

ABOUT ENSAAF

ENSAAF—a U.S.-based organization fighting impunity in India for state-sponsored human rights abuses—works to bring perpetrators to justice, investigates and exposes human rights violations, and organizes survivors to engage in advocacy. ENSAAF has four programs: Community Organizing, Documentation & Education, Legal Advocacy, and United Nations. ENSAAF, which means *justice* in many South Asian languages, acts to implement the international rights to knowledge, justice, and reparation.

ONGOING PROJECTS

Extradition Case of Kulvir Singh Barapind: On November 8, 2005, Judge Wanger of the Eastern District Court of California certified the extradition of Kulvir Singh Barapind to India for three cases involving allegations of murder. On November 23, ENSAAF submitted an application for relief for Barapind under the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. On December 27, the Center for Human Rights and Global Justice called on the Secretary of State to withhold Barapind's extradition. Barapind faces imminent extradition.

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HUMAN RIGHTS DAY: ENSAAF WRITES TO PUNJAB CHIEF MINISTER

On December 10, 2005 the world commemorated Human Rights day. Kofi Annan, the General Secretary of the United Nations, declared:

Let us be clear: torture can never be an instrument to fight terror, for torture is an instrument of terror. . . . Today, on Human Rights Day, let us recommit ourselves to the principles of the Universal Declaration of Human Rights, and let us rededicate ourselves to wiping the scourge of torture from the face of the earth.

On that same day, ENSAAF wrote to the Chief Minister of Punjab, India, urging it to protect human rights in Punjab, end impunity for its mass crimes, and end its practice of torture, among other action items.

The impact of such letters may not be immediately apparent, but they serve several important functions. First, they provide formal notice about human rights abuses to governments accused of committing or ignoring violations in their countries. Governments frequently deny knowledge of abuses committed by their officials or agents. Detailed letters to these governments, discussing human rights violations in their countries, prevent the governments from claiming ignorance of the violations. Providing notice, thus, is an important step towards holding governments accountable for their crimes.

"Torture can never be an instrument to fight terror, for torture is an instrument of terror."

-Kofi Annan

Second, democratic governments, ostensibly concerned about and committed to redressing human rights abuses, should officially respond to any

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UPDATE ON PUNJAB MASS CREMATIONS MATTER PENDING BEFORE NATIONAL HUMAN RIGHTS COMMISSION

In recent months, there have been significant developments in the Punjab mass cremations case before the Indian National Human Rights Commission (NHRC). On October 24, 2005, Petitioner Committee for Information and Initiative on Punjab (CIIP) submitted an application to the Commission regarding the Commission's obligations to investigate cases of extrajudicial executions and justly compensate surviving family members. CIIP's application focused on the findings and implications of a torture and trauma report independently submitted to the Commission by the Physicians for Human Rights (PHR) and the Bellevue/NYU Program for Survivors of Torture.

On November 1, Human Rights Watch (HRW) issued a letter to the NHRC, urging the Commission to investigate all violations of the right to life and properly evaluate the PHR/Bellevue report. On November 11, in response to the Petitioner's earlier September 9, 2005 application, the NHRC issued a restrictive order. The November order undermined the victim families' hopes of receiving truth and justice for the murder of their family members and their own human rights violations, as well as hopes that the Commission would honestly address the issues raised in Petitioner CIIP's October 24 application.

Among other things, the CIIP's September 9, 2005 application had argued that:

1. The Commission must investigate each secret cremation in order to identify the victims, determine the violations suffered by the decedent and his surviving family members, and to identify the individuals and institutions responsible for the violations;
2. The Commission must apply international human rights law and jurisprudence to guide its investigations and grants of reparations;
3. The application of strict liability cannot be used as a means to foreclose investigations into the crimes and deny the victim families an opportunity to be heard;

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Human Rights Day

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correspondence that presents credible information about rights violations committed in their countries. These letters generate potential for dialogue and engagement with governments to improve their human rights practices. If governments fail to respond through actions or words to the issues raised in letters, however, the letters provide an opportunity for rights groups to engage in further advocacy, highlighting the governments' failures to act on information regarding human rights abuses.

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Lastly, letters to governments signal that the international community is monitoring and documenting their human rights practices. If governments fail to comply with their international obligations, the human rights community will not be idle. As of date, the Punjab government has failed to respond to ENSAAF's letter.

ENSAAF's letter, available at <http://www.ensaaf.org/CM-letter.htm>, highlighted outstanding human rights issues in Punjab and urged the government to take immediate actions to address impunity. Among other issues, ENSAAF called on the government to investigate thoroughly every disappearance in Punjab and bring the perpetrators to justice. ENSAAF called on the government to end its practice of torture and remove and ban instruments of torture from detention facilities.

ENSAAF further urged the government to stop its practice of promoting and shielding human rights abusers, like Sanjiv Gupta and S.S. Virk. Gupta is directly implicated in the 1993 disappearance of Sukhdev Singh. Notwithstanding this finding, Gupta was promoted to the post of Inspector General of Police, the second highest position in the Punjab police force. Gupta has been repeatedly identified by witnesses, survivors, and human rights groups as a perpetrator of torture, disappearances, and extrajudicial executions. Earlier this year, Virk was promoted to Director General of Police (DGP), the

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4. Even if the CBI is investigating cases to determine criminal culpability, the Commission has an independent obligation to conduct investigations to determine civil liability; and
5. The Commission must adjudicate the unlawful deprivation of life in addition to the issue of the illegality of the cremation.

The CIIP's next application, submitted on October 24, 2005, argued for reparations in conformity with international law and India's own Supreme Court jurisprudence and also placed the PHR/Bellevue report on record. The PHR/Bellevue groups directly submitted their report to the Commission on October 24, as well. Their exhaustive study was based upon 130 interviews of surviving family members of secret cremation victims, conducted by a research team consisting of three psychologists, one psychiatrist, and two primary care internal medicine physicians, all of whom have had extensive experience with torture survivors and/or investigating human rights abuses.

The PHR/Bellevue study documented violations and traumas suffered by the families, including: the psychological impact of the reported abuses on the family members; the impact of these abuses on the physical health of the family members; the financial impact of the loss of the deceased, injuries and disabilities among family members, and/or destruction of property; and the attitude and/or the expectation of the family members regarding reparations.

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head of the police force. Virk served as Deputy Inspector General of the Central Reserve Police Force during the government's counter-insurgency movement and has been implicated in cases of torture and extrajudicial execution. ENSAAF has interviewed people who survived torture at the hands of Virk.

ENSAAF urged the government to stop its practice of promoting and shielding human rights abusers, like Inspector General of Police Sanjiv Gupta and Director General of Police S.S. Virk. ENSAAF has interviewed people who personally survived torture at the hands of DGP Virk.

ENSAAF further urged the government to charge former DGP KPS Gill in the murder of human rights defender Jaswant Singh Khalra. In February 2005 at Khalra's murder trial, Special Police Officer (SPO) Kuldip Singh testified that then DGP Gill personally interrogated Khalra. SPO Kuldip Singh recounted that one officer told Khalra that if he had followed DGP Gill's instructions, he could have saved his life. Despite this testimony, the prosecution has refused to investigate, charge, or prosecute Gill.

ENSAAF also requested the government to release the inquiry report on the disappearance of Jathedar Gurdev Singh Kaonke. Kaonke has been "missing" since his alleged escape from authorities in January 1993. On June 5, 1998, members of a human rights group met with then Chief Minister of Punjab Parkash Singh Badal to inform him that their investigation into Kaonke's disappearance revealed that Kaonke had been tortured to death on January 1, 1993. The Chief Minister ordered an official investigation to be conducted by then Additional Director General of Police (ADGP) B.P. Tiwari. The B.P. Tiwari Inquiry Committee submitted its report to the Punjab government in the first week of May 1999. The government, however, did not disclose the report. Over six years later, the government continues to refuse to release the Tiwari inquiry report into the disappearance of Kaonke.

ENSAAF concluded the letter by urging the Punjab government to engage in comprehensive and transparent accountability efforts, and offered to help the government develop polices to redress and prevent human rights violations.

In an effort to delineate salient human rights issues before the Commission finalized its order in response to the CIIP's recent applications, HRW wrote to the Commission on November 1. Among other things, HRW urged the Commission to order a full accounting of the systematic abuses that occurred in Punjab, determine liability after thorough investigations into the violations, and provide compensation to surviving family members based on a detailed understanding of the scope of violations suffered by each individual. HRW also urged the Commission to weigh the PHR/Bellevue report.

In response to the September 9, 2005 application, which also revealed the Commission's disregard for the October 24, 2005 application, the PHR/Bellevue report, and the HRW letter, the Commission issued its November 11, 2005 order.

Without addressing each of the arguments advanced by the CIIP, the Commission asserted that it would not investigate the illegal cremations. The Commission further castigated the CIIP for raising the issues presented in its September 9 application:

The petition (A1-9/9) contains no fresh material. It again aims at asking the Commission to enlarge the scope of enquiry overlooking various earlier orders of the Commission . . . The same attitude of CIIP has continued even after 10th September, 1998 and it has continued to file application after application for "clarification"; "reconsideration"; "review" and to "seek clarification from the Supreme Court regarding scope of inquiry". We have already referred to all such petitions and do not wish to repeat the same. The manner in which repeatedly settled issues regarding the scope of inquiry before the Commission have been sought to be reopened by the CIIP, creates an impression that it perhaps is not sensitive to the need for an expeditious grant of compensation and rehabilitation to the affected families. The repeated petitions filed by CIIP have delayed consideration of "grant of compensation to the legal heirs" or next of kin of the deceased whose bodies had been "unlawfully cremated" as "unidentified"/ unclaimed resulting in the delay in their rehabilitation and we disapprove of that attitude.

The Commission thus accused the CIIP of disregarding previous orders, failing to produce any new material, and being insensitive to the needs of the victim families. These admonishments are disingenuous for several reasons. First, the Commission partially cites to its own orders, suppressing key parts of previous orders, and also fails to address all the issues advanced by the Petitioners, requiring them to repeat their arguments. Second, Petitioners did present new material that directly challenged the Commission's arbitrary grants of compensation. Third, some of the applications or alterations to the scope of inquiry were initiated by other parties, such as the Commission itself. And fourth, the Commission's failures to acknowledge, record, and justly compensate the violations suffered by the victim families are the primary cause of their inability to rehabilitate.

The CIIP has consistently argued that the Commission must investigate unlawful deprivations of life and provide reparations to the victim families. The Commission asserts that the possibility of investigations was foreclosed by previous orders.

The CIIP has consistently argued that the Commission must investigate unlawful deprivations of life and provide reparations to the victim families. The Commission asserts that the possibility of investigations was foreclosed by previous orders. An examination of the Commission's January 1999 order, however, reveals that investigations are required:

In respect of the procedure for determining the claims in addition to the cases that the Commission may directly enquire into, it would be necessary to have, to begin with, three Commissioners of Inquiry of the rank of retired Judges of the High Courts. The Commissioners of Inquiry will be required to conduct inquiries into and examine the claims and to make appropriate recommendations to the Commission of their findings and proposals for the relief if any to be granted.

Notwithstanding the January 1999 order, the Commission's November 2005 order shuns any possibility of investigations. Thus, it is the Commission

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who has failed to follow its own precedent.

The Commission further claimed that the CIIP submitted no new information that would allow the Commission to alter its position. Such a conclusion, however, deliberately ignores the arguments and information presented by the CIIP in its October 24, 2005 application, which incorporated the PHR/Bellevue report. This new information was submitted over two weeks before the Commission issued its November 11, 2005 order. The Commission thus had new reason to consider expanding the amount and scope of compensation and developing reparations criterion, as the Petitioners have urged throughout the course of this litigation.

Finally, in its discussion of previous NHRC and Supreme Court orders and decisions, the Commission frequently cites to the grant of “adequate”, “appropriate”, “rehabilitative”, and “relative” relief. None of its orders, however, discuss how an arbitrary and identical award to 109 families is “adequate”, “appropriate”, “rehabilitative” or “relative” to the fundamental human rights violations inflicted upon the families. Rather, in its latest November 11, 2005 order, after implicitly rejecting the expert medical report submitted by the CIIP and PHR/Bellevue to compel the Commission to devise just reparations, the Commission accuses the petitioner CIIP of preventing the “rehabilitation” of the surviving family members.

The CIIP has repeatedly called for the Commission to expand its scope of investigation to include the unlawful deprivation of life and related rights, rather than simply determining the lawfulness of cremation. And, as decided in this order and earlier orders, the Commission has repeatedly rejected such an expansion. The CIIP, however, has also consistently argued for the expansion of the scope of compensation, that the families and the decedents must be compensated for all violations relating to the unlawful deprivation of life, and not merely for the violation of police rules regarding cremation procedures. The Commission, however, continues to ignore this argument, even though it states that, in this matter, the NHRC’s primary role is to determine compensation and rehabilitate the victims.

Notably, the Commission also failed to discuss its refusal to apply international or national standards to develop the criterion for compensation or reparation. It

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award, confirming that its previous November 11, 2004 order was a final grant of compensation. Citing to this order, it further affirmed that:

It is clarified that while granting the monetary relief as aforesaid, we are not expressing any opinion about the culpability or otherwise of any police officer or officials, nor shall we be understood to have expressed any opinion about the responsibility of any of the officials of the state for infringing the right to life of the deceased by any act of omission or commission, lest it should prejudice any of the parties in the investigation being carried out by the CBI to determine the culpability under orders of the Hon'ble Supreme Court. In fact, the grant of this monetary relief by us is without prejudice to the rights of the parties.

The Commission concluded: “As a result of the above discussion we reject and dismiss the petition (A1 - 9/9) filed by CIIP.” The Commission’s latest November 11, 2005 order, thus, unequivocally rejects the possibility of investigations into the mass cremations to establish the liability of individuals or institutions, the identity of the victim, or just reparations. The next hearing is scheduled for January 9, 2006.

THE EXTRADITION OF KULVIR SINGH BARAPIND AND RISK OF TORTURE UPON RETURN

On Tuesday, December 27, 2005, the Center for Human Rights and Global Justice (CHRGJ) at New York University School of Law called on the United States Secretary of State to withhold extradition of any person who is more likely than not to be subjected to torture upon return. The CHRGJ issued its call as the U.S. Secretary of State finalized her decision whether to extradite Kulvir Singh Barapind to India. The CHRGJ submitted an amicus letter (pdf, 1.6 MB) in support of the legal position taken by Barapind regarding U.S. obligations under international and domestic law.

In Punjab, India, Barapind was a senior member of the Sikh Students Federation, a political group advocating for a separate Sikh state, serving in several leadership positions from local president to national joint secretary. Before he fled to the United States in 1993, Indian security forces tortured him severely during two detentions, in order to stop his political activism and force him to reveal the identities of other Federation activists.

Indian security forces tortured him by suspending him in the air from his wrists with his arms tied behind his back, rolling a wooden log over his thighs to crush his muscles, tearing his legs apart at his waist to a 180-degree angle, applying electric shocks, and beating him on the soles of his feet, among other methods. Indian security forces also tortured Barapind's family and friends in their efforts to apprehend him.

Two Sikhs extradited from the U.S. to India were tortured by Indian officials in 1997, despite diplomatic assurances from the Indian government promising protection from torture.

The Indian government alleges that Barapind was a militant leader, responsible for 11 incidents involving robbery, attempted murder, conspiracy to murder, and murder. It requested Barapind's extradition from the U.S. in 1997. In a decision in August 2001, the Eastern District Court of California found that Indian officials used torture, threats to life and fabrication of evidence to support the extradition request for Barapind, thus dropping three cases brought by the Indian government. The Court dropped five more cases

because they fell under the political offense exception in the extradition treaty.

On November 8, 2005, Judge Wanger of the Eastern District Court of California certified the extradition of Kulvir Singh Barapind to India in three cases involving allegations of murder. Two weeks later, ENSAAF submitted an application for relief from extradition on behalf of Barapind to the U.S. Secretary of State, under the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT). The Convention Against Torture, implemented as federal law, prohibits the U.S. from returning or extraditing individuals who are more likely than not to be tortured upon return.

Barapind's Convention Against Torture application presents overwhelming evidence that he will be tortured by Indian officials if he is surrendered to India.

Barapind's CAT application presents overwhelming evidence that he will be tortured by Indian officials if he is surrendered to India. The application includes evidence that:

- Two Sikhs extradited from the U.S. to India were tortured by Indian officials in 1997, despite diplomatic assurances from the Indian government promising protection from torture;
- Judge Wanger of the Eastern District Court of California determined that Indian officials tortured, killed, and coerced witnesses to fabricate evidence to support India's extradition request;
- Recent State Department and human right reports document flagrant, gross, and mass human rights violations in Punjab and India, including the widespread and systematic use of custodial torture;
- Indian officials continue to torture individuals they suspect to be Sikh separatists. In recent months, India has escalated its practice of torturing suspected Sikh separatists;
- Expert opinion agrees that Barapind is likely to be tortured because of the practice of custodial torture and death in Punjab and India, as well as

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PUNJAB COPS CONVICTED OF 1995 MURDER OF ACTIVIST KHALRA

KPS Gill Remains Free

On Friday, November 18, 2005, Additional District Judge Bhupinder Singh in Patiala convicted six Punjab police officials in the 1995 abduction and murder case of human rights activist Jaswant Singh Khalra. The court sentenced Deputy Superintendent of Police (DSP) Jaspal Singh and Amarjit Singh to life imprisonment for murder, abduction with intent to murder, destruction of evidence, and criminal conspiracy. The court sentenced officers Satnam Singh, Surinderpal Singh, Pritpal Singh, and Jasbir Singh to seven years imprisonment for abduction with intent to murder, two years imprisonment for destruction of evidence, and five years imprisonment for criminal conspiracy. Senior Superintendent of Police (SSP) Ajit Singh Sandhu, the primary accused, and DSP Ashok Kumar died during the trial of the case. A revision is pending in the High Court of the earlier discharge of accused Rashpal Singh.

Through government records, Khalra demonstrated that security forces abducted, murdered, and secretly cremated an estimated 25,000 Sikhs in Punjab from 1984 to 1995. In early 1995, Khalra warned at a press conference that the Punjab government “was highly mistaken in thinking that by eliminating him the matter relating to 25,000 unclaimed bodies” in Punjab “[could] be put to an end.” He further stated that he was prepared to die for the cause of justice, and appealed to the people to “hold the police chief KPS Gill” accountable for his murder and the mass cremations in Punjab. Punjab police abducted Khalra on September 6, 1995, tortured him in detention, and killed him in late October 1995.

Mrs. Paramjit Kaur Khalra, Khalra’s widow, welcomed today’s verdicts, but reiterated her demand that former Punjab police chief KPS Gill also be tried. During the Khalra trial, Special Police Officer (SPO) Kuldip Singh testified that he witnessed KPS Gill interrogate Khalra several days prior to his murder. SPO Kuldip Singh also testified that Khalra had been tortured. Despite this testimony, no officer was charged with Khalra’s torture, nor was KPS Gill charged or summoned for examination.

ENSAAF commends and appreciates Mrs. Paramjit Kaur Khalra for persevering in her fight for truth and justice, and also commends her legal team, led by Rajvinder S. Bains. In his arguments and rebuttal before the Court, Bains highlighted: the death threats received by Khalra from Punjab police because of his investigations into mass cremations; the eyewitnesses to his abduction, illegal detention, torture, and disposal of his body; the suppression of key evidence by the government prosecutor; intimidation and implication of witnesses in false cases by the accused police officers to prevent witnesses from testifying; and failings in police alibis.

These convictions must mark the beginning of a new chapter of accountability, signaling an end to impunity for hundreds of perpetrators of torture and murder in Punjab.

Extradition of Kulvir Singh Barapind *Continued from page 6*

Barapind's status as a suspected militant;

- Indian officials previously tortured and threatened to kill Barapind, and also tortured his friends and family in their attempts to apprehend him;
- Indian officials extrajudicially executed Barapind's alleged accomplices in the crimes underlying India's extradition request;
- At least one official responsible for torturing Barapind currently holds a senior position in the Punjab police;
- Indian laws do not adequately protect against torture, and, in fact, encourage torture during interrogations; and
- Due process violations will increase the risk that Barapind will be tortured, illegally detained, and denied a judicial remedy to protect himself. Indian authorities will deny Barapind access to counsel, presence of counsel during interrogations, and confidential visits with counsel. They will also detain him for a prolonged and indefinite period, prior to the commencement of trial, and will charge him with extra crimes in violation of the rule of specialty.

The CAT application prepared by ENSAAF contains a detailed brief and 17 exhibits, including 11 affidavits. The CHRGJ also submitted an amicus letter.