

INDIA: Break the cycle of impunity and torture in Punjab

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INDIA

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Introduction

Torture and custodial violence continue to be regularly reported in Punjab, despite the end of the militancy period in the state in the mid-1990s.

One reason for the continuation of serious human rights violations after the militancy period is that a decade of armed insurgency and police counter insurgency operations left its mark on the way the police and the criminal justice system function in the state. Another reason is that virtually none of the police officers responsible for a range of human rights violations - including torture, deaths in custody, extra-judicial executions and “disappearances” during the militancy period - were brought to justice, creating an atmosphere in which state officials appear to believe that they can violate people’s fundamental rights with impunity even today.

In this report, Amnesty International (AI) makes the link between the impunity enjoyed by police officers during and after the militancy period and the continuation of torture today. This link sends a warning to states in India presently ravaged by armed conflicts – such as Jammu and Kashmir and states in the northeast – that perpetrators of human rights violations must be held to account in situations of widespread and prolonged violence, if long-term repercussions for the enjoyment of human rights are to be avoided.¹

The report focuses on abuses committed in police custody. AI recognizes that during the militancy period torture and other forms of violence were widely used also by armed opposition groups engaged in a conflict with the security forces in Punjab. The organization condemned these human rights abuses in the past and continues to do so in the case of the ongoing conflicts in Jammu and Kashmir and the northeastern states. It believes that torture must be condemned whatever the identity or position of the perpetrator and that victims of human rights abuses by armed opposition groups or other actors have the same right to justice and reparation as the victims of police abuses.² The main reason for focusing exclusively on the continuation of torture in police custody in this report is that the majority of the armed opposition groups are today inactive in Punjab and AI has received no reports of acts of torture perpetrated by their members after the end of the militancy period. Similarly, the issue of impunity for abuses committed by these groups during the militancy period is marginal, as most of their members in the state were arrested or killed by security forces in counter insurgency operations in the early 1990s.

¹This report is based on a number of different sources, including press items, published and unpublished reports and research studies, legal proceedings (on which all individual cases are based) and information kindly forwarded to AI by individuals and human rights groups in the state. These include the Committee for Coordination on Disappearances in Punjab, Lawyers for Human Rights International and Insaaf International. Other organizations and individuals who contributed to this report with valuable information do not wish to be named. The Punjab Human Rights Commission also responded to AI’s request of information on its activities.

² See Amnesty International, *India: Words into action: Recommendations for the prevention of torture*, January 2001 (AI Index: ASA 20/003/2001).

This report is part of a series of documents on torture in India produced in the context of AI's ongoing international Campaign Against Torture. Recommendations made in it should be read in conjunction with the document "*India: Words into action: Recommendations for the prevention of torture*", submitted to the Indian government in December 2000 and published in January 2001.³ In March 2001 AI received a two-page response from the government to that report: this pointed out that India's signature of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in October 1997 marked a commitment to the prevention of torture; that effecting further improvements wherever required was an ongoing process; and that the government was drawing up an "Action Plan" as part of the UN Decade on Human Rights Education. The letter concluded by stating that "we welcome all useful suggestions made in the report and shall have no hesitation in taking steps to implement them".

The present report stands therefore as a further reminder of the urgent need for the Indian government, as well as state governments, to take active steps to translate these commitments into action so that the pattern of torture is ended. It follows a report on violence against women in Uttar Pradesh and Rajasthan and another on torture in West Bengal.⁴

AI sent a draft of the present report to the Government of India and to the Government of Punjab one month before publication, inviting their comments on its contents in a spirit of constructive dialogue. A letter (received by fax), from the High Commission of India in London on 14 January 2003 stated however that "The report on Punjab has been examined by the concerned authorities in India," and "that in view of the sweeping, judgemental and non-substantiated nature of much of the contents, it really does not merit a formal, written response". AI greatly regrets that specific cases as well as the larger issues of impunity and the continuation of torture in the state raised in the report have not been addressed by the Indian authorities.

Concerns about the use of torture have been raised by AI during the Campaign Against Torture about a wide range of countries, including Brazil, China, Pakistan, the Russian Federation and the USA.

³ *India: Words into action: Recommendations for the prevention of torture*, January 2001 (AI Index: ASA 20/003/2001).

⁴ *India: The battle against fear and discrimination. The impact of violence against women in Uttar Pradesh and Rajasthan*, May 2001 (AI Index: ASA 20/016/2001) and *India: Time to act to stop torture and impunity in West Bengal*, August 2001 (AI Index: ASA 20/033/2001).

I. Background: the militancy period in Punjab and its aftermath

A decade of violence shapes policing practices

The decade of violent political opposition in Punjab – which lasted from the mid-1980s to the mid-1990s and is known as the period of militancy – and its pattern of unlawful and indiscriminate arrests and killings have left a legacy for policing practices in the state. In a decade of violence about 10,000 civilian lives were reportedly lost, while hundreds of people were detained without charge or trial. Thousands of “disappearances” or extrajudicial executions were allegedly carried out by the police as part of a deliberate policy to eliminate armed opposition groups as well as their supporters. The unchecked use of torture eroded police professional and investigative skills. The protection from prosecution provided by security legislation during this period weakened police officers’ sense of accountability to the judiciary and society and encouraged continuing misuse of police powers.

The militancy period began in the early 1980s when a movement within the Sikh community in Punjab turned to violence to achieve an independent state for the Sikhs, which they would call Khalistan.⁵ Some sections of the ruling Congress party, whose support base included urban Hindu traders, fomented this radicalization in order to weaken their main parliamentary opposition in the state, the Akali Dal party, which represented the Sikh peasantry with a more moderate agenda. In 1982 the Akali Dal launched a civil disobedience campaign against a decision to divert a river vital to Sikh farmers in the state. A number of Sikh organizations were banned and several leaders of militant groups took shelter in the Golden Temple in Amritsar.

The radicalization of the movement for Khalistan was met with arrests under a series of national security laws that were introduced during the 1980s to meet the “terrorist” threat in Punjab but were enforced also in other parts of India and maintained for several years after the end of the militancy period in Punjab. The 1980 National Security Act (NSA), amended in 1984 because of “the extremist and terrorist elements in the disturbed areas of Punjab and Chandigarh”, provided powers to preventively detain people suspected of activities “prejudicial to the defense of India, the relations of India with foreign powers or the security of India” for up to two years in Punjab and up to one year in the rest of India⁶. The Terrorist Affected Areas (Special Courts) Act followed the NSA in 1984. The Terrorist and Disruptive Activities (Prevention) Act, in force from 1985 to 1995, subsequently provided

⁵ Sikhs are numerically the third largest religious minority in India.

⁶ Under the NSA political suspects may be preventively detained without charge or trial; in the first 15 days of detention they do not have the right to know the grounds of their arrest. AI expressed its concerns about the inconsistency of the provisions of this act with international human rights standards in the document *India: New National Security Ordinance in India. Background and Amnesty International’s Concerns*, October 1980 (AI Index: ASA 20/03/80).

the police in Punjab with sweeping powers of arrest and detention. These laws left the heaviest legacies of the militancy period on policing methods in the state and the rest of the country. They explicitly freed the police from accountability to the criminal justice system for actions undertaken in “good faith”, allowing officers to believe themselves beyond the reach of law.

The Sikh armed opposition groups responded to the arrests by stepping up their attacks against the police, elected representatives, civil servants and both Hindu and Sikh civilians. In 1983 the Government of India imposed direct rule on Punjab in the face of the increased violence: the state Legislative Assembly and government were therefore dismissed and the administration of the state came under the control of the central government, through the Governor of the state. From this moment the Punjab Police started to take orders from Delhi and so stopped being accountable to any political institution within the state. Tensions with the civil administration in the state reportedly freed the police from any accountability to this civil authority as well.

Human rights violations by the police during the decade of militancy were widespread. Indiscriminate and arbitrary arrests continued in this period, setting a pattern which continued until the mid-1990s. Civilians were often arrested solely for being related to or living in the same village as members of armed opposition groups. Such civilians were often placed on an unofficial blacklist circulated to all police stations and were liable to be arrested again after their release on any occasion when there was a militant action in the area. Arrests often occurred when a quick solution for a case was needed or simply to fulfil an arrest quota. Arrest procedures were frequently not followed and the arrest was often not recorded in the daily log of the police station, thus remaining completely unofficial and leaving detainees vulnerable to further abuses. Detainees were frequently moved from one police station to another, or to unofficial interrogation centers, making it difficult for their families and lawyers to trace them. Torture was widespread and used both as a substitute for investigation and as punishment. The police routinely disregarded court orders to bring detainees before a court, and judges were threatened to deter them from taking action against the police. When detainees died in police custody, the police organized the post-mortems and the cremations before any independent investigation could be carried out into the cause of death. Undercover agents were also unofficially recruited: these were often former members of armed opposition groups offered not to be killed or tortured in exchange for their collaboration with the police. They were reportedly used to infiltrate militant groups, to kill militants or to discredit them with violent actions in their names. “Disappearances” and the killing of members of armed opposition groups and their supporters by the police in real or staged “encounters” were frequent. They were tolerated by the police authorities and government as part of a policy to eliminate armed opposition groups⁷.

⁷ Human rights violations during the conflict have been documented in various reports by Indian and international human rights organizations, including: Committee for Coordination on Disappearances in Punjab (CCDP), *Enforced Disappearances, Arbitrary Executions and Secret Cremations: Victim Testimony and India's Human Rights Obligations. Interim Report*, New Delhi, 1999 (thereafter referred to as CCDP's *Interim Report*); Human Rights Watch/Physicians for Human Rights, *Dead Silence: The Legacy of Abuses in Punjab*, New York, 1994; Amnesty International,

The structure of the police force itself underwent some important changes in order to meet the threat of violent opposition: a system of monetary rewards was set up, reportedly with the sanction of the central government, to encourage police officers to kill militants. The system was not codified in any police manual or law, but a few circulars issued by the Punjab Home Department reportedly allowed for the granting of these rewards. The militants were categorised in different lists, which were given by the Director General of Police (DGP) himself and circulated to the police stations. Rewards were different according to the category the militant killed had been put into, and they could vary from around 50,000 Rs (about US\$ 1,030) to 500,000 (about US\$ 10,300) in the early 1990s. It is reported that the central government created a special fund to finance these rewards, the fund being operated only by senior police officers at state level. At the level of the police stations the system of rewards reportedly generated practices of misappropriation and corruption, the trend being for senior officers to get the major part of the reward for themselves, leaving only smaller amounts to the lower ranked policemen who actually carried out the "work". A system of out of term promotions was also set up in this period for those police officers who "distinguished" themselves killing a large number of militants. This system was reportedly established in order to bring up a new cadre of young officers who, it was believed, would be better equipped for the fight against "terrorism".

In 1984 the violence on both the police and the militants' side reached such levels that the Indian Army was deployed and the Armed Forces (Punjab and Chandigarh) Special Powers Act was introduced in designated "disturbed areas" of Punjab. In these areas the army was granted powers to shoot to kill, to enter and search any premises, and to arrest any person without warrant and with immunity from prosecution. The army stormed the Golden Temple in June 1984, killing thousands of civilians together with the armed militants who had retreated to its premises. In retaliation, Prime Minister Indira Gandhi was killed by her Sikh bodyguards in October 1984, triggering massive anti-Sikh riots in the Indian capital, New Delhi, and other parts of the country, in which thousands were killed. The alleged connivance of a section of Congress leaders in the massacre and the failure of the authorities to prosecute those responsible further radicalised the Sikh community in Punjab.

In July 1985 the Government of India reached an accord with the Akali Dal, which subsequently won elections for the restored state assembly when direct rule was lifted. The accord, however, was never fully implemented by the central government, causing fresh alignments of some splinter elements of the party with the militants. In May 1987 the Akali Dal state government fell, and direct rule was again imposed. State assembly elections were cancelled amid increased violence. Armed opposition groups assaulted and killed Hindu and Sikh civilians, targeting civil servants, politicians, journalists, businessmen and moderate Sikh political leaders whom they considered to have colluded with the Government of India.

In 1991 a "catch and kill" counter-insurgency policy was adopted by Punjab Police prior to new elections. These were held in 1992 but were widely boycotted by the Sikh electorate and won by the Congress party. A new Chief Minister, Beant Singh, was sworn

India: An unnatural fate, 1993 (AI Index: ASA 20/042/1993) and *India: Determining the fate of the "disappeared" in Punjab*, October 1995 (AI Index: ASA 20/028/1995).

into power. Political analysts and commentators affirm that the low rate of support for the Congress government in the state compelled Beant Singh to seek the close cooperation of the Director General of Police K.P.S. Gill and therefore not to interfere with his methods of fighting the armed opposition groups in the state: the police were thus again left almost free from political scrutiny within the state. In an intensified crackdown on the opposition, the police killed several human rights activists as well as many members of armed opposition groups, their families and supporters. By 1993, the authorities declared that "terrorism" had been defeated and that normality had returned to Punjab. Arrests of members of armed opposition groups are still occasionally reported, although such groups are believed to be inactive.

After the militancy period: what should Punjab do with its past?

A coalition of the Shiromani Akali Dal (SAD) party and the Hindu nationalist party, Bharatiya Janata Party (BJP), won state elections in 1997. The new administration, headed by Chief Minister Prakash Singh Badal, promised the release of detainees charged with offences under the lapsed Terrorist and Disruptive Activities (Prevention) Act (TADA); improved accountability for police officers; a "Truth Commission" to investigate human rights violations during the militancy period; and the prosecution of police officers accused of human rights abuses committed during the decade of unrest.

Few of these promises materialized during the SAD-BJP tenure. Only a few TADA detainees were released, and at present the number still detained under the lapsed Act and awaiting trial has been estimated at between 35 and 100. TADA is reported to be still occasionally used to arrest suspects in connection with crimes committed before it lapsed. Some refugees from Punjab - deported to India from western countries in recent years on the ground that after the end of the militancy period they would no more be at risk in Punjab - have been detained and charged under the lapsed Act on their return.

Davinder Pal Singh Bhuller was expelled from Germany after his application for political asylum was rejected. He was taken into custody when he arrived at Delhi airport on 18 January 1995, in connection to his alleged involvement in a car bombing in New Delhi in 1993 in which 12 people were killed and 29 injured. He confessed to involvement in the killings but did so only once, allegedly under torture, and later retracted his confession.

In August 2001 a designated TADA court passed the death sentence on him. In December 2001 an appeal against the death sentence was made to the Supreme Court. While the court was making its decision armed militants perpetrated an attack on the Lokh Sabha (the Indian parliament) on 13th December 2001 and observers believe that heightened rhetoric about the threat of "terrorism" in the country and a hardening of government policies may have influenced the decision. The appeal was rejected by a three judge bench; two judges believed the death penalty should be upheld but, unusually, the other ruled that the accused was innocent. A petition questioning the controversial appeal decision was upheld by a three judge bench of the Supreme Court in mid December 2002. A mercy petition is shortly due to be filed by his lawyers.

No Truth Commission was established. The Government of Punjab failed to take up a proposal made by the Punjab and Haryana High Court in August 1999 that a commission of inquiry could be established by the government itself under the Commission of Enquiry Act,

1952, to investigate reports of hundreds of alleged “disappearances” in police custody and suspected extrajudicial executions. The authorities did not clearly distance themselves from proposals of an amnesty for at least 500 police officers who have been charged with human rights violations allegedly committed in their official capacity during the militancy period (see below). Similarly, the government sanction required by law to initiate prosecution against police officers involved in criminal cases was often refused in the state.

A positive achievement was the establishment, under the 1993 Protection of Human Rights Act, of the Punjab Human Rights Commission (PHRC) in 1997. In many cases during the last five years, however, the state government has not complied with recommendations made by the Commission, particularly to pay compensation to the victims of police abuses. The role of the Commission is examined in Chapter 5.

In February 2002 state elections brought to power a new Congress government in the state, led by Chief Minister Amarinder Singh. By that time all the themes related to justice and impunity – including an inquiry into human rights violations which occurred during the militancy period and the issue of accountability of the police force - had disappeared from the political debate in the state, which focussed instead on corruption in public affairs, economic development and the financial difficulties of the state. The Chief Minister stated his government’s intention to “forget the past and think about the future”⁸, but indicated also that “the state government would fight the legal cases of those police officers who fought against terrorism and secure their release”⁹. Police reforms and the isolation of police from political pressures did not seem to be priorities of the new government, which undertook a major reshuffle of all senior police officers in the state as soon as it took office¹⁰, thus potentially establishing channels of influence for the government on the police force. Observers have also pointed to a renewed resort to the political use of the police force by the state government when the police was used to crack down on political opponents in November 2002¹¹. A strong political will is required if the practice of using the police force for political ends is to be stopped in the state.

⁸ The Tribune, 1 March 2002.

⁹ The Tribune, 1 March 2002.

¹⁰ The Tribune, 5 March 2002.

¹¹ The Tribune, 11 November 2002.

II. The fight for justice after the period of militancy

Since the end of the period of militancy individuals and human rights organizations have pressed the Government of India and the National Human Rights Commission (NHRC) to provide justice and reparation to the victims of police abuses which took place during that decade in Punjab. Their appeals have been met with resistance, refusals or protracted delays.

a. “Disappearances”, possible extrajudicial executions and illegal cremations

In January 1995 the human rights wing of the Shiromani Akali Dal party alleged that it had evidence showing that, during the period of militancy, Punjab Police had carried out secret cremations of hundreds of “unclaimed” bodies in the crematoria of Amritsar district. The party said that some of the bodies were those of people who had “disappeared” in police custody and had been extrajudicially executed.

Jaswant Singh Khalra’s ‘disappearance’

In September 1995 Jaswant Singh Khalra, a member of the Shiromani Akali Dal research team investigating the cremations, was arrested by the Punjab Police and subsequently “disappeared” while in police custody. His fate remains unknown.

An inquiry by the Central Bureau of Investigation reported in July 1996 that nine police officials were responsible for his abduction, and they were subsequently charged with murder. During their trial, which is ongoing, police officers have delayed proceedings and intimidated witnesses, judicial orders have been disregarded, evidence suppressed and members of the Khalra Action Committee (a group of relatives and colleagues formed to pursue investigations into his fate) have themselves suffered intimidation and abuse¹².

In June 1999 Kuldip Singh, who was an eye-witness to J.S. Khalra's murder, testified that he was threatened by police to withdraw a statement filed by him with the Central Bureau of Investigation (CBI) in relation to the case. Kikkar Singh, another witness, was charged with five criminal cases by Punjab Police after giving testimony which implicated police in Khalra's illegal detention and torture. Rajiv Singh Randhawa, the third key witness in the case, was detained by police in early July 1998 and again in September 2000; on both occasions his arrest took place just days before hearings of Khalra's case were due for recording evidence, including that of Rajiv Singh. In July 2000 the Punjab Human Rights Commission ruled that the charges against Rajiv Singh were “concocted” by police as a means of dissuading him from giving evidence against police¹³.

In an unexpected development after years of delay, the case was recently scheduled for recording of evidence in a Sessions court. By the time evidence started to be recorded in November

¹² For more information on Khalra's case see Amnesty International, *India: A Mockery of Justice*, April 1998 (AI Index: ASA 20/07/98).

¹³ For more information on the harassment of witnesses in J.S. Khalra's case, see Amnesty International, *India: Persecuted for challenging injustice. Human rights defenders in India*, April 2000 (AI Index: ASA 20/14/00) and *India: Arrest of witness points to continuing police harassment*, September 2000 (AI Index: ASA 20/049/2000).

2002 Kikkar Singh, following years of harassment, denied having been witness to Khalra's illegal detention and torture.

A few months earlier a human rights activist following the trial commented on the developments in the judicial proceedings in Khalra's case: "Everyone was ready to give evidence for years but the evidence was never recorded when the witnesses were ready, willing and available. Because of this change in the situation [ie. the witnesses might have turned hostile following police harassment] false cases are now not being registered against the witnesses. [...] No wonder now that the case has been fixed for recording of evidence."

In April 1995 the Committee for Information and Initiative on Punjab (CIIP), a non-governmental human rights organization based in New Delhi, successfully petitioned the Supreme Court for an investigation of these allegations¹⁴. The Central Bureau of Investigation (CBI) was entrusted by the Supreme Court to carry out the investigations and, having analyzed the evidence available in three crematoria in Amritsar, found that 2,097 bodies had been illegally cremated by police, 585 of which were fully identified, 274 were partially identified and 1,238 were unidentifiable. The CBI indicated that it was ready to initiate prosecutions against police officials in several cases but did not make its findings public, arguing that disclosure could hamper further investigations and would cause "embarrassment".

In December 1996 the Supreme Court ordered the National Human Rights Commission (NHRC) to examine the CBI's findings. After lengthy disputes over the legal status of its inquiry, in January 1999 the NHRC stated that it would limit its investigations to the cremations of 2,097 bodies investigated by the CBI in Amritsar district and would invite claims for monetary compensation from the families of the victims. This decision excluded from the investigation similar cases of "disappearances" and suspected extrajudicial executions reported from the other 16 districts of Punjab, despite the fact that the CIIP in the meanwhile had submitted to the Supreme Court partial records for over 1,700 additional cases from outside Amritsar district, thus indicating that the pattern of extra-judicial killings might have extended to the whole state.¹⁵ Out of the 2,097 cases finally retained for investigation, in only 88 cases did the NHRC receive claims from the legal heirs of the deceased. Out of these, only 18 cases were forwarded to the State of Punjab for clarification, while the others were considered outside the NHRC's jurisdiction or otherwise "disputed". On the 18 cases received from the NHRC, the State of Punjab took the position that "*without examining the correctness of the claims*" and "*without going into the merits of the matter, compensation may be determined*". On 18 August 2000 the NHRC accepted this position explaining that the government has "*neither conducted any detailed examination in these cases on merits nor does it admit its liability... but it offers payment of compensation...*" The order continued: "*For this conclusion, it does not matter whether the custody was lawful or unlawful, or the exercise of power of control over the person was justified or not; and it is not necessary even to identify the individual officer or officers responsible/ concerned.*"

¹⁴ Criminal Writ Petition, No. 447/95.

¹⁵ For a detailed description of the developments until mid 1999, see Amnesty International, *India: A vital opportunity to end impunity in Punjab*, August 1999 (AI Index: ASA 20/024/1999).

In January 2001 all the 18 claimants to whom compensation had been offered, and who were shocked by the inconsistency of this order with the original mandate of the NHRC, demanded that the latter should either restore the original intent of justice and of a thorough investigation or stop further proceedings. The NHRC ordered in February 2001 that investigations should be reopened in all the 2,097 cases.

Pursuant to this order, the NHRC allowed the parties involved in the case to inspect part of the CBI's records of investigation. The inspection revealed that the documents collected by the CBI were not only partly illegible but also contained very little meaningful information. The NHRC thus decided to invite suggestions from the parties on "points of substance", to guide its future work. The CIIP urged the NHRC to examine all available evidence, including the police and families' accounts, to determine whether the bodies were those of suspects or detainees, whether their deaths had been unlawful, whether human rights had been violated in connection with their deaths, and whether any liability of the police could be established in connection with their deaths.

In February 2002 the NHRC eventually spelt out its method of work: it would initially examine the cases of the 585 fully identified bodies to ascertain whether police officers had been responsible for the deaths or for any human rights violations, the liability of those officers and of the government authorities, and whether compensation should be given. It also made clear that the burden of proof would be put on the concerned governments. By November, however, the State of Punjab had allegedly filed affidavits in only 23 out of the 583 cases under examination, producing only cursory responses to the questions raised by the NHRC. A hearing fixed for November 2002 was again indefinitely adjourned.

In AI's view, the Supreme Court's directive to the NHRC in December 1996 to examine these cases marked an opportunity for an impartial investigation into a long-standing pattern of abuses and an invaluable occasion to halt the trend towards impunity in Punjab. It opened up the prospect of establishing mechanisms to deal with large numbers of complaints, to ensure reparation to victims and to make recommendations to prevent future human rights violations. The willingness of the NHRC to assume a significant role in the investigation of "disappearances" and illegal cremations in Punjab would have set an historic precedent for investigations in areas where an internal conflict is taking presently place, such as Kashmir and the northeast, giving a clear signal that it is not possible to commit human rights violations and get away with it in the long term.

However, AI is concerned that on several occasions during the last six years the NHRC has shown reluctance to seize this opportunity: it imposed on itself narrow limits with regard to the area of investigation when it could have included a much wider range of abuses in its purview¹⁶, it kept a low profile and it showed no will to speed up the process.

¹⁶ The reference here is to the contents of the order of January 1999. AI notes also that the NHRC could have chosen to give a much wider interpretation of its role in the cremation ground issue even before that Supreme Court order. International human rights standards, in fact, state that "acts constituting enforced disappearance shall be considered a continuing offence as long as the

Six years after the Supreme Court authorized the NHRC's investigation, no significant steps have been taken to identify the cremated bodies or seek more information from relatives. Justice delayed, these relatives now say, is justice denied.

In addition, the NHRC's mandate and powers in this case are limited by the Supreme Court order of December 1996 itself. The NHRC is in fact examining the responsibilities for deaths and cremations with the sole purpose of awarding compensation and relief to the families of victims. Any recommendations it may make, for example for the prosecution of police officers, are not binding on the police, state or national authorities. The CBI remains - according to that order - the agency in charge of the criminal prosecution of the police officers. There is no guarantee, in terms of the Supreme Court's order, that the CBI will follow up on the NHRC's work with regard to prosecutions.

The failure to bring to justice those responsible for abuses or to provide redress for the victims prolongs the ordeal of the relatives, who may continue to face harassment and further human rights violations, and are losing confidence in the possibility of obtaining justice at all. It also sends a message that the prosecution of those responsible for human rights violations in areas where security forces face violent political opposition is not a priority for the authorities, including the NHRC, thus potentially creating expectations of impunity in other parts of the country where there are internal conflicts.

b. A mechanism to investigate large numbers of human rights violations

Parallel to the developments in the cremation grounds issue before the NHRC, other initiatives to oppose the trend towards impunity in Punjab were organized by the human rights movement in the state, but were met with inaction on the part of the relevant authorities.

The Committee for Coordination on Disappearances in Punjab (CCDP) was formed in November 1997 as an umbrella body for several human rights organizations and individuals seeking a judicial commission of inquiry into the decade-long violence in the state. Their aims were:

- to collate information on "disappearances", police abductions and illegal cremations, and to press for justice and redress for the relatives of the victims;

perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and the facts remain unclarified" (Declaration on the Protection of all Persons from Enforced Disappearance, 1992, Article 17). According to this text, it is open to the NHRC to consider "disappearances" in Punjab as human rights violations which are presently taking place, and therefore not to be bound in these cases by Article 36(2) of the PHRA which bars the NHRC from "inquiring into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed". The NHRC could therefore have taken action on the cremation grounds case under the PHRA, without waiting to be mandated to do so by a Supreme Court order.

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- to evolve a workable system of state accountability, and to build up the pressure of public opinion to counter the bid for impunity;
 - to lobby for national laws to be brought into conformity with India's commitments to UN human rights standards, particularly on torture, "disappearances", accountability and compensation for victims of human rights abuses; and
 - to initiate a national debate on the powers and accountability of state and national government bodies.

In pursuance of this agenda, in December 1997 the CCDP called on the new Punjab government to set up a Truth Commission to investigate all complaints of human rights violations, as promised in its election manifesto. In April 1998, following the refusal by the Government of Punjab to set one up, the CCDP announced its intention to constitute a three-person People's Commission on Human Rights Violations in Punjab, headed by a former Chief Justice of the Calcutta High Court. In August 1998, before formally announcing the first public hearing of the Commission, a delegation of human rights bodies handed over to the Chief Minister a list of 2,851 persons missing from police records or possibly killed in police "encounters" and demanded a judicial commission to investigate these cases. They received no substantive response from the government. The first hearing of the People's Commission was therefore held from 8 to 10 August 1998.

Further sittings were however cancelled, because in December 1999 the Punjab and Haryana High Court, reacting to a Public Interest Litigation filed by a lawyer from Chandigarh, set limits on the work of the People's Commission on the basis that it was establishing a parallel judicial system. The objection presented by the People's Commission that it did not intend to take up cases pending in regular courts and that the persons summoned by it were under no obligation to attend the hearings was not accepted. The High Court judgment was upheld by the Supreme Court in May 2000 and the People's Commission was therefore wound up.

During the course of the proceedings in the High Court concerning the activities of the People's Commission, other opportunities were offered to the State of Punjab and India to set up mechanisms to investigate large numbers of "disappearances" and suspected extrajudicial executions, as well as other human rights violations perpetrated during the militancy period. Again, these opportunities were not taken up:

In 1998 the Government of Punjab, in its response to the High Court, suggested that human rights abuses which had taken place during the militancy period could be investigated if the central government amended section 36(2) of the Protection of Human Rights Act (PHRA), so that the Punjab Human Rights Commission (PHRC) could pursue cases of human rights violations more than a year old. As the majority of "disappearances" took place several years before the PHRC was set up (in 1997), section 36(2) of the PHRA, which bars the NHRC and state human rights commissions from investigating alleged abuses which occurred over one year prior to the complaint being made to them, places the majority of these cases outside the scope of its scrutiny. The Government of Punjab's request was refused in February 1999 by the Government of India, on the grounds that extending the limitation period from one to 10 years would "*open the floodgates of litigation which would*

be beyond the capacity of both the NHRC and the Punjab Human Rights Commission”.

The High Court subsequently asked the Government of Punjab whether it was prepared to set up an independent commission under the Commission of Inquiry Act 1952 into past human rights violations, as an alternative to the activities of the People’s Commission. In August 1999 the Government of Punjab indicated that it would not consider this option.

AI is concerned at the repeated and formal refusals by both the Government of India and the Government of Punjab to set up mechanisms to investigate the abuses which took place during the decade-long militancy period in the state. The organization is particularly worried to learn that the reason for the refusal presented by the Government of India is that *“it would open the floodgates of litigation”*. Opening the floodgates of truth, justice and redress – not only of litigation – is precisely what the state and its agencies should be doing after more than a decade of silence on the matter, even if this would require the provision of additional resources to the agency requested to carry out the task. AI believes also that the prevention of the work of the People’s Commission is yet another opportunity missed by the Government of India, the Government of Punjab and the criminal justice system as a whole to elaborate mechanisms of coordination with the human rights movement in Punjab in order to shed light on the causes and responsibilities involved in the violence which occurred in the state.

c. An amnesty for police officers?

As a result of complaints filed by the families of their victims or by human rights groups, in mid 2001 about 500 police officers in Punjab were facing trial for criminal offences allegedly committed in their official capacity during the militancy period. These offences included possible extrajudicial executions, “disappearances”, torture including rape, abductions and unlawful detention. By December 2002 between 75 and 100 police officers had been convicted. AI is concerned at repeated calls for an amnesty for police officers accused of human rights violations in the state.

In 1997 the apparent suicide of a Senior Superintendent of Police who faced several criminal charges for alleged abuses during counter-insurgency operations was followed by requests from police organizations for an amnesty.

In July 2001 police officials in Jalandhar announced that they would return presidential awards for gallantry during the militancy period in protest at the criminal charges brought against police officers for crimes allegedly committed during operations against armed opposition groups. The Union Home Minister announced in August 2001 that the government was contemplating “steps to provide legal protection and relief to the personnel of the security forces facing prosecution for alleged excesses during anti-insurgency operations” in Punjab, Jammu and Kashmir and the North East, and that this would possibly be “some form of general amnesty”.

The Home Minister’s announcement was welcomed by the Communist Party of India and by the Congress Party, which promised to “withdraw all the cases against the innocent

cops [police officers]" if voted to power. The Union Law Ministry and the Chief Minister of Punjab were more ambivalent.¹⁷ The amnesty proposal has not been formally confirmed or withdrawn since.

AI believes that an amnesty for police officers facing charges for human rights abuses has no basis in law and should therefore be clearly and urgently rejected by the competent authorities. The Code of Criminal Procedure requires the consent of the central or state government for the arrest and prosecution of members of the armed forces and public servants for actions taken in their official capacity¹⁸. However, the Supreme Court has confirmed that government sanction is not required for prosecution of malicious actions that do not fall within the ambit of official duties.¹⁹ Most of the charges brought against the 500 police officers pertain to serious human rights abuses. These acts cannot be considered as falling within the duties of law enforcement personnel under any circumstances.

The powers of pardon are clearly defined under Indian law. The Code of Criminal Procedure allows the granting of pardon to accomplices of crimes on the condition that they make "a full and true disclosure of the whole of the circumstances ... relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof."²⁰ It also allows the government to suspend or remit sentences for an offence, but only after the sentence has been awarded and this also subject to judicial opinion²¹. Similarly, the Constitution allows the President of India and State Governors the power to "suspend, remit or commute sentences in certain cases". But the "mercy jurisdiction" of the President and the Governors becomes operative only after the courts have delivered conviction²².

More fundamentally, the right to life and liberty guaranteed by the Constitution must always be protected and redress to its violation provided, even in a state of declared Emergency, which Punjab however never officially proclaimed. No legislation introduced in parliament can retrospectively cancel the legal consequences of violations of fundamental human rights guaranteed in the Constitution of India.

AI is also concerned that, on several occasions in the course of the debate on a possible amnesty for police officers in Punjab, elected representatives have suggested that the NHRC could act as an appropriate substitute for proceedings in the criminal justice system in cases of police officers suspected of human rights abuses. The organization acknowledges the vital role the NHRC has to play in upholding a culture of accountability among law enforcement personnel. However AI does not believe that this institution can act as an appropriate substitute for the normal prosecution process if acting under the PHRA. The NHRC has powers to investigate and recommend action, but it does not have the power to initiate prosecutions. Moreover, it is not empowered to address abuses allegedly carried

¹⁷ *The Tribune*, India, 24 August 2001.

¹⁸ See Sections 45 and 197 of the Code of Criminal Procedure.

¹⁹ *Shembhoo Nath Misra Vs. State of Uttar Pradesh*, AIR n. 2102 of 1997

²⁰ Sections 306 and 307.

²¹ Section 432.

²² Articles 72 and 161.

out by armed forces, or violations dating back more than one year.²³

d. Reverse the trend to impunity

If human rights violations carried out by the security forces during the militancy period are not promptly, thoroughly, independently and impartially investigated and those responsible brought to justice, the system which allowed them to commit those crimes will remain intact. The officers concerned will remain free to repeat the violations, while expectations of impunity are fostered. AI believes that torture and ill-treatment in police custody continues today in Punjab largely because police officers were not promptly investigated and prosecuted for human rights violations committed during the militancy period and therefore they do not expect now to be questioned about their recourse to custodial violence.

The Constitution of India clearly sets out the right of victims and their families to have access to remedies for the enforcement of fundamental rights when they appear to have been violated (Article 32). The Constitution is equally clear about the fact that “the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India” (Article 14). This suggests that all victims of abuses have the right to seek justice, irrespective of who carried out the abuses, where and when.

The right to legal remedy is reflected in several major international human rights standards. The International Covenant on Civil and Political Rights, to which India is a party, requires states “to ensure that any person whose rights or freedoms ... are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity” (Article 2.3). The UN Declaration on the Protection of all Persons from Enforced Disappearance states that “All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness” (Article 4). The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provide further guidelines on bringing those suspected of being responsible for human rights violations to justice. They require that “Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences” (Article 1). The Principles also state that “Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed” (Article 18).

²³AI expressed its concerns on the proposed amnesty for police officers in Punjab in an open letter sent on 24 August 2001 to the Minister of Home Affairs L.K. Advani. The organization has received no response to that letter.

The Committee for Coordination on Disappearances in Punjab (CCDP) shares these views and has significantly observed that “The right to know belongs not only to individual victims and their families, as the right to truth about what happened, but also to the social collective, to draw on history to prevent recurrence of evil and to preserve the knowledge of oppression as part of its heritage. It is only from such knowledge that it would ever be possible to dismantle the machinery that allowed criminal behavior to become routine administrative practice.”²⁴

AI considers that the development of mechanisms to investigate and prosecute large numbers of human rights violations is a matter of urgency, if the trend to impunity in Punjab is to be reversed. As a contribution towards this end, the organization submits a series of recommendations to the Government of India, the Government of Punjab, the NHRC and the Supreme Court, which are enclosed at the end of this report.

²⁴ CCDP, *Interim Report*.

III. Torture continues after the end of the militancy period

Reports of torture by Punjab Police continue, although they are less frequent than during the period of violent political opposition. The methods are similar. They often include kicks and blows with sticks and leather belts. Detainees have been strung up, usually with their hands behind their back or their head down. They have been subjected to the “roller”, a wooden pole or iron rod rolled over their legs by several police officers leaning on it with their full weight, which leads to a crushing of muscle tissue and subsequent kidney complaints. Detainees have been tortured with electric shocks to the genitals and other sensitive areas such as ear lobes and fingers. They have been beaten on the soles of their feet (*falanga*), burned with a hot iron or boiling water, and had chilli peppers applied to their anus or eyes. Police officers have threatened to kill them. As a result of torture, victims have suffered serious physical disabilities, deep states of depression, disturbed sleep and nightmares.²⁵

The continuation of torture in Punjab may largely be considered as a legacy left by policing practices due to the informal restructuring of the functioning of Punjab Police during the militancy period: the unchecked use of torture to extract information from suspects led to a police force who lost their ability to conduct investigations; the provisions included in security legislation granting protection from prosecution for police officers, which contributed to weakening the sense of accountability of the police, opened the way to a continuing misuse of police powers; expectations of high extra-salary profits linked to the policing activity raised by the system of rewards persisted beyond the militancy period and made a section of police officers vulnerable to corruption. The *de facto* impunity of a large number of police officers suspected of having committed human rights abuses during the militancy period sent the message to some members of the police force that policing methods used during those days would be tolerated even after the end of violent political opposition.

However, the pattern of abuses has changed rapidly after the end of the militancy period. Torture is no longer used as part of a counter-insurgency strategy. The legal framework governing the limits of policing activity has also changed, as the security laws that facilitated torture during the militancy period are no longer in force or in use: the Terrorist and Disruptive Activities (Prevention) Act (TADA) lapsed in 1995, the Armed Forces Special Powers Act has no more relevance after the withdrawal of the army, the Disturbed Areas (Special Courts) Act has been withdrawn. The National Security Act is still in force in the state as in the rest of India, but since the early 1990s there have been no reports of its misuse or even use in Punjab.

Torture today takes place in two main contexts: in the course of regular criminal investigations and following unlawful and arbitrary arrests.

During criminal investigation police frequently resort to torture to extract information from suspects while they are in their custody. Particular pieces of legislation, including the

²⁵ See also: Physicians for Human Rights, *The Shadow of Police. Report of a Fact Finding Mission to Punjab*, Denmark 2000.

Narcotic Drugs and Psychotropic Substances Act (NDPSA) and the Arms Act, are reported to be frequently misused by police to detain suspects for lengthy periods, during which torture frequently takes place. The NDPSA in particular is reported to be called by many human rights activists in Punjab "the TADA of peace time." This Act, intended to curb the possession and trade of narcotics, provides for wide powers of arrest of suspects and it is reported to be frequently misused by the police for filing false cases against persons whom they want to get in their custody.²⁶

Torture occurs even more frequently during unlawful and arbitrary arrests. As such detentions are not acknowledged by police, there is no judicial scrutiny of these cases. The detainee may be held for several days in incommunicado detention without charge or trial, or be charged only several days after arrest and after the 24 hours that a detainee may be legally held by police before their continued detention must be authorized by the judicial authorities.

This was the case for **Kashmir Singh**, a 35-year-old bus driver who was allegedly tortured by police at the police station in Gadian. Arrested and questioned by the Station House Officer (SHO) about a theft on 12 December 1995, he was detained illegally and incommunicado until 24 December, when he was formally implicated in a false case under the Arms Act and subsequently produced before a Magistrate's Court in Gurdaspur. When brought to court for the second time on 30 December he showed signs of assault and was not able to stand or walk without help. The police produced a medical report, prepared by doctors of the Civil Hospital in Gurdaspur and dated 27 December, which stated that he showed no signs of injury. The court, however, ordered his release on bail and further medical examination. He was found to have fractures to both hip joints, required two surgical operations, a long hospitalization and was left permanently disabled. On 5 January 1996 the police reportedly used his thumb prints to falsify a statement in which he apparently confirmed that his injuries resulted from a fall while he was in the Civil Hospital, soon after he was first examined. On 29 January 1996 his father sought an order from the Punjab and Haryana High Court for his release because Kashmir Singh was still held in police custody in the hospital where he was receiving treatment, although the court had ordered his release on bail.²⁷ He also petitioned the court for an independent inquiry into the assault on his son and for compensation.

On 17 January 1997 the High Court ordered a raid in the hospital in which Kashmir Singh was detained and entrusted investigations to the Sessions Judge in Gurdaspur. In a report submitted on 23 November 1998, the judge exonerated the Station House Officer at the Gadian police station of illegal detention and torture but implicated an officer of lower rank. His report also found that doctors in the Civil Hospital in Gurdaspur had signed a false medical report about Kashmir Singh. On 14 July 1999 the High Court awarded Kashmir Singh compensation of 150,000 Rs. (about US\$ 3,120) and recommended disciplinary measures against the doctors who prepared the false medical report, but did not propose any

²⁶ The pattern of registered offences after the end of the conflict in Punjab shows how widely the NDPSA is used: since 1994 the NDPSA is one of the acts under which the majority of criminal cases are registered in the state, second only to cases registered under the Indian Penal Code (and in some years to those under the Excise Act). It is closely followed by the number of cases registered under the Arms Act.

²⁷ Criminal Writ Petition, No. 134 of 1996.

action against the police. In response to a legal challenge to the High Court order by Kashmir Singh's father, the Supreme Court of India said on 18 February 2000 that the prosecution of police officers in the case could only be initiated by the family filing a fresh complaint with the police. The Court also advised that they bring a civil claim for damages if they wished to receive higher compensation. The family is presently considering filing a complaint with the police.

a. Why does torture take place?

i. A substitute for police investigations

Torture is often used in Punjab to “solve” criminal cases quickly, without time-consuming investigations. It is widely reported that many police officers torture suspects or potential informants – or even persons totally unconnected with the case under investigation - in order to obtain a confession or the information needed to solve a case. Confessions extracted in this way are given by the victim sometimes just to stop torture, and there is no guarantee that they correspond to the facts.

The use of torture as a means of extorting confessions spread during the militancy period, as at that time the Terrorist and Disruptive Activities Act (TADA) allowed for confessions obtained in police custody to be presented as evidence in courts, and the recourse to custodial violence to obtain such confessions became therefore routine. The use of forced confessions is today governed and prohibited by the Indian Evidence Act. Observers and human rights activists suggest however that torture continues to be used today in the state because professional investigative skills have been sapped and no other method of conducting an investigation is familiar to most of the police force in Punjab.

The lack of investigative capabilities of police officers in Punjab is also a result of inadequate resources: at present a very minor part of the budget of Punjab Police is invested in training, research, development and in modernization of investigative techniques.²⁸ Often police officers are not equipped, during their investigations, with material pertaining to fingerprinting, still photography or videography.

ii. “Teaching a lesson”

Police officers in Punjab are frequently reported to use torture to pursue personal interests unconnected to the maintenance of law and order, to “teach a lesson” to personal enemies, to favour business friends or to assert their power.

In a case that illustrates the use of torture to settle personal disputes, **Jagdish Rai Jain**, a 52-year-old businessman in the town of Bathinda, died in police custody, reportedly after

²⁸The largest part of the budget of Punjab Police is spent on salaries and fuel for vehicles. See J.K. Jain, *Management of District Police. A Study*, PhD thesis submitted in Guru Nanak Dev University, Amritsar, through Punjab Police Academy, Phillaur, 1999.

being assaulted by police officers. He had been repeatedly summoned to the Canal Colony police post in Bathinda and threatened by a police officer acting on behalf of an acquaintance in a commercial dispute, and on 26 September 1999 he was taken to the same police post from his home by two police officers. His son, who followed them, said that he saw Jagdish Rai Jain being pushed around by a police Sub-Inspector and other officers and collapsing after a particularly strong push. He died shortly afterwards, before his son could take him for medical treatment. When his son filed a complaint the next day at Kotwali police station, he was allegedly made to sign a blank piece of paper. On 15 October he obtained a copy of the complaint form, but found that it said that Jagdish Rai Jain had complained of chest pain when his son arrived at the police post and was taken to a private hospital where he collapsed and died. The accusation he had made against the police was surprisingly recorded in the complaint as “abetting the commission of suicide and unlawful assembly”, a charge with no clear link with the facts.²⁹ He wrote complaint letters to the local Senior Superintendent of Police, the Inspector General of Police in Patiala, the Station House Officer of the Kotwali police station and the chairman of the Punjab Human Rights Commission to seek help in correcting the recorded charge, but did not receive any response. An application made in October 1999 to the Punjab Human Rights Commission for action against the police officers involved and for compensation, supported by the affidavits of two witnesses to the incident, was rejected for reasons not known to AI.³⁰ At the time of writing, no information about developments in this case had reached AI. In November 2002 AI sought the cooperation of the Punjab Human Rights Commission in updating the information in this case but the response received from the PHRC did not mention Jagdish Rai Jain’s case.

iii. Extortion

The police often use torture or the threat of torture to extort money.

News media and social commentators widely report that recruitments, transfers and promotions within the police force in Punjab take place on payment of large sums of money by the candidates at all levels. The post of Senior Superintendent of Police of a district, for example, is reportedly sold for millions of rupees, the exact price varying from district to district and decreasing for lower positions. In these circumstances, police officers see the payment of a large bribe for their recruitment or promotion as an investment which they will try to recover by demanding bribes in their turn in return for police services once they get the desired posting. In criminal cases, officers may be bribed to take action or not to take action by one or other of the parties, or may extort money from detainees not to torture them or to release them.

Expectations of “extra wage” profits within the police force are also a legacy of the system of rewards for eliminating members of armed opposition groups during the militancy period. The system of rewards is no longer in operation in the state but these expectations continue, and it is commonly accepted in Punjab that every police activity, including torture, “has a price”.

²⁹ First Information Report No. 234.

³⁰ Complaint n. 1587 of 1999.

Police reportedly demanded 50,000 Rs (about US\$ 1,030) to stop torturing **Jagmohan Singh** in August 1999. In response to an unofficial order by the police, he reported to the Sector 19 police station in Chandigarh on 27 August, where he was stripped and beaten by at least three officers - including the Station House Officer and two Sub-Inspectors - with heavy iron rods and leather belts. They demanded money to release him, and when he refused, he was punched, kicked and tortured with electric shocks to his ears and genitals. He was implicated in a case of theft and on 28 August was produced before a magistrate's court and remanded in police custody. The court also ordered a medical examination. A police Sub-Inspector allegedly threatened to kill him and torture his family if he told the doctor the cause of his injuries. The medical examination at EMO Hospital in Chandigarh was reportedly cursory and the doctor recorded no signs of injury, although Jagmohan Singh later said that he was bleeding from his ears and had other injuries. On 29 August he was tortured again and made to telephone his family to ask for money for his release. When he appeared before the magistrate's court again on 30 August, the court acceded to his lawyer's application for a further medical report. A medical examination later the same day revealed serious injuries. Subsequently, Jagmohan Singh filed a complaint with the NHRC, and an NHRC investigator took statements from Jagmohan Singh, the police and witnesses in October 2001. At the time of writing, the findings of the inquiry were not known.

b. Targets of torture

The targets of torture have also changed since the period of militancy, when the most frequent victims of police abuses were members of the Sikh community, in particular youths and supporters of Sikh political parties and armed opposition groups, together with their families. At that time, anyone deported to India after having sought or received political asylum abroad also invariably came under the scrutiny of the police and became a possible target of torture. Now, the majority of victims are detainees held in connection with criminal investigations, and include members of all religious communities and social groups.

i. The poor

Increasingly the poor and the uneducated - the most vulnerable sections of society - have become targets for police abuse. They do not have influential acquaintances who can put pressure on the police or money for bribes to secure their release.

Gurbax Singh and **Sher Singh**, very poor residents respectively of Kurukshetra district and of Panipat in the state of Haryana, were reportedly tortured following their arrest in August 1999 as suspects in a criminal case. Two lawyers practicing in the district court in Chandigarh noted their poor health conditions and subsequently helped Gurbax Singh to file an affidavit testifying to torture with the Magistrate's Court in Chandigarh. He and Sher Singh alleged that they had been tortured by officers and staff at several police stations in Haryana and Punjab - including in Patiala and at the Police Interrogation Centre in Mal Mandi, Amritsar district, both in Punjab - and in Chandigarh, after having been arbitrarily transferred from one state to the other without any court order. They also alleged that they

had been denied appropriate medical treatment for injuries resulting from torture. On 25 August 1999 Gurbax Singh lodged a complaint with the NHRC against the Station House Officers at police stations in Panipat, Haryana, and Sector 34, Chandigarh, and against the Incharge of the Police Interrogation Centre in Amritsar. He asked for an inquiry into his case, for disciplinary action against the police officials involved and for compensation. To date, he has reportedly received no information about the progress of his complaint from the NHRC.

ii. Dalits

Members of *dalit* communities (formerly known as “untouchables”) are also particularly easy targets of custodial violence, as in many cases they are in a situation of double vulnerability resulting from their poverty and perceived low social status.

Gaje Singh, a 39-year-old tailor and member of the *dalit* community in Nayagaon, Ropar District, was allegedly assaulted by police on 17 October 2001. Several officers of the 37 Battalion of the national Central Reserve Police Force (CRPF) attacked the village in reprisal after an officer was allegedly beaten up by Gaje Singh and his neighbours in a personal dispute over the money charged for some work. After meeting resistance, CRPF officers in uniform and armed with service weapons returned to the village at about 8pm, ransacked several shops and beat Gaje Singh with iron rods, rifle butts and sticks. A handicapped shopkeeper, **Darshan Singh**, and his 78-year-old mother, **Satpal Kaur**, were also beaten with iron rods. Gaje Singh suffered serious injuries to his head, chest and feet. Darshan Singh's right arm was broken and his mother suffered injuries to her back. Three officers of the regular police who were in the vicinity did not intervene during the attack, nor did any police officer help the injured.

Gaje Singh filed a complaint at Nayagaon police station and the Punjab police registered a criminal case for minor offences against four CRPF officers. However, no arrests were made. To initiate criminal prosecution against officers of a central security force, permission from the Union government needs to be given³¹, but Punjab Police did not take any steps to seek such permission. A senior CRPF officer assured a lawyers' organization monitoring the case that disciplinary action would be taken against the officers and that they would be asked to pay the victims' medical expenses. He also suspended three of the officers involved in the attack and acknowledged that it was a blatant case of “police highhandedness”. Police officers subsequently tried to convince the victims to settle the matter out of court by offering them some money, but the offer was reportedly not accepted. No formal charges were brought against the officers concerned and the fate of the disciplinary action initiated by the CRPF is not known. The victims are finding it difficult to obtain the money needed to take their complaint further to the Punjab Human Rights Commission and are under pressure from other villagers to drop legal proceedings.

³¹ Code of Criminal Procedure, Section 197.

iii. Women

There has been an overall increase in crimes against women recorded in Punjab in the post militancy period, particularly in the context of matrimonial disputes. In response, the police in Punjab have created “women cells” at district level to deal specifically with offences against women. However, these units reportedly lack staffing and other resources such as means of transport.

Women are particularly vulnerable to police abuse. Rape and other forms of sexual harassment are reported to be frequent forms of torture in police custody. Their humiliation is often greater as they are often tortured solely as a means of putting pressure on their husbands and families.

One case illustrates the obstacles a woman can meet while pursuing justice when the alleged offender is a police officer. **Renu Bala**, a resident of Bathinda, was arrested with her husband in the night of 10 June 1996 while searching for their son who had not returned after work. A group of police officers, headed by an Assistant Sub-Inspector from the Cantonment police station in Bhatinda, reportedly stopped and questioned them in the street and took them to a nearby hotel. The Assistant Sub-Inspector allegedly bit Renu Bala’s face and tore off her clothes while attempting to rape her in one of the hotel rooms. Other officers forced her husband to drink alcohol and restrained him. The couple was later allowed to escape, after the rape attempt failed. The local police refused to register their complaint about their ill-treatment, but inquiries initiated by the Senior Superintendent of Police and the Executive Magistrate in Bathinda, following public outcry, supported their allegations against the Assistant Sub-Inspector. At that point Renu Bala and her husband began receiving threats from unidentified police officers who said that Renu Bala’s husband would be implicated in false cases if they did not stop pursuing the case. The Executive Magistrate noted in his report that, while he was recording witnesses’ statements, the accused Assistant Sub-Inspector had sent a police employee to his office to threaten Renu Bala’s husband. However, although the police subsequently registered her complaint, they took no action to investigate it or to protect her or her husband against further threats by police officers. After about two years the police filed an application to cancel the complaint, and on 12 November 1998 the Chief Judicial Magistrate recorded that Renu Bala did not wish to proceed with her complaint, noted that a compromise had been reached between the parties and accepted the cancellation report. A complaint that Renu Bala had lodged with the NHRC in June 1996 received an initial response only in July 2001, but at that time Renu Bala decided not to pursue her complaint further.

iv. Human rights activists

During the militancy period many lawyers and human rights activists attempted to alert the international community to the human rights abuses taking place in Punjab and to pursue human rights cases in the courts. As a result, they were themselves targeted by the police and a number of lawyers and journalists “disappeared”. Since 1995 there have been no reports of killings of human rights defenders. However, human rights defenders continue to be under constant surveillance and have been subjected to harassment, threats and violent

attacks by the police in attempts to intimidate and silence them. False criminal charges have been brought against some as a form of harassment. AI believes that the authorities share responsibility for encouraging this attitude. Officials have made unsubstantiated and public accusations that human rights organizations are “anti-national” or support “terrorist” organizations. Such accusations have been made on several occasions in recent times by, among others, the Director General of Police, Punjab, and by the Union Law Minister in late 2001.

Several lawyers involved in cases against the police have been harassed.³² **Arunjeev Singh Walia**, a lawyer in the Punjab and Haryana High Court and an active member of the organization Lawyers for Human Rights International, was threatened and illegally detained for several hours on 4 October 1998 at SAS Nagar Central police station, Mohali, in Ropar district, while visiting a client. The abuse he suffered was possibly meant to intimidate him in relation to his activity as a defense lawyer and human rights activist. A petition requesting that the police officers concerned be found in contempt of court for preventing his access to a client is still awaiting a hearing in the High Court.

Veneeta Gupta is a doctor and General Secretary of Insaaf International, a non-governmental organization. On 20 February 2001 about 20 police officers in plain clothes and headed by the Deputy Superintendent of Police (Vigilance) of Bathinda raided her private clinic, apparently because of her opposition to the closure of a hospital in the same town. They refused to identify themselves or show her a search warrant. Dr Gupta requested the Senior Superintendent of Police in Bathinda to register a case of unlawful and forcible entry, intimidation, threat and defamation against the intruders, but no action was taken by the police. On 22 February she was illegally detained and questioned for two hours by the Deputy Commissioner of Police, Bathinda, who used gender discriminatory language, attempted to register a false case against her and accused her of instigating various social and human rights groups to oppose the closure of a hospital. A complaint filed before the Punjab Human Rights Commission in December 2001 about the harassment Dr Gupta was victim of is still pending and is scheduled for hearing in January 2003.

Ram Narayan Kumar, convenor of the Committee for Coordination on Disappearances in Punjab (CCDP), has for several years regularly received anonymous and threatening telephone calls and e-mails, and believes that he is under close police surveillance. On 4 December 2001 he was questioned by the Chief Enforcement Officer of Delhi, whose remit covers financial irregularities and foreign exchange issues, about his past political activities, his involvement in the CCDP's investigations into illegal cremations and his foreign contacts. In October 2002 his laptop computer, containing vital data on the cremation grounds issue, was tampered with by unidentified persons in a hotel room in Chandigarh.

³² The cases were reported in Amnesty International, *India: Persecuted for challenging injustice – Human rights defenders in India*, April 2000 (AI Index: ASA 20/008/2000).

c. Failure to implement safeguards for detention

Legal safeguards for detainees exist in Indian law which, if routinely implemented, would go a long way to prevent the use of torture.³³ Article 22 of the Constitution states that “no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall be denied the right to consult, and to be defended by, a legal practitioner of his choice”. Several provisions of the Code of Criminal Procedure provide for judicial scrutiny of detentions, including:

- Section 50, which requires the arrested person to be informed of the grounds of arrest and of the right to bail;
- Section 56, which requires the arrested person to be taken before a magistrate or officer in charge of the police station;
- Section 57, which requires the police not to detain an arrested person more than 24 hours in absence of judicial scrutiny;
- Section 58, which requires the police to report all cases of arrest without warrant to the local District Magistrate;
- Section 167, which requires the police to seek the authorization of a judicial magistrate when it considers that a detainee should remain in police custody more than 24 hours to allow the completion of investigations.

The Evidence Act prohibits the use of confessions obtained in police custody as evidence in court. In 1996 the Supreme Court issued 11 directives to be followed in all cases of arrest or detention, as preventive measures against torture in custody in addition to the safeguards in the Code of Criminal Procedure.³⁴ They are known as the “D.K. Basu guidelines” and, in addition to the provisions of the Code of Criminal Procedure, require the police *inter alia* to:

- bear identification tags while carrying out an arrest;
- make a detailed memo of every arrest;
- allow the detainee to inform his or her family or a friend of the arrest and place of detention;
- ensure that the detainee has a medical examination at the time of arrest and

³³ For an analysis of strengths and weaknesses of the Indian law relating to arrest and detention and of the safeguards for detainees contained in it, see Amnesty International, *India: Words into action: Recommendations for the prevention of torture*, January 2001 (AI Index: ASA 20/003/2001).

³⁴ D.K. Basu vs. State of West Bengal (Writ Petition, No. 539 of 1986).

subsequently every 48 hours; and

- allow the detainee to meet a lawyer during interrogation.

The International Covenant on Civil and Political Rights, to which India is a party, further affirms that “No one shall be subjected to arbitrary arrest or detention... 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 and shall be entitled to trial within a reasonable time or to release” (Article 9).

Only by implementing existing safeguards will the police successfully convert the arbitrary policing methods employed during the militancy period to those appropriate in peacetime. AI understands that the Director General of Police (DGP) in Punjab has instructed the police force that the D.K. Basu guidelines be observed – in accordance with the Supreme Court’s request to all DGPs. However, they have not yet been incorporated in the Punjab Police Rules, 1935, under which Punjab Police act, or in any other police manual. The cases below, as many others in this report, demonstrate that they continue to be routinely ignored in most police stations.

The story of **Bhag Chand**, a police officer in Chandigarh, illustrates the failure to observe the safeguards. On 1 October 1999 he was arrested while off duty, ostensibly because of a minor traffic offence – a number plate on his scooter was not visible. His arrest was not registered at the Sector 36 police station where he was taken and his relatives were not informed that he had been arrested. An Inspector and a Sub-Inspector asked him to confess his involvement in a robbery. When he denied the accusation and told them that he was a police officer, they reportedly stripped him, beat him with sticks, and kicked and punched him on his back and genitals. They allegedly subjected him to the “roller” torture, leaning with two other officers on an iron rod rolled across his legs, and to have continued to torture him for more than two hours. The next day a team of interrogators questioned him and on 3 October he was released uncharged, after having been warned not to tell anyone about the torture he had been subjected to. During his detention, he was reportedly given no food and was not medically examined.

He subsequently complained to the Inspector General of Police and a judicial magistrate ordered an investigation and a medical examination. The investigation was carried out by the police and, although the medical examination revealed marks of torture, no action was taken against the officers responsible. Pressure was exerted on Bhag Chand to withdraw his complaint. He also filed a complaint before the NHRC, but his case was not investigated allegedly because an internal police inquiry was pending.

The failure to implement the legal safeguards for detainees, however, cannot be attributed solely to the lack of will of individual police officers to do so, but is in part linked to the difficult working conditions in which most police officers operate in Punjab. They receive little training in investigation techniques. They are under public pressure to inflict “instant punishment” on some categories of suspects. Officers often operate in a poor working environment, lacking proper accommodation, lighting, ventilation and furniture during in their offices. Working hours are not clearly fixed and “24-hour duty” for police

officers is widely expected.

Safeguards for detention are routinely disregarded also because the police hierarchy in Punjab fails to hold those who violate them to account. In many of the cases in this report, the police authorities or the Punjab Human Rights Commission (PHRC) have initiated or ordered internal inquiries or taken disciplinary action against police officers involved in unlawful practices. It often appears, however, that these disciplinary actions – which would be expected to lead to the suspension and possible transfer of the police officers concerned – rarely involve any consequences for them, as senior officers seem to lack the will to take forward and implement such internal enquiries. Officers due for suspension have often in practice remained on active duty at the same police station in which the offence was committed. Disciplinary actions are internal to the police force and it is often difficult for the judiciary, but also for civil society, to monitor their implementation.

The routine violation of safeguards for arrest and detention and the consequent continuation of custodial violence is rooted in the recent history of law enforcement in Punjab, but is also a reality shared by large numbers of other states in India. This points to the urgent need for a comprehensive review and reform of policing activities not only in Punjab, but in the country as a whole. Since the 1980s various commissions (the National Police Commission, the Law Commission, the Ribeiro Committee, the Padmanabhaiah Committee) have submitted to the Government of India proposals for police reforms but none of these recommendations appears to have been taken seriously by either the central or state governments³⁵. The high level of torture in police custody in Punjab, therefore, stands here as a further reminder of the urgency of such reform.

It points in particular to the desperate need for an effective and independent mechanism to monitor policing practices and to ensure that safeguards are observed at all levels of the police force. District Magistrates at present have powers to monitor the functioning of police at district level, but have been largely ineffective in this area of their responsibilities.

d. The enforcement of the Prevention of Terrorism Act in Punjab

The widespread use of torture in Punjab described above sounds a note of warning in relation to the implementation of the Prevention of Terrorism Act (POTA) in Punjab, enacted at the national level in March 2002. The Act gives broad powers of arrest and detention to the police throughout India; people deemed to be a threat to the unity or security of the country may be detained without charge or trial for up to six months and confessions obtained in police custody are made admissible as evidence in court; immunity from

³⁵ For a more detailed account of the debate about police reforms in India, see Amnesty International, *India: Words into action: Recommendations for the prevention of torture*, January 2001 (AI Index: ASA 20/003/2001).

prosecution for police officers acting "in good faith" is also provided under the Act.³⁶

The present government in Punjab – as all Congress-led state governments in the country – opposes in principle the implementation of the Act in the state and no case has been registered under POTA until date. AI welcomes this position. The organization believes that the implementation of POTA, which is in itself a piece of legislation open to abuse, would be disastrous in a state like Punjab, where low level of police accountability, its vulnerability to political pressures and the frequent recourse to torture prevail. AI urges any future government in the state not to implement POTA, if human rights are to be protected in Punjab.

³⁶ See Amnesty International, *India: Briefing on the Prevention of Terrorism Ordinance*, November 2001 (AI Index: ASA 20/049/2001).

III. The role of the judiciary

During the militancy period the functioning of the courts in Punjab came to a standstill: a large number of judges at all levels were threatened by both police and armed militants. Judges frequently absented themselves from court cases to avoid sentencing members of armed opposition groups or remanding them in police custody. Magistrates in lower courts routinely accepted without question police reports of deaths allegedly resulting from armed encounters with members of armed militants and refused medical examinations in cases in which detainees alleged they had been tortured. This abdication of responsibility by the judiciary led to post-mortems being carried out at police hospitals; in other cases, the courts failed to investigate allegations that witnesses and complainants were intimidated by the police or by armed opposition groups or to ensure that arrests ordered by the courts were carried out at all.

The situation has improved since the militancy period. Judges have slowly begun to assume again their proper role, stimulated by legal actions brought by human rights lawyers active in both district-level courts and High Courts. Isolated convictions of police officers for offences including torture of detainees during and after the militancy period have occurred since the end of violent political opposition. Such convictions, although very few in number³⁷, convey the message that the police can be held accountable for their actions to the judiciary and the public.

However, many concerns remain about the functioning of the judiciary and its ability to ensure accountability for acts of torture, especially at district level.

a. The lower judiciary

In lower courts at district level, there remains a high degree of tolerance by public prosecutors and by judicial officers – magistrates and Sessions Court judges – of both procedural inaccuracies and unlawful practices by the police during arrest, investigation and prosecution, which allow torture to take place.

An overview of the constraints under which the lower judiciary operates is crucial to understand this apparently passive attitude. Its members are seriously overburdened by the number of pending cases. They are reported to try as many as 100 cases on an average day, with the result that most hearings take less than 10 minutes each. The pressure on judicial officers for rapid decisions leads to shortcuts in observing safeguards. The courts do not always question police failures to comply with legal requirements on arrest and detention – for example when detainees are not produced before a magistrate's court within 24 hours of arrest – or with the D.K. Basu guidelines. In theory, police officers who do not follow the guidelines could be charged with contempt of court under the definition of "civil contempt"

³⁷ In mid 1997 30 police officers were reported to be in jail serving sentences following conviction, 100 were on bail and 140 others were facing prosecution. By December 2002 police officers convicted for human rights abuses were reported to be between 75 and 100.

under the 1971 Contempt of Court Act (Section 2). As this rarely happens, the result is that police continue to consider these guidelines as not binding.

In addition, the lower judiciary does not take a proactive role when police officers are charged with torture or ill-treatment of a detainee: the absence of a specific and clearly defined offence of torture in the Indian Penal Code even allows the courts to operate double standards and to show more leniency to police officers accused of torture than to other citizens. Judicial officers and public prosecutors have for example accepted charges framed by the police for lesser offences such as “voluntarily causing hurt” or “wrongful confinement” which allow the accused to be released on bail.³⁸ If the public prosecutor or the court does not bring more serious charges, such as “voluntarily causing hurt to extort confession or compel restoration of property”³⁹, the accused police officer is likely to be released immediately on bail. In some cases, courts even grant preliminary bail without serious scrutiny of the merits of the charge: the accused police officer simply signs a personal bond and avoids arrest altogether. Courts have also granted bail in some cases in which police officers have been charged with non-bailable offences. Police officers released on bail have intimidated witnesses or improperly induced or bribed a complainant to withdraw their complaint. Even when a complaint is not withdrawn, the officer can file a cancellation report on the case before the Chief Judicial Magistrate in the hope that the report may not be seriously scrutinized or that the court may agree to delay prosecution until an informal settlement has been reached between the police and the victim or their family.

The case of **Sham Lal** illustrates how such settlements can encourage impunity. On 4 September 1997 Sham Lal, a 28-year-old driver, was reportedly killed after a fight broke out between police officers and residents of the village of Ajnali in Fatehgarh Sahib district, who were resisting the arrest of a man in the village over a dispute with electricity workers. It appeared that Sham Lal may have been hit by police with a rifle butt. Local politicians and demonstrators called for the police officers to be brought to justice and compensation paid to Sham Lal’s family. The family filed a complaint with the police of “culpable homicide not amounting to murder”.⁴⁰ On 8 September they also complained to the PHRC which requested the report of the state authorities on the incident and the post-mortem report.

The state’s report, produced after repeated adjournments, said that Sham Lal had died after falling in a canal (*nullah*) and not at the hands of the police. The post-mortem found that his injuries were not the cause of death. In April 1998 his relatives and other eye-witnesses confirmed the police account, in contradiction of their original complaint. The changed position of the witnesses had allowed also the cancellation of the complaint filed by Sham Lal’s family, under an order of the local Subdivisional District Magistrate. However, the PHRC obtained further medical analysis of the post-mortem report from a doctor of Chandigarh hospital who highlighted several inaccuracies in the report and argued that all the injuries on Sham Lal’s body could not have been caused by a single fall. The PHRC concluded in October 1999 that “the victim had suffered these injuries obviously either at the hands of the police officials or at the hands of the PSEB [Punjab State Electricity Board]

³⁸ Indian Penal Code, Sections 323 and 342 respectively.

³⁹ Indian Penal Code, Sections 330 and 331.

⁴⁰ Indian Penal Code, Section 304.

employees". However, the PHRC also concluded that a compromise agreement had been reached privately between the police and Sham Lal's relatives, and that there was therefore insufficient evidence for it to establish liability or to take any action on the case. The PHRC commented:

"It is unfortunate that even after the dawn of Independence about half a century back, the basic character of the Nation has not emerged as even the relations of the deceased have wilted under the pressure of the police. To crown it all, it is noticed by the Commission in all the cases of custodial deaths or torture or rape that the senior officers of the Police Force manning the districts are prone to give shelter to the misdeeds of their subordinates for the reasons best known to them. The matter does not rest here as even the medical officers posted in the districts are also amenable to the influence of the police."

Corruption can also ensure judicial decisions favorable to police defendants. Lawyers and human rights activists in Punjab have reported that the lower judiciary is sometimes susceptible to bribes and pressure from rich or otherwise influential defendants, including police officers, operating in the district courts through touts. Bail or a light sentence – each has its price, and judicial officers refusing to accept these practices are reportedly a minority. AI was informed that a post in the lower magistracy may be "sold" for about 2,500,000 Rs. (about US\$ 52,050), as a result of the huge demand for such a post. Again, as in the case of newly appointed police officers seen above, if such sums are paid for being appointed, then the money will need to be recovered as soon as possible by the magistrate through the practice of demanding bribes. As a result, justice for those who cannot afford to pay bribes may become virtually inaccessible.

The police can exert pressure on the lower judiciary by means other than the payment of bribes. During the militancy period, judicial officers under threat from armed opposition groups often required police protection and this reportedly became a way for police to constantly keep them under pressure. Since the militancy period, judicial officers are reported to be routinely assisted by police officers in their professional as well as private life; this assistance is today considered simply as a privilege attached to the status of judicial officers, but it entails that it may be embarrassing for the latter to prosecute police officers.

In terms of career prospects, the lower judiciary may fear that convicting police officers of torture or ill-treatment could harm their career prospects: the judicial hierarchy above them is not likely to appreciate such a stance for the reasons seen above and they could therefore be excluded for example from elevation to the High Court.

b. Punjab and Haryana High Court

Police influence is reported to be weaker at the level of the Punjab and Haryana High Court than in the lower courts, and corruption and bribery much less common. This more positive attitude may be linked to the higher sense of responsibility felt by the judges in this court, as well as to the fact that High Court judges earn almost double the salary earned by judges in district courts, approximately 40,000 Rs. (about US\$ 830) a month, which makes them less susceptible to financial corruption.

However, police influence is not absent: since the militancy period a pattern seems to have emerged of compensating the victims of police torture while failing to prosecute the officers responsible. As noted above, this approach is inconsistent with India's commitment under the International Covenant on Civil and Political Rights to provide effective remedies for human rights violations, including those committed by officials.⁴¹

The High Court reportedly shares the lower courts' tendency to ignore police violations of the safeguards for arrest and detention. Some judges apparently consider non-compliance with the D.K. Basu guidelines as unfortunate but unavoidable. In 1998 the Punjab and Haryana High Court dismissed an application for officials who were found not to have complied with the D.K. Basu guidelines to be charged with contempt of court, reportedly on the grounds that such a ruling would not be practically enforceable.

A further weakness of the judicial system at High Court level is the lack of secure tenure of public prosecutors. Unlike public prosecutors in the district courts, who are appointed by the state government on a permanent basis through the Punjab Public Service Commission, public prosecutors at the High Court are recruited on a contract basis. Each new state government can bring in its own team of public prosecutors, which may be therefore vulnerable to political pressure, including for a lenient line of prosecution in cases of custodial violence: police investigations or the way charges are framed against police officers alleged to have committed human rights violations are therefore rarely questioned by the public prosecutor. The UN Guidelines on the Role of Prosecutors states: "States shall ensure that selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice".⁴² The same text highlights also that "Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations."⁴³

c. The Legal Aid Service in Punjab

Defence lawyers have a crucial role in ensuring that safeguards for arrest and detention contained in law are strictly implemented and that an accused person is not put in an environment where torture is allowed to take place: the presence and active involvement of a lawyer in a case can ensure that established periods of police remand are strictly observed, that medical checks take place during the detention period and reports reflect the true physical condition of the detained, that the detained is physically produced in court and that applications for bail are made at the appropriate time.

According to the Constitution of India and to the D.K. Basu guidelines, every arrested person has the right to be represented by a lawyer of their choice at every step of their detention and prosecution. Provisions exist, in addition, which ensure that legal aid is provided free of charge to detainees who cannot afford to pay for a defence lawyer. AI

⁴¹ Article 2.3

⁴² Article 2.a.

⁴³ Article 6.

is however concerned that the Legal Aid Service in Punjab does not appear to ensure effective assistance to accused who cannot afford to pay for a private defence lawyer. This situation introduces an element of further discrimination in the criminal justice system in the state, as it entails that poor accused enjoy potentially a lower protection from custodial violence than those who can afford to pay for a private legal practitioner.

Legal aid lawyers in district courts are normally appointed by a Sessions Judge on the recommendation of the President of the District Bar Association. Any lawyer who has completed three years of practice can be appointed as Legal Aid lawyer. Once appointed, each counsel is attached to a specific area.⁴⁴ AI received reports indicating that many Legal Aid lawyers are inexperienced and not sufficiently familiar with criminal codes and procedures when they enter the Legal Aid Service.

Lawyers and human rights groups in the state indicate that when an accused is arrested, police rarely take the initiative of informing him/her of the right to obtain free legal aid. If a Legal Aid lawyer is eventually assigned, he/she does not always question arbitrary police or magistrate's attitudes which may facilitate custodial violence and in a significant number of cases do not meet or interview the accused at all, nor does he/she appear in court when the accused is produced there. Some magistrates do not question the absence of the Legal Aid lawyer in court, nor do they put it on record in the case proceedings.

Legal Aid lawyers are reportedly not always above corruption. Reports indicate that some of them demand bribes from the family of the accused to conduct a proper defence or to file a bail application.

⁴⁴ AI was informed that Legal Aid lawyers in Punjab are presently paid around 1,100 Rs. (about 22 US\$) per case. Part of the amount is paid to them when they take up the case, while part is given once the judgement is passed. Every lawyer can get around 10-15 cases a month.

IV. The role of doctors

Doctors can play a central role in both preventing and detecting cases of torture, as medical evidence is a crucial part of the investigation of allegations of torture.

A doctor should record the state of health of detainees in police custody shortly after arrest. The D.K. Basu guidelines state that “the arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The “inspection memo” must be signed by both the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.”

The guidelines also require that the detainee “should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody”.

However, in practice, medical examinations on arrest or during police detention are extremely rare in Punjab. The detainee is often not aware of the possibility of such examination and no information is provided by the police. In any event, no arrangements reportedly exist for medical examinations to take place.

Nevertheless, doctors have a role to play in the detection of torture during later stages of the detention and in relation to any subsequent trial. According to the Code of Criminal Procedure, when brought before a court a detainee may request a medical examination (Article 54). Further medico-legal examinations can be ordered by the court at subsequent stages of detention. In all cases where there is any doubt regarding the cause of a death, the police must send the body for examination by a doctor.⁴⁵ Under an NHRC directive in December 2001, the post-mortem must be videotaped in all cases of death in custody where the preliminary inquest or a complaint has raised suspicion of foul play. Such post-mortems must be carried out according to guidelines issued by the NHRC.

Evidence emerging from torture cases in Punjab, as well as from doctors and lawyers practicing in the state, suggests however that health professionals have often refused to carry out medico-legal examinations or even to treat torture survivors. They are also alleged to have provided incomplete or false medical evidence, sometimes under pressure from the police, but also pursuing their own interest or as a result of improper inducement. Certain practices are particularly widespread:

- Doctors are sometimes threatened, pressured or bribed to exaggerate the objective findings of a medico-legal examination, often to build evidence of an assault on the patient. Their report might subsequently be used to file false charges in a case in which the patient seeks to figure as the victim of an assault rather than the aggressor.
- The post-mortem is often delayed, by which time decomposition has begun, making signs of torture difficult to detect. Bodies are often kept unrefrigerated for this reason before the post-mortem.
- Doctors may deliberately delay a post-mortem until evening in order to be able to produce a report which cannot be challenged by further examination of the body. The

⁴⁵ Code of Criminal Procedure, Section 174.

family, wanting to follow tradition and to cremate the body before sunset, may in fact carry out the cremation before seeing the post-mortem report. Once the cremation has been performed the police inform the doctor, who is at this point free to draw up any report as its accuracy can no longer be challenged. As most people are not aware of this practice, no efforts are normally made to get a court order requiring that the post mortem is shown to the family and their lawyer before the cremation. In cases where the family asks to see the post mortem before performing the cremation, they reportedly have to face resistance from the police or their middle men at local level.

- Post-mortem reports often do not differentiate between the blue marks of post-mortem stains and bruises on the body which may indicate torture, thus making the report inconclusive. Practicing doctors have reported that if the doctor carrying out the post-mortem avoids making this differentiation, it cannot be made on the basis of a videotape of the post-mortem that might be available in the case of a death in police custody.
- Doctors often refrain from giving a provisional cause of death until they have received the report of the forensic examination of the viscera from the chemical examiner, even in cases where this report is not relevant to determine the cause of death. This practice causes unnecessary delays in court proceedings and allows the doctor to avoid taking sole responsibility for drawing any conclusion on the causes of death. Bribery and other pressures on forensic experts are reportedly widespread, so that it is possible to obtain “tailored” results.
- In cases where medico-legal examinations or post-mortem examinations result in objective physical findings, doctors often do not draw conclusions as to their probable cause, as they are reluctant to take the responsibility for linking symptoms and findings to torture practices. The Istanbul Protocol on the investigation and documentation of torture affirms that the medical expert should include in his report “an interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill treatment”.⁴⁶ The Protocol includes Principles to guide such investigations which make clear that a doctor’s examination of a person alleging torture should include: the case history, “including alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms”; physical and psychological examination; and an opinion on the findings.
- The way the medico-legal report is distributed by the doctor may hinder the victim of torture from contesting its contents. The practice is that the doctor is likely to give the report to the victim if the injuries found are minor. However, if the report was produced as a result of a formal complaint by the victim to the police, it is given to the

⁴⁶ Principle 6(b)(iv) of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Principles are a valuable tool for training doctors in documenting torture. They constitute an appendix to the *Istanbul Protocol: a Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

police. If it was produced at the request of a magisterial inquest, the report is sent to the magistrate and the police are likely to be informed of its contents. This means that the police get the report irrespective of the circumstances, while the victim gets the report only after directions of the court. This is inconsistent with the Istanbul Protocol which states that medical reports should be provided to the subject of the report and to the authority responsible for investigating the allegation of torture or ill-treatment.⁴⁷

- AI has been informed by practising doctors and human rights groups that it is common to find in each district one or two doctors who are sought after by other doctors doing medico-legal examinations to assist them in making a 'convincing' false report. This, if confirmed, would be an indication that the practice of producing "tailored" medico-legal evidence is developing into an elaborate "technique".
- After the reorganization of the Punjab Health System in 1995, a fee was reportedly imposed on medico-legal services requested by one of the parties in a trial⁴⁸. This exacerbates the difficulty for low-income torture victims in accessing medico-legal expertise.

There are many reasons for the apparent cooperation of some medical professionals in covering up cases of torture. Doctors often come under heavy pressures from police officers involved in torture cases. Police officials, for example, are often present during medico-legal examinations and post-mortem examinations, and in some cases supervise the work of the doctor. Pressures on doctors may include direct threats and intimidation or the registration of false criminal charges against them. A large number of the government doctors who are entitled to perform medico-legal duties also run private medical practices – which they are not allowed to do by law – and accept bribes to treat patients. This makes them vulnerable to police pressure.

Another source of pressure is the medical and bureaucratic hierarchy to which doctors are accountable. Ultimately the health authorities are accountable to the civil administration of the state⁴⁹ which, through the Punjab Public Service Commission (PPSC), makes decisions on permanent recruitments and promotions in the health service. At district level, both the Civil Surgeon, the most senior health official, and the Senior Superintendent of Police, the most senior police official, are directly accountable to the District Magistrate, the three working in close coordination. This entails the possibility for the police to exercise pressure on health authorities at senior level through the civil administration. Practising doctors informed AI that senior officials of the administration and medical officers, themselves reportedly subject to the influence of senior police officers and politicians, have

⁴⁷ Principle 6(c) of the Principles included in the *Istanbul Protocol*.

⁴⁸ Exemptions from this fee exist on paper, but they have reportedly never been implemented in the case of medico-legal services.

⁴⁹ The hierarchy in the Punjab Health System is constituted of: Medical Officer, Senior Medical Officer, different Heads of wings (like immunization, family planning etc), Civil Surgeon (head of the district), Joint Directors, Additional Directors and Director Health. Up to this level all are professional doctors. They report to the senior civil administrators (Indian Administrative Service officials), including Additional Secretaries, Joint Secretaries and Secretary Health. The post of Principal Secretary, who heads of Health Department, was added recently.

sometimes put pressure on a doctor to review a “non-compliant” attitude so as not to damage all their career prospects.

Government doctors are an easy target for bribery by police officers accused of torture who demand medico-legal reports helpful to their case. Doctors who have paid bribes themselves to the administration⁵⁰ to gain their posting may seek to recover their “investment” by in turn demanding bribes for their services.

The inaccuracies and poor quality of many medico-legal reports reflect also the difficult working conditions in which government doctors operate. There appears to be very little training in medico-legal duties within the three-month general training organized by the Health Department for junior doctors recruited to government service. Most of this training is theoretical; it usually includes a visit to the mortuary and observation of a few post-mortem examinations. It is the posting and not the qualification that entitles a government doctor to carry out medico-legal duties.⁵¹

The shortage of equipment also seriously hampers government doctors working in post-mortem centers that often lack basic facilities such as proper lighting and tools. Doctors rely upon old techniques of physical examination and outdated X-ray machines. In the cases where hospitals have modern scientific equipment, doctors may not be trained in how to use it to detect injuries resulting from torture. The Model Autopsy Form issued by the NHRC is routinely not followed because it requires skills, equipment and infrastructure which are not available in most of the post mortem centers.

AI recognises that doctors who acquiesce in the cover-up of police torture in Punjab are often themselves caught in a net of influences and pressures. Nevertheless, it is as crucial for medical officers involved in illegal practices to be held accountable as it is for police officers and members of the judiciary.

Since the militancy period, however, there have been almost no reports of medical officers being prosecuted for failing to carry out their duties. On rare occasions the High Court and the PHRC have summoned doctors to explain why they have refused to carry out medical examinations ordered by the courts⁵² in torture cases and have openly expressed dissatisfaction, but have not recommended any action being taken against them. Similarly, the criminal law has not been invoked against doctors who have submitted false or incomplete medical reports to the courts.⁵³ In a few cases, disciplinary measures have been taken by the Health Department but no information is available on their implementation and

⁵⁰ Permanent recruitments of doctors are made by the PPSC, while temporary recruitments are made by the Health Department.

⁵¹ Private doctors are allowed to conduct medico-legal examinations, although not post-mortems. However, they are increasingly reluctant to offer treatment, even in emergency cases, where there are medico-legal aspects, for fear of police harassment and to avoid time-consuming court appearances over several years.

⁵² Refusal by a doctor to carry out a medical examination ordered by a court can be construed as an act of “civil contempt” under the Contempt of Court Act, 1971.

⁵³ Section 177 of the Indian Penal Code prescribes the punishment for furnishing false information to any public servant.

the sanctions imposed do not appear to have entailed any bar to promotion for the doctors concerned.

In the following case, the PHRC recommended that there should be no prosecution of a medical officer because disciplinary action was reportedly being taken, but in practice neither disciplinary measures were carried out nor was compensation paid. In August 1999 **Tarlok Singh** was detained at the Central Jail, Gurdaspur, awaiting trial on charges of involvement in a murder. On 27 August he told his wife that he was being held in solitary confinement and that he feared being killed by the jail staff. His wife asked the Superintendent to have her husband removed from the solitary confinement cell ("Phansi Kothi"), but he demanded a bribe of 40,000 Rs (about US\$ 830) which she did not have. That night Tarlok Singh apparently suffered from severe mental stress and breathing problems but was not given any medical care or taken to hospital. On 28 August, when his wife again visited the jail, she was told by officials that her husband had committed suicide during the night. She was not permitted to visit the cell or to see the body of her husband. Other inmates told her that he had been crying and screaming for help the whole night. The Deputy Commissioner of Police, Gurdaspur, ordered an inquiry. It found that the jail officials were not at fault.

On 30 August 1999 Tarlok Singh's widow filed a complaint with the PHRC, alleging that he died as a result of negligence and failure to provide medical care on the part of the Superintendent and the Medical Superintendent.⁵⁴ The PHRC directed the Inspector General of Prisons to file a detailed report and to present the post-mortem report, inquest report and video recording of the post-mortem. The Inspector General's report stated that Tarlok Singh had committed suicide as a result of chronic mental disorder, and the post-mortem confirmed that he had died by hanging. On 24 February 2000 the PHRC concluded that he had committed suicide but found the Deputy Superintendent and the Medical Superintendent to have been negligent in failing to monitor the detainee regularly as required in the Jail Manual. No prosecution was recommended by the PHRC as internal disciplinary action was reportedly being taken against the officers, and interim compensation of 200,000 Rs (about US\$ 4,150) was awarded to his widow. However, she was obliged to initiate legal action in the High Court to effect payment of the award.⁵⁵ She also had to file a fresh complaint with the PHRC to request that disciplinary action be taken against the officials responsible for her husband's death. In November 2002 AI wrote to the PHRC seeking information about the outcome of this complaint, but this case was not mentioned in the PHRC's response to AI.

⁵⁴ Complaint No. 1087 of 1999.

⁵⁵ Civil Writ Petition, No. 7261 of 2000.

V. The Punjab Human Rights Commission

The Punjab Human Rights Commission (PHRC) was set up in May 1997 under the 1993 Protection of Human Rights Act (PHRA). Its purpose is to inquire into human rights violations and to promote respect for and awareness of human rights in law and practice. In its first year of operation it received 195 complaints of human rights violations; by 2001, the number reportedly exceeded 6,300.

The PHRC is composed of a Chairperson and four Members, selected for a five-year term by the State Governor acting on the advice of a committee chaired by the Chief Minister. The selection of the first members was controversial. Several local human rights organizations expressed concern that some PHRC members did not appear to have the record of involvement in the protection and promotion of human rights that is required under the PHRA (Section 21). They were also concerned that members of the human rights movement in Punjab had been excluded from the PHRC.

In August 2002 new members were appointed to the PHRC, after the term of the previous ones expired. According to the PHRA, the PHRC shall be constituted by “a Chairperson who has been a Chief Justice of a High Court; one Member who is, or has been, a Judge of a High Court; one Member who is, or has been, a district Judge in that State; and two Members to be appointed from amongst persons having knowledge of, or practical experience.” These provisions appear not to have been complied with in the appointment of the new members of the PHRC.

AI believes that appointment procedures contained in the PHRA should be strictly adhered to. Public confidence in human rights institutions around the world depends in part on the membership of those institutions, and it is the responsibility of the appointing authorities to ensure that, in all cases, the best qualified candidates are selected to hold these important positions. In its 1997-98 Annual Report the PHRC stated that “the method of appointment and removal from service of the Chairperson and Member of the Commission, statutory guarantee of their tenure, their status, the manner in which staff of the Commission, including its investigative agency, [...] the financial autonomy of the Commission, all describe the Commission’s authority and autonomy.”⁵⁶

AI received disturbing reports that after the appointment of the new members, the PHRC passed orders concerning the granting of bail to accused, despite the fact that this institution has not the powers to issue such orders, but has only recommendatory functions. In September a human rights group in the state filed a Writ Petition in the Punjab and Haryana High Court seeking a review of the recent appointments to the PHRC. The petition was listed for final arguments for December 2002.

As of December 2002, in addition, there were three vacancies out of five posts in the PHRC. AI learnt that as a consequence in late 2002 cases were adjourned without proper hearing to as far ahead as February 2003. A petition seeking the filling of the three vacancies in the PHRC has been filed in the Punjab and Haryana High Court by a human rights group and is presently pending.

⁵⁶ Annual Report 1997-98, p. 8.

Almost five years after its establishment, it is very difficult to assess the PHRC's work as it has not published annual reports or records of deaths in custody or other patterns of human rights violations in the state. The annual report for 1997-98 has been produced and placed before the Punjab Legislative Assembly, but it has reportedly not been published so far. Under the Protection of Human Rights Act (Section 28), every state human rights commission should produce an annual report and present it for discussion to the state Legislative Assembly before publication.

The PHRC seems to have circumscribed its role mainly to responding to individual cases of human rights violations. Activities related to the promotion of human rights in the state appear to have been very limited so far.⁵⁷ The PHRC also stated its commitment to engage in a dialogue with the human rights movement in the state⁵⁸ in order "to not only promote human rights culture, but also to propagate its (the PHRC's) message of transparency". It further identified areas of possible cooperation between the PHRC and non governmental organizations, such as the identification of human rights violations, their investigation and the development of specific recommendations.⁵⁹ AI is not aware of the progress made by the PHRC in this program of cooperation.

As far as the PHRC's powers to investigate individual cases of human rights violations is concerned, they are limited by the PHRA itself. In particular, it may not investigate human rights violations more than one year after they occurred, which effectively excludes any examination of human rights violations committed during the militancy period. In addition, it does not have the authority to make any binding order to the state government or its agencies, although it may make recommendations.⁶⁰

Further limitations arise from the composition of the PHRC's investigative staff. At present two police constables, headed by an Additional Director General of Police, reportedly compose its Investigation Wing, with the result that they are effectively investigating human rights violations allegedly committed by their own colleagues. This raises serious concerns of conflict of interest, especially if the officers remain accountable to the police hierarchy and are likely to return to the police force after completion of their service in the PHRC.

The number of investigators is also very low in relation to the number of complaints received. The posts sanctioned to the Investigation Wing number 33, but only three of these posts appear to have been filled so far. As a result, few PHRC investigations are undertaken by its Investigation Wing. The majority are carried out directly by the Punjab Police on behalf of the PHRC, leading again to a situation in which the police are both investigators and suspects. In cases where the police investigation does not satisfy the PHRC, it may entrust further investigation to a retired judicial officer.

⁵⁷ The PHRC organized a one day seminar on "Human rights education" on 4 March 1998 and encouraged ten educational institutions in Punjab to celebrate Human Rights Day.

⁵⁸ This commitment is spelt out in the Annual Report 1997-98, at p. 8 and 14.

⁵⁹ Annual Report 1997-98.

⁶⁰ For an analysis of the limitations of the PHRA, see Amnesty International, *India: Submission to the Advisory Committee established to review provisions of the Protection of Human Rights Act 1993*, October 1998 (AI Index: ASA 20/26/1998).

The functioning of the PHRC is reported to be bureaucratic and unhelpful towards the victims of human rights violations. Complainants often require the services of a lawyer simply to file their complaints, hindering the access to justice for the poorest and weakest sectors of society. One complainant told AI:

"I visited PHRC recently and was appalled to see people sitting outside the rooms of chairman and members with their lawyers waiting to be called as in courts. Each member of PHRC was holding a court separately and churning out dates without bothering to see that for poor people it is not easy to afford traveling from far off places and afford other secondary expenses. The common man cannot even think of representing [himself before the PHRC] without the help of a lawyer. I had to hire a lawyer to deal with my representation to PHRC. The Commission [PHRC] called me for personal appearance and sent [me] back to be called again. I had to spend money on lawyer and travel to state capital and also time. I am already repenting that I ever sent copy of my representation to them."

These weaknesses have limited the effectiveness of the PHRC, particularly in delivering justice to the victims of torture and to the families of detainees who have died in police custody. A large number of complaints about torture and ill-treatment in police custody are dismissed on technical grounds, for example that the case is *sub judice* (before a court of law) or that an internal police inquiry has not concluded.⁶¹ In other cases, the family of the victim may not pursue a complaint before the PHRC because an informal settlement has been reached with the police.

The following case illustrates how pressure on victims' families or financial inducements can thwart the PHRC's investigations into human rights violations by the police. **Baljit Kumar Balli**, a 30-year-old rickshaw puller and resident of Patiala, was arrested at his home on 14 June 1998 after an argument with a neighbour. He was taken to the Kotwali police station in Patiala where he was allegedly tortured with electric shocks to his genitals and the skin around his penis was cut. Following protests by his family and the intervention of a local politician, he was released on the afternoon of 15 June, in great pain and bleeding heavily. He died as a result of his injuries in Rajindra Hospital on 18 June 1998.

The family filed a complaint in which they said that Baljit Balli's brother and another eyewitness saw him being tortured by officers at the police station and having difficulty in walking. The police registered a case of "culpable homicide not amounting to murder" against an Assistant Sub-Inspector, a Home Guard Officer and a Special Police Officer.⁶² The Assistant Sub-Inspector was reportedly detained for a few hours, then released and suspended from duty. A post-mortem examination by a team of doctors which included the Head of Forensic Medicine at the Government Medical College in Patiala, found swellings on the knees, thighs, penis and scrotum but gave no opinion on the cause of death.

A local lawyers' organization registered a complaint before the PHRC, calling for an investigation and for compensation to be paid to the victim's relatives.⁶³ However, during the

⁶¹ Legally, the fact that an enquiry internal to the police force is taking place should not block the PHRC from taking up a case.

⁶² Indian Penal Code, Section 304.

⁶³ Complaint No. 419 of 1998.

PHRC investigation, the police produced new affidavits and statements by relatives of Baljit Balli, including by his widow and brother. In these statements, his relatives said that his injuries resulted from an accidental fall during which a heavy bag of potatoes had landed on him. When the PHRC's investigating officer asked the doctors who had carried out the post-mortem whether this account was credible, they said that it could not be ruled out. As a result, the case against the three accused officers was closed. The PHRC commented that: "In view of the stance adopted by the widow of the deceased and his other close relatives, the commission has no option but to accept *fait accompli* with which it has been presented by the police".

In another case, the PHRC made several efforts to investigate a case where it was suspected that financial inducement had prevented the truth emerging about a death in police custody. **Jagan Nath**, alias Jagnoo, a member of the *dalit* community living in the village of Pasla, District Jalandhar, was arrested on 31 August 1997 after he allegedly abused police officers. He was reportedly seen by a relative lying unconscious in the police station in Goraya on 1 September. He died later the same day in hospital. After a post-mortem, the police organized the cremation of his body.

An inquiry was opened by the Sub Divisional Magistrate. On 3 September the Superintendent of Police in Jalandhar opened an investigation into charges of murder and wrongful confinement against an Assistant Sub Inspector of the Goraya police station.⁶⁴ A complaint was also filed before the PHRC, which asked for a report from the state government and the post-mortem report. On 4 March 1998 the police, speaking on behalf of the state authorities, told the PHRC that the father of Jagan Nath had lodged a statement with the police in Goraya that his son had died as a result of an epileptic fit. The post-mortem had not been video-recorded because Jagan Nath's death was not considered to have occurred in police custody. The post-mortem report stated that the cause of Jagan Nath's death was cardio-respiratory arrest resulting from shock and haemorrhage and that he had 21 injuries on his body. The PHRC concluded that these injuries could not have resulted from a fall following an epileptic fit and directed the police to conduct a criminal inquiry. The police report, submitted on 30 November 1998, stated that, although Jagan Nath's death was suspicious, the relatives said it resulted from natural causes and "no final opinion can be given due to lack of evidence". The PHRC's Investigation Wing investigated the case and came to the same conclusion but said that "there was a general rumour in that area that, although the deceased had died from the results of police torture, ...due to monetary consideration the relations of the deceased were supporting the version of his having died due to injuries suffered after a fall in an epileptic fit". The PHRC sought to question the relatives and adjourned the case on several occasions to allow Jagan Nath's father to appear, without success. The complaint was finally dismissed by the PHRC for lack of evidence on 21 October 1999.

The PHRC allows the state ample time to file its reports in response to allegations of torture and deaths in custody, and it seldom summons police officers to respond to the allegations made against them. Even in cases in which the PHRC recognizes that there is *prima facie* evidence of torture, it usually tends to recommend monetary compensation for

⁶⁴ India Penal Code, Sections 302 and 342 respectively.

the victim or their family but does not recommend the prosecution of any officers involved. As far as AI is informed, no police officers were recommended for prosecution in connection with the 26 cases of deaths in police custody taken up by the PHRC between 1997 and 2001.

Efforts to compensate victims are to be welcomed, and AI acknowledges the role played by the PHRC to this end. However, redress should not take the form of monetary awards alone but should include the prosecution of those responsible. Prosecutions of officials should be pursued more vigorously and other aspects of reparation for victims addressed. Adequate and effective reparation for victims should incorporate the following:⁶⁵

Restitution: steps should be taken to restore the victim to the situation they were in before the violation occurred, including restoration of their legal rights, social status, family life, place of residence, property and employment;

Compensation: steps should be taken to compensate for any economically assessable damage resulting from violations including physical or mental harm, emotional distress, lost educational opportunities, loss of earnings, legal and/or medical costs;

Rehabilitation: steps should be taken to ensure medical and psychological care if necessary as well as legal and social services;

Satisfaction and guarantees of non-repetition: steps should be taken to ensure cessation of continuing violations, public disclosure of truth behind violations, official declaration of responsibility and/or apologies, public acknowledgement of violations, as well as judicial or administrative sanctions, and preventive measures including human rights training.

The PHRC's lenient attitude is sending a signal to the public and to the police that a police officer who violates human rights will suffer no adverse consequences. Such a message allows the cycle of violence to continue, in which impunity leads directly to further torture.

The effectiveness of the PHRC is further reduced by the failure of the state authorities to implement its recommendations. Refusal to award recommended compensation or delay in making payments is common. In such cases the complainant must obtain a writ from the High Court to direct the state to comply with the PHRC's recommendations. This has inevitably resulted in victims of human rights violations filing complaints directly in the High Court, without passing through the PHRC. Similarly, PHRC recommendations for the transfer of police officers found to have committed human rights violations are often ignored by the authorities. Even orders issued by the PHRC to the state government and requesting it to file reports in specific cases are often ignored: in a case concerning the dilapidated conditions of the judicial lock up in the old court in Ludhiana,⁶⁶ the PHRC had to request from the state government an interim report on the progress made in the construction of a new lock up at least five times. Although in some cases the PHRC has itself initiated legal

⁶⁵ These recommendations are based on the UN Draft Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law.

⁶⁶ Complaint n. 37 of 1997.

action in the High Court to have its recommendations effected, follow-up action of this sort is not routine.

One case illustrates the difficulties faced by the PHRC in getting its recommendations implemented by the state authorities. **Pala Singh**, aged about 24 and living in the village of Bhai Bakhtaur, District Bathinda, was arrested on 29 August 1997 on suspicion of involvement in a theft. He was detained by police at the house where the theft had taken place and was allegedly made to drink a liquid chemical. He reportedly died at the Civil Hospital in Mour. His family alleged that some villagers had bribed the police to harm him. The police said that he was not in police custody, but that he had committed suicide at the house after becoming depressed about being suspected of theft.

A non-governmental organization in Chandigarh filed a complaint with the PHRC, which concluded that Pala Singh had committed suicide by deliberately drinking the chemical.⁶⁷ The PHRC also said that it considered Pala Singh to have been held in police custody and that the police had been negligent in allowing him to commit suicide. It therefore ordered the police to pay 50,000 Rs (about US\$ 1,030) in compensation to the family within two months. The brother of Pala Singh also filed a petition to the Punjab and Haryana High Court seeking an investigation of the case, and the police refused to pay the compensation recommended by the PHRC until the High Court decision was known.⁶⁸ The PHRC had to issue a specific order in February 2000, making clear that the pendency of the case before the High Court had no bearing on the payment of the compensation recommended. In December 2002 the PHRC wrote to AI stating that the compensation had finally been paid to Pala Singh's father.⁶⁹

In another case, the police ignored an order of disciplinary action issued by the PHRC. In the early hours of 29 April 2001 about 35 police officers reportedly arrested **Balwinder Singh** and his sons **Gurmukh Singh** and **Dilbagh Singh**, residents of Gurdaspur, and **Sukhwinder Singh**, resident of village Hamrajpur in Gurdaspur district, at a house in Bhukera village. They were allegedly severely beaten over a two-day period at a police interrogation centre in Gurdaspur. The following day **Manjit Singh**, **Randhir Singh Dheer** and other members of their family were allegedly arrested. All were reported to have been beaten and tortured with electric shocks at a police station in Batala, before being released in the evening of 30 April. When the first group of detainees were brought before a Sessions Court in Gurdaspur, the police told the judge that Gurmukh Singh, Sukhwinder Singh, Manjit Singh and Randhir Singh Dheers had been arrested on 1 May 2001 in a vehicle packed with arms and explosives. The accused disputed the police report, which allegedly contained several inconsistencies. The police also reported that medical examination of the detainees during their detention revealed no signs of torture or other ill-treatment.

The four detainees and their relatives complained to the PHRC of forcible entry, illegal detention and torture by the police. On 12 June the PHRC directed that charges against them should not be put before the court until the PHRC had scrutinized the complaint.

⁶⁷ Complaint No. 12 of 1997.

⁶⁸ Criminal Miscellaneous Petition, No. 21627.M of 1997.

⁶⁹ Letter n. 12/97/PSHRC/2002/3873, dated 4 December 2002.

Despite this ruling, on 27 July the police brought formal charges of illegal possession of arms and explosives against Gurmukh Singh in the court of the Chief Judicial Magistrate in Gurdaspur. In early 2002 Gurmukh Singh was reportedly still detained in the Central Jail, Gurdaspur, while AI received no information about the whereabouts of the other three detainees. The PHRC recommended to the police that disciplinary action be taken against the officers who ignored its order in this case and sought a report from the Home Secretary on the matter by 30 April 2002. No action appears however to have been taken against any policeman, on the base of police's allegations that the accused were planning to commit terrorist acts. In November 2002 AI wrote to the Punjab Human Rights Commission asking for an update on the status of Gurmukh Singh's case but the response received from the PHRC did not mention it.

The setting up of the PHRC in 1997 sent a reassuring message to the international community, anxious for international human rights standards to be respected in Punjab after the militancy period. However, AI is concerned that the PHRC has so far not been given the powers, resources or institutional autonomy to function effectively as a check on torture and ill-treatment in police custody.

Conclusions

The police and criminal justice system in Punjab are slowly moving in the direction of a greater accountability to the public compared with the period of militancy. However, much remains to be done to transform these institutions so that they can fully perform their statutory functions, including to prevent torture and ill-treatment in police custody or to provide full redress for the victims of human rights violations.

AI's research demonstrates that the continuation of torture after the end of the militancy period is the result of the impunity for past abuses. The case of Punjab shows how impunity and further torture stand in a causal relation, the first feeding the continuation of the second. There is an urgent need to break this circle and the recommendations in this report are made as a contribution towards this objective.

The policy adopted in Punjab to deliver justice to victims of abuses during the period of militancy is watched closely in states such as Jammu and Kashmir and in the northeast, where armed conflicts continue. The path taken by Punjab is in fact assessed by many as to its viability for the other states once conflicts end there. It is therefore crucial to demonstrate that, although the criminal justice system ceased to function properly during the militancy period in Punjab, the victims of that period of violence can still have justice and redress and that the procedures and attitudes which facilitated abuses during the period of militancy can be dismantled.

VII. Recommendations

The following recommendations are being made to the relevant authorities in light of the findings set out in this report. The “recommendations for the prevention of torture in Punjab” reflect those made to the Government of India and contained in the report “*INDIA: Words into action. Recommendations for the prevention of torture*”, published in January 2001.

A. Recommendations to end impunity in Punjab

Recommendations to the Government of Punjab and to the Government of India

- The Government of India should fully implement its obligations under international law with respect to allegations of human rights violations in Punjab committed during the period of militancy. Specifically it should ensure prompt, effective, independent and impartial investigation of all allegations of human rights violations; the right of victims to receive redress and reparation; and that those identified as being suspected of perpetrating human rights violations are brought to justice in trials which meet international standards for fair trials.
- With this aim, a mechanism should be established to investigate and prosecute large numbers of human rights violations. Special care should be taken to ensure that: the agency charged of investigations under this mechanism is not the one whose members are accused of having committed the abuses; an in-built guarantee – as the admissibility of the findings of the enquiry in trial – exists, ensuring that the result of investigations lead directly to judicial prosecutions, where appropriate; adequate resources are provided to any agencies entrusted with the task.
- The Government of India and the Government of Punjab should make every effort to facilitate and cooperate fully with investigations into human rights violations in Punjab. In the cremation grounds case they should fully cooperate with the NHRC, providing all documentation and other evidence which can help clarify the case.
- The Government of India and the Government of Punjab should take steps to ensure non-repetition of past violations. In addition to bringing those suspected of perpetrating human rights violations to justice, this should involve provision of systematic and continuous training in human rights for police and security forces. (see also recommendations below).
- The Government of Punjab should state clearly that illegal practices carried out by the Punjab Police in past years will not be tolerated and that those suspected of such practices will be prosecuted in accordance with the law.
- The Government of Punjab should ensure that disciplinary and criminal action is taken against police or administrative officials who attempt to subvert the process of investigation.
- Those participating in the investigation of human rights violations - including the complainant, lawyer, witnesses and those conducting the investigation - should be given protection against ill-treatment, intimidation or reprisal.
- Any proposal for an amnesty before trial and conviction which would cover crimes under international human rights law for law enforcement officials operating or having operated in areas of armed conflict should be immediately rejected.
- In cases where the crimes were carried out by police under the order of a senior officer, that officer should also bear criminal responsibility and be brought to justice for ordering, soliciting, or otherwise

inducing the commission of such offences. Similar responsibilities, if any, of administrative officers or elected representatives in unlawfully facilitating or covering up the alleged crimes should be urgently and thoroughly investigated and prosecuted accordingly.

- The criminal justice system should be considered as the first and most appropriate method of investigation and prosecution of alleged fundamental rights violations by law enforcement personnel. The normal functioning of the NHRC cannot be considered as a substitute remedy to the proceedings of the criminal justice system, unless the Commission is specially mandated to do so by the Supreme Court and it is provided with necessary resources.
- The Government of India should ensure that the recommendations of the Advisory Committee made in 1997 -- that the restrictions on the powers of the NHRC including the time limit for its investigations be removed and that it be authorized to investigate all allegations of violations by agents of the State -- are implemented immediately and that adequate resources are provided to the NHRC to meet its enlarged mandate.

Recommendations to the National Human Rights Commission

- The NHRC should look beyond monetary compensation and ensure that its recommendations include means to ensure restitution, rehabilitation, satisfaction and guarantees of non-repetition.
- AI understands that the NHRC's choice to investigate initially only the cases of the identified bodies illegally cremated in Amritsar during the militancy period is a pure methodological choice, and that after the completion of this task the NHRC will turn its investigations to the cases of the "partially identified" cremated bodies. A public commitment by the NHRC to the continuation of the investigations in this direction will be welcome.
- The NHRC as well as the Government of India and the Government of Punjab should take up any opportunity - and in particular the one represented by the cremation grounds issue - to elaborate mechanisms of coordination with willing human rights organizations in the state in order to shed light into the causes and responsibilities involved in the decade-long violence in the state.

Recommendations to the Supreme Court of India

- In the cremation grounds case, where the NHRC does not act under the PHRA but under a Supreme Court order, it should be given powers by the Supreme Court to accept complaints from any individual in the state of Punjab whose relative has been missing since last seen in the custody of the police. These would include cases of "disappearance" and extrajudicial execution as recognised under international law. Bearing in mind that this task is likely to lead to the investigation of a large number of complaints, the NHRC should be given additional resources for investigating this specific case.
- The findings of the NHRC investigations in the cremation grounds issue should be made admissible in court, to ensure that a link between the process of investigation and of prosecution is established.

B. Recommendations for the prevention of torture in Punjab

Recommendations to the Government of Punjab and to the Government of India

1. Publicly condemn and never tolerate torture

- Officials at all levels of the administration should publicly condemn all forms of torture and ill-treatment whenever they occur. They must make clear to all law enforcement officials, public officials, members of the judiciary and members of civil society that torture will never be tolerated. Talk of degrees of torture or torture of certain groups of "hardened criminals" or "terrorists" as being "acceptable" should be condemned promptly and publicly.
- Public officials should lead by example. Any public officials found responsible for committing acts of torture or ill-treatment whether in their private or public capacity should be publicly condemned and prompt action taken against them.
- The authorities should institute public education programs to educate people about the unlawfulness of torture and ill-treatment in all their forms.
- The Government of Punjab should make a public commitment to end impunity for torturers as an important signal that torture will not be tolerated.
- The Government of India should issue a standing invitation to visit India to special procedures of the UN Commission on Human Rights, and especially to the UN Special Rapporteur on Torture.

2. Address discrimination

- Implement existing legal sanctions against police officers found responsible for illegal actions based on discrimination, including when the targets are poor, *dalits*, women and human rights defenders, and initiate disciplinary action against police officers found to have acted in a discriminatory manner towards individuals.
- Ensure that any program of police reform includes steps to eradicate discrimination within the police and to specifically prohibit acts of discrimination which lead to torture or ill-treatment. Reforms should include ensuring representation within police and security forces of all sections of society.
- The authorities should ensure that training programs for law enforcement personnel include training on the prevention of violence against women, on the inviolable right of every person to respect of their dignity and physical integrity and on prohibiting discrimination on such grounds as racial, ethnic, caste and religious orientation.
- All police stations should hold and display in regional languages copies of relevant legislation enacted to protect certain vulnerable groups from violence and abuse.
- Incidents of torture and other human rights violations should be carefully monitored with a view to determining correlation of their occurrence with victims belonging to certain marginalised categories in society. Statistics should be published and steps taken to provide special protection on the basis of this information. Monitoring mechanisms should involve the statutory commissions established to protect particular groups in society as well as non-governmental bodies and individuals who come from or represent these groups in society.

3. Prohibit torture and ill-treatment in law and amend or repeal legislation which facilitates it

- The law should lay down an active duty on the part of public officials to protect human rights and prevent torture or ill-treatment rather than a passive one of merely abstaining from it and should include

offences of ordering, preparation, participation, encouragement and complicity in torture. Article 5 of the UN Code of Conduct of Law Enforcement Officials, which states that it is a duty to disobey any order from a superior to inflict torture or ill-treatment, should be incorporated in relevant laws, including those governing policing in Punjab. Such a provision should be included in training of and instructions to anyone who may be involved in the custody or treatment of detainees.

- Protection should be provided for those refusing to carry out orders to inflict torture in addition to the prosecution of those who gave such orders.
- Evidence elicited as a result of torture should be excluded in all trials.
- The Government of India should ratify the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment as a matter of urgency. Domestic legislation should be enabled and brought in line with the Convention.

4. Address institutional problems which facilitate torture

- AI urges the Government of Punjab to actively cooperate with the Government of India in order to initiate a comprehensive program of police reforms, including training programs, a review of the system of appointments and promotions, amendments to laws and creation of new oversight institutions. In the development of proposals for police reforms the Government of Punjab should thoroughly consult and include the Punjab Human Rights Commission (PHRC), human rights organizations and other members of civil society. Any proposals for police reform should be made public in full.
- Police reforms should specifically address the problem of human rights violations in custodial situations and structural problems which have been identified as facilitating torture and ill-treatment and other human rights violations. They should also incorporate international human rights standards, particularly those relating to arrest and detention procedures and safeguards against discrimination. They should incorporate a code of ethics for police officers.
- Police reforms should ensure that police are able to operate independently in the interests of the whole community and are not, as they are now, open to political and other influences which commonly lead to abuses of the law including torture and ill-treatment.
- Police reforms should ensure that transparency and accountability inform appointments, transfers and promotions of police officers at every level. They should ensure that police officers found to have accepted or offered bribes while performing their duties or with the aim of obtaining career advantages should meet strong departmental action. Information about the implementation of these actions should be accessible to the public.
- Working conditions of police officers in the state should be reviewed. In particular the problem of long duty hours should be addressed.
- The Punjab Police Rules of 1935, as well as all police manuals the state, should be urgently updated and brought in line with existing and any future national legislation and jurisprudence which provides safeguards to detainees. Any new legislation or manuals governing the operations of police should be kept under regular periodic review to ensure that the protection of human rights remains central.
- The Government of Punjab should continue to refrain from implementing the Prevention of Terrorism Act in Punjab, in consideration of the fact that the present functioning of police in the state does not guarantee that misuse of the Act would be prevented.

Criminal justice system

- The problem of overload within the criminal justice system must be urgently addressed recognising that it contributes to public tolerance of violence as a means of justice and the use of torture and ill-treatment by law enforcement officials as a means of "instant punishment", and prevents victims of torture or ill-treatment from obtaining prompt redress.
- Urgent attention must be given to ensuring that evidence in criminal cases is collected through proper investigation by police and presented to the courts after careful consideration by members of the prosecution service. It should be made clear to all within the criminal justice system that the use of torture and ill-treatment as a means of coercing confessions from the accused or testimony from witnesses is unlawful and that all, including police, lawyers (including those provided through legal aid), prosecutors and judicial officers, play a crucial role in ensuring that such actions do not form part of processes for bringing people to trial.
- Mechanisms should be developed to isolate judicial officers from pressures by police, especially when they prosecute charges of custodial violence.
- The appointment of public prosecutors at all levels should be informed by transparency and accountability and should not be open to pressures or influence from the executive power.
- The problem of the ineffectiveness of the Legal Aid Service in the state must be urgently addressed. Magistrates should be made aware of their duty to ensure that effective legal representation is provided to every accused, irrespective of their economic situation, and that absence of a Legal Aid lawyer in court is put on record in the case proceedings.
- Legal Aid lawyers must be provided proper training to ensure that they have the necessary competence to perform their role.
- The names of Legal Aid lawyers attached to each court should be notified on the notice board of each court as well as of the District Bar Association, enabling the accused and their families to approach them.
- A mechanism to monitor the effectiveness of the Legal Aid Service should be put in place as a matter of urgency.

Political and administrative system

- The link between corrupt practices within the political and administrative system and the use of threats or force often amounting to torture or ill-treatment must be acknowledged and addressed. In particular, corrupt political influence over police and the resulting resort by police to threats or force against individuals must be addressed by taking relevant steps to remove the police from such influence and initiating criminal proceedings against public officials found to have abused their positions of authority for corrupt or malicious purposes.

5. Provide adequate safeguards for detainees during arrest and detention in law and practice

- Police powers to arrest during investigation and without warrant should be strictly limited and adequate safeguards for arrest ensured. Police should be required to clearly demonstrate in writing the need for arresting an individual as a means of reducing the number of unwarranted arrests at the instigation of

vested interests.

- Records of all arrests should be kept in a police record with bound and numbered pages and including details of the officer arresting, the full name and details of the arrestee, the time and place of arrest, any witnesses and any other relevant details. There should be periodic unannounced checks by superior officers or by a visiting body and action taken against officials found not to have followed procedures.
- Safeguards for detainees on arrest which have been set out by the Supreme Court, particularly in *D.K. Basu vs. State of West Bengal*, should be incorporated in relevant statutory law and all police manuals, including the Punjab Police Rules, as a matter of urgency. Measures should be put in place to monitor their implementation and statistics published periodically.
- Magistrates should play an active role in monitoring strict adherence to the guidelines set out by the Supreme Court in *D.K. Basu vs. State of West Bengal* and they must not tolerate any failure by police to comply with them. Any such failure should be construed as contempt of court and should therefore attract prosecution of the police officers involved.
- Resources should be allocated to ensure that these safeguards can be implemented in practice by police and security forces including the provision of basic materials. Regular training should be given to police officers incorporating these safeguards and any future safeguards set out by the courts or in law to ensure that police officers are aware of how such safeguards can be implemented in practice and how they are an essential part of their role in safeguarding the rights of citizens.
- All detainees and accused should have a right in law to be informed about their rights in custody. These should be read out to them in a language they understand (recognizing the low literacy levels in many areas of the country) and be publicly displayed in all police stations in relevant languages.
- Where unrecorded detentions have been proven, those responsible should be disciplined and prosecuted for unlawful imprisonment and the victims granted compensation for illegal detention.
- Police manuals, codes of practice and standing orders should be publicly available documents and be presented at police stations on request.
- Resources should be made available so that magistrates are able to apply themselves fully to the important role they play in assessing the lawfulness and monitoring the condition of detention of detainees. It should be a requirement that magistrates ask detainees questions which will clarify their identity.
- In order to ensure a safe environment in which detainees are able to bring complaints of torture before a magistrate, there should be an opportunity for detainees to be heard by the magistrate in the absence of those police officials who have brought them from the police station and may have been responsible for their arrest, interrogation and detention. Magistrates should question detainees brought before them to ascertain that they have not been tortured or ill-treated, have not made involuntary confessions and are not being held in conditions amounting to ill-treatment. In doing so, they must ensure that detainees are not withholding relevant information from them for fear of reprisals by law enforcement officials and make it clear to detainees that in the event that a complaint is made steps will be taken to protect them against reprisals.
- Judges should pursue any evidence or allegations of torture and order release if the detention of an individual is found to be unlawful.
- Detainees should have an enforceable right to a medical examination and should be informed of that right. A copy of the examination report should be given to the detainee or their nominated representative such as their lawyer or relatives. Medical personnel required to carry out examinations of detainees or to

provide treatment to detainees in custody should be independent of police and should be duty bound to file an official report of the examination indicating any injuries found.

- Women should be detained separately from men and this should be carefully monitored by independent mechanisms.
- Recognizing the practice of arresting or detaining innocent relatives, particularly women, against whom there are no charges, as a means of forcing suspects to surrender or provide information about wanted people, this practice should be clearly identified as illegal and constituting the offence of "wrongful confinement". Reports of such practices should promptly be investigated and action taken against those responsible.
- The treatment of children who come into contact with the law must be in line with international standards on the administration of juvenile justice.

6. Provide adequate safeguards for interrogation

- The role of proper investigation within the policing system should be strengthened to reduce reliance on confession as the lynch-pin of evidence against the accused. Detailed guidelines should be drawn up for the interrogation of suspects in consultation with lawyers, Bar Associations, human rights groups and medical professionals. Guidelines should be published and reviewed periodically to ensure they remain an effective mechanism to prevent torture and ill-treatment.
- The authorities should keep under systematic review interrogation rules, instructions, methods and practices with a view to preventing any cases of torture in line with the Convention against Torture. Those involved in interrogation should receive regular training on how to implement such rules and regulations.
- Lawyers should be present during interrogation of suspects. Detainees should be given the opportunity to contact their lawyer or seek the services of a lawyer through legal aid prior to interrogation.
- All officials involved in interrogation should clearly identify themselves to the detainee and their lawyer.
- Female security personnel should be present during the interrogation of women detainees, and should be solely responsible for conducting body searches in accordance with the directions of the UN Human Rights Committee and reflected in the Supreme Court's judgement in Sheela Barse vs. State of Maharashtra (1983 2 SCC 96).

7. Provide effective independent monitoring mechanisms to ensure implementation of safeguards

- The government should ensure that there are in place independent monitoring mechanisms to scrutinize police and security force behaviour in all districts of the state. Their independence should be assured by ensuring that they consist of persons of integrity respected in the local community for their independence of judgement and political impartiality. Their members should be fully aware of international human rights standards and national law as well as any new legal judgements which provide enhanced safeguards for those arrested or detained. Given that human rights organizations play an important role in the detection of cases of torture and other forms of ill treatment, AI believes that they should play a role in monitoring custodial situations.
- Monitoring mechanisms should have adequate powers and resources to undertake their work including powers of unannounced, immediate and unhindered access to all places where people may be held in

acknowledged or unacknowledged detention; access to interview detainees in private; and access to judicial processes. They should also have powers to obtain any documentary evidence necessary to check for implementation of legal provisions and to promptly obtain information on the enforcement of announced departmental action against offending police officers. Failure by police, security forces or judicial officers to cooperate with these mechanisms should be an offence and the government should take immediate action against any official who fails to cooperate promptly and fully.

- Monitoring mechanisms should forward any evidence of non-implementation of safeguards to the PHRC or NHRC and to relevant superior officers requesting further investigation or recommending action to be taken. They should regularly publish the results of their findings including information on specific provisions of law which have most commonly been violated, details of police stations which have been identified as abusing legal provisions, and information on the background of victims of human rights violations as a means of identifying particularly vulnerable groups in society and identifying the need for special protection.

8. Ensure investigations into torture

- The government should ensure prompt independent investigations into all allegations of torture or ill-treatment (including rape and death in custody). Investigations of allegations of torture or ill-treatment should incorporate the Principles included in the Istanbul Protocol. Those investigating the allegations should be fully independent of the alleged perpetrators and have the necessary powers and expertise required to open prompt criminal investigations wherever there is reasonable ground to believe that an act of torture has been committed. They should have the necessary resources and powers to carry out investigations promptly and effectively, including powers to compel witnesses to attend and to obtain documentary evidence including powers to commission investigations by medical or other experts.
- Public officials suspected of involvement in torture or ill-treatment should not be allowed to be associated with the investigation into the allegation of torture in any manner, and should be removed from any position of influence over alleged victims or witnesses for the duration of the investigation and any trial proceedings. Firm action should be taken against any police officers found to have colluded with colleagues accused of torture or ill-treatment in the cover-up of the crime including harassment of the victim or witnesses.
- Complainants, witnesses and others at risk should be protected from intimidation and reprisals: a witness protection program should be established in Punjab.
- Police and other officials not promptly or truthfully complying with the orders of judicial or other investigating officers should be subject to immediate disciplinary proceedings.
- Methods and findings of investigations should be made public and the victim or the victim's family must be allowed access to the complete records of the enquiry including post mortem reports and be given the right to be represented through a competent legal counsel during the inquiry, if necessary with the help of legal aid.
- The government should consider setting up effective, adequately resourced and independent police complaints investigation mechanisms at district level, the membership of which should include members of civil society as well as executive and judicial representatives. These bodies should maintain and publish uniform and comprehensive statistics on complaints of torture and ill-treatment by law enforcement personnel.
- The Government of Punjab should institute a review of the numerous cases of alleged torture by police which are pending investigation and prosecution to determine the reasons for delays and to take action

against police officials found to be deliberately interfering in the investigative or judicial process.

9. Ensure adequate procedures for medical examination of torture victims

- Facilities should be made available for medical examination by an independent medical practitioner on arrest at the request of the detainee.
- Those who allege torture or ill-treatment including rape and other forms of sexual abuse should be immediately examined by an independent medical practitioner. Police should not be present during the examination and detailed records of the examination should be kept in accordance with Principle 6(b) of the Istanbul Principles.
- Steps should be taken to protect medical professionals carrying out post mortems and medical examinations of alleged torture victims from police pressure. As a step towards this, police officials should not be present during post mortems or the medical examination of detainees. In addition, the victims' relatives or their representatives should have the right to request any registered doctor of their own choice to be physically present while a post-mortem is actually being conducted. Strict departmental action and legal prosecution should be initiated against police officers found to be interfering with the medico-legal work of doctors. Appropriate instructions should be issued at this purpose by the Director General of Police.
- Medico-legal reports should be promptly provided to the subject of the report and to the authority responsible for investigating the allegation of torture or ill-treatment. This should be clearly communicated to all government doctors by health authorities at district level.
- Training of all medical professionals should incorporate medical ethics and in particular the UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Training of the Health Department for junior government doctors, in particular, should include: suitable sessions of forensic practice; information on the impact of their reports on the course of justice and hence on the lives of torture victims; information on their obligation to comply as far as it is technically possible to the standards set for post mortems by the NHRC and by Principle 6 of the Istanbul Principles, including their duty to indicate an opinion about the possible causes of death or injuries; information on their legal obligations when dealing with a court and of the legal consequences any illegal behaviour may attract. The cooperation of human rights organizations in designing these trainings could be usefully sought. Similar trainings should be made available periodically also to government doctors already in service.
- Adequate resources and proper equipment must be provided to all post mortem centres in the state.
- Any mechanism charged of independently monitor the implementation of arrest and detention safeguards (see above, recommendation 7) should be empowered to monitor also the medico-legal activity of doctors reporting on possible cases of torture or ill treatment.
- Strict departmental action, including possible suspension, barring from promotions or removal from service, should be taken by the Health Department against doctors found to have participated in the cover-up or facilitation of torture. Information about the implementation of these actions should be available to the public.
- The PHRC, NHRC, as well as the judiciary in Punjab should take serious notice of attempts of doctors

to cover up torture cases and should respectively recommend and initiate prosecution against offending doctors, according to the Contempt of Court Act, 1971, and to section 177 of the Indian Penal Code.

- The Indian Medical Council should take serious notice and appropriate action in cases in which its members are involved in cover up of torture.

10. Bring to justice those responsible for torture

- The authorities should bring to justice anyone involved in acts of torture, and no leniency should be made in consideration of the position held by the accused. The definition of those responsible should include those who may have given orders as well as those who carried out the actions. Officials who are found to have ordered or tolerated torture by those under their command should be held criminally responsible for their acts. An order from a superior officer or a public authority must never be invoked as a justification for taking part in torture. All officials must be made aware that they have a duty to disobey a manifestly illegal order and will themselves face criminal prosecution for such acts. There should be no amnesties for public officials found guilty of torture.
- Any public official indicted for infliction of or complicity in torture or ill-treatment should be suspended from duty and not permitted to occupy any public position with responsibility for people in detention.
- All legal provisions which require government sanction for the prosecution of police should be removed.
- The granting of bail to individuals involved in acts of torture must be carefully assessed by the courts, in consideration of the fact that the accused, if released, could intimidate the victims and their families. No bail must be granted for non bailable offences.
- Those found guilty of torture or ill-treatment must be punished in a way commensurate with the seriousness of the offence, but excluding the death penalty and other punishments which are themselves human rights violations.
- In cases in which "departmental action" has been taken against individual police officers, information should be publicly provided on the exact nature of that action.

11. Provide reparation to victims of torture

- Verification mechanisms should be put in place to ensure that orders for compensation are implemented promptly by the authorities and that they are paid directly to the awardee. Judicial officers should however take notice that granting compensation to victims of torture is in no way a substitute to prosecution and punishment of the police officers involved.
- Medical care and rehabilitation should be provided through institutions established with state support.

12. Strengthen and support the Punjab Human Rights Commission

- The Government of Punjab should publicly state its commitment to human rights and in that regard its support for the work of the PHRC. Adequate resources should be provided for the full and effective functioning of the Commission including provision of investigative staff delinked from Punjab Police. The posts already sanctioned to the PHRC should be filled as a matter of urgency.
- Provisions contained in the PHRA and related to the appointment of members of the PHRC should be strictly adhered to. In particular, the requirement that the members should have "knowledge of, or

practical experience in, matters relating to human rights” should inform the appointments.

- The PHRC should be given the power to visit custodial institutions without having to previously notify state officials.
- Recommendations of the PHRC should be promptly complied with. As a means to this, it should be given explicit powers to refer cases in which it has found sufficient evidence to merit prosecution for a human rights violation directly to the prosecuting authorities so that appropriate action can be taken against individuals concerned. The Government of Punjab should provide information on the nature of departmental action taken against police officials.

13. Provide effective human rights training to police

- Training programs for law enforcement officials and others should include practical methods to prevent torture and not just theoretical teaching of legal provisions and human rights standards. Human rights education or ethics training should be integrated into training focussed upon increasing the professionalism of the police. Training should acknowledge the context in which violence has become accepted as a way of "solving" problems and that this situation increases the use of torture.
- Training should include the issue of sensitivity towards groups already suffering discrimination in the criminal justice system.
- In selecting and training of law enforcement personnel, the qualification of respect and sensitivity to human rights protection should be a prerequisite, kept under review and counted toward assessment of their performance and future prospects.
- Human rights training including gender sensitive training should be provided to police, judiciary and medical professionals, in addition to programs already undertaken. The training should be provided to all ranks from the highest to the lowest and should be given at periodic intervals, not just at the start of the job.
- The absolute prohibition against torture and ill-treatment should be reflected in the training and all orders given to officials involved in arrest and custody. These officials should be instructed that they have the right and duty to refuse to obey any order to participate in torture.
- Training manuals should incorporate the following international standards:
 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
 UN Code of Conduct for Law Enforcement Officials;
 UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions;
 UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
 UN Convention against Torture, and Other Cruel Inhuman or Degrading Treatment or Punishment.
 UN Declaration on the Protection of All Persons from Enforced Disappearance.

14. Increase cooperation with national bodies in the fight to end torture

- The Government of Punjab should recognise the crucial role that many human rights organizations play in detecting and publicising incidents and patterns of torture, pursuing justice for victims and their

relatives and identifying problems in the system which facilitate torture or prevent justice. It should effectively respond to the observations and recommendations made by various organizations in India and include them in discussions on how to prevent torture.

- The Government of Punjab should encourage the holding of expert meetings of human rights activists, lawyers, medical professionals and others including international experts, on torture and other human rights issues.

Recommendations to the Punjab Human Rights Commission

- The PHRC should monitor, record and publish the numbers of complaints of torture and ill-treatment which are brought to them, including a separate category for the number of complaints of rape or sexual assault in custody. These records should provide a breakdown of the profile of victims by gender and social background in order to provide information on patterns of torture.
- An annual report of activities should be regularly prepared by the PHRC and tabled in the Punjab Legislative Assembly for discussion, as per section 28 of the PHRA. The publication of press releases and other special reports marking the position of the PHRC on different issues touching on the protection of human rights would contribute in engaging it in a dialogue with the human rights movement and the general public in the state.
- The PHRC should examine its practices and procedures to ensure that they meet standards of impartiality and rigour and that its standards of human rights protection are in line with international human rights standards and do not compromise human rights in any way. Methods of investigation set out in the Istanbul Principles should be incorporated into the methodology and training of officials of the PHRC to ensure professional and impartial investigation.
- The PHRC, under section 10 of the PHRA, can institute its own procedure for “rendering effective, speedy and inexpensive justice to the victims”. A procedure should therefore be designed to help complainants to file their complaints before the Commission, or otherwise provide them with free legal aid at state expenses.
- The PHRC should establish a mechanism for reviewing its recommendations on a periodic basis as a means of checking whether its recommendations have been implemented and followed up by the authorities.
- The PHRC should be clear that complicity by police in acts of torture is an offence and that "communicating its displeasure" to senior officers who have witnessed torture and taken no action or taken steps to cover up torture is an insufficient response for such crimes and the identification of such practices by the PHRC should be followed by investigation and criminal prosecution.
- The PHRC should undertake or facilitate proper medico-legal training for doctors.
- The PHRC should recommend, when appropriate, the prosecution of all person found guilty of human rights violations as a means to provide redress to the victims, in addition to the granting of a monetary compensation.

