

ABOUT ENSAAF

Ensaaf, which means *justice* in many South Asian languages, is a U.S.-based 501(c)(3) organization fighting impunity in India for mass state crimes. Impunity means the impossibility of holding human rights abusers accountable because they are shielded by law or protected by political institutions and powers.

Ensaaf challenges impunity by documenting and exposing human rights violations, bringing perpetrators to justice, and organizing survivors to become active participants for change. Ensaaf advocates for survivors' international rights to truth, justice, and reparations. Ensaaf has four programs: Community Organizing, Documentation & Education, Legal Advocacy, and United Nations.

PROJECT UPDATE

Media and Archival Research: Ensaaf continues to research the archives of the Punjab daily, *The Tribune*. It has collected relevant articles from 1988 to 1995, the peak period of abuses during the counter-insurgency operations. Over 13,000 deaths were reported from 1989-1992 alone. Among other issues, Ensaaf's analysis will include a list of killings, discussions of human rights cases, the functioning and role of security forces, and government and security responses to human rights violations.

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US EXTRADITES SIKH ACTIVIST KULVIR SINGH BARAPIND

On June 17, 2006, the United States extradited Sikh activist Kulvir Singh Barapind to India. Mr. Barapind arrived in New Delhi on June 19. The same day, Human Rights Watch (HRW) called on the Indian government to ensure that its security forces did not torture or mistreat Mr. Barapind. In its press release, HRW discussed Mr. Barapind's high risk of torture in police remand, citing his account of past torture and India's history of mistreating Sikh activists in custody. According to Mr. Barapind's attorneys in India, he will remain in police remand until July 7, and possibly longer. Based on conversations with Mr. Barapind's family, attorneys, and US Embassy officials, who have visited Mr. Barapind in remand, we can report that he has not been tortured or abused. However, Mr. Barapind remains at high risk of torture as long as he is in police remand and not in judicial custody. Ensaaf calls on the Indian government to immediately end Mr. Barapind's arbitrary remand and ensure that he is given a speedy and impartial trial.

Ensaaf prepared Mr. Barapind's application for relief under the Convention Against Torture to help ensure that Indian officials would not torture him. The application included a detailed brief and 17 exhibits, including 11 affidavits. The Center for Human Rights and Global Justice submitted an amicus brief. Ensaaf also secured the involvement of the United Nations Special Rapporteur on the Question of Torture, as well as the involvement of Congressman Chris Smith and his Professional Staff Sheri Rickert at the House Subcommittee on Global Human Rights. Further, Ensaaf secured a commitment from the US government to monitor the treatment of Mr. Barapind and act on any information of abuse.

Ensaaf is indebted to all of the individuals who have helped with Mr. Barapind's case.

Please visit <http://www.ensaaf.org/barapind.html> for further information.

THE DISAPPEARANCE OF RIGHTS ATTORNEY S.S. BHATTI

On May 12, 1994, Indian security forces abducted Punjab human rights attorney Sukhwinder Singh Bhatti in broad daylight. Over the following weeks, security forces clandestinely detained and tortured Mr. Bhatti. Despite two official inquiries and appeals to the Punjab High Court and Indian Supreme Court, no officials have been held accountable for disappearing him.

Mr. Bhatti was Sangrur district's leading defense lawyer for individuals accused of crimes under the Terrorist and Disruptive Activities (TADA) Act, 1987, a draconian law that facilitated torture and indefinite detention. He was litigating 131 TADA cases at the time of his disappearance. Despite threats to his life by Punjab policemen, Mr. Bhatti refused to abandon his clients.

On May 12, 2006, the 12th anniversary of Mr. Bhatti's disappearance, Ensaaf submitted a communication to the UN Special Representative on the Situation of Human Rights Defenders, providing a detailed discussion of Mr. Bhatti's case, identifying key perpetrators, and describing the operation of an unofficial interrogation center where Mr. Bhatti was illegally detained and tortured. After Ensaaf submitted its communication to the UN, officials from Punjab's Home Ministry visited Mrs. Bhatti to interview her regarding her husband's disappearance. Ensaaf is presently assisting Mrs. Bhatti in pursuing her husband's case before the Supreme Court.

Ensaaf calls on the Indian government to immediately fulfill its international obligation to provide Mrs. Bhatti her rights to truth, justice, and reparations. Mrs. Bhatti has the right to know the truth about the fate of her husband. Moreover, Mrs. Bhatti has the right to justice, which includes a thorough investigation capable of identifying the responsible officials and leading to their prosecutions. The Indian government must also provide Mrs. Bhatti reparations, which include compensation. Until the Indian government ends impunity for this crime, it continues to violate Mrs. Bhatti's international rights to truth, justice, and reparations.

Please visit <http://www.ensaaf.org/Bhatti.html> to read Ensaaf's communication to the UN.

INTERNATIONAL GROUPS CALL FOR THE PROSECUTION OF K.P.S. GILL FOR MURDERING J.S. KHALRA

On May 1, 2006, Ensaaf, Human Rights Watch, Redress, and the Center for Human Rights and Global Justice wrote to the Director of the Central Bureau of Investigation (CBI), calling on the CBI to investigate and prosecute former Director General of Punjab Police K.P.S Gill for the murder of human rights activist Jaswant Singh Khalra. Over ten years ago, members of the Punjab police operating under Mr. Gill illegally detained, tortured, and murdered Mr. Khalra because of his courageous work in exposing the disappearances, custodial deaths, and secret cremations of thousands of Sikhs in Punjab. During the trial of Mr. Gill's subordinate officers for abducting and murdering Mr. Khalra, evidence emerged that Mr. Gill personally interrogated Khalra and ordered his murder. In November 2005, six of Mr. Gill's subordinates were convicted for their roles in Mr. Khalra's murder.

Given the weight of the evidence, under the international law of command responsibility, there is a clear legal case to be made against Mr. Gill. According to the law of command responsibility, commanders are responsible for the orders they give, and if the orders are unlawful, they are as responsible in law as those who carried out the criminal acts. A commander is further liable if he knew or should have known that his subordinates were about to commit criminal acts, or if he failed to prevent or punish those criminal acts.

Please visit <http://www.ensaaf.org/CBIletter.html> to read the full text of the letter. Visit <http://www.ensaaf.org/khalra.html> for a collection of materials on human rights activist Jaswant Singh Khalra.

UN HUMAN RIGHTS COUNCIL APPROVES DISAPPEARANCE TREATY: WILL INDIA COMPLY?

On Thursday, June 29, 2006, the 47 members of the newly constituted United Nations (UN) Human Rights Council—the successor forum to the UN Commission on Human Rights—unanimously approved the *International Convention for the Protection of All Persons from Enforced Disappearance*. The UN General Assembly will consider the Convention for adoption in September. If the General Assembly approves the Convention, it will go to individual states for ratification. Human rights groups hailed the Council's approval of the Convention as a strong message that enforced disappearance would not be tolerated in any country.

The Convention contains strong provisions aimed at ending impunity for disappearances, as well as preventing future disappearances. These provisions are particularly relevant to India, given its systematic and widespread disappearance of Sikhs in Punjab from 1984 to 1995, and the subsequent impunity granted to the perpetrators. Before he was killed by police in 1995, human rights activist Jaswant Singh Khaira estimated that Indian security forces disappeared and extrajudicially executed 25,000 Sikhs in Punjab. Hundreds of perpetrators, including all of the major architects, remain unaccountable for these crimes.

Article 2 of the Convention includes four major elements in the definition of a disappearance: (1) the deprivation of liberty of the victim through, for example, arrest, detention, or abduction; (2) the role of state agents or those acting with the acquiescence of the state in bringing about the deprivation of liberty; (3) the refusal to acknowledge the deprivation of liberty; and (4) the placing of the person outside the protection of law. The convention classifies widespread or systematic enforced disappearances as a crime against humanity. Article 1.2 of the Convention clearly prohibits disappearances even under emergency situations, such as war or political instability. This directly counters the rationale propounded by key leaders of the Indian security forces, such as former Punjab police chief K.P.S. Gill, who justified abuses in Punjab because of the "special situation" in Punjab, specifically an armed

self-determination movement.

Criminal Penalties

The Convention, if implemented, is legally binding and requires parties to prosecute any offender found within its territory, unless the state extradites the offender or surrenders him to a relevant international tribunal. Article 4 calls upon states to take appropriate measures to ensure that enforced disappearance constitutes a criminal offence in their country's laws. Article 12.4 of the Convention obligates state parties to ensure that an accused cannot hinder or influence investigations through pressure, intimidation, or acts of reprisal.

If ratified by India, these articles will require it to implement serious reform. For example, the government has repeatedly promoted perpetrators of disappearances in Punjab and failed to protect survivors from reprisal. One example is of police officer Sanjiv Gupta. Despite implication in widespread disappearances, including the disappearance of human rights attorney Kulwant Singh Saini, his wife, and their two year old baby, the government has promoted Sanjiv Gupta to Inspector General of Punjab Police—the second highest rank.

Preventative and Anti-Impunity Measures

The Convention also develops preventative as well as anti-impunity measures. It includes many provisions that currently exist in Indian law but that the police routinely flout, such as the requirement to record all detainees in registers and detain individuals only in recognized and supervised places. In the fight against impunity, the Convention commits its signatories to searching for the disappeared and compensating victims, thus recognizing the rights to truth and reparations.

The Indian government has yet to uphold the rights to truth, justice, and reparations for survivors of the widespread and systematic disappearances perpetrated in Punjab. India has further failed to repeal impunity provisions despite urgings from the UN Human Rights Committee and international human rights organizations. Under Sections 45 and 197 of the Indian Code of Criminal Procedure, for example, criminal prosecutions against members of the security forces cannot begin without special

approval from the government.

The New UN Human Rights Council

Elections for the Human Rights Council were held in May 2006, and the first session of the Council concluded on June 30, 2006. India has a one-year term on the Council. When India announced its candidature for a position on the UN Human Rights Council, it described itself as a “committed supporter of the UN human rights system”. India’s actions, however, contradict its words. For example, despite twelve years of requests for an invitation, India has repeatedly refused to permit country visits by the UN’s Special Rapporteur on the Question of Torture. Out of 14 UN human rights treaties and protocols, India has ratified only 7, failing to ratify the crucial Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In its voluntary pledges and commitments submitted to the Secretariat of the UN by its Permanent Mission to the United Nations, India pledged to “continue to abide by its national mechanisms and procedures to promote and protect the human rights and fundamental freedoms of all its citizens.” These mechanisms, however, are severely flawed. The Punjab mass cremations case, stalled for 10 years before the Indian National Human Rights Commission (NHRC), demonstrates the failures of India’s national mechanisms to redress systematic disappearances.

In December 1996, after reviewing a petition based on Khalra’s investigations of police abductions leading to secret cremations in Amritsar, as well as a Central Bureau of Investigation (CBI) report, India’s Supreme Court concluded that the CBI’s report disclosed “flagrant violations of human rights on a mass scale.” It directed the NHRC to examine all issues, and in order to equip the NHRC to effectively adjudicate this large case of disappearances, the Supreme Court granted the Commission its extraordinary powers under Article 32 of the Constitution. These powers allow the Court to forge new remedies to protect and enforce fundamental human rights and redress violations. Notwithstanding these extraordinary powers, in ten years, the Commission has failed to investigate a single disappearance to establish the factual circumstances surrounding the victim’s disappearance and possible end in a secret cremation. Further, the Commission has refused to call any surviving family members to testify about the disappearance of

their relative or determine the scope of the human rights violations suffered. It has also failed to investigate a single security official or agency implicated in these gross violations.

Conclusion

The approval of the *International Convention for the Protection of All Persons from Enforced Disappearance* represents a key step in a lengthy process that involved several years of negotiations and development of the draft treaty. As Human Rights Watch, Amnesty International, the International Commission of Jurists, and the International Federation of Human Rights said in a statement calling for the adoption of the Convention: “[The Convention] effectively marks a significant development in applicable international law, all the while based on firmly established standards of customary international law. The Convention also responds to a substantial gap in the law - the absence of a treaty to address the multiple violations of human rights and international crime that enforced disappearance represents.” What remains to be seen is whether India will ratify the Convention, and if it will implement it towards genuinely addressing enforced disappearances within its borders.

ENSAAF WELCOMES ITS ADVISORY COUNCIL

Ensaaf is privileged to announce its new Advisory Council. The Advisory Council is comprised of a broad range of experienced human rights advocates who will guide Ensaaf in implementing its mission.

Brad Adams is the Executive Director of the Asia Division of Human Rights Watch (HRW). HRW is the largest human rights organization based in the US and protects the human rights of people around the world (hrw.org).

Rajvinder Singh Bains is a Punjab & Haryana High Court attorney with over two decades of human rights litigation experience. He is the lead attorney of the Khalra trial team.

Sandra Coliver is a Senior Legal Officer at the

Open Society Justice Initiative, an operational arm of the Open Society Institute founded by financier George Soros that promotes the rule of law and human rights worldwide (<http://www.justiceinitiative.org>).

Matt Eisenbrandt is the Litigation Director at the Center for Justice & Accountability (CJA). CJA works to hold human rights abusers accountable through lawsuits brought under universal jurisdiction laws (www.cja.org).

Carla Ferstman is the Director of Redress. Redress helps torture survivors obtain justice and reparations (www.redress.org).

Ram Narayan Kumar is the Director of the South Asian Orientation Course in Human Rights and Peace Studies, a program of the South Asian Forum for Human Rights (SAFHR). SAFHR promotes human rights, peace, and democracy in the region (www.safhr.org).

Smita Narula is the Faculty Co-Director at the Center for Human Rights and Global Justice (CHRGJ), based at NYU School of Law. The CHRGJ focuses on issues related to global justice and emphasizes research productivity in all aspects of its work (www.nyuhr.org).

Vasuki Nesiah is a Senior Associate at the International Center for Transitional Justice (ICTJ). ICTJ assists countries pursuing accountability for past mass atrocities or human rights abuse (www.ictj.org).

ENSAAF FOUNDERS WIN ECHOING GREEN AWARD

The global nonprofit organization Echoing Green has named Ensaaf founders Sukhman Dhama and Jaskaran Kaur among the world's "Best Emerging Social Entrepreneurs" for their plan to challenge impunity for mass state crimes in Punjab, India.

Ensaaf was chosen for this award because of its innovative and proactive approach to impunity. Ensaaf regards impunity as a perpetual violation of survivors' rights to truth, justice, and reparations. Moreover, Ensaaf's strategies challenging impunity are comprehensive: We document and expose violations to counter official denials, remove perpetrators from power through legal accountability, assist cases in India that will develop the law on command responsibility and reparations, and organize survivors to become active participants for change.

As a winner of the prestigious 2006 Echoing Green Fellowship, Ensaaf will receive \$90,000 in seed funding; Dhama and Kaur will also receive four years of technical support, leadership training, and strategic counsel to institutionalize Ensaaf. Ensaaf is one of just twelve organizations to receive the 2006 Echoing Green Fellowship from 800 applicants among 75 countries.

About Echoing Green

Founded in 1987, Echoing Green identifies, funds and supports the world's most exceptional emerging social leaders and the organizations they launch. Through a multi-year fellowship program, Echoing Green helps these leaders develop new solutions to society's most difficult problems in diverse fields including education, healthcare, housing, civil and human rights, the environment, economic development and the arts. With the support of co-founder **General Atlantic, LLC** (GA), a private equity firm, foundations and individual donors, Echoing Green has invested over \$22 million in start-up funding to nearly 400 social change entrepreneurs. For more information, visit <http://www.echoinggreen.org>, call 212.689.1165 or email info@echoinggreen.org.

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