



PERMANENT MISSION OF
INDIA
TO THE UNITED NATIONS OFFICE
GENEVA

STATEMENT BY MR. S.S. AHLUWALIA, MEMBER OF PARLIAMENT
AND ALTERNATE LEADER OF THE INDIAN DELEGATION TO THE
45TH SESSION OF THE HUMAN RIGHTS COMMISSION UNDER
AGENDA ITEM 10.

GENEVA, FEBRUARY 20, 1989.

Mr. Chairman, Sir,

My delegation would like to begin by underlining the importance of Agenda Item 10 since it relates to the question of the human rights of persons subjected to any form of detention or imprisonment. During this, as well as earlier sessions of the Commission, we have followed the debate under this agenda item with great interest because of the humanitarian dimensions of the issues involved. In particular we have again, as in the past, carefully studied the reports of the Special Rapporteur on Torture and the Working Group on Enforced or Involuntary Disappearances. Like several other delegations, we are concerned that, despite the existence of international standards and national laws, incidents of torture and enforced or involuntary disappearances continue to occur in various parts of the world.

Mr. Chairman, the Special Rapporteur on Torture has rightly pointed out in his report that since no society is immune to torture, and since torture may take place everywhere, the need to take effective preventive measures is relevant for all countries. We are all agreed that torture is among the most heinous violations of human rights. We also agree that torture may take many forms and occur in widely different situations. It may be used to suppress dissent and to force compliance, in violation of the right to equality and to equal opportunity. The worst types of torture are known to be practiced in prison cells and detention centres. The other manifestation of torture, more institutional and linked to a

political system, is less overtly physical in its abuse and may be more difficult to detect. This form of torture is visible in the denial of respect for the human person and the effort to deny his individual personality. Torture in his form can be seen especially in the case of South Africa where the majority of the people are denied equal rights and where the political system is built on racist contempt and humiliation. In fact, the very existence of apartheid creates an environment where persistent institutional injustice thrives together with physical torture of the worst type since they are both the natural extensions of state policy.

Mr. Chairman, while torture and other human rights issues may occur in any situation, such abuses will remain isolated cases if there are effective methods of redress. We feel that the really effective measures against torture, or indeed against other forms of human rights violations as enforced or involuntary disappearances, have the same starting point as the rule of law in general.

✓ The right to life or personal liberty is one of the fundamental rights conferred on all citizens of India by the Constitution of India. Specifically, Article 21 of the Constitution prescribes that no person shall be deprived of his life or personal liberty except according to the procedure established by law. It is not only constitutional provisions which ensure the right to life or personal liberty and the dignity of the individual, but as much India's democratic temper and traditions and its abiding faith in the rule of law.

The law in India forbids a police officer to use more than the minimum force required to deal with a particular situation. The law codes deny the power to cause the death of the person sought to be arrested by the police officer, even if he is resisting or is evading arrest. Use of force which is disproportionate to the situation is unauthorised. In case any illegitimate use of force by the police for any purpose whatsoever comes to notice, the instructions require an immediate inquiry to be conducted into the circumstances of the case. If any prima facie evidence of excessive or illegitimate use of force is found, the delinquent official is liable for severe punishment. If a person dies in police custody, procedure requires that an independent inquiry into the cause of death be done by the magistrate. This is an important statutory protection since in India the executive and judiciary are separate.

Mr. Chairman, the Government of India has issued directives from time to time on the need for police officers to desist from third degree methods during the investigation of cases. Police personnel found guilty of using such methods render themselves liable to exemplary punishment. A number of examples can be cited to underscore the fact that in India, an entire network of safeguards within a democratic system are available to prevent cases of human rights violations such as torture or involuntary disappearances. (Last week a High Court in an Indian State has awarded Rs.1.44 lakhs as damages against the State Government for the death of a person in police custody. The High Court held that jail

officials were duty-bound to ensure safety of prisoners and dereliction on their part has deprived a citizen of his life.) In addition to the constitutional, judicial and legal protection to persons in custody, additional safeguards exist in the form of a completely free and unfettered press, public media and healthy political institutions. Such forms of protection buttress Government's own efforts to maintain its commitment to safeguarding human rights.

Mr. Chairman, the Government of India has given its complete cooperation to the Special Rapporteur on Torture and the Working Group on Enforced or Involuntary Disappearances. Some cases of alleged torture had been referred to us last year, and we will be sending a comprehensive reply in regard to them. I must mention, however that some of these cases had come to our notice even before they were referred to us by the Special Rapporteur, and the process of making an inquiry had already been set in motion. In some of these cases where it was established that the allegations of torture were true, the victims have been paid compensation and steps for taking action against the guilty officials are underway.

However, not all the cases referred to us by the Special Rapporteur on Torture fall in this category. Some of the allegations are found to be false. In one such case, the medical reports were not consistent with the allegations made, and it is our impression that the allegation was made only to defame the police. Moreover, my delegation would like to mention that the report of the Special Rapporteur on Torture is somewhat at variance with the cases as they were referred

to us. However, as stated earlier, we will be replying to the Special Rapporteur on all specific matters.

This brings us to the other important report, that of the Working Group on Enforced or Involuntary Disappearances. We have extended full cooperation to the Working Group and furnished information on several cases. However, we are compelled to point out that there is need for the refinement of the working methods of this Group. We would like to express our strong sense of unhappiness at some of the procedures being followed by the Group. The portion relating to my country in the latest report of the Working Group incorporates certain allegations made by the Chairman of the so-called Sikh Human Rights Group. I quote from the report:

"During its twenty sixth session, the Working Group met the Chairman of the 'Sikh Human Rights Group' (North America), who asserted that the Indian Government had enacted laws curtailing several rights and in particular the right to habeas corpus. Two years must elapse before a writ of habeas corpus could be filed" .(unquote)

Mr. Chairman, it is unfortunate that the Working Group has included such an allegation in its report without first referring it to us for observations. The allegations made by the Sikh Human Rights Group are completely baseless. There is no law in India which states that two years must elapse before a writ of Habeas Corpus can be filed. While it is true that an appeal under the Anti-Terrorist Law can be made only to the Supreme Court, the inherent jurisdiction of the High Courts under Articles 226 and 227 is intact. The Supreme Court is the highest court of the land and judicial review

is therefore maintained. Therefore, the allegations mentioned in the report are wrong. The report appears to project the view that appealing to the Supreme Court is "extremely expensive and practically impossible for people from the villages". These difficulties projected in appealing to the Supreme Court are distorted. The Supreme Court has treated even a post card as a writ petition for the protection of fundamental rights.

Mr. Chairman, we are compelled to state that had the Working Group taken the basic precaution to check the veracity of these allegations, it could have avoided being put in a position of being responsible for publishing fabricated reports and distortions at the instance of unrecognised and motivated group. We feel that the Working Group may lose credibility as a result of any hasty action, and its future allegations and findings may be seen by governments with some degree of skepticism.

I repeat, Mr. Chairman, we object to the procedure which has been followed with regard to the allegations made by the so-called 'Sikh Human Rights Group'. These allegations have unfortunately been included in the report without our comments having been sought. The procedure implies giving credence to unsubstantiated allegations against governments without giving the government an opportunity to respond. Such a working procedure must be reviewed immediately. The Working Group has a sensitive humanitarian mandate to discharge. This task will be compromised if it is interpreted as being one of publicising unsubstantiated and in fact false

allegations against governments or of embarrassing governments rather than working cooperatively with them.

In this regard we were happy to note that in his introductory statement this morning, the Chairman of the Working Group on Enforced or Involuntary Disappearances has himself indicated that the Working Group, in the second year of its present mandate, will consider improving its reporting on allegations and proposals of a general nature received from non-governmental organisations. We are glad that he has taken cognisance of the fact that such allegations must be supplemented by any views or observations which the governments concerned might wish to put forward. We strongly support the suggestion that the Working Group should revise its own procedures with a view to better responding to the different situations it faces in the accomplishment of its tasks.

I thank you, Mr. Chairman.