

THEMATIC REPORTS

Mechanisms of the Commission on Human Rights

Disappearances, Working Group on enforced or involuntary: (E/CN.4/1998/43, paras. 3, 13, 24, 25, 32, 42, 52, 61, 203–217)

On the question of compensation the report refers to information provided by the government indicating: there is no statutory right to compensation for victims of human rights violations but courts in India have awarded such compensation in a number of cases; compensation for human rights violations is considered part of the public law regime in the country; compensation has also been paid to victims of human rights violations based on recommendations of the National Human Rights Commission; the burden of proof related to presumption of death lies with the person affirming the death; payment of compensation does not require a presumption of death once culpability is established; courts have ordered exhumation to establish the identity of a person reported to have disappeared; and, compensation has been paid to victims of disappearance and their families.

Twenty-eight newly reported cases of disappearance were transmitted to the government, seven of which reportedly occurred in 1997. Two cases were clarified on the basis of information previously submitted by the government. The majority of the 272 cases transmitted to the government occurred between 1983 and 1995, in the context of ethnic and religious disturbances in the Punjab and Kashmir regions. The disappearances in both regions were primarily attributable to the police authorities, the army and paramilitary groups acting in conjunction with, or with the acquiescence of, the armed forces. The disappearances were alleged to have been the result of a number of factors related to the wide powers granted to the security forces under emergency legislation, in particular the Terrorist and Disruptive Activities Act and the Public Security Act. The victims have included shopkeepers, a lawyer who was reportedly well known for defending Sikhs detained in Punjab, journalists, human rights activists, students and others.

The majority of the newly reported cases occurred in Punjab during 1996. One case concerned the Chairman of the Srinagar-based Institute of Kashmiri Studies who attended the 47th session of the UN Sub-Commission. Three cases concerned members of the Jammu and Kashmir Liberation Front who were allegedly taken from the premises of the organization in Srinagar by members of the Special Task Force.

The Working Group (WG) also received allegations related to non-compliance by the government with provisions of the Declaration on the Protection of All Persons from Enforced Disappearance. Serious concern was expressed to the Group about: the number of cases of disappearance in which the fate of the victim remains unknown and in which the perpetrators have not been brought to justice; the fact that members of the security

forces continue to act with impunity; the fact that investigations are carried out usually by the police or army officials rather than by an independent and impartial body; the fact that although there has been a decrease in incidents of police excesses in the Punjab, including disappearances, human rights workers and activists continue to be subjected to threats and abuses by members of the security forces; adoption by police in all provinces of the practice of not filing arrest reports or registering detentions; and, the fact that in Jammu and Kashmir families can only obtain information on the whereabouts of their relatives by bribing prison guards.

The government denied the allegations related to non-compliance with provisions of the Declaration and stated, *inter alia*: instructions were issued to all authorities concerned that inquiries must be conducted into every allegation brought to their attention; various police and armed forces organizations also have their own statutory acts which make it mandatory for them to investigate allegations involving their personnel; whenever a prima facie case of human rights violations is established, exemplary action under the law is taken against offenders and appropriate relief provided to the victims; and, the extensive range of statutory, institutional and judicial remedies that are available domestically ensure that no one enjoys impunity.

The government considered as “completely baseless” the allegation that investigations are rarely carried out into cases of disappearances and when carried out are not conducted by independent or impartial authorities, stating, *inter alia*: investigations are invariably carried out whenever allegations are raised or even *grosso modo* on the basis of media reports; in several instances, the investigation is not entrusted to the police and is carried out by the Central Bureau of Investigation (CBI); whenever the nature of allegations so requires, independent judicial inquiries are ordered; and, in certain cases, the courts have ordered that investigations be carried out under their direct supervision.

The government also stated that there are no restrictions on activities carried out by Indian non-governmental organizations and human rights activists within the framework of the law in any part of the country. On other points, the government stated, *inter alia*: the Criminal Procedure Code requires the police to inform all arrested persons of the grounds of their arrest and to produce them before a Magistrate within 24 hours; all detainees have full rights under existing laws to contact their lawyers and there are no restrictions on legal aid and assistance to those who require it; and, family members are also informed and visit detainees regularly while in judicial custody.

In response to individual cases, the government variously responded that: the persons concerned had been released; no complaint concerning the disappearance of the person had been lodged with the police; and, the person concerned was currently available at his residence.