

TABLE OF CONTENTS

Acknowledgments	2
About ENSAAF	2
Frequently Used Terms	3
I. Executive Summary	4
II. Introduction	5
Human Rights Abuses in Punjab: 1984 to 1995	5
Impunity for Human Rights Abuses	7
Alleged Revival of the Militancy	8
Study on Abuses Committed in Recent Militancy-Related Arrests	10
II. Legal Framework	11
International Law	11
Domestic Legal Framework	11
III. Human Rights Abuses Committed in Recent Arrests	14
Information on Detainees	14
Illegal and Incommunicado Detention	15
Allegations and Charges	17
Torture	18
Targeting of Immediate Family Members	20
IV. Recommendations to the Governments of Punjab and India	22

ACKNOWLEDGMENTS

ENSAAF would like to express its sincere appreciation to its field workers, whose names are withheld because of safety concerns, and to the individuals who participated in this study.

ENSAAF field workers conducted the documentation for this report in Punjab, India in August and September 2005. This report was researched and written by ENSAAF Executive Director Jaskaran Kaur and edited by ENSAAF Legal Director Sukhman Dhani and Director Mie Lewis.

ABOUT ENSAAF

ENSAAF is a 501(c)(3) organization based in the United States that fights impunity in India. We work to bring perpetrators to justice, investigate and expose human rights violations, and organize 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.

P.O. Box 4155
Santa Clara, CA 95056
408.727.6122
<http://www.ensaaf.org>
info@ensaaf.org

Cover picture: Hand-cranked generator used to administer electric shocks to detainees held in the custody of Punjab police

FREQUENTLY USED TERMS

<i>Amritdhari</i>	Initiated Sikh
BKI	Babbar Khalsa International
CIA	Criminal Investigation Agency
DGP	Director General of Police
FIR	First Information Report
<i>Gurdwara</i>	Sikh house of worship
IPC	Indian Penal Code
NHRC	National Human Rights Commission
PSHRC	Punjab State Human Rights Commission
SHO	Station House Officer
SI	Sub-Inspector
SSP	Senior Superintendent of Police

EXECUTIVE SUMMARY

In response to a militant Sikh movement for self-determination, Indian security forces unleashed brutal counter-insurgency operations upon the people of Punjab from 1984 to 1995. The government's counter-insurgency operations incorporated systematic human rights violations, including illegal detention, torture, extrajudicial execution, and "disappearance," among other abuses. The decimation of the militancy in the mid-'90s brought an end to systematic killings and "disappearances." The impunity granted to perpetrators of these violations, however, ensured that custodial abuses, such as illegal detention and torture, continued as part of the Punjab police's "investigative" techniques.

During the past several years, human rights organizations have reported that the targets of custodial abuse no longer represent those targeted during the counter-insurgency. A recent revival of militancy-attributed arrests, however, indicates an escalation of human rights violations committed in the context of national security. From June 2005 to August 2005, the Punjab police claim to have arrested several dozen individuals, intent on reviving or supporting the militancy. These arrests center around the apprehension of Jagtar Singh Hawara, the main accused in the 1995 assassination of Punjab's chief minister.

In August and September 2005, ENSAAF documented 28 cases of detention of Punjabis accused of militancy-related activities. Its study reveals that, in contravention of international and domestic laws, Indian security forces routinely resorted to illegal and incommunicado detention. The police did not inform families of the places of detention or allow confidential visits. Further, the Punjab police, including the Criminal Investigation Agency, frequently tortured the detainees. Torture methods included electric shocks, tearing the legs apart at the waist and causing pelvic and muscle injury, and pulling out the hair and beard of the detainees, among other techniques. The police also threatened and detained immediate family members of the targeted individual.

The Indian police constructed and presented elaborate stories of thwarted militant crimes, recovered weapons, captured human bombs, and the discovery of an international network to revive militancy in Punjab. These stories, reported almost daily in the Punjab media in June and July, served to conceal the escalation in human rights abuses committed in the name of national security. Further, the exaggerated stories, in direct contrast to testimonies of detainees and their families, indicate that police fabricated evidence to support criminal charges.

This report represents the first public document detailing human rights violations committed by Indian security forces in the recent militancy-related arrests. Out of over 90 media articles printed since June 2005 discussing the capture and plans of alleged Punjabi militants, all but a handful have failed to question government accounts of the events. Government officials have not publicly acknowledged, investigated, or redressed the violations. Thus, the majority of detainees whose experiences are discussed in this report remain in the custody of Indian security forces and continue to be at risk of custodial abuse. By misinforming the public about threats to national security, Indian security forces have so far successfully masked an escalation in human rights violations.

I. INTRODUCTION

Human Rights Abuses in Punjab: 1984 to 1995

The religious minority community of Sikhs represents about two percent of India's population.¹ In the northern Indian state of Punjab, bordering Pakistan, Sikhs form 60 percent of the population. In the 1980s, Punjab, India experienced a decade-long insurgency, fueled by failed attempts at procuring greater autonomy, water rights, local control over agricultural production and prices, and redress for human rights abuses, among other issues.

The militant movement for Sikh self-determination in Punjab developed after the Indian Army invaded the Harmandir Sahib (Golden Temple) complex in Amritsar, Punjab—the center of Sikh religious and political life—and around 41 other Sikh gurdwaras. The invasions occurred on June 4, 1984.² During the attack on Harmandir Sahib alone, eyewitnesses estimate that the Army killed between 4000 and 8000 people, mostly Sikh pilgrims.³ In retaliation for this massacre, on October 31, 1984, two Sikh members of Prime Minister Indira Gandhi's security staff assassinated her in Delhi. After the assassination, senior politicians and police officers orchestrated pogroms of Sikhs across India, killing at least 2,733 Sikhs in Delhi alone, and burning Sikh homes and businesses.⁴

From 1984 to 1995, the militancy in Punjab and its brutal repression by the Indian government escalated. Indian security forces illegally detained, tortured, extrajudicially executed, and “disappeared” an estimated 25,000 Sikhs in the context of counter-insurgency operations.⁵ A system of rewards for police for the capture of militants led to an increase in “disappearances” and extrajudicial executions.⁶ Although all Punjabi Sikhs were vulnerable to “disappearances” and extrajudicial executions, police especially targeted *Amritdhari*, or initiated, Sikhs, those who were politically active with the Akali Dal parties, and families and friends of suspected militants.⁷ The United States Department of State's 1993 *Country Report on Human Rights Practices: India*, described the police practice of faked encounters:

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,

¹ Office of the Registrar General, India, *The First Report on Religion: Census of India, 2001*, at <http://www.censusindia.net/religiondata/Summary%20Sikhs.pdf> (last accessed Sept. 30, 2005).

² Ram Narayan Kumar, “The Ghalughara: Operation Blue Star—A Retrospect,” *Sikh Review* (Calcutta: June 2000) at <http://www.sikhreview.org/june2000/tsr8.htm> (last accessed Sept. 30, 2005).

³ *Id.*

⁴ Jaskaran Kaur, *Twenty Years of Impunity: The November 1984 Pogroms of Sikhs in India*, 4-5 (ENSAAF: Sept. 2004).

⁵ Ram Narayan Kumar, Ashok Agrwaal, Amrik Singh, and Jaskaran Kaur, *Reduced to Ashes: The Insurgency and Human Rights in Punjab*, 56, 58 (South Asia Forum for Human Rights: May 2003). For other reports on abuses by Indian security forces, see, e.g., Human Rights Watch/Physicians for Human Rights, *Dead Silence: The Legacy of Abuses in Punjab* (May 1994); Human Rights Watch, *Punjab in Crisis: Human Rights in India* (Aug. 1991); Amnesty International, *Human Rights Violations in Punjab; Use and Abuse of the Law* (May 1991); Amnesty International, *Punjab Police: Beyond the Bounds of Law* (Aug 1994), Amnesty International, *Break the Cycle of Impunity and Torture in Punjab* (Jan. 2003); ENSAAF's Punjab human rights library at: <http://www.ensaaf.org/punjabhr.html> (last accessed Sept. 30, 2005).

⁶ Human Rights Watch/Physicians for Human Rights, *Dead Silence: The Legacy of Abuses in Punjab*, 2 (May 1994).

⁷ *Id.*, 4-5.

police may claim to have been ambushed by militants while escorting a suspect. Although the detainee invariably dies in “crossfire,” police casualties in these “incidents” are rare.⁸

Security forces further persecuted their victims through extortion and destruction of property, such as crops, livestock and buildings. Human Rights Watch described the government counter-insurgency operations as “the most extreme example of a policy in which the end appeared to justify any and all means, including torture and murder.”⁹

India’s Parliament enacted special counter-insurgency legislation that facilitated human rights violations, such as illegal detention, torture, and extrajudicial execution, and shielded security forces from accountability for such violations. The National Security Act of 1980, amended in 1984, allowed for detention without trial for up to two years in Punjab for acts prejudicial to the security or defense of India.¹⁰ The Terrorist Affected Areas (Special Courts) Act of 1984 provided for special *in camera* courts in “terrorist affected” areas, that could conceal the identity of witnesses. In addition, a defendant charged with “waging war” had the burden of proving his innocence.¹¹ The Armed Forces (Punjab and Chandigarh) Special Powers Act of 1983 empowered security forces to search premises and arrest people without warrant. Section 4 of the Special Powers Act allowed them to shoot to kill suspected terrorists, and Section 7 extended prosecutorial immunity to any police action taken pursuant to the Act.¹² Amnesty International described this act as license for security forces “to torture and kill with impunity.”¹³

From May 11, 1987 to February 25, 1992, the Indian government also dismissed the elected government in Punjab and imposed President’s rule¹⁴ from the center.¹⁵ In addition, in March 1988, Parliament reinforced its sanction for human rights violations by passing the 59th Amendment to the Constitution and invoking it in Punjab. The amendment “annulled the Constitution’s guarantees of the right to life and liberty.”¹⁶ This amendment was not repealed until April 5, 1990.¹⁷

The Indian government continues to apply the Terrorist and Disruptive Activities (Prevention) Act (TADA) of 1985 to crimes that allegedly occurred prior to its lapse in May 1995. TADA establishes *in camera* courts and, under Section 21, detainees charged with certain crimes are

⁸ Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices—1993: India*, 31 Jan. 1994, at http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_sasia/India.html (last accessed Sept. 30, 2005).

⁹ Human Rights Watch, *Dead Silence*, 2.

¹⁰ Kumar, et al., *Reduced to Ashes*, 84; Department of State, *Country Reports on Human Rights Practices: 1989*, 1388 (India).

¹¹ Department of State, *Country Reports on Human Rights Practices: 1989*, 1389 (India).

¹² 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. Armed Forces (Punjab and Chandigarh) Special Powers Act (1983).

¹³ Amnesty International, *India: Torture, Rape & Deaths in Custody*, 60 (1992).

¹⁴ Article 356 of the Indian Constitution empowers the central government to dismiss the elected state legislature if the governor determines that “governance cannot be carried on in accordance with the provisions of this Constitution.”

¹⁵ Department of State, *Country Reports on Human Rights Practices: 1990*, 1437 (India). Department of State, *Country Reports on Human Rights Practices: 1992*, 1133 (India).

¹⁶ Department of State, *Country Reports on Human Rights Practices: 1989*, 1388-9 (India).

¹⁷ Department of State, *Country Reports on Human Rights Practices: 1990*, 1432 (India).

presumed guilty until proven innocent.¹⁸ Further, confessions made to police officers are admissible in TADA courts, leading to the admission of statements extracted through torture.¹⁹

Impunity for Human Rights Abuses

The end to counter-insurgency operations has brought an end to systematic extrajudicial killings and “disappearances” in Punjab. However, major perpetrators of the abuses from 1984 to 1995 have received promotions and currently occupy senior positions in the Punjab police. Thus, their ongoing tenure and the impunity granted to virtually all perpetrators have created a system that continues to facilitate custodial abuses, in particular illegal detention and torture.²⁰

Impunity in Punjab for abuses committed in the context of the counter-insurgency operations of 1984 to 1995 prevails for several reasons.²¹ Indian institutions—from the judiciary, to the National Human Rights Commission, to the central government—have failed to provide survivors with an effective remedy. High courts deny habeas corpus petitions without an examination of the merits,²² and criminal cases in lower courts follow a protracted procedure, increasing the likelihood that ultimately families drain their financial resources and the police intimidate and subdue witnesses through pressure and harassment.²³ The judiciary has also thwarted civil society initiatives, banning the People’s Commission on Human Rights Violations in Punjab in 1998.²⁴

Administrative remedies have contributed to impunity. India’s National Human Rights Commission (NHRC) has failed to carry out the mandate it received in December 1996 from the Supreme Court to investigate and hear all cases of “disappearances” and extrajudicial executions in Punjab arising from the counter-insurgency operations. Instead, the NHRC has limited its inquiry to the issue of illegal cremation in just three crematoria in Amritsar district—one out of 17 districts in Punjab. This limited inquiry ignores the foundational question of whether security forces violated the individual’s right to life, as well as the widespread and systematic pattern and practice of “disappearances” and extrajudicial executions that occurred throughout Punjab. Further, in the almost nine years that this matter has dragged before the Commission, the Commission has not heard the testimony of a single survivor; nor has it found a single security official or agency liable for the thousands of “disappearances” and extrajudicial executions leading to illegal cremations in Punjab.²⁵ The Punjab State Human Rights Commission (PSHRC)

¹⁸ Department of State, *Country Reports on Human Rights Practices: 1992*, 1139 (India).

¹⁹ Department of State, *Country Reports on Human Rights Practices: 1989*, 1386 (India).

²⁰ See, e.g., Amnesty International, *Break the Cycle* (Jan. 2003). On August 19, 2005, Justice R.L. Anand, a member of the Punjab State Human Rights Commission, stated that more than 80 percent of the complaints filed before the Commission were against Punjab policemen. *Cops need to amend ways, says Justice Anand*, Tribune (Chandigarh), Aug. 20, 2005, at <http://www.tribuneindia.com/2005/20050820/punjab1.htm#14> (last accessed Sept. 30, 2005).

²¹ For a more extensive discussion of each factor, please read ENSAAF’s publication “No Safe Haven: The Myth of the Internal Flight Alternative in India for Returned Sikh Asylum Seekers,” at <http://www.ensaaf.org/ifa-letter-2005-01.pdf> (last accessed Sept. 30, 2005).

²² Jaskaran Kaur, “Judicial Impunity for Disappearances in Punjab, India,” 15 *Harvard Human Rights Journal*, 269 (Spring 2002).

²³ See, Kaur, “Judicial Impunity,” for a more detailed discussion.

²⁴ Writ Pet. (Civil), Sudershan Goel v. Union of India and Others (Punjab and Haryana H.C. 1998) (No. 14133/1998).

²⁵ See, ENSAAF, *Punjab Human Rights: Background—National Human Rights Commission*, at <http://www.ensaaf.org/nhrc.html> (last accessed Sept. 30, 2005); ENSAAF Dispatch, June 2005, at <http://www.ensaaf.org/dispatch-jun05.pdf> (last accessed Sept. 30, 2005).

also lacks the powers necessary to counter custodial abuses. It can only examine cases that fall within a one-year statute of limitations and make non-binding recommendations.²⁶

The government has rewarded and promoted security officials who have engaged in human rights violations, instead of bringing them to justice. In August 2001, the government proposed and supported amnesty for police officials facing prosecution for human rights abuses committed in Punjab, Kashmir, and the Northeast.²⁷ Impunity provisions in the Code of Criminal Procedure also pose a major obstacle to prosecutions of security forces who perpetrated human rights abuses. Sections 45 and 197 of the Code of Criminal Procedure require the prosecutor to apply for prosecution sanction from the central or state government before instituting any proceedings against a public servant or member of the Armed Forces. Prosecution sanction has thus worked to prevent and halt cases proceeding against senior officers charged with gross human rights violations, such as those occupying senior posts in Punjab today. The Indian government has also repeatedly refused to allow United Nations (UN) human rights rapporteurs to visit India in order to investigate complaints.²⁸

Alleged Revival of the Militancy

Recent large scale arrests in Punjab indicate an escalation of human rights violations in the name of national security. Since June 2005, the Punjab police have arrested at least 70 people on alleged terrorism-related charges.²⁹ Although the militant groups were decimated during the police counter-insurgency operations, the police have recently alleged that militants are attempting to revive their struggle. The rhetoric on the revival of terrorism increased substantially in May 2005, following two bomb blasts in Delhi theatres, and the later June arrest of Jagtar Singh Hawara, the leader of the India branch of the militant group Babbar Khalsa International (BKI).

Jagtar Singh Hawara is an accused in the August 1995 assassination of then Punjab Chief Minister Beant Singh. In late 1995, he was arrested and detained in Burail Jail.³⁰ In January 2004, he and two co-accused escaped from Burail Jail.³¹ On May 22, 2005, two bombs detonated at Delhi screenings of a controversial film that had triggered protests throughout Punjab,³² killing one person and injuring over 50 others.³³ The police eventually placed

²⁶ Protection of Human Rights Act, 1993, paras. 36(2), 18, at <http://nhrc.nic.in/> (last accessed Oct. 3, 2005).

²⁷ Jaskaran Kaur and Ravinder Bhalla, "Empty Charge Sheets: Amnesty for Police Abuses in Punjab," 58 *Guild Practitioner* 208 (Fall 2001).

²⁸ In his 2004 Report, the Special Rapporteur on the Question of Torture noted with regret that his 1993 request to visit India had still not been answered. Because ten years had passed without a satisfactory response to his repeated requests to visit India, the Special Rapporteur drew attention to Commission Resolution 2002/84, titled "Human rights and thematic procedures." This resolution emphasizes cooperation with the Commission through relevant thematic procedures. Theo Van Boven, *Civil and Political Rights, Including the Questions of Torture and Detention: Report of the Special Rapporteur*, UN Doc. No. E/CN.4/2004/56, Dec. 23, 2003, ¶5.

²⁹ Ritu Sarin, *Old ghosts return to Punjab with new faces*, Indian Express, Jul. 24, 2005, at http://www.indianexpress.com/full_story.php?content_id=75016 (last accessed Sept. 30, 2005).

³⁰ Ritu Sarin, *9 years in jail couldn't shut out Hawara*, Indian Express, Jul. 26, 2005, at http://www.indianexpress.com/full_story.php?content_id=75124 (last accessed Sept. 30, 2005).

³¹ *Delhi blasts: Babbar Khalsa chief Hawara held*, Tribune (Chandigarh), June 9, 2005, at <http://www.tribuneindia.com/2005/20050609/main1.htm> (last accessed Sept. 30, 2005).

³² *Protest Against 'Jo Bole So Nihal'*, Tribune (Chandigarh), May 14, 2005, at <http://www.tribuneindia.com/2005/20050514/main8.htm> (last accessed Sept. 30, 2005).

responsibility for the bombings on the BKI. Beginning in June, security forces started apprehending alleged BKI militants.³⁴

On June 8, 2005, the Delhi police arrested Jagtar Singh Hawara, allegedly recovering explosives and arms from his possession.³⁵ Immediately following Hawara's arrest, the police began to arrest other alleged militants, raising an alarm about attempts to conduct new militant operations and assassinate prominent political and security officials in Punjab and India.³⁶ The reports by the police stated that Hawara had strengthened the Babbar Khalsa International, increasing recruits of non-Sikhs and women, training human bombs,³⁷ channeling funds from abroad,³⁸ and procuring explosives and other arms.³⁹ For example, in one case subsequently investigated by ENSAAF, the police claimed to have arrested a close associate of Hawara who had conducted reconnaissance of cities in Punjab and Delhi to establish the best location for a bomb blast,⁴⁰ maintained a hit list that included former Punjab Director General of Police K.P.S. Gill, and possessed a cache of weapons and explosives.⁴¹ His wife, however, told ENSAAF a contrasting story. With each new arrest, the police described how the detainee fit into Hawara's scheme to revive militancy in Punjab.⁴²

³³ *Delhi blasts: Babbar Khalsa chief Hawara held*, Tribune (Chandigarh), June 9, 2005, at <http://www.tribuneindia.com/2005/20050609/main1.htm> (last accessed Sept. 30, 2005).

³⁴ *See, e.g., One more Babbar Khalsa militant held*, Tribune (Chandigarh), June 8, 2005, at <http://www.tribuneindia.com/2005/20050608/punjab1.htm#7> (last accessed Sept. 30, 2005).

³⁵ *Delhi blasts: Babbar Khalsa chief Hawara held*, Tribune (Chandigarh), June 9, 2005, at <http://www.tribuneindia.com/2005/20050609/main1.htm> (last accessed Sept. 30, 2005).

³⁶ *See, e.g., One held for links with Hawara*, Tribune (Chandigarh), June 12, 2005, at <http://www.tribuneindia.com/2005/20050612/punjab1.htm#2> (last accessed Sept. 30, 2005); Saurabh Malik, *2 close associates of Hawara arrested*, Tribune (Chandigarh), June 16, 2005, at <http://www.tribuneindia.com/2005/20050616/main3.htm> (last accessed Sept. 30, 2005); *Another Babbar held in Hoshiarpur*, Tribune (Chandigarh), June 19, 2005, at <http://www.tribuneindia.com/2005/20050619/punjab1.htm#1> (last accessed Sept. 30, 2005); *Two Hawara accomplices held*, Tribune (Chandigarh), July 12, 2005, at <http://www.tribuneindia.com/2005/20050712/cth1.htm#4> (last accessed Sept. 30, 2005); Saurabh Malik, *2 "human bombs" held in Chandigarh*, Tribune (Chandigarh), July 17, 2005 at <http://www.tribuneindia.com/2005/20050717/main4.htm> (last accessed Sept. 30, 2005); *1 held with RDX, human bomb belt*, Tribune (Chandigarh), July 21, 2005, at <http://www.tribuneindia.com/2005/20050721/punjab1.htm#3> (last accessed Sept. 30, 2005).

³⁷ Jupinderjit Singh, *Hawara was preparing human bomb: 50 detonators, 3 human bomb pressure buttons recovered*, Tribune (Chandigarh), June 13, 2005, at <http://www.tribuneindia.com/2005/20050613/punjab1.htm> (last accessed Sept. 30, 2005).

³⁸ *See, e.g., BKI 'outsourcing' petty criminals: police*, Tribune (Chandigarh), June 10, at <http://www.tribuneindia.com/2005/20050610/punjab1.htm#5> (last accessed Sept. 30, 2005).

³⁹ *See, e.g. Delhi blasts: Babbar Khalsa chief Hawara held*, Tribune (Chandigarh), June 9, 2005, at <http://www.tribuneindia.com/2005/20050609/main1.htm> (last accessed Sept. 30, 2005); Jupinderjit Singh and Iqbal Singh, *US-made gun recovered from Hawara's hideout*, Tribune (Chandigarh), June 11, 2005, at <http://www.tribuneindia.com/2005/20050611/punjab1.htm#4> (last accessed Sept. 30, 2005).

⁴⁰ Saurabh Malik, *2 close associates of Hawara arrested*, Tribune (Chandigarh), June 16, 2005, at <http://www.tribuneindia.com/2005/20050616/main3.htm> (last accessed Sept. 30, 2005).

⁴¹ *Arms, ammunition seized from Hawara's accomplices*, Tribune (Chandigarh), June 17, 2005, at <http://www.tribuneindia.com/2005/20050617/punjab1.htm#5> (last accessed Sept. 30, 2005); *Punjab police arrest two Hawara aides: Huge cache of arms and ammunition seized*, Tribune (Chandigarh), June 17, 2005, at <http://www.hindu.com/2005/06/17/stories/2005061708200300.htm> (last accessed Sept. 30, 2005).

⁴² *See, e.g., Jupinderjit Singh, Hawara was preparing human bomb: 50 detonators, 3 human bomb pressure buttons recovered*, Tribune (Chandigarh), June 13, 2005, at <http://www.tribuneindia.com/2005/20050613/punjab1.htm> (last accessed Sept. 30, 2005); Saurabh Malik, *2 close associates of Hawara arrested*, June 16, 2005, at <http://www.tribuneindia.com/2005/20050616/main3.htm> (last accessed Sept. 30, 2005); Kiran Deep, *Hawara plotted against Bhaniarawala in Buraail Jail*, Tribune (Chandigarh), July 23, 2005, at <http://www.tribuneindia.com/2005/20050723/punjab1.htm#3> (last accessed Sept. 30, 2005)

Study on Abuses Committed in Recent Militancy-Related Arrests

Because similar police reports during the counter-insurgency operations of 1984 to 1995 often masked human rights abuses, such as illegal detention, torture and extrajudicial executions, ENSAAF designed a study to identify what, if any, violations were occurring in the context of the recent arrests. ENSAAF field workers visited the residences of 26 people whose arrests were either reported in the media or by private individuals. The researchers then interviewed the informants regarding details of the arrest, allegations against the accused, conditions of detention, experiences of other family members with government and security officials, and legal remedies pursued.

This report presents documented cases of the use of illegal detention by Indian police, in particular the Punjab police, including the Criminal Investigation Agency (CIA). The report also discusses evidence of the torture of these detainees by security forces. The 26 questionnaires give comprehensive information on 28 cases of detentions, and also cite to an additional five cases of detention of immediate relatives. In ten cases, the detainee himself was released and provided the information to the field workers regarding his experiences with security forces. In the remaining cases, the informant is an immediate relative of the detainee. Media reports have also been referenced to determine formal dates of arrest and police versions of officially recognized arrests.

Chapter III discusses the findings of this study. In cases where informants agreed to share their information publicly, ENSAAF has used their names. In the majority of the cases, ENSAAF has kept identification information confidential, in order to protect the safety of individuals.

II. LEGAL FRAMEWORK

International Law

International law prohibits torture and cruel, inhuman, or degrading treatment or punishment. The prohibition of torture is *jus cogens*, meaning that no derogation is permitted, even in times of emergency. This prohibition takes precedence over any conflicting international standards, treaties, or domestic laws.⁴³ Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights (ICCPR), both applicable to India, clearly prohibit torture; Article 4(2) of the ICCPR similarly emphasizes that no derogation is permitted from the prohibition of torture. The definition of torture in Article 1(1) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Torture Convention”) constitutes customary international law:⁴⁴

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

International law further prohibits states from illegally detaining individuals, and imposes safety measures such as access to procedural safeguards allowing an individual to challenge his detention.⁴⁵ Article 9 of the ICCPR affirms that, “No one shall be subjected to arbitrary arrest or detention,” and further states that “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.”

Domestic Legal Framework

India has ratified the Geneva Conventions, Convention on the Prevention and Punishment of the Crime of Genocide, International Convention on the Elimination of All Forms of Racial Discrimination, and the ICCPR, among other international instruments. It signed the Torture Convention on October 14, 1997, but has not ratified it.⁴⁶

⁴³ Redress, *Terrorism, Counter-Terrorism, and Torture: International Law in the Fight Against Terrorism*, 18 (July 2004), citing the International Court of Justice advisory opinion on Reservations to the Convention on the Prevention and Punishment of Genocide, 1951 ICJ Rep. 15 (May 28); the ICJ’s South West Africa cases (Preliminary Objections) (Ethiopia v. South Africa; Liberia v. South Africa), 1963 ICJ Rep. 319 (Dec. 21); the Case of the Barcelona Traction, Light and Power Co. Ltd. (Belg. v. Spain), 1970 I.C.J. 3 (Feb. 5), and Article 53 Vienna Convention on the Law of Treaties.

⁴⁴ *Id.*, 17, citing Prosecutor v. Anto Furundzija, International Criminal Tribunal for the Former Yugoslavia, Judgment, 10 Dec. 1998, para 160.

⁴⁵ *Id.*, 39, citing Human Right Committee, Communication No. 560/1993, CCPR/C/59/D/560/1993; Hammel v Madagascar, Communication No. 155/1983, CCPR/C/29/D/155/1983, at paras 18.2 and 20; see also Torres v Finland, Communication No. 291/1988, CCPR/C/38/D/291/1988; Vuolanne v Finland, Communication No. 265/1987, CPR/C/35/D/265/1987; Portorreal v Dominican Republic, Communication No. 188/1984, CCPR/C/31/D/188/1984). See also Habeas Corpus in Emergency Situations (Arts. 27(2) and 7(6) of the American Convention on Human Rights, Advisory Opinion OC-8/87, January 30, 1987, Inter-Am. Ct. H. R. (Ser. A) No. 8 (1987))

⁴⁶ Redress, *Reparation for Torture in India, Nepal and Sri Lanka*, 7-8 (March 2003).

The Indian Constitution does not have an explicit provision that automatically incorporates international law; laws have to be incorporated by legislative act.⁴⁷ The Supreme Court has held, however, that fundamental rights should be interpreted in conformity with international law, as long as the law does not clearly conflict with municipal law. In *Visakha vs. State of Rajasthan*,⁴⁸ the Court focused on the spirit and object of the constitutional guarantee, holding that: “[a]ny international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into [the statutes] to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee.”⁴⁹ Because India follows England’s common law and designates the same status to customary international law,⁵⁰ it is similarly bound by a rule of customary international law as long as this law is not inconsistent with national law.⁵¹

The Indian Constitution and statutory law do not explicitly prohibit torture and other human rights violations. The Supreme Court has interpreted Article 21 of the Constitution, prohibiting the deprivation of life or liberty “except according to procedure established by law,” to proscribe torture.⁵² However, although the Code lists offences that could constitute torture or illegal detention, the Indian Penal Code does not contain a direct crime or definition of torture and other human rights abuses.⁵³ The lack of a direct crime and definition of torture and other human rights violations leads to inadequate charges against perpetrators.

Legal safeguards technically exist to protect detainees from illegal detention, but are not routinely implemented. Section 41(a) of the Code of Criminal Procedure, 1973, allows police to make an arrest without a warrant or a magistrate’s authorization, if the arrest is based on reasonable suspicion, information, or complaint. Article 22 of the Constitution requires police officials to inform arrestees, except enemy aliens and those held under preventative detention laws, of the grounds for arrest, allow access to counsel, and produce the detainee before a magistrate within 24 hours. The Supreme Court has further interpreted this article to require that police inform a relative or friend about the arrest and record the arrest in police records.⁵⁴

Section 58 of the Code of Criminal Procedure reinforces these provisions and requires the police to report all arrests without warrant to the district magistrate. In *D. K. Basu v. State of West Bengal*, the Supreme Court issued mandatory directions for compliance by all law-enforcement officials during arrest or detention of any person to supplement these constitutional and statutory safeguards.⁵⁵ These guidelines include the requirements of police to: wear

⁴⁷ Redress, *Reparation for Torture*, 8.

⁴⁸ 1997(6) SCC 241.

⁴⁹ National Human Rights Commission of India, *Annual Human Rights Report (1998-99)*, available at http://nhrc.nic.in/ar98_99.htm, para 4.9 (last accessed Sept. 30, 2005).

⁵⁰ Redress, *Reparation for Torture*, 8, citing: Article 372 of the Constitution: “Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India, immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislative or other competent authority;” *Director of R&D v. Corp. of Calcutta*, AIR 1960 SC 1355 at 1360; *Builders Supply Corp. v. Union of India*, AIR 1965 SC 1061 at 1068; *State of West Bengal v. Corp. Of Calcutta*, AIR SC 997 at 1007.

⁵¹ *Id.*, citing *Gramophone Co. of India Ltd v. Birendra Bahadur Pandey*, AIR 1984 SC 667 at 671.

⁵² Redress, *Reparation for Torture*, 13, citing *Sunil Batra v. Delhi Admin.*, AIR 1978 SC 1675; See also, *Mullin v. Union Territory of Delhi*, AIR 1981 SC 746.

⁵³ Redress, *Reparation for Torture*, 14-5 (examples of IPC offences that could constitute torture).

⁵⁴ *Joginder Kumar v. State of Uttar Pradesh*, 1994, 3 J. T. SC 423.

⁵⁵ *D.K. Basu v. State of West Bengal*, (1997) IRCR 373.

identification badges during an arrest and make a detailed witnessed memo about the arrest.⁵⁶ Any violation of these guidelines should lead to both departmental discipline as well as charges of contempt of court.

Section 57 of the Code of Criminal Procedure prohibits police from detaining an individual without warrant for more than 24 hours, without producing the detainee before a magistrate and receiving authorization under section 167. Section 167 requires judicial permission to extend police investigations that cannot be completed within 24 hours of the person's detention. The concept of police remand describes the situation where the magistrate allows the police to continue to detain an individual and conduct investigations beyond 24 hours.

Section 162 of the Code makes statements made by any person to a police officer in the course of an investigation inadmissible at any inquiry or trial, except during cross-examination to contradict the witness who made the statement. It further proscribes the police from procuring the signature of a detainee on any statement. Section 163 of the Code of Criminal Procedure also prohibits police officers or other officials from inducing, threatening, or making promises to extract a confession. However, the criminal laws do not contain an explicit prohibition of the use of torture as a means to extract evidence.⁵⁷

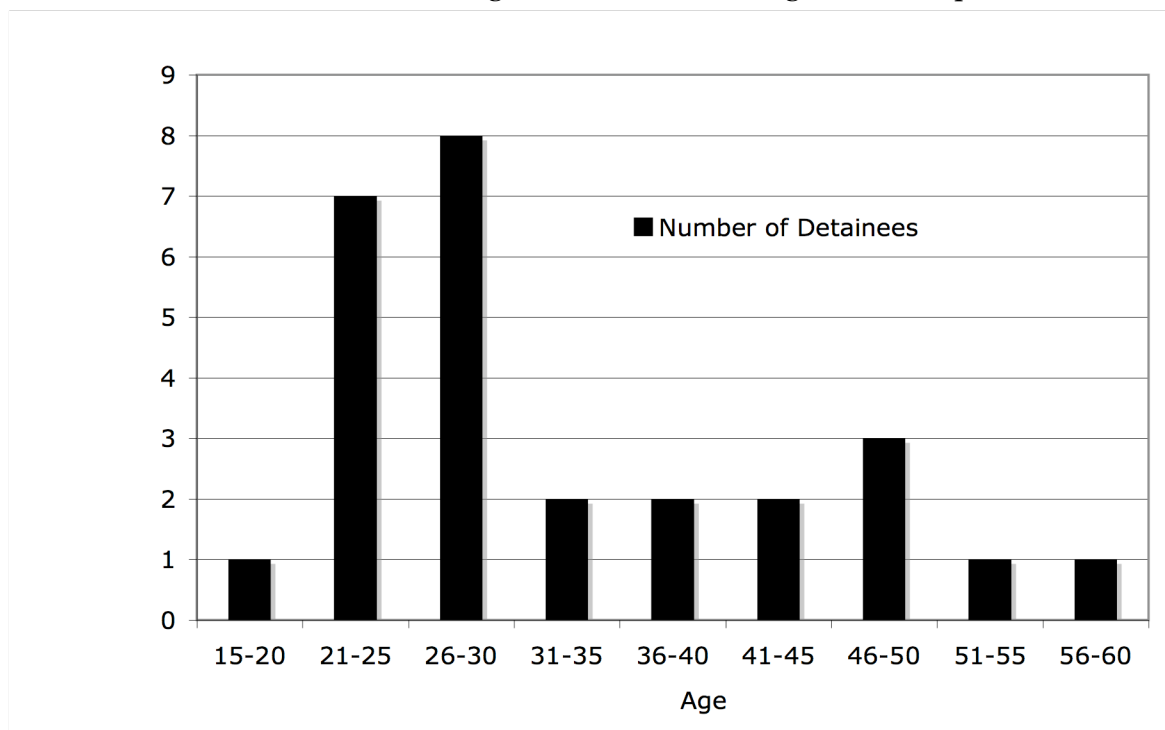
⁵⁶ Amnesty International, *Break the Cycle*, 26.

⁵⁷ Redress, *Reparation for Torture*, 13, citing *D.K. Basu*, para 10.

III. HUMAN RIGHTS ABUSES COMMITTED IN RECENT ARRESTS

Information on Detainees

In August and September 2005, ENSAAF interviewed 26 informants and comprehensively documented 28 cases of detention. These 28 cases also mentioned an additional five cases of detention of immediate family members. In ten cases, the detainee himself was released and provided the information regarding his experiences with security forces. In the remaining cases, the informant was an immediate relative of the detainee. The following chart reflects the age distribution of the detainees, excluding one detainee whose age was not reported:



All detainees are Punjabi. All but two detainees interviewed are male. Twelve detainees are farmers; other occupations include shopkeepers (2), financiers (2), drivers (3), religious preachers or scripture readers (3), student (1), property dealer (1), courier service (1), housewife (1), and long distance phone booth operator (1). One woman is not employed. Thirteen of the detainees interviewed live in Ropar district; others live in Ludhiana (2), Chandigarh (1), Amritsar (7), Sangrur (2), and Fatehgarh Sahib (3). The vast majority of detainees (19) are married. 17 people were still in detention at the time of their relatives' interview with ENSAAF.⁵⁸

⁵⁸ On September 2, 2005, Punjab police announced the release of 16 persons because of a lack of evidence against them. The police did not report the names of the released detainees. Ajay Banerjee, *Hawara case: 16 not to be charged*, Tribune (Chandigarh), September 3, 2005, at <http://www.tribuneindia.com/2005/20050903/punjab1.htm#5> (last accessed Sept. 30, 2005).

Illegal and Incommunicado Detention

Since June 2005, in their investigations into the Delhi bomb blasts and the alleged network of the militant group Babbar Khalsa International (BKI), Indian police, primarily from Punjab, have routinely resorted to illegal and incommunicado detention of individuals. The vast majority of the detentions documented by ENSAAF began with illegal and incommunicado detention; in only four cases did the police formally arrest or acknowledge detention for purposes of interrogation on the date of the actual detention. The police held nine detainees for one to four days in illegal detention before formally arresting them; four detainees for five to seven days before formal arrest; and five detainees for nine to 11 days before formal arrest. The two women interviewed by ENSAAF were held in illegal detention and released without formal arrest. B. Singh spent over one month in illegal detention and was also released without formal arrest.⁵⁹

B. Singh himself informed ENSAAF of the details of his detention. The police detained his brother in early July 2005, picking him up from home. Four days later, they detained his brother's wife and promised to release her only if B. Singh presented himself at the police station. The next day, B. Singh, accompanied by members of the village council and other relatives, presented himself at the police station, and the police released his sister-in-law. The police confiscated his motorcycle and personal items such as photo albums. During his over month long detention, the police tortured him with electric shocks to his ear and groin. They also tore his legs apart at the waist, as far as they could. In violation of the laws of arrest and detention, the police never presented B. Singh before a magistrate or formally arrested him.

In another example of illegal detention, policemen from CIA Staff Fatehgarh Sahib, led by Inspector Gurmeet Singh Pinky, held 20-year old Parvinder Singh in illegal and incommunicado detention for one week before formally arresting him. The police took him into detention on June 9, 2005 from his house in the presence of his family. His family did not recognize the police officers. Two days later, on June 11, his father filed an application with the Senior Superintendent of Police (SSP) of Fatehgarh Sahib, reporting Parvinder Singh's detention and requesting information on his whereabouts. His father described the details of Parvinder Singh's apprehension, after they had returned from a religious function on June 9:

Before our arrival, they [police] had fully searched our house with my father Sohan Singh [present] and they did not find anything from our house. When we returned home, they asked me for my name and my son's name. We told my name and my son Parvinder Singh's name. They took me and my son Parvinder Singh outside of our house, about two acres length away, where their gypsy car had already been standing. We couldn't read the gypsy's number because it was night and there was a sandstorm. They put my son Parvinder Singh in the gypsy and left.

In the following days, Parvinder Singh's father visited many police stations but was told Parvinder Singh was not detained at those stations. On June 11, he filed his application with the SSP. On June 16, a week after Parvinder Singh had been in illegal detention, the SSP of Ropar gave a press statement that Khanna police had arrested Parvinder Singh on June 16 and had registered a case under the Explosive Substances Act⁶⁰, Arms Act,⁶¹ and various sections of

⁵⁹ Three informants could not accurately recall the date of formal arrest, if any; nor were the dates reported in the media.

⁶⁰ *Arms, ammunition seized from Hawara's accomplices*, Tribune (Chandigarh), June 17, 2005, at <http://www.tribuneindia.com/2005/20050617/punjab1.htm#5> (last accessed Sept. 30, 2005). See also FIR No. 144, dated 16/6/05, PS Kharar and FIR No. 83, dated 17/6/05, PS Samrala (on file with ENSAAF).

Chapter VI of the Indian Penal Code, dealing with waging war against the state.⁶² The police alleged that Parvinder Singh was a BKI militant with a hit list including the former director general of Punjab police, a senior Congress leader, and controversial cult leader Baba Bhanianarwala.⁶³ The police further claimed to have recovered ammunitions and explosives from Parvinder Singh: two sticks of RDX, two detonators, and 20 cartridges for an AK-47.⁶⁴

ENSAAF's investigation also reveals contradictions between the places of arrest reported by informants, and the places of arrest reported by police, throwing further doubt on the police versions of arrest and the detainee's alleged crimes. All but one informant reported that individuals, most often immediate family members, witnessed the arrests. In 16 cases, police apprehended individuals from their homes, in the presence of immediate family members. In seven cases, the detainees presented themselves, in the presence of others, at the police station or requested meeting place, after receiving a request from police officers to do so. In three cases, detainees were arrested from public places. For example, Satnam Singh's father saw him off on the Amritsar to Hazoor Sahib train, Sach Khand Express. He was seated in compartment number 12, seat number 45. On June 25, 2005, police apprehended Satnam Singh from inside the train while it was stopped at Delhi Railway station, in the presence of other passengers who protested his detention. In media reports, however, the police claimed that Delhi police arrested Satnam Singh on June 28 in North Delhi, and that he was receiving training as a human bomb.⁶⁵

Police arrested Jog Dass from his shop in his village in Ludhiana district on July 10, 2005. On July 11, the Chandigarh police claimed to have arrested Jog Dass and his colleague Samir near the football stadium in Sector 17 of Chandigarh where they were engaged in reconnaissance for a bomb blast. The police allegedly seized weapons from Jog Dass's possession, attributed two past attacks on Bhanianarwala to him and Samir, and gave an elaborate story regarding their plans to revive the militancy:

About their targets, they [Jog Dass and Samir] revealed to the police that Baba Piara Singh Bhanianarwala, Ashutosh Maharaj, Jagdish Tytler, former Director General of Police, KPS Gill and Bhajan Lal were on their hit list. They reportedly admitted that Hawara had motivated several persons to become human bombs. He was also providing arms and explosives, along with monetary assistance, to "recruits." They also told the police that Hawara obtained a number of vehicles for his operational purposes.⁶⁶

⁶¹ *Remand of Hawara aides extended*, Tribune (Chandigarh), June 23, 2005, at <http://www.tribuneindia.com/2005/20050623/punjab1.htm#4> (last accessed Sept. 30, 2005). See also FIR No. 144, dated 16/6/05, PS Kharar and FIR No. 83, dated 17/6/05, PS Samrala (on file with ENSAAF).

⁶² FIR No. 144, dated 16/6/05, PS Kharar and FIR No. 83, dated 17/6/05, PS Samrala (on file with ENSAAF). See, for the Indian Penal Code, <http://www.helpinelaw.com/bareact/index.php?dsp=ind-penal-code> (last accessed Sept. 30, 2005).

⁶³ *Arms, ammunition seized from Hawara's accomplices*, Tribune (Chandigarh), June 17, 2005, at <http://www.tribuneindia.com/2005/20050617/punjab1.htm#5> (last accessed Sept. 30, 2005).

⁶⁴ *RDX sticks seized from Hawara's accomplice*, Tribune (Chandigarh), June 28, 2005, at <http://www.tribuneindia.com/2005/20050628/punjab1.htm#8> (last accessed Sept. 30, 2005). For other coverage, see also, *Police remand for Hawara's accomplice*, Tribune (Chandigarh), June 25, 2005, at <http://www.tribuneindia.com/2005/20050625/punjab1.htm#20> (last accessed Sept. 30, 2005); *Remand of Parvinder Singh extended*, Tribune (Chandigarh), June 29, 2005, at <http://www.tribuneindia.com/2005/20050629/punjab1.htm#22> (last accessed Sept. 30, 2005).

⁶⁵ *Satnam brought to Ropar for recoveries*, Tribune (Chandigarh), July 1, 2005, at <http://www.tribuneindia.com/2005/20050701/punjab1.htm#9> (last accessed Sept. 30, 2005).

⁶⁶ *Two Hawara accomplices held*, Tribune (Chandigarh), July 12, 2005, at <http://www.tribuneindia.com/2005/20050712/cthi1.htm#4> (last accessed Sept. 30, 2005).

Jog Dass' father sent telegrams to the Punjab State Human Rights Commission. A day after the alleged arrests, Samir's father Avtar Singh gave a press conference stating that police took his son into detention allegedly for identification of an accused on July 10, a day earlier than they claimed. The police took Samir away in a vehicle, in which Avtar Singh also saw Jog Dass seated. Avtar Singh sent telegrams to the Punjab State Human Rights Commission, the Punjab Director General of Police, and the Chief Justice of the Punjab and Haryana High Court.⁶⁷ On July 14, one hundred people protested against the illegal detention and implication of Samir in false cases.⁶⁸ Despite these efforts, the two men remain in detention.

The police did not inform families of the location of the detainee. In the vast majority of the cases, the police arrived in both uniforms and plainclothes, making it difficult to identify them. In eight cases, police without jurisdiction over the targeted individual's residence arrested the individual from his home. Baldeep Singh, for example, was picked up from his home in Ropar district on June 20, 2005 by police from another district, the CIA Staff Fatehgarh Sahib police led by Inspector Gurmeet Singh Pinky. They also detained his brother and confiscated his Tata Safari SUV and two of his brothers' passports. On the same day, the police detained relatives of Baldeep Singh's brother from another village. The family did not learn where Baldeep Singh was detained until the next day, when a local politician spoke to a police official on their behalf. The police released all of Baldeep Singh's relatives on June 23, without formally arresting them. The police held Baldeep Singh in incommunicado detention for five days before officially arresting him on June 25, allegedly at a checkpoint near a gurdwara in Fatehgarh Sahib.⁶⁹ The police tortured Baldeep Singh with electric shocks and by tying his hair to his feet and hanging him upside down. The police had tortured his brother using similar methods.

Allegations and Charges

The majority of detainees have been charged under the Explosive Substances Act, 1908, Sections 4 and 5, and the Arms Act, 1959. The relevant sections of the Explosive Substances Act punish individuals for attempting to cause explosions or keeping explosives with intent to endanger life or property, or making or possessing explosives under suspicious circumstances.⁷⁰ The police have also charged individuals under various sections of the Indian Penal Code, such as sections 120B (punishment for criminal conspiracy to commit serious offense), 212 (harboring an offender), 216 (harboring an offender who has escaped from custody or whose apprehension has been ordered), and various offences against the state detailed in Chapter VI of the Code, such as waging or attempting to wage war against the State, sedition, and promoting enmity between different groups.

⁶⁷ Pradeep Sharma, *Hawara accomplices in police custody*, Tribune (Chandigarh), July 13, 2005, at <http://www.tribuneindia.com/2005/20050713/cth1.htm#27> (last accessed Sept. 30, 2005).

⁶⁸ Sameer 'implicated' in Hawara case, Tribune (Chandigarh), July 15, 2005, at <http://www.tribuneindia.com/2005/20050715/ldh1.htm#3> (last accessed Sept. 30, 2005). For further developments, see *Police remand for Hawara's accomplices*, Tribune (Chandigarh), July 26, 2005, at <http://www.tribuneindia.com/2005/20050726/punjab1.htm#22> (last accessed Sept. 30, 2005); *Hawara's police remand extended*, Tribune (Chandigarh), July 29, 2005, at <http://www.tribuneindia.com/2005/20050729/cth1.htm> (last accessed Sept. 30, 2005); *Hawara's aides sent to judicial custody*, Tribune (Chandigarh), July 30, 2005, at <http://www.tribuneindia.com/2005/20050730/punjab1.htm#18> (last accessed Sept. 30, 2005).

⁶⁹ *Hawara's confidant arrested*, Tribune (Chandigarh), June 26, 2005, at <http://www.tribuneindia.com/2005/20050626/punjab1.htm#6> (last accessed Sept. 30, 2005).

⁷⁰ Explosive Substances Act, 1908, <http://www.helpinelaw.com/bareact/index.php?dsp=explosive-subs> (last accessed Sept. 30, 2005); Arms Act, 1959, <http://www.helpinelaw.com/bareact/index.php?dsp=arms> (last accessed Sept. 30, 2005).

Five detainees reported a prior history with the Punjab police arising out of the counter-insurgency operations of 1984 to 1995, including torture, harassment, and implication in false cases. Two detainees faced detention and eventual acquittal under the Terrorist and Disruptive Activities (Prevention) Act. Another detainee was charged with a role in the Beant Singh assassination case, for which Hawara is the main accused, but was acquitted in 2002.

Two families believe the police are targeting them because of their relatives. Parvinder Singh, whose detention was discussed above, is the nephew of Hardeep Kaur, the woman accused by the Punjab police of harboring Jagtar Singh Hawara. The police detained her on June 9,⁷¹ and also detained many of her family members.⁷² Another detainee, Jagtar Singh, is the nephew of Gurdeep Singh, accused with Hawara in the bomb blast at Baba Bhaniananwala's ashram and also accused of helping Hawara escape Burail Jail; the police have not yet apprehended Gurdeep Singh.⁷³ The police detained Jagtar Singh on June 24, 2005, but did not formally arrest him until July 1, calling him a hardcore terrorist and listing alleged weapons seized from him.⁷⁴ The police tortured Jagtar Singh, subjecting him to electric shocks, among other methods, and had to hospitalize him after the torture. His mother reported that the police repeatedly visit and harass the family for information they do not possess on the whereabouts of Gurdeep Singh and his family, accusing them of having sheltered Gurdeep Singh. The police also illegally detained Jagtar Singh's brother, releasing him after apprehending Jagtar Singh.

Torture

The cases documented in this study reveal that Punjab⁷⁵ police beat and tortured illegal detainees arrested for militancy-related activities. Twelve informants indicated beatings and torture suffered by the detainee, and three described torture of immediate family members taken into detention to pressure the targeted individual. Eight informants did not know if their family member had been tortured because they had not been allowed to speak to the detainee up to the point of their interview with ENSAAF. Only five informants explicitly said the detainee had not been tortured. In addition, one woman detainee was verbally abused and threatened with electric shocks, but they were not applied.⁷⁶

The most prominent method of torture reported was the use of electric shocks, including shocks to the ears, genital area, and tongue. Punjab police also tore detainees' legs apart at the waist, causing pelvic and muscle injury, and pulled hair out from detainees' heads and beards. One detainee reported being hung upside down with the hair of his head tied to his feet. The police threatened one detainee with death: after torturing him with other methods, the police tied his hands and legs for eight hours and told him they would throw his body in a canal, as happened

⁷¹ Jupinderjit Singh and Iqbal Singh, *Delhi Police nabs Hawara's harbourer*, Tribune (Chandigarh), June 10, 2005, at <http://www.tribuneindia.com/2005/20050610/punjab1.htm#4> (last accessed Sept. 30, 2005).

⁷² Jupinderjit Singh and Iqbal Singh, *US-made gun recovered from Hawara's hideout*, Tribune (Chandigarh), June 11, 2005, at <http://www.tribuneindia.com/2005/20050611/punjab1.htm#4> (last accessed Sept. 30, 2005).

⁷³ *Blast in ashram, challan filed*, Tribune (Chandigarh), Sept. 17, 2005, at <http://www.tribuneindia.com/2005/20050917/punjab1.htm#25> (last accessed Sept. 30, 2005).

⁷⁴ *Sirhind CIA staff arrests 2 hardcore terrorists*, Tribune (Chandigarh), July 2, 2005, at <http://www.tribuneindia.com/2005/20050702/punjab1.htm#31> (last accessed Sept. 30, 2005).

⁷⁵ The reports of torture all implicate the Punjab police.

⁷⁶ Two informants did not provide ENSAAF with enough detail for ENSAAF to determine if they had been tortured.

during the counter-insurgency operations of 1984 to 1995.⁷⁷ The police officers most often cited for torturing detainees include Station House Officer (SHO) Balwant Singh of Morinda Police Station, Sub Inspector (SI) Gurdeep Singh of CIA Staff Ropar, and Inspector Gurmeet Singh Pinky of CIA Staff Fatehgarh Sahib. Gurmeet Singh Pinky is a member of the Special Investigation Team (SIT) constituted by Director General of Punjab police S.S. Virk to destroy Hawara's alleged militant network.⁷⁸

On June 19 and 20, 2005, the police raided Jaswant Singh's home seeking to apprehend him. Because he was not home, they took his elderly father into detention. On June 21, 2005, the village council presented Jaswant Singh at the police station. The police held him in illegal detention until July 2, never formally arresting him. Jaswant Singh described his torture during this detention to ENSAAF:

First, they pulled me inside, and removed my kirpan, turban, comb, kara, and watch.⁷⁹ Then they started interrogating me; during the interrogation, the police grabbed me by my hair and forcefully dragged me, verbally abused me, hit me with their fists, and kicked me...After that, on 29-30 June, they twice pulled apart my legs, tearing my groin, and on 30-31 again, one time, they pulled apart my legs, tearing my groin. They stretched my legs so brutally that the flesh of my thighs turned black. It looks like the muscles have been torn from the bones. I have been taking medicine, shots and other treatment from the village doctor for 15-20 days. But I still feel pain up until now.

The police again detained Jaswant Singh on July 10, and officially arrested him on July 11. He has since been released.

The police did not allow the vast majority of the families to visit their relative in detention; instead, families met the detainees at court hearings. In all but three cases, family members could not speak to the detainee in a confidential setting. Despite these restrictions, many detainees reported torture to their family members. When Inderjit Singh's father visited him in police custody, in the presence of police constables, Inderjit Singh related that he had been severely beaten, subjected to electric shocks, and had his legs torn wide apart. He asked his father to ask the police not to torture him. The police were pressuring him to recover weapons that he did not possess. Although the police detained Inderjit Singh on July 13, 2005, confiscating his Honda City car, they formally announced his arrest on July 16, 2005. They claimed to have apprehended him while he was driving a car with two others, intending to commit a robbery. The police added that he had also planned to kill former Haryana Chief Minister Bhajan Lal.⁸⁰

⁷⁷ Department of State, *Country Report on Human Rights Practices: 1992*, 1135 (India).

⁷⁸ Saurabh Malik, *Hawara had hidden more ammunition, claims police*, Tribune (Chandigarh), June 14, 2005, at <http://www.tribuneindia.com/2005/20050614/punjab1.htm> (last accessed Sept. 30, 2005); *Babbar terrorist was using women to hide*, Hindustan Times, June 18, 2005, at http://hindustantimes.com/news/181_1403340,0006.htm (last accessed Sept. 30, 2005).

⁷⁹ The kirpan (religious sword), kara (iron bangle), and kanga (comb) comprise part of the uniform of an *amrtidhari* Sikh. See, Sikh Coalition, Resources, at <http://www.sikhcoalition.org> (last accessed Oct. 3, 2005).

⁸⁰ FIR No. 202, July 16, 2005, PS Sirhind (on file with ENSAAF); *Three Hawara accomplices held*, Tribune (Chandigarh), July 17, 2005, at <http://www.tribuneindia.com/2005/20050717/punjab1.htm#5> (last accessed Sept. 30, 2005). See also, Ritu Sarin, *Sudden Disquiet: Punjab, Babbar Khalsa: Old ghosts return to Punjab with new faces*, Indian Express, July 24, 2005, at http://www.indianexpress.com/print.php?content_id=75016 (author quotes Inderjit Singh as admitting to giving Hawara shelter) (last accessed Sept. 30, 2005).

The extensive stories of attempts to revive the militancy reported by the police, starkly contrasting the versions given by informants, indicate that the police used torture to induce confessions and fabricated evidence to support criminal charges. In the case of Parvinder Singh, discussed above, the police illegally detained him in incommunicado detention for one week before formally arresting him. During that time, the police tortured him with electric shocks, tore his legs apart, and caused a vertebrae disc in his back to dislocate by pulling his hair back while jabbing his spine with their knee. They also tied his hands and legs for eight hours and threatened to kill him by throwing him into a canal. On July 16, 2005, Fatehgarh Sahib police filed First Information Report (FIR) No. 83, recording the confession Parvinder Singh allegedly made to police:

I have hidden three detonators, 381 rounds of AK-47, and a plug along with wires to detonate explosives in one plastic bag, and RDX in another plastic bag, in a ditch near the house of my maternal aunt, Charanjit Kaur, wife of Ajaib Singh, village Neelon Khurd, on the right side of an uninhabited drain which runs from Neelon Khurd to village Kot Gangu Rai. Only I know this information and I can spot it for you to procure it. These explosives and ammunition were given to me by Jagtar Singh Hawara, who said, "Keep this carefully; when the time comes, we will do a big action and start the struggle against the government."⁸¹

The police also procured Parvinder Singh's signature on the alleged confession, in violation of Indian law. Charanjit Kaur, Parvinder's aunt and also Hardeep Kaur's sister, was arrested on June 12 by Punjab police.⁸²

Eight families pursued legal or administrative remedies to address the illegal detention and/or torture. Three families filed habeas corpus petitions in the High Court of Punjab and Haryana. Four families approached the Punjab State Human Rights Commission. One family received a reply from the commission indicating that a copy of the application had been sent to the Senior Superintendent of Police (SSP) of Ropar. Another family filed petitions with various senior police officers. At the time of the writing of this report, none of these remedies had been successful in addressing the custodial abuse.

Targeting of Immediate Family Members

The police routinely detained and threatened family members of the targeted individual, often to pressure the individual to surrender if he was not home when they visited his residence, or to increase pressure on an individual who was already in custody. In several cases, when the police visited the residences of the targeted individuals, they threatened to take other family members into detention if the families did not comply with their demands. They also intimidated women, in one case threatening to strip naked one detainee's wife and daughter in police custody and put feces in their mouths. Because families still remember the horrors of the counter-insurgency period, these threats create a strong climate of fear, inhibiting reporting of abuses and preserving impunity for perpetrators.

⁸¹ FIR on file with ENSAAF.

⁸² Jupinderjit Singh, *Hawara was preparing human bomb: 50 detonators, 3 human bomb pressure buttons recovered*, Tribune (Chandigarh), June 13, 2005, at <http://www.tribuneindia.com/2005/20050613/punjab1.htm> (last accessed Sept. 30, 2005).

Three days after detaining A. Singh, the police detained his wife. The village council gathered at her residence as the police took her away; the police informed them that they were taking her to Kharar police station. In fact, they detained her at CIA Staff Ropar and kept her in detention for one day, during which they slapped her and administered electric shocks to her, among other abuse. Her brother then contacted a senior police officer who promised no further trouble for the family if they paid him 60 thousand rupees (US \$1360.54⁸³). The family paid him the money, and the police released A. Singh's wife. A. Singh remains in detention.

⁸³ Exchange Rates Table for Indian Rupees, 1 INR = 0.02267547 US\$, at <http://www.x-rates.com/d/INR/table.htm> (last accessed Oct. 3, 2005).

IV. RECOMMENDATIONS TO THE GOVERNMENTS OF PUNJAB AND INDIA

Given Indian police's escalation of human rights violations in the name of national security, ENSAAF makes the following recommendations to the governments of India and Punjab:

- Stop human rights abuses by Indian security forces;
- Eliminate the practice of police remand, during which the vast majority of violations occur;
- Remove all objects, equipment, and fixtures in police stations used to facilitate torture and other cruel, inhuman or degrading treatment or punishment;
- Ensure that detainees are provided with an opportunity to bring complaints of torture and ill-treatment, without fear of reprisal, and receive an effective remedy;
- Desist from intimidating or harassing family members of detainees, witnesses to their arrest or custody, and legal representatives;
- Conduct speedy and impartial investigations and prosecutions against all security personnel responsible for human rights abuses against detainees and immediately suspend from duty any officials subject to investigation for custodial abuse;
- Eliminate the requirement of prosecution sanction found in sections 45 and 197 of the Code of Criminal Procedure, which serves to prevent criminal prosecutions against government officials accused of committing human rights violations and other crimes;
- Enact and ratify legislation ensuring that no military, police, law-enforcement, or other state agents receive immunity or amnesty from criminal prosecutions or disciplinary proceedings for past or future violations of the rights to life and liberty, and that in such prosecutions or proceedings, no defense of obedience to superior orders is available;
- Remove and prosecute judges and magistrates who ignore evidence of torture of detainees brought before them and fail to remove the detainees from the custody of security forces;
- Remove and prosecute government doctors who ignore evidence of torture of detainees whom they evaluate and fail to report such incidents of torture;
- Enact legislation that defines and criminalizes torture and illegal detention;
- Provide an effective remedy, including prompt and independent investigations, prosecutions, and reparations, for survivors of human rights abuses committed during the counter-insurgency operations of 1984 to 1995;
- Engage in a public accounting of how the government has allowed its institutions to participate in the perpetration of gross human rights violations;
- Give a clear and public acknowledgment of the illegal practices perpetrated by the Indian security forces in the recent militancy-related arrests, and restore the dignity and legal status of the victims;
- Invite UN human rights mechanisms, such as the UN Special Rapporteur on Torture and the Working Group on Arbitrary Detention, into India to investigate practices of detention; and
- Ratify the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.