from custody. After an investigation in May 1998, the CCDP found conclusive evidence that Jathedar Kaunke was severely tortured at the Jagraon Sadar police station and at the Criminal Investigative Agency (CIA) interrogation center. The police killed Jathedar Kaunke under torture.

The Akali government refused to publish the inquiry report into Jathedar Kaunke's disappearance. In June 1998, a delegation met Badal to demand an independent investigation into Jathedar Kaunke's disappearance and the registration of cases against the perpetrators. Badal directed Additional Director General

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IMPUNITY means the **IMPOSSIBILITY**, in law or in fact, "of bringing the perpetrators of human rights violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims."

*--UN Principles for the Protection and Promotion of
Human Rights through Action to Combat Impunity*

Impunity denies the survivors and their communities the rights to knowledge, justice and reparation. The practice of impunity encourages further human rights violations. Exposing the truth of abuses, bringing perpetrators to justice, providing reparations, and acting to prevent the recurrence of abuses helps restore the dignity of survivors and is essential to providing an effective remedy against human rights abuses.

YOUTH CORNER: Q & A ON OPERATION BLUESTAR

Punit Kaur Khalsa and Amrit Kaur Khalsa

This year marks the 20th anniversary of Operation Bluestar, the Indian Army attack on the Harmandir Sahib complex in Amritsar, Punjab, and around 41 other gurdwaras in June 1984, allegedly to root out separatists. Amrit and Punit, ENSAAF's youth representatives, have written this Q&A for other youth to understand the army attack.

Q: What is the significance of the day of the attack?

A: The attack lasted about 5 days. Thousands of Sikhs came to Harmandir Sahib because it was Guru Arjun Dev Ji's Martyrdom anniversary on June 3. The Indian government and military leaders who planned the attack knew that this was an important date for Sikhs all over and that Sikhs would come to the Harmandir Sahib to pray, or do 'Darshan'. The fact that the Army attacked on this particular week, knowing the Harmandir Sahib complex would be filled with thousands of innocent people, shows they wanted to maximize the attack on innocent people. They attacked our heart, the Harmandir Sahib, in an attempt to weaken the Sikh nation.

Q: What is Harmandir Sahib?

A: The Harmandir Sahib complex is in Amritsar, Punjab. It is also known as 'the Golden Temple'. It has many surrounding Gurdwaras. The Harmandir Sahib itself sits in the middle of a pool of nectar. There is the Darshani Deori that opens and takes the people across the water to the gurdwara. Across the Darshani Deori is the Akal Takat, which is the 'seat of Sikh temporal authority'. The complex also includes the Langar hall, the Sikh Reference Library, other smaller gurdwaras, and resting houses.

Q: What happened during the attack?

A: A lot was going on during the attack. Pilgrims were shot at point-blank range, with their hands tied behind their backs. No was allowed inside the complex and no one was allowed to leave. Those who tried to leave

were shot and killed, or detained by the police. Men, women, and children of all ages were taken hostage in rooms without any food or water for days. The pool of nectar [sarowar] was red from all the blood shed from bodies that had either fallen in or were thrown in.

No one knew what was going on inside or outside of the Harmandir Sahib because of the total censorship. No reports were sent, and there was no mail, radio, or TV. coverage in Punjab. People stayed inside their homes because of the shoot-to-kill curfew. All foreign reporters and journalists were forbidden to enter the city or even Punjab itself. Every entrance to the complex was blocked and the Indian army was everywhere you looked. During the week, thousands of people were killed and injured and the Indian police brought tanks into the complex. They destroyed the Akal Takht and left bullet marks in the Harmandir Sahib. At the same time, security forces attacked around 41 other gurdwaras. They held innocent Sikhs in detention, without charge or trial. They didn't care who you were or where you came from.



Amrit Kaur mans the ENSAAF table at the San Jose Gurudwara grand-opening on August 28-29, 2004. ENSAAF distributed flyers on human rights abuses in Punjab, and a CD with reports and a TV documentary, among other materials.

Q: What happened to the Sikh religious scriptures and artifacts?

A: The artifacts were stolen from the Sikh Reference Library and Harmandir Sahib complex, burned, and/or broken. Mr. Duggal, the librarian, insists that the library was intact when he last saw it on June 6 after the army had gained control of the complex. When he returned on June 14, the army had burned the library down. The library included many manuscripts of important scriptures and documents in Sikh History. The Indian government recently admitted that it had in its possession materials from the Sikh Reference Library. It still has not returned them.

of Police B.P. Tiwari to conduct an inquiry. Tiwari submitted his report to the Badal government in May 1999, but the Badal government refused to release the report to the public. In April 2002, Simranjit Singh Mann moved the High Court of Punjab & Haryana to release the report. The state government refused to release the report, leaving the High Court to order yet another investigation.

Right to Justice

All victims of human rights abuses possess the right to an effective remedy, necessary for a lasting and just reconciliation. The right includes an investigation of the abuses and prosecution of perpetrators. The Akali government, however, failed to grant prosecution sanction for cases against perpetrators, and instead promoted police officers and provided funds to support them in legal cases. The government also attempted to dismiss the Punjab illegal cremations matter proceeding before the National Human Rights Commission.

Impunity Law: Prosecution Sanction

Perpetrators of violations of human rights continue to occupy senior state security and governmental positions of power. Despite extensive documentation citing police officers like Sanjeev Gupta and Sumedh Saini, for example, as perpetrators of disappearances, executions, and torture, they have neither been demoted, nor suspended, nor disciplined for their participation in these violations. Instead, many have been promoted and awarded for their roles. A senior state official of the Badal government told a commission from the government of Denmark in 2000 that secret funds were used to pay legal costs for police officers facing cases of human rights abuse.

Sections 45 and 197 of the Indian Penal Code require the prosecutor to apply for prosecution sanction from the central or state government before instituting any proceedings against a public servant or member of the Armed Forces. Instead of aggressively granting prosecution sanction in cases against police officers for human rights abuses, the Akali government has regularly failed to grant sanction, thus stifling cases against police officers. In

one special case, regarding the disappearance of Ropar advocate Kulwant Singh, his wife, and their two-year old child, the Supreme Court recommended the suspension of concerned police officers, such as Sanjeev Gupta. Instead, Gupta was promoted.

Undermining the National Human Rights Commission

On September 6, 1995, armed commandos of the Punjab Police abducted human rights activist Jaswant Singh Khalra, for his discovery of mass illegal cremations. The Committee for Information and Initiative in Punjab (CCIP) moved the Supreme Court of India to demand a comprehensive inquiry, thus beginning the Punjab illegal cremations matter. In December 1996, the Supreme Court referred the matter of police abductions leading to disappearances and secret cremations in Punjab to the National Human Rights Commission.

The Punjab government undermined the rights of survivors in this case. The Akali government contrived to dismiss this case by granting compensation to just 18 families, with no admission of liability or guilt. The 18 families all rejected this compensation as an affront to justice, and the case was restored to its position of examining illegal cremations in Amritsar.

Right to Reparation

All victims of human rights violations and their beneficiaries have a right to reparation, which includes restitution, compensation, and rehabilitation. Because the Punjab government has refused to acknowledge and investigate the human rights abuses perpetrated by its security forces, the majority of the victims and survivors have received no reparation. Many find it difficult to continue their lives, without legal and administrative measures solving problems relating to the acknowledgment of disappearances or arbitrary executions, from death certificates to inheritance rights. There is also no understanding of the impact of human rights violations in terms of trauma, the status of orphans, the effects of extortion and destruction or confiscation of property, and the status of widows, among other issues.

The Indian and Punjab governments must acknowledge the abuses perpetrated against the Sikhs; it must remember those abuses; it must bring the perpetrators to justice; and it must dismantle the people and systems that allowed those abuses to occur.

entertain claims from non-Amritsar or issue personal notice to other families whose bodies have been identified. Over 700 identities have been established, yet the Commission refuses to notify their families—their claims will only be accepted in response to the public notice. Also, the Commission will not accept claims unless they relate to bodies illegally cremated in Amritsar. It is inexplicable why the Commission will accept multi-district claims from the 88 original claimants and will issue personal notice to them, but will not accept claims from other families from non-Amritsar districts or issue personal notice to families whose bodies have been identified. Irrespective of the Commission's rationale, such discrimination is impermissible under Indian and international law. Understandably, families from non-Amritsar districts have expressed their deep disappointment and disillusionment with the NHRC for its deliberate failure to consider the extrajudicial executions and disappearances of their loved ones.

Moreover, the Commission cannot fail or refuse to adjudicate a case of illegal cremation because a claim was not filed with respect to one of the 2,097 bodies. The Commission's and state's obligation to investigate fundamental rights violation runs independently of the decision or ability of the victim's family to come forward with a claim.

The Supreme Court instructed the CBI to investigate and identify the bodies, but the CBI failed to do so in an independent and impartial manner. In over seven years since they received these instructions, the CBI has done little more than to corroborate the findings of the CCDP, and has failed to identify the bodies that figure among the 1,273 unidentified. Thus, the NHRC must lead efforts to impartially investigate claims of disappearance and extrajudicial execution, which it is empowered and bound to do by the Supreme Court.

Comparative Analysis

The NHRC's inability to adjudicate even one case of illegal cremation among 2,097 in seven years cannot be explained away by a lack of institutional resources or capabilities. Human rights commissions from other countries with fewer resources and greater case burdens have adjudicated tens of thousands of

disappearances and related violations in a fraction of the time. Some examples are: Argentina's *National Commission on the Disappeared*, which took 7,000 statements in 9 months; Chile's *National Commission on Truth and Reconciliation*, which thoroughly investigated 2,920 cases in 9 months; El Salvador's *Commission on the Truth*, which investigated 34,000 cases in 8 months; The South African *Truth and Reconciliation Commission*, which investigated 21,000 cases in 2.5 years; and Guatemala's *Historical Clarification Commission*, which investigated 42,000 cases in 18 months. It is also important to note that these commissions were able to conduct nationwide investigations, where India has failed to conclude even one case from one district in the state of Punjab.

Furthermore, recognizing that claims would be in the thousands and would require greater resources and attention, the NHRC specifically requested and received additional funding to deal with the mass cremations matter. Thus, it is not constrained by a lack of resources.

Moreover, the NHRC has been granted extraordinary powers to investigate and adjudicate the mass cremations cases. Normally, the NHRC is proscribed by its constituting act, the Protection of Human Rights Act, 1993. Under this act, the NHRC:

- Can only make recommendations and issue reports (PHRA Chp. I, (18));
- Cannot investigate abuses committed by security forces (PHRA Chp. I, (19)); and
- Cannot investigate violations older than one-year (PHRA Chp. VIII, (36)(2));

The NHRC has repeatedly called for the removal of these restrictions.

However, none of these restrictions operate in the Punjab mass cremations matter. Because the NHRC is adjudicating this case by order of the Supreme Court as a *sui generis* body, vested with the powers of the Court, the provisions of its constituting act do not apply. The Supreme Court's September 10, 1998 clarifying order clearly state that: "In deciding matters referred by this court, the NHRC is given a free hand and is not circumscribed by and conditions." Notwithstanding these unprecedented powers, the NHRC has failed to hear testimony from a single family in over seven years.

ACTIVITIES LOG

ENSAAF in the News: On August 26, Neel Garlapati interviewed ENSAAF directors Jaskaran Kaur and Sukhman Dhami for Radio Intifada on Pacifica's Los Angeles station KPFK 90.7.

Barbara Crossette's article, *India's Sikhs: Waiting for Justice*, in this summer's *World Policy Journal* also discussed ENSAAF's work and its report on the November 1984 pogroms, *Twenty Years of Impunity*. Aseem Chhabra's article on Sikh reactions to 1984, which appeared in *India Abroad*, discussed ENSAAF's work, as well.

Human Rights Education: In the past months, ENSAAF has made presentations and distributed materials at local California gurudwaras, specifically Fremont, San Jose, and Stockton. ENSAAF also presented at the Jakara 2004 Conference in Fresno, California. ENSAAF has developed a new flyer on raising awareness on human rights abuses in Punjab, which it distributed at the grand-opening of the San Jose Gurudwara on August 28-29, 2004.

ENSAAF has presented several workshops at the Harvard School of Public Health, Yale University, University of California at Berkeley, and University of Toronto. ENSAAF's Toronto presentation centered on Human Rights in Punjab, post-1984, specifically focusing on security legislation, disappearances, and issues of impunity and accountability.

Legal Advocacy: ENSAAF directors worked with the Harvard Law Student Advocates for Human Rights and Human Rights Watch on their amicus brief submitted to the Indian National Human Rights Commission in December 2003. The 81-page brief urges the Commission to investigate fully and in accordance with international law the 2,098 illegal cremations ordered by the State in Amritsar district during Punjab's ten-year period of unrest, and to expand its inquiry to all of Punjab.

United Nations: ENSAAF has submitted two communications on the issues of forced disappearances, extrajudicial executions and impunity in Punjab, India to UN human rights mechanisms. ENSAAF also attended the 2004 Commission on Human Rights in Geneva.

ENSAAF BOARD OF DIRECTORS

Sukhman Dhami: A graduate of American University, both the School of International Service and the Washington College of Law, Sukhman has interned for civil and human rights groups, such as the Lawyers' Committee for Civil Rights Under Law and the Civil Rights Division of the Department of Justice. At the Public International Law and Policy Group, Sukhman drafted peace agreements and advised non-governmental organizations on legal reform issues. His diverse public interest experience includes representation of asylum seekers from Mali and Sierra Leone; and legal work on arbitrary detention before the Inter-American Commission on Human Rights.

Jaskaran Kaur: A graduate of Yale University and Harvard Law School, Jaskaran is a lawyer focusing on human rights documentation, research and advocacy on human rights issues in Punjab. She is a contributing author to *Reduced to Ashes: The Insurgency and Human Rights in Punjab*, which analyzes impunity and over 600 cases of extrajudicial execution and disappearance by Punjab's security forces. Jaskaran has also researched the judiciary's handling of habeas corpus petitions filed in Punjab by families of the disappeared, publishing her study in the *Harvard Human Rights Journal*.

Peter Rosenblum: Peter is the Lieff, Cabraser, Heimann & Bernstein Associate Clinical Professor in Human Rights at Columbia Law School. He joined the Human Rights Program at Harvard Law School in the fall of 1996 and served as Associate Director until 2002, when he became Clinical Director. Peter also held an academic appointment as Lecturer at Harvard Law School and oversaw clinical human rights projects with students. In 2003, Peter joined Columbia Law School. He was formerly Program Director for the International Human Rights Law Group and Human Rights Officer for the United Nations Centre for Human Rights. Peter has engaged in human rights research and field missions in Africa, Eastern Europe, and Asia.

CONTACT US

To receive the newsletter by email, get involved with ENSAAF, or donate, please contact info@ensaaf.org. Check out our website at www.ensaaf.org; and call us at 408.727.6122 or 415.259.7214.

Citations to articles available upon request.