



*Ending Torture. Seeking Justice for Survivors*



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**Joint submission by Ensaaf and the Redress Trust**

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REDRESS:  
87 Vauxhall Walk, London SE11 5HJ, United Kingdom  
Tel: + 44 (0) 20 7793 1777 Fax: + 44 (0) 20 7793 1719  
Email: [info@redress.org](mailto:info@redress.org) Web URL: [www.redress.org](http://www.redress.org)

Ensaaf:  
P.O. Box 594, Fremont, CA 94537, United States  
Tel: + 1 206 866-5642 Fax: + 1 270 916-7074  
Email: [info@ensaaf.org](mailto:info@ensaaf.org) Web URL: [www.ensaaf.org](http://www.ensaaf.org)

## **I. The organisations**

### **Ensaaf**

1. Ensaaf is a non-governmental human rights organisation based in the United States working to end impunity and achieve justice for mass state crimes in India.

### **The Redress Trust**

2. REDRESS is an international human rights non-governmental organisation, based in the United Kingdom, with a mandate to assist torture survivors to seek justice and other forms of reparation.

## **II. Summary**

3. This submission focuses on the mass cremations, enforced disappearances and extrajudicial killings carried out in Punjab during the 1980s and 1990s.<sup>1</sup> It highlights the failure of the Government of India to hold the individuals responsible for these violations to account and to provide victims with effective remedies and full reparation. In support of this submission, we also enclose a joint Ensaaf report released in January 2009, co-authored with Benetech's Human Rights Data Analysis Group, entitled *Violent Deaths and Enforced Disappearances During the Counterinsurgency in Punjab, India*.<sup>2</sup>
4. In 1995, human rights activists used government records to reveal that security forces had secretly and illegally cremated over 6,000 individuals in three crematoria in Amritsar district—then one of thirteen districts in Punjab. In 1997 India's National Human Rights Commission (NHRC) was empowered by the Supreme Court to examine the role of state actors in the perpetration of these human rights violations and to provide redress to victims and their beneficiaries. However, despite its powers to do so, and despite substantial evidence of systematic human rights violations presented to it by victims, the NHRC failed to establish the extent of human rights violations and to provide victims with an adequate remedy and reparation.
5. Ensaaf is in direct and frequent contact with civil society in Punjab and victims of these human rights violations, who continue to seek a remedy and reparations before the NHRC. The tactics used in Punjab as part of a decade-long counterinsurgency operation have been replicated by the Indian government to handle conflicts in other areas, including Jammu & Kashmir, the Northeast and Central India, maintaining a cycle of impunity for this pattern of

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<sup>1</sup>International and domestic human rights organizations and media groups have extensively documented the human rights violations committed by Indian security forces and the Punjab Police during counterinsurgency operations in Punjab between 1984 and 1995, see, e.g., Ensaaf and Human Rights Watch, *Protecting the Killers: A Policy of Impunity in Punjab, India* (New York: Human Rights Watch, 2007) ("*Protecting the Killers*") at 13; R.N. Kumar, A. Singh, A. Aggrwal and J. Kaur, *Reduced to Ashes: The Insurgency and Human Rights in Punjab* (Kathmandu: South Asia Forum for Human Rights, 2003) ("*Reduced to Ashes*") at 56, 58; Amnesty International, "Break the Cycle of Impunity and Torture in Punjab," AI Index: ASA 20/002/2003, January 2003, available online at <http://www.amnesty.org/en/library/info/ASA20/002/2003/en>.

<sup>2</sup>See Annex A. Contrary to the position taken by Indian security officials that human rights violations during the counterinsurgency in Punjab were unavoidable "aberrations", this preliminary statistical analysis finds that the intensification of counterinsurgency operations in Punjab in the early 1990s was accompanied by a shift in state violence from targeted lethal human rights violations to systematic enforced disappearances and extrajudicial executions, accompanied by unlawful mass cremations.

state-sponsored violence. It is important that impunity for serious violations of human rights is not allowed to prevail.

### **III. Background**

6. During the counterinsurgency in Punjab between 1984 and 1995, thousands of people were tortured, killed or forcibly disappeared<sup>3</sup>, a practice that was exacerbated by a system that rewarded officers for killing alleged militants. The Punjab Police falsely reported extrajudicial executions, custodial deaths and “disappearances” as “encounters” or “escapes” from custody, the vast majority of which began with illegal detention and torture.<sup>4</sup>
7. In 1995, human rights activist Jaswant Singh Khalra discovered government municipal cremation records revealing that over 6,000 secret cremations had taken place in three crematoria in Amritsar, one of Punjab’s then thirteen districts. After he made these records public, members of the Punjab Police abducted, illegally detained, and tortured Mr. Khalra, killing him in October 1995.<sup>5</sup> Subsequently, the Supreme Court of India ordered the Central Bureau of Intelligence (“CBI”) to investigate mass cremations in Punjab. The CBI’s investigation disclosed 2,097 secret cremations at the three cremation grounds first identified by Mr. Khalra. This number was reduced to 2,059 after the Punjab Police identified duplicate records in the CBI list.<sup>6</sup>
8. In response to the CBI investigation, in 1997 the Supreme Court of India mandated the NHRC to examine issues raised by the petitioners, granting the NHRC extensive powers to afford redress for fundamental violations of human rights under Article 32 of the Indian Constitution.<sup>7</sup> However, instead of using these extraordinary powers, the NHRC has consistently failed to address the full extent of human rights abuses associated with the “disappearances” in Punjab.

### **IV. Failure to investigate and to provide adequate reparation to victims**

9. After several years of wrangling over the proper interpretation of the NHRC’s mandate, its powers to adjudicate the case and delays concerning the discovery of records, the NHRC ordered the Government of Punjab to solicit claims from families by publishing notices in July 2004.
10. Of the original 2,057 cremations that the NHRC agreed to examine, approximately 1,257 individuals were identified. However, in the vast majority of those cases, the Punjab Police denied having prior custody of the victim. The police would only acknowledge that the body had been illegally cremated. In those cases, the NHRC found that the “dignity of the dead” had been violated and that appropriate administrative steps had not been followed for the cremation of the bodies.<sup>8</sup> In about ten per cent of the cases, the police admitted to having

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<sup>3</sup>Protecting the Killers at 13; *Reduced to Ashes* at 56-58.

<sup>4</sup>Protecting the Killers at 13-14.

<sup>5</sup>Protecting the Killers at 64, citing *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). The Supreme Court of India recently upheld the convictions of five police officers sentenced to life imprisonment for the abduction and murder of Jaswant Singh Khalra: *Prithipal Singh Etc. v. State of Punjab & Anr. Etc.*, Criminal Appeals No. 523-527 of 2009, Judgment (November 4, 2011) (Crim. App. Juris., Supreme Court of India).

<sup>6</sup> NHRC Order dated October 9, 2006, Reference Case No. 1/97/NHRC (“October 9, 2006 NHRC Order”) available online at <http://nhrc.nic.in/Punjab.htm#9th%20October,%202006>.

<sup>7</sup> Order of the Supreme Court dated September 10, 1998, Criminal Miscellaneous Petition Nos. 6674 of 1997 and 4808 of 1998, Writ Petitions (Crl.) Nos. 497 and 447 of 1995.

<sup>8</sup> October 9, 2006 NHRC Order.

custody of the victim prior to his death.<sup>9</sup> In those situations, the NHRC did find a violation of the right to life. Nevertheless, the police continued to maintain that those victims were mainly terrorists or criminals killed in crossfire.<sup>10</sup> Of the original lists drawn up the CBI, 814 bodies remained unidentified.<sup>11</sup>

11. In 2006, the NHRC appointed former High Court Justice K.S. Bhalla to review evidence and conduct an inquiry into the remaining unidentified bodies. Like the NHRC, the 'Bhalla Commission' did not conduct independent investigations and also relied on the Punjab Police to verify identifications. Identification information submitted by third parties was only accepted if the Punjab Police agreed with the identification. After eight months of inquiry, the Bhalla Commission had identified only 90 bodies and refused to recognize that any human rights violations had been committed by the Punjab Police. The compensation awarded by the NHRC to the families of the 90 victims identified by the Bhalla Commission was inadequate, as it was only based on the illegality of the cremation and did not take into account the full extent of human rights violations suffered by the victims.
12. At the end of 2006, the UN Working Group on Enforced or Involuntary Disappearances (WGEID) noted that there were at least 325 outstanding cases of disappearances "and that most of the cases reported occurred between 183 and 2004, in the context of ethnic and religious disturbances in the Punjab and Kashmir regions."<sup>12</sup>
13. In March 2008, the NHRC set up a four-person committee headed by a senior Punjab police officer, to review and remedy the remaining cases. This committee was ordered to solicit and accept claims from every district in Punjab and to consider firsthand testimonial evidence for every case. Although some claims were received, the Committee failed to resolve any cases and the NHRC disbanded the committee after only a few months. The NHRC then set up yet another sub-committee in 2010, which began operating in 2011 and has made limited progress on approximately 70 cases. Significant concerns remain in regards to the investigative and evaluative procedures of this latest committee. It has arbitrarily rejected the vast majority of claims, and continues to rely on the police to verify claims. Further, it is perpetuating the practice of providing inadequate compensation by failing to establish the facts of each violation.
14. In essence, the NHRC has established a pay-to-kill system that fails to address individual violations, thereby allowing the perpetrators to remain unidentified. These long-standing defects raise serious doubts about the intention and ability of the committee and the NHRC to identify the full spectrum of human rights violations and to provide just reparations for the victims.
15. After fifteen years of proceedings, the NHRC has very little to show for itself. Despite objections from petitioners, pressure from non-governmental organizations<sup>13</sup>, and recommendations by the United Nations Working Group on Enforced and Involuntary

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<sup>9</sup> NHRC Order dated November 11, 2004, Reference Case No. 1/97/NHRC available online at <http://nhrc.nic.in/punjab.htm#Reference%20made%20by%20the%20Supreme%20Court>.

<sup>10</sup> *Protecting the Killers* at 34-35.

<sup>11</sup> This number was subsequently reduced to 800 cremations based on submissions by the Punjab Police. See *Protecting the Killers* at 35.

<sup>12</sup> See Human Rights Council, Working Group on the Universal Periodic Review, First Session, Geneva, 7-18 April 2008, Compilation prepared by the office of the high commissioner for human rights, in accordance with paragraph 15 (B) of the Annex to Human Rights Council Resolution 5/1, India, para.18.

<sup>13</sup> See e.g., Letter from Human Rights Watch to National Human Rights Commission of India (November 1, 2005), available online at <http://hrw.org/news/2005/10/31/letter-human-rights-watch-national-human-rights-commission-india>; Joint Submission by Ensaaf, REDRESS and the Center for Human Rights and Global Justice to the Working Group on Enforced or Involuntary Disappearances (Oct. 17, 2007), available online at <http://www.ensaaf.org/publications/letters>.

Disappearances (WGEID)<sup>14</sup>, the NHRC continues to disregard the evidence brought before it by victims in regards to the mass cremations. Despite its broad mandate under Article 32, the NHRC did not examine the role of state actors or the illegality of their actions during the counterinsurgency. In particular, the NHRC failed to fulfill its mandate by:

- a. Limiting the territorial scope of its inquiry to only the three crematoria described in Mr. Khalra's report;
- b. Limiting its mandate solely to the issue of whether the cremations were *procedurally* correct, ignoring the larger issues concerning violations of the right to life and liberty;<sup>15</sup>
- c. Ignoring cases in which bodies were disposed of by methods other than cremation, such as dumping bodies in canals; and<sup>16</sup>
- d. Declining to independently investigate a single "disappearance," killing, or cremation.<sup>17</sup>

### ***Effective remedy***

16. Indian law does not provide clear or specific remedies for enforced disappearances. India has yet to ratify the Convention on Enforced or Involuntary Disappearances and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
17. Despite the NHRC's broad mandate under Article 32, the NHRC limited itself to review only the illegal cremations found in the CBI lists, and only to cremations in Amritsar district, thereby preventing potentially tens of thousands of victims of the enforced disappearances, extrajudicial killings and mass secret cremations with access to a remedy. Indeed, the NHRC shows complete disregard for evidence of victims such as those not found in the CBI's estimates, those cremated outside of the three crematoria in Amritsar, those cremated before 1984 or after 1995, and all those disposed of by other means besides cremation, as well as those victims of disappearances whose families do not yet know of their fate or whereabouts.
18. Furthermore, the NHRC has taken at face value the submissions of the Punjab Police, the alleged perpetrators of the crimes it is charged with investigating. Despite finding several hundred cases in which the police were able to identify victims' bodies prior to cremation and deliberately chose to illegally cremate the bodies, the NHRC continues to regard police identification as infallible.<sup>18</sup>

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<sup>14</sup>Rep. of the Working Group on Enforced or Involuntary Disappearances, Human Rights Council, 10th Sess., UN Doc. A/HRC/10/9 (Feb 6, 2009) at paras. 175-187.

<sup>15</sup>October 9, 2006 NHRC Order.

<sup>16</sup>*Protecting the Killers* at 33, 42.

<sup>17</sup>*Protecting the Killers* at 31, 34.

<sup>18</sup>*Protecting the Killers* at 36, citing October 9, 2006 NHRC Order.

## ***Recommendations***

Ensaaf and REDRESS make the following recommendations to India:

- Establish an independent monitoring mechanism to ensure accountability of the NHRC and its progress in fully and effectively investigating all disappearances, extrajudicial killings, illegal cremations and other methods of unlawfully disposing of bodies throughout Punjab during the counterinsurgency;
- Prosecute the individuals responsible for these human rights violations, including high- level police and security officials;
- Repeal relevant legal provisions that provide immunity to security forces for human rights violations and enact laws criminalizing torture and enforced disappearances in line with internationally recognised definitions;
- Ensure that victims of these human rights violations and their beneficiaries obtain access to effective remedies and full reparation;
- Ratify and effectively implement international human rights treaties, including the CAT and the Optional Protocol to the CAT, the Optional Protocol to the International Covenant on Civil and Political Rights, the Rome Statute of the International Criminal Court and the Convention on Enforced Disappearances and to accept the competence of the Committee Against Torture to hear individual communications under the CAT; and
- Extend a standing invitation to all Special Procedure mandate holders.