

Punjab Police to enjoy “unprecedented freedom from legal and democratic accountability.”<sup>43</sup> The Indian public, including members of the judiciary, expressed support for restricting the fundamental rights of Sikhs in pursuit of measurable gains against militancy.<sup>44</sup> Furthermore, special counterinsurgency laws, such as the Armed Forces (Punjab and Chandigarh) Special Powers Act of 1983 (AFSPA) and the Terrorist and Disruptive Activities (Prevention) Act of 1987 (TADA) gave security forces greater powers to arrest, detain, and kill suspected militants, and provided prosecutorial immunity to officers who acted “in pursuance” of the acts.<sup>45</sup> Thus, allegations of widespread and systematic human rights violations by the security forces were not thoroughly investigated, nor were the actions of the security forces

monitored or assessed against international human rights norms.<sup>46</sup>

Human rights activists have produced extensive qualitative accounts and analyses of state violence, supported by narrative testimonies, affidavits, and legal proceedings, challenging official assertions that security practices ended the “war on terrorism” while resulting in only minor human rights violations. Until now, however, human rights groups have lacked the capacity to conduct systematic and reproducible quantitative research to record the nature and scope of human casualties and enforced disappearances resulting from the conflict.<sup>47</sup> Such an analysis can help to evaluate security rationale, policy, and practices against international human rights standards.

## 4 Motivation for this Quantitative Analysis

There have been a number of different data collection initiatives on enforced disappearances, extrajudicial executions, and “illegal cremations” in Punjab over the last two decades. This report synthesizes the existing data and describes the magnitude and pattern of *reported* enforced disappearances, extrajudicial executions, and “illegal cremations.” Of

official claims and justifications for security policies and practices connected to the counterinsurgency against the Sikh militant movement will be compared to observed patterns. Specifically, we seek to assess the observed policies and practices of the security forces<sup>48</sup> against the government’s claims that enforced disappearances, extrajudicial executions, and

<sup>43</sup>K.S. Dhillon, “A Decade of Violence, 1983–1992,” in J.S. Grewal, et al., ed., *Punjab in Prosperity and Violence*, p. 115.

<sup>44</sup>Ibid. See also Mohan Guruswamy, “Close Encounters,” *Outlook*, June 8, 2007, <http://www.outlookindia.com/full.asp?fodname=20070608&fname=mohanguruswamy&sid=1> (citing perceived corruption and incompetence in the lower judiciary as the reason “the general public is willing to go along with the police’s murderous ways”); Khushwant Singh, “Defending the Indefensible,” *Hindustan Times*, June 20, 2003. Copy on file with Ensaaf. (stating: “I supported K.P.S. Gill for resorting to extra-judicial methods to stamp out terrorism,” before he read *Reduced to Ashes*); Jaskaran Kaur, “A Judicial Blackout: Judicial Impunity for Disappearances in Punjab, India,” *Harvard Human Rights Journal*, vol. 15 (2002), p. 284 (quoting the response of Justice G.S. Singhvi when questioned about the failure to protect the rights to life and liberty in Punjab during the period of militancy: “What about the life and liberty of those killed by the militants and terrorists? [It is] not possible to separate the militants from the innocent people who were killed”).

<sup>45</sup>Armed Forces (Punjab and Chandigarh) Special Powers Act (1983), section 7. Section 7 states: “No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.” The Terrorist and Disruptive Activities (Prevention) Act, section 26. Section 26 states: “No suit, prosecution or other legal proceeding shall lie against the Central Government or State Government or any other authority on whom powers have been conferred under this Act or any rules made thereunder, for anything which is in good faith done or purported to be done in pursuance of this Act or any rules made thereunder or any order issued under any such rule.”

<sup>46</sup>Human Rights Watch and Ensaaf, *Protecting the Killers*, p. 4.

<sup>47</sup>Singh, *Ethnic Conflict in India*, p. 163 (noting the lack of verifiable research available).

<sup>48</sup>The term “security forces” refers to the Punjab Police, the Indian Armed Forces, as well as paramilitary forces consisting of the Central Reserve Police Force and the Border Security Force.

“illegal cremations” were “minor aberrations.” Additional data will be required, however, before we can make conclusions about the total number of people killed or disappeared during the conflict. An additional objective of this report is to frame policy-relevant questions and pose hypotheses about lethal violence in Punjab which might be testable with additional data and inferential statistical methods.

#### 4.1 Enforced Disappearances, Extrajudicial Executions, and “Illegal Cremations”: Modalities of State Violence in Punjab

The human rights narrative describing political violence during the counterinsurgency operations in Punjab between 1984 and 1995 is dominated by terms such as “enforced disappearances,” “fake encounters,” and “illegal cremations.” This section clarifies these terms and places them in the context of the political violence in Punjab in the 1980s and 1990s.

##### 4.1.1 Enforced Disappearances

Some men arrive. They force their way into a family’s home, rich or poor, house, hovel or hut, in a city or in a village, anywhere. They come at any time of the day or night, usually in plain clothes, sometimes in uniform, always carrying weapons. Giving no reasons, produc-

ing no arrest warrant, frequently without saying who they are or on whose authority they are acting, they drag off one or more members of the family towards a car, using violence in the process if necessary.<sup>49</sup>

The above scenario describes an enforced disappearance from the perspective of a family member.<sup>50</sup> According to the International Covenant for the Protection of All Persons from Enforced Disappearances, an enforced disappearance is considered to be:

the arrest, detention, abduction, or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the whereabouts of the disappeared person, which place such a person outside the protection of the law.<sup>51</sup>

Enforced disappearances in Punjab often began with illegal detention.<sup>52</sup> In the majority of the cases, security forces abducted the victims in front of witnesses, often family members.<sup>53</sup> Indian security forces did not officially acknowledge detentions, provide family members with information regarding the illegal detention or enforced disappearance of the victims, or present detainees before magistrates within 24 hours, as required by Indian law.<sup>54</sup>

<sup>49</sup>United Nations Working Group on Enforced and Involuntary Disappearances, “Fact Sheet No. 6 (Rev.2), Enforced or Involuntary Disappearances,” <http://www.ohchr.org/Documents/Publications/FactSheet6rev.2en.pdf> (accessed November 22, 2008) (citing the Independent Commission on International Humanitarian Issues, “Disappeared Technique of Terror,” London, 1986).

<sup>50</sup>Ibid.

<sup>51</sup>International Covenant for the Protection of All Persons from Enforced Disappearances, adopted December 20, 2006, G.A. Res. A/RES/61/177, not yet in force, art. 2.

<sup>52</sup>Kumar, et al., *Reduced to Ashes*, p. 186.

<sup>53</sup>Ibid.

<sup>54</sup>Ibid., p. 201.

In many cases, security officials extrajudicially executed victims and disposed of their bodies without acknowledging the deaths or informing family members of the whereabouts of the remains.<sup>55</sup> With the channels of information controlled by government authorities, families were discouraged from seeking legal remedies, and human rights organizations were hindered in their attempts to document the full scale of the enforced disappearances.<sup>56</sup> Security forces further obstructed justice by intimidating witnesses and lawyers, detaining and torturing family members, and ignoring court orders.<sup>57</sup>

#### 4.1.2 Fake Encounters

According to evidence collected by human rights groups, Indian security forces reported many extrajudicial executions, custodial deaths, and enforced disappearances as “encounters” or “escapes” from custody, in order to conceal the extrajudicial violence.<sup>58</sup> For example, in February 2006 then Director General of Punjab Police S.S. Virk admitted that the Punjab Police had faked the encounter deaths of over 300 militants-turned-informers, cremating others in their place, who remain unidentified.<sup>59</sup> Further, in an examination of 838 reported enforced disappearances, the Committee for Coordination on Disappearances in Punjab found that 467

of the cases were reported in newspapers as encounters or escapes, though victims’ families were never officially informed about the victim’s whereabouts or death.<sup>60</sup> The US State Department described the practice of fake encounter killings in Punjab in 1993:

In the typical scenario, police take into custody a suspected militant or militant supporter without filing an arrest report. If the detainee dies during interrogation or is executed, officials deny he was ever in custody and claim he died during an armed encounter with police or security forces. Alternatively, police may claim to have been ambushed by militants while escorting a suspect. Although the detainee invariably dies in “crossfire,” security officer casualties in these “incidents” are rare.<sup>61</sup>

Alleged encounters were often reported in local newspapers with little information other than the number of alleged militants killed in a given encounter and the village where the encounter supposedly took place.<sup>62</sup> These reports have thus been difficult to systematically scrutinize against claims of enforced disappearances and extrajudicial executions.

<sup>55</sup>Ibid., pp. 197–199, 201–202.

<sup>56</sup>See, e.g. Ibid., pp. 197–199, 201–202.

<sup>57</sup>Jaskaran Kaur, “A Judicial Blackout: Impunity for Disappearances in Punjab, India”, *Harvard Human Rights Journal*, p. 269.

<sup>58</sup>US State Department, Bureau of Democracy, Human Rights, and Labor, “Country Reports on Human Rights Practices-1993: India,” January 31, 1994, [http://dosfan.lib.uic.edu/ERC/democracy/1993\\_hrp\\_report/93hrp\\_report\\_sasia/India.html](http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_sasia/India.html) (accessed December 11, 2008). See also Alex Perry, “Urban Cowboys: Bombay’s cops gun down a lot of gangsters,” *Time International*, January 13, 2003, p. 25 (quoting the former editor of the *Hindustan Times*: “We know the vast majority of encounters are fake. We do not think that this is a perfect situation, but in common with the rest of the middle class we have come to the regrettable conclusion that there is no real alternative”).

<sup>59</sup>Kumar, et al., *Reduced to Ashes*, p. 156.

<sup>60</sup>“DGP Fears Threat to Sukhi’s Life,” *Tribune* (Chandigarh), February 20, 2006, <http://www.tribuneindia.com/2006/20060220/main4.htm> (accessed December 11, 2008). In late 2007, S.S. Virk was arrested on unrelated corruption charges, but the official police admission of fake encounters which he made remains unexamined.

<sup>61</sup>US State Department, Bureau of Democracy, Human Rights, and Labor, “Country Reports on Human Rights Practices-1993: India,” January 31, 1994, [http://dosfan.lib.uic.edu/ERC/democracy/1993\\_hrp\\_report/93hrp\\_report\\_sasia/India.html](http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_sasia/India.html) (accessed December 11, 2008).

<sup>62</sup>See Section 5 of this report.

### 4.1.3 “Illegal Cremations”

We went to the cremation grounds and asked the employees [to] tell us how many dead bodies did the police give you? Some said we burned 8–10 every day. Some said there was no way to keep count. Sometimes a truck full of bodies came, and sometimes 2–4 dead bodies.<sup>63</sup>

In the above description, Jaswant Singh Khalra explains how he and fellow human rights activist Jaspal Singh Dhillon discovered the security forces’ practice of secret cremations to dispose of bodies of people who were killed by Indian security forces from 1984 to 1994 in Punjab. Khalra and Dhillon discovered records of unidentified cremations carried out in three cremation grounds in Amritsar district, labeled by the Punjab Police as cremations of “unidentified/unclaimed” bodies.<sup>64</sup> In 1995, the Committee for Information and Initiative on Punjab (CIIP) petitioned the Supreme Court to demand a comprehensive inquiry into the mass cremations. Motivated by Khalra’s own enforced disappearance a few months later, the Supreme Court ordered the Central Bureau of Investigation (CBI) to investigate the cremations. The CBI limited its investigation to three crematoria in Amritsar district, acknowledging 2,097

secret cremations.<sup>65</sup> Based on the CBI inquiry reports, the Indian Supreme Court referred the matter to India’s National Human Rights Commission (NHRC), giving it unprecedented powers to investigate and redress the claims of human rights abuses. The NHRC subsequently restricted its review to the procedural matter of “illegal cremations”—the fact that the bodies were cremated in violation of Punjab Police rules.<sup>66</sup>

Human rights groups have used survivor and witness testimony to demonstrate that victims of “illegal cremations” were also illegally deprived of life, through methods such as enforced disappearances and fake encounters.<sup>67</sup> In contrast, the NHRC has limited itself to determining the identity of the cremation victims based on security forces confirmations, and awarding compensation to the next of kin of those identified, ignoring issues of fundamental rights violations and of institutional and individual responsibility.<sup>68</sup> The NHRC has also limited its review to the three crematoria listed in Khalra’s original petition from Amritsar district—one of thirteen districts in Punjab during the conflict.<sup>69</sup> The NHRC has refused to accept evidence of illegal cremations conducted outside of Amritsar district. The limitations in the geographic and substantive scope of the NHRC’s review thus preclude drawing conclusions about the scale of human rights violations through-

<sup>63</sup>Ensaaf, “Sardar Jaswant Singh Khalra,” video report, 2006, <http://www.ensaaf.org/docs/khalravideo.php> (accessed January 11, 2009).

<sup>64</sup>Human Rights Wing (Shiromani Akali Dal), “Press Note on Mass Illegal Cremations,” January 16, 1995, <http://www.ensaaf.org/docs/pressnote.php> (accessed November 22, 2008).

<sup>65</sup>The NHRC subsequently acknowledged 38 duplicate records of cremations, putting the number of unique cremations at 2,059. NHRC Order date October 9, 2006, Reference Case No. 1/97/NHRC, <http://nhrc.nic.in/Punjab.htm> (accessed January 18, 2009).

<sup>66</sup>NHRC order dated January 13, 1999, Reference Case No. 1/97/NHRC. Copy on file with Ensaaf.

<sup>67</sup>Human Rights Watch and Ensaaf, *Protecting the Killers*, pp. 33–34.

<sup>68</sup>The NHRC has thus avoided the enforcement of fundamental human rights norms against extrajudicial executions and enforced disappearances, which would require the full investigation of the violations, the prosecution of perpetrators, and reparations for the families of the victims. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted December 16, 2005, G.A. res. 60/147, U.N. Doc. A/RES/60/147 (2005). The NHRC has accepted the police proposal with regard to the illegal cremations matter that “It does not matter whether the custody was lawful or unlawful, or the exercise of power of control over the person was justified or not; and it is not necessary even to identify the individual officer or officers responsible/concerned.” NHRC order dated August 18, 2000, Reference Case No. 1/97/NHRC. Copy on file with Ensaaf.

<sup>69</sup>At least 10% of the victims identified by the NHRC as having been secretly cremated in Amritsar district live outside of Amritsar district.

out Punjab.<sup>70</sup>

By examining these related reports of lethal human rights violations—alleged enforced disappearances and extrajudicial executions reported by human rights organizations, alleged encounters reported by newspapers, and “illegal cremations” from Amritsar acknowledged by the National Human Rights Commission—this analysis attempts to clarify the historical narrative of violence in Punjab based on the data currently available.

## 4.2 The Data

In this report, we analyze data representing over two decades of documentation initiatives by local human rights groups, official records from India’s National Human Rights Commission, and daily accounts of deaths due to the insurgency from 1988 to 1995 reported in a major Punjab newspaper. Ensaaf and the Human Rights Data Analysis Group (HRDAG) at the Benetech Initiative have gathered the currently available documentation, processed the information where necessary, eliminated duplicate records, and prepared the documentation for statistical analysis.<sup>71</sup> In total, this report presents an analysis of six datasets comprising over 21,000 records.

### 4.2.1 Official Administrative Records of Mass Cremations

Unlike many other cases of large-scale enforced disappearances, in Punjab the perpetrators did not build mass graves to dispose of the bodies of the deceased.<sup>72</sup> Instead those responsible disposed of the bodies of the victims by different means. Some bodies were dumped in canals,<sup>73</sup> others were returned to the victims’ families, and yet others were delivered to the municipal cremation grounds. Evidence of large-scale human rights violations emerged in early 1995 when human rights activists Jaswant Singh Khalra and Jaspal Singh Dhillon exposed government cremation records relating to over 2,000 cremations from Amritsar district, one of then 13 districts in Punjab.<sup>74</sup> Khalra described how he obtained proof of these “illegal cremations” after approaching cremation ground workers:

When we said we need an account, they [the municipal cremation ground workers] told us we could get the account from one place: ‘The police gave us the dead bodies, and the municipal committee gave us the firewood.’ Because the municipal committee’s policy is if they receive an unclaimed body within the city, then the city’s municipality will cremate it on its own expense, we went and

<sup>70</sup>Kumar, et al., *Reduced to Ashes*, p. 205.

<sup>71</sup>For a more detailed discussion of the processes involved in preparing the data for analysis, please see Appendix A of this report.

<sup>72</sup>For references on the analysis of mass graves in the aftermath of political violence, see for example, Eric Stover and Gilles Peres, *The Graves: Srebrenica and Vukovar* (Zurich: Scalo, 1998); Luis Fondebrider, “Reflections of the scientific documentation of human rights violations,” paper presented at the ICRC Workshop on Human Remains: Law, Politics, and Ethics, Geneva, Switzerland, May 23–24, 2002; Clyde Collins Snow, Fredy Armando Peccerelli, José Samuel Susanávar, Alan G. Robinson, and Jose Maria Najera Ochoa “Hidden in Plain Sight: X.X. Burials and the Desaparecidos in the Department of Guatemala, 1977–1986,” in J. Asher, D. Banks and F. Scheuren, eds., *Statistical Methods for Human Rights*, (New York: Springer, 2007); C.C. Snow and M.J. Bihurriet “An epidemiography of homicide: Ningun Nombre burials in the Province of Buenos Aires from 1970 to 1984,” in T.B. Jabine and R.P. Claude, eds., *Statistics in the Service of Human Rights* (Philadelphia: University of Pennsylvania, 1991).

<sup>73</sup>See, e.g. Human Rights Watch and Ensaaf, *Protecting the Killers*, p. 15.

<sup>74</sup>Human Rights Wing (Shiromani Akali Dal), “Press Note on Mass Illegal Cremations,” January 16, 1995, <http://www.ensaaf.org/docs/pressnote.php> (accessed November 22, 2008).

we saw the full account of our disappeared brothers written.<sup>75</sup>

When Khalra went public with the information collected from municipal cremation grounds and municipal committee records, he began to receive threats from the security forces.<sup>76</sup> The Punjab Police abducted Khalra on September 6, 1995, secretly detained and tortured him for almost two months, and murdered him in late October 1995. His body was then dumped in a canal in Amritsar.<sup>77</sup> The Punjab and Haryana High Court recently affirmed the convictions of five police officers for Khalra's abduction and murder, enhancing the sentences of four officers so that all five convicted officers must serve life imprisonment.<sup>78</sup>

The cremation records available to Ensaaf include 482 firewood purchases by Punjab Police for the cremation of "unidentified" bodies and 303 records of cremations from the Durgiana Mandir cremation ground in Amritsar district.<sup>79</sup> In addition to official administrative records collected by Khalra from Amritsar's municipal cremation grounds, Ensaaf has also obtained municipal cremation ground records from the districts of Faridkot, Kapurthala, Moga, Zira, and Ludhiana, all of which are part of the record in the mass cremations case before the

NHRC. A substantial limitation of these data is that only 7% (104/1,484) of the recovered municipal cremation logbook entries include the names of the deceased. Most entries refer to "unidentified bodies," making it difficult to match entries from the cremation logbooks with information from other data sources such as the NHRC, CCDP, PCHR, and the *Tribune*.

#### 4.2.2 Information Collected by the National Human Rights Commission of India

After the Punjab Police disappeared Jaswant Singh Khalra in 1995, the Supreme Court of India ordered the Central Bureau of Investigation (CBI), India's premier investigative agency, to investigate the cremations Khalra had brought to light. The CBI's confidential report to the Supreme Court listed 2,097 illegal cremations at three cremation grounds of Amritsar district, one of 13 districts in Punjab at the time.<sup>80</sup> After reviewing the report, the Supreme Court found that it disclosed a "flagrant violation of human rights on a mass scale," and referred the matter to the Indian National Human Rights Commission (NHRC).<sup>81</sup> At the beginning of the process in 1997, the CBI fully established the identities of 585 cremation victims, partially identified 274 vic-

<sup>75</sup>Ensaaf, "Sardar Jaswant Singh Khalra," video report, 2006, <http://www.ensaaf.org/docs/khalravideo.php> (accessed January 11, 2009).

<sup>76</sup>*State (CBI) v. Ajit Singh Sandhu & Others*, Additional Sessions Judge Bhupinder Singh, Patiala, Session No. 49-T of 9.5.1998/30.11.2001, Judgment, November 18, 2005, paras. 14, 17.

<sup>77</sup>*Ibid.*, paras. 28, 31.

<sup>78</sup>*Paramjit Kaur Khalra v. State of Punjab and Others*, Punjab and Haryana High Court, Criminal Revision No. 323 of 2006, Judgment, October 8, 2007.

<sup>79</sup>According to the press release issued by Jaswant Singh Khalra and Jaspal Singh Dhillon, approximately 400 unclaimed bodies had been brought to the Patti cremation grounds, 700 firewood purchases were discovered in Tarn Taran for cremating unclaimed bodies, and over 2,000 unclaimed bodies had been cremated in the Durgiana Mandir cremation ground in Amritsar district. Human Rights Wing (Shiromani Akali Dal), "Press Note on Mass Illegal Cremations," January 16, 1995, <http://www.ensaaf.org/docs/pressnote.php> (accessed November 22, 2008).

<sup>80</sup>Khalra himself, however, had discussed over 6,000 cremations in Amritsar district. Ensaaf, "Sardar Jaswant Singh Khalra," video report, 2006, <http://www.ensaaf.org/docs/khalravideo.php> (accessed January 11, 2009). The Committee for Information and Initiative on Punjab questioned the CBI's report, raising issues with the CBI's failure to conduct a thorough investigation. See Kumar, et al., *Reduced to Ashes*, pp. 161–169.

<sup>81</sup>Order of the Supreme Court dated December 12, 1996, Writ Petitions (Crl.) Nos. 497 and 447 of 1995. Copy on file with Ensaaf.

<sup>82</sup>A cremation is "identified" if the name of the decedent, his father's name, and his residence are known. A cremation is "partially identified" if two out of the three above pieces of information are known. If none of these facts are known, the

tims, and failed to identify 1,238 victims.<sup>82</sup>

After 12 years of proceedings before the NHRC, 38 duplicate records were identified, leaving 2,059 “illegal cremations,” 657 of whose victims remain unidentified.<sup>83</sup> The public records from these proceedings consist primarily of identifications or confirmations made by the Punjab Police, the accused perpetrators in the case.<sup>84</sup>

In most cases, only a limited amount of information about the victims, aside from the name, sex, father’s name, and some details of the incident, is available. Additionally, because the information released by the NHRC was not uniformly recorded, it is difficult to ascertain in detail the nature and patterns of the cases documented by the NHRC.

#### 4.2.3 Information Collected by the Committee for Coordination on Disappearances in Punjab

The Committee for Coordination on Disappearances in Punjab (CCDP) was a coalition of human rights activists dedicated to honoring the memory of Jaswant Singh Khaira and exposing the truth of human rights violations in Punjab. Their efforts recorded 1,713 detailed narratives, through a standardized survey instrument, of families whose loved ones had allegedly been disappeared or killed by the security officers,<sup>85</sup> providing information on 1,691 unique enforced disappearances, extrajudicial executions, and “illegal cremations.” Of the enforced disappearances documented by the CCDP, 89% (1,503/1,691) were obtained from either the parent, spouse, sibling, or child of the deceased. As

a result, the information collected from CCDP is highly detailed, including full names of the victims and their parents, details of the incidents, and demographic information of the victims. In 2001, after the CBI released its lists of cremations to the parties to the NHRC litigation, the CCDP focused its documentation efforts on Amritsar district, to help identify the victims of “illegal cremations.”<sup>86</sup> The CCDP data therefore has the same focus on Amritsar as the other data sets: 52% (880/1,691) records are from Amritsar, 9% (152/1,691) from Gurdaspur, 8% (142/1,691) from Sangrur, 7% (115/1,691) from Ludhiana, and 24% (400/1,691) from other districts; 0.1% (2/1,691) CCDP records have an unknown district.

#### 4.2.4 Information Collected by the People’s Commission on Human Rights Violations in Punjab

In 1997, the CCDP organized a private panel of three retired justices to hear people’s petitions about abuses committed by the security forces. This civil society initiative, called the People’s Commission on Human Rights Violations in Punjab (PCHR), was banned by the Punjab and Haryana High Court in 1999 for creating a parallel judicial system. The case took issue with the Commission’s plan to reevaluate judgments passed by the High Court.<sup>87</sup> The Punjab state authorities never responded to the 522 affidavits and applications collected by the PCHR. The contents of the affidavits have been entered into a database and are examined in this report alongside the patterns of reported enforced disappearances and “illegal cremations” documented in the other available data sources.

cremation is “unidentified.”

<sup>83</sup>Updates to the NHRC proceedings are available at [www.ensaaf.org/docs/nhrc.php](http://www.ensaaf.org/docs/nhrc.php).

<sup>84</sup>The NHRC relied solely on the Punjab Police, the accused perpetrator of illegal cremations, to confirm the identities of the victims. Human Rights Watch and Ensaaf, *Protecting the Killers*, p. 34.

<sup>85</sup>Kumar, et al., *Reduced to Ashes*, pp. 149–150.

<sup>86</sup>*Ibid.*, p. XIII.

<sup>87</sup>*Sudershan Goel v. The Union of India and Others*, Punjab and Haryana High Court, Civil Writ Petition No. 14133 of 1998, Judgment, December 20, 1999.

The 522 affidavits and applications submitted to the PCHR document 538 victims. Of these 538 victims, 506 are unique (i.e. duplicate reports were received in about 33 cases). The PCHR documented enforced disappearances, fake encounters, killings, torture, and acts of ill-treatment. The PCHR collected these affidavits from all parts of Punjab: of the unique victims reported, 16% (132/506) were from Amritsar, 12% (60/506) were from Gurdaspur, 10% (50/506) were from Sangrur, and 10% (50/506) were from Hoshiarpur. Information about the 506 unique victims was collected from a co-lineal relative (i.e. a parent, sibling or child) of the victim in 85% (430/506) of cases.

#### 4.2.5 Newspaper Articles from the *Tribune*

The *Tribune* is the major daily English-language newspaper in Punjab. From 1988 to 1995, the *Tribune* regularly reported alleged encounters, deaths from crossfire, “inter-gang” violence, accidents, lethal attacks (deaths without a reported exchange of fire), and escapes from custody. Ensaaf constructed a database of all such incidents reported by the *Tribune* during this period. Although the vast majority of reports in the *Tribune* do not include any identifying information about the deceased, the information recorded in the newspaper allows an analysis of when and where the deaths occurred, and how they were described.

The *Tribune* deaths database contains 17,582 unique victims from 1988 to 1995. Of these victims, % (NULL/17,582) were civilians reported to have been killed in lethal attacks, 33% (5,805/17,582) were reported to have died in an encounter, 6% (1,055/17,582) were reported to have died in warfare with rival gangs, and 5% (938/17,582) were simply reported as “body found.”<sup>88</sup>

<sup>88</sup>Reported deaths from crossfire, accidents and escapes from custody comprised less than 9% of the recorded violence combined.

<sup>89</sup>The newspaper accounts, while not directly citing the police, “dutifully” reflect police reports. Kanwar Sandhu, “Punjab Police, Official Excesses,” *India Today*, October 15, 1992, p. 82.

In general, most deaths reported by the *Tribune* were described without a cited source: 85% (14,902/17,582) of reports did not mention a source.<sup>89</sup> Of the deaths reported in the *Tribune*, 7% (1,179/17,582) explicitly cited the “Punjab Police” as the information source, and 1% (261/17,582) cited “K.P.S. Gill,” former Director General of Punjab Police. Given the concise nature of such newspaper reporting, minimal description of the victim was included in the *Tribune* newspaper reports. Of the victims documented by the *Tribune*, the victim’s home district was not reported in 85% (14,859/17,582) of cases. The most frequently reported home districts were Amritsar, 3% (538/17,582); Gurdaspur, 2% (372/17,582); Ludhiana, 1% (231/17,582); and Ferozepore, 1% (206/17,582).

#### 4.3 Limitations of the Available Data

The data analyzed in this report were compiled from cremation records collected by Jaswant Singh Khalaria, claims and identifications acknowledged by the National Human Rights Commission, interviews conducted by the Committee for Coordination on Disappearances in Punjab, affidavits collected by the People’s Commission on Human Rights Violations in Punjab, and newspaper articles reported by the *Tribune* newspaper.

The data capture part of the human impact of enforced disappearances, extrajudicial executions, and “illegal cremations” in Punjab. However, these data do not capture all of the enforced disappearances, extrajudicial executions, encounters, fake or otherwise, and illegal cremations which occurred from 1984 to 1995. Instead, these data represent an unknown fraction of such cases. These data sources amount to an incomplete record because:

- the media may have been averse to reporting acts of state violence as enforced disappearances or extrajudicial killings fearing that they would be subjected to intimidation and violence by security officers;<sup>90</sup>
- people who lived or were disappeared or extrajudicially executed in remote areas of Punjab had a smaller chance of being documented;
- the NHRC process itself was limited to victims who were illegally cremated in three crematoria in Amritsar district—then one of 13 districts in Punjab. Further, security forces had to confirm each identification before the NHRC acknowledged it. The list of alleged cremations in the three crematoria at issue was further constrained by limitations of the CBI investigation;<sup>91</sup>
- people with little access to the media and mass communications are less likely to contact the NHRC, non-governmental organizations (NGOs), or the media;
- survivors who faced continuing intimidation by security forces may have been less likely to report an enforced disappearance or extrajudicial execution of a relative. Further, families went underground to escape persecution and had to relocate, making it difficult for NGOs to locate them;
- the reliability and timeliness of reporting enforced disappearances or extrajudicial executions at different times, in different places, and involving different institutional perpetrators may vary. The probability with which a given enforced disappearance or extrajudicial execution was reported may vary according to the time and place of the violation, the perpetrator involved, the modality of the lethal violence, and the means of disposal of the deceased's remains;
- NGOs faced a scarcity of resources that limited their ability to continuously document the phenomena of enforced disappearances, extrajudicial executions, and “illegal cremations,” both during the conflict and immediately after it;
- CCDP's focus on Amritsar after the CBI lists were released in 2001 largely excluded cases outside of Amritsar district;
- older and less mobile family members may have lower probabilities of reporting an enforced disappearance or extrajudicial execution of a relative due to their reduced mobility, hence victims survived by mostly elderly and less mobile persons were less likely to have their violations documented.

As a result, without additional data and the use of inferential statistical methods, it is not yet possible to estimate the total magnitude and pattern of all enforced disappearances and extrajudicial executions in Punjab.<sup>92</sup> The estimation of total en-

<sup>90</sup>The reliability of media reports on enforced disappearances and extrajudicial executions were also affected by security forces' intimidation of reporters. For example, in January 1992, Punjab Police abducted and disappeared journalist and human rights activist Ram Singh Billing for his work exposing human rights violations in Punjab. US Department of State, “Country Report on Human Rights Practices - 1992: India,” p. 1143. Reporters fearing for their lives would have been less likely to report on extrajudicial executions and enforced disappearances during the conflict. For a detailed analysis of the inverse correlation between actual state violence and the reporting of violence by local media, see Christian Davenport and Patrick Ball, “Views to a Kill: Exploring the Implications of Source Selection in the Case of Guatemalan State Terror, 1977–1996,” *Journal of Conflict Resolution*, vol. 46:3 (2002), pp. 427–450.

<sup>91</sup>Kumar, et al., *Reduced to Ashes*, p. 161.

<sup>92</sup>There is a growing literature on the estimation of lethal violence during armed conflicts, which draws on the integration of multiple, independently collected data sources and the demographic estimation technique, “multiple systems estimation.” See, e.g. Patrick Ball, Herbert Spierer, and Louise Spierer, eds. *Making the Case: Investigating Large Scale Human Rights Violations Using Information Systems and Data Analysis*. (Washington, DC: American Association for the Advancement of Science, 2000); Patrick Ball (with the American Bar Association-Central and East European Law Initiative), *Political Killings in*

forced disappearances and extrajudicial executions throughout Punjab is a long-term goal of the collaboration between Benetech's HRDAG and Ensaaf. This preliminary descriptive analysis is a first step

towards that goal and is aimed at framing our future, inferential statistical analysis and research on enforced disappearances and extrajudicial executions during the counterinsurgency in Punjab.

## 5 Observed Patterns in Reported Lethal Violence in Punjab

This preliminary analysis describes patterns in the observed data across the dimensions of time, space, and the demographic profile of documented victims. The available statistical data have been independently collected by government and non-governmental entities. This report considers whether the data are consistent or inconsistent with claims by the government of India and security officials. In particular, it aims to clarify whether documented lethal violence associated with the counterinsurgency in Punjab follows the pattern of "random excesses" or "minor aberrations" of overzealous security officials, as senior Punjab officials have previously claimed.<sup>93</sup>

This section describes the pattern of reported enforced disappearances, extrajudicial executions (including "fake encounters"), and "illegal cremations" documented by previous data projects in Punjab. The magnitude and patterns described here do not represent the total magnitude and overall pattern of enforced disappearances, extrajudicial executions, "illegal cremations," and alleged militant deaths. Rather, this analysis describes the pattern and trend of the reported acts observable from the available data, such as:

- Variations over time in the number of reported enforced disappearances, extrajudicial executions, "illegal cremations," and deaths relative to one another; and
- Variations in reported enforced disappearances, extrajudicial executions, documented cremations, and newspaper-reported deaths across Punjab districts.

Based on government assertions that human rights violations were "random excesses" or "aberrations," we would expect the reported human rights abuses to reflect random variations across time and space. It is plausible that the more that security forces engaged in violent incidents, as recorded by the *Tribune*, the more likely we would find "aberrant" violations during a given time period. Human rights groups including Ensaaf, however, also cite the intensification of counterinsurgency violence, and the corresponding focus on eliminating large numbers of suspected militants, as the driving force behind widespread lethal human rights violations.<sup>94</sup> Patterns observed in this analysis will suggest future directions for research that will allow us to statistically determine the true nature of the violations, whether systematic or random.

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*Kosova/Kosovo, March-June 1999* (Washington, DC: ABA/CEELI-AAAS, 2000); Patrick Ball, Jana Asher, David Sulmont, and Daniel Manrique, "How many Peruvians have died? An estimate of the total number of victims killed or disappeared in the armed internal conflict between 1980 and 2000," Report to the Peruvian Commission for Truth and Justice (CVR), 2003; Romesh Silva and Patrick Ball, "The Profile of Human Rights Violations in Timor-Leste, 1974-1999: Report by the Benetech Human Rights Data Analysis Group to the Commission on Reception, Truth and Reconciliation (CAVR)," (Palo Alto: Benetech Human Rights Data Analysis Group, 2006) [http://hrdag.org/resources/timor\\_chapter\\_graphs/timor\\_chapter\\_page\\_01.shtml](http://hrdag.org/resources/timor_chapter_graphs/timor_chapter_page_01.shtml) (accessed January 18, 2009).

<sup>93</sup>Rajender Puri, "The Real Fake Encounter," *Outlook*, May 16, 2007, <http://www.outlookindia.com/full.asp?fodname=20070516&fname=rajinderpuri&sid=1> (accessed December 11, 2008); See also "It is our political will" Interview with Beant Singh," *Frontline*, November 20, 1992, p. 28.

<sup>94</sup>See, e.g. Human Rights Watch/Asia and Physicians for Human Rights, *Dead Silence*, p. 2