

To  
**The Hon'ble Chairperson**  
**National Human Rights Commission,**  
**New Delhi.**

Respected Sir,

This is a complaint concerning the incidence of so-called 'encounter' killings in Andhra Pradesh.

We, the complainants, are President and General Secretary of A.P. Civil Liberties Committee (APCLC). APCLC is an organisation of lawyers, teachers, writers, journalists and other members of the intelligentsia, fighting for the last twenty years to protect the Constitutional and other legal rights of the citizens, in particular the poor, the dalits, the tribals and women; and to safeguard democratic norms, values and principles in the administration as well as in the social, political and economic life of society. We take up the fight for these rights and values by lawful means such as petitioning the administration, publication of literature, conduct of public meetings and other peaceful mass activity, filing cases in courts of law, presenting evidence before enquiry commissions, etc.

One major issue concerning which we have been agitating from the beginning is the killing of citizens in so-called 'encounters' by the police. All those killed are described as armed Naxalites by the police, but both the statement that they are armed Naxalites and the averment that the killing is a case of an armed 'encounter' are in doubt.

APCLC has conducted on-the-spot enquiries into these so-called 'encounter' killings, by constituting fact-finding committees to talk to eye-witnesses, neighbouring residents and government officials involved in the legal formalities such as inquest of the dead body and post-mortem examination. We also enquire, whenever possible, from the policemen stated to be involved in the killing.

It is our considered opinion based on the hundreds of fact-finding reports, that the majority of the incidents described as 'encounters' are cases of deliberate and cold-blooded murder by the police or para-military forces. In the most typical case, a person or persons are taken into custody, tortured to extract information, and then shot dead in cold blood. The killing is described as an 'encounter' in which an armed squad of Naxalites attacked the police and the police fired back in self-defence causing the

death of the victim or victims. Often, to create the impression of veracity the victim is dressed up in the uniforms sported by the Naxalite armed squads and a weapon is placed by his or her side.

## **The background**

The Naxalites, or the various Communist Party of India (Marxist-Leninist) (CPI-ML) parties have been politically active in Andhra Pradesh from the late sixties. They believe in armed struggle as the means of safeguarding the rights of the oppressed and achieving the communist revolution and constitute armed squads for this purpose. Individual Naxalite activists also sometimes carry arms.

The Naxalites also organise the tribals, the landless poor, urban workers, coal-mine workers, women, students, farmers etc., in mass organisations to agitate for their rights. Through these agitations they have achieved sizeable increase in labourers' wages in agriculture, forest-based work, coal-mines, industrial units etc; they have also achieved considerable distribution of government land and redistribution of landlords' land to the poor and lakhs of acres of forest land to the tribals; they have succeeded in putting an end to demands of forced labour and extortion by landlords and government officials, in particular forest officials; they have fought the harrassment of dalits and women in rural areas; they have obtained considerable improvement in coal-mine workers' and other industrial workers' working conditions and rights; and so on.

While some of the CPI-ML parties do not participate in elections, the others do. There are two legislators in the AP Assembly from two CPI-ML parties, one of them from a Scheduled Tribe reserved constituency. And there are dozens of village panchayat presidents (sarpanches) as well as a few presidents of Mandal Praja Parishads (the middle tier of the 3-tier Panchayat Raj structure).

It is an admitted fact that the Naxalites, especially the banned CPI-ML (Peoples War) party, do indulge in considerable violence such as killing of landlords, contractors and persons alleged to be police informers; kidnapping prominent persons and holding them hostage to demand the release of arrested Naxalites; destroying government and private properties in protest against police repression; etc. The APCLC neither supports nor advocates this use of violence by the Naxalites, but we have consistently campaigned and advised the Government on two counts:

(1) That whoever uses violence should be tried and punished only in accordance with a procedure laid down by the law of the land and cannot be subjected to torture or extra-judicial execution by the State. That would be contrary to Articles 14 and 21 of the Indian Constitution.

(2) A political movement with a substantial social base such as the Naxalite movement should never be treated merely as a problem of 'law and order' even if it takes to violence. It should be seen as an expression of deep-rooted oppression in society and frustration born of the oppression. It should be addressed at a political and social level while taking lawful precautions and punitive measures against the incidents of violence.

The Government of Andhra Pradesh has been consistently ignoring this advice. It refuses to acknowledge the social, political and economic content and social base of the Naxalite movement but instead treats it merely as an outbreak of violence and disorder. Secondly, in the name of meeting the violence and disorder, the State indulges in lawless suppression of the movement and of the poor and oppressed people who participate in and support the movement.

Illegal confinement, torture and rape in police custody, destruction of poor peoples houses, household goods and fields by the police, fabrication of false criminal cases enmasse, executing people extra-judicially in the name of 'encounters' and rendering people 'missing' has been the method employed by the AP Government to tackle the Naxalite movement during the last 25 years.

### **'Encounter' killings**

As this complaint concerns 'encounter' killings, we will hereafter confine ourselves to that aspect of the extra-legal suppression.

An 'encounter' is typically described as occurring in the following manner: An armed police patrol is scouting the Naxalite-affected areas in search of Naxalites. The Naxalites (either an armed squad of one or more individual armed Naxalites) are either spotted by the police or the police are spotted by them. In the former case, the police lawfully advise the Naxalites to surrender but the Naxalites instead open fire or throw explosives at the police to kill them; in the latter case, the Naxalites directly indulge in violence upon the police with the intention of killing them. In either case, the result is that the lives of the police are in danger and they fire back in self-defence to save their lives. After some duration of mutual exchange of fire, the Naxalites leave the scene, which is then searched by the police to reveal one, two or more dead bodies of armed Naxalites usually dressed in the special uniforms worn by the Naxalite armed squads.

This is the invariable story. This story contains two elements that we would like to separate:

- (1) The victim of the encounter opened fire first and the police returned fire in self-defence; and
- (2) The victim was an armed Naxalite.

(1) Naxalite activists, by which we mean armed underground activists of the CPI-ML parties;

(2) Peasants, peasant youth, and tribal youth which category also includes the activists of the mass organisations affiliated to the Naxalite parties which however are unarmed and function through legal methods;

(3) Other rural poor, that is village and small town workers other than peasants and including petty traders and vendors;

(4) Students and unemployed youth;

(5) Elected representatives from the CPI-ML parties;

(6) Persons involved in crimes other than Naxalite activity who have however been killed by the police in the name of Naxalites and

(7) Persons whose identity is not known.

We will summarise below the information revealed by the Annexure. The Annexure is in a tabular form with four columns: The serial number, date and name of the village or town where the 'encounter' has taken place, name of the victim and classification of the victim as described above, and details of how the killing actually took place. We have not given the police version as it is monotonously the same.

Along with the name of the village we have mentioned the district and the mandal in which it is located. Mandals are sub- divisions of districts, much smaller than the tahsils or taluks familiar in other parts of the country. Each mandal consists of about 15 to 30 villages. It is both a revenue unit and a panchayat unit. Every mandal headquarters is also the seat of a police station, whose jurisdiction is the whole of the mandal (there are however a few mandals which contain two police stations). Thus the mandal also gives the police station area in which the 'encounter' has taken place. In cases where it has taken place at the mandal headquarters itself we have just noted the village and not mentioned the mandal.

The Annexure reveals that there were 285 incidents of 'encounters' in the years 1991, 1992 and 1993 in Andhra Pradesh resulting in the death of 496 persons. 22 of the victims are women and 474 are men.

While every one of the incidents is allegedly a case of Naxalites first opening fire upon the police and the police returning the fire in self-defence, only 5 out of the 285 incidents resulted in death or injury to policemen. There have been many instances of policemen being killed in landmines blasted by Naxalites but very rarely have policemen died in the so-called 'encounters'. This itself raises doubts about the veracity of the 'encounter' stories.

The following table gives the break-up of the victims according to the classification described earlier:

Naxalite activists	204
Peasants, peasant youth, tribal peasants	210
Other rural and small town poor	30
Students and unemployed youth	11
Persons involved in crimes other than Naxalite activity	8
Elected representatives	2
Not known	31
Total	496

The table shows that only 204 (i.e., 41.1 per cent) of the victims are Naxalite activists who are likely to possess arms, but however that does not mean that these 204 victims died in a real exchange of fire, for many of them were caught unawares and taken into custody and then killed, as the details of the last column of the Annexure indicate.

210 of the victims (i.e., 42.3 per cent) are peasants, peasant youth or tribal youth. This is the largest category of 'encounter' victims. We use the term peasant in a broad sense, to include both farmers and wage labourers, because in the background Telangana districts where most of the incidents have taken place, a large number of wage labourers do possess tiny bits of land with or without legal title, and on the other hand small farmers who possess upto one hectare of land are frequently forced to hire out their labour to earn sufficient livelihood.

Another 30 of the victims are a closely related category. These are rural or small town poor other than peasants such as mine workers, stone masons, fishermen, fruit vendors, rickshaw pullers, auto-rickshaw drivers, toddy tappers, petty shop keepers etc. We have included in this category a reporter (S.No. 58) of one of the main Telugu daily newspapers and a person who was a Homeguard working for daily wages in the police force, but suspected by the police of being a Naxalite agent (S.No. 187).

Eleven of the victims are students or unemployed youth including one 6-year-old tribal girl student and a 11-year-old tribal boy student who were killed in an indiscriminate firing by the police upon a tribal residential school in which the Naxalites were talking to the teachers and students (S.No. 35).

Eight of the victims are persons involved in some other crime such as theft or extortion other than Naxalite activity, though some of them (S.No. 68) claimed to be Naxalites. Why these people too are killed in the name of 'encounters' in a mystery. It appears that some of them died of torture during interrogation in a police station and were then filled with bullets and shown

as 'encounter' victims to avoid uncomfortable enquiries about a death in a police custody.

Two of the victims are elected representatives from a CPI-ML party; the Vice-President of Tekulapalli village panchayat, and the Vice-President of Tekulapalli Mandal Praja Parishad (a woman) (S.No. 20).

The identity of 31 of the victims is not known.

Who are the unarmed victims of the 'encounters'? The peasants, the tribals, the other rural labourers, the students and the unemployed youth and the elected representatives.

Firstly, they are all from the poorest and most oppressed sections of society. The 261 victims (i.e., 54.4 per cent of the total) who belong to these categories are village or small town inhabitants, with only two exceptions. Only 9 of the 261 are from forward castes, 15 are tribals, 10 are Muslims and the remaining 227 are from Scheduled Castes and Backward Castes. These unarmed 'encounter' victims from oppressed families are invariably persons suspected of being sympathisers or supporters of Naxalite parties. They are suspected of providing food and shelter to Naxalite activists and acting as couriers. They are suspected of taking up agitations on local issues against political leaders, landlords or the administration at the suggestion of the Naxalites. Some of them are activists of peasant, worker or rural womans' organisations working through legal and peaceful means but politically affiliated to the Naxalite parties. Many of them are former activists who have surrendered to the police and are attending Court regularly and leading a life of toil in the villages but are still suspected of having connections with the Naxalites. Such persons are picked up from home or place of work and shot dead after torture in the name of an 'encounter'.

One important reason for these killings is revenge. During 1991, 1992 and 1993 there were many incidents of policemen, CRPF or BSF personnel, Congress leaders and other prominent persons being killed by the Naxalites. Whenever such incidents happen, the police retaliate by picking up from that locality rural youth who are suspected of sympathising with or aiding the Naxalites. They are shot dead near the area of the crime and a story is put out that an 'encounter' took place with the very same Naxalites who killed the policemen, Congress leaders etc. The victims are dressed up in Naxalite uniforms to give veracity to the story and a weapon is placed by the side of the dead body. We will quote below from the Annexure, the major incidents of retaliatory killings:

On 24-9-92, the Naxalites blew up with landmines a BSF van in Warangal district killing 13. The enraged survivors immediately rounded up some cow-herds grazing cattle nearby and killed 4 youth (S.No. 174). Later, on 13-2-93

a former Naxalite who was attending the police station regularly on a bail condition was brought to the same spot and killed (S.No. 204). Again, on 13-8-93, three more peasant youth were taken into custody, brought to the same spot and killed (S.No. 244).

In the same district, the killing of a Head Constable of Tadwai police station by the Naxalites was revenged with the killing of four peasant youth in two separate incidents by the police (S.Nos. 70, 73).

In Karimnagar district, the killing of three constables by the Naxalites in a landmine blast at Sarangapur on 12-10-93 led to a series of retaliatory killings by the police (S.Nos. 264, 265, 266, 268, 269, 270), in which a total of 12 peasants and peasant youth were picked up (mostly from their homes) and shot dead.

In Mahbubnagar district, the Naxalites killed the Superintendent of Police and some other policemen in a landmine blast on 14-11-93. In retaliation, the police took into custody and shot dead four villagers on 27-11-93 (S.No. 278).

These are just the most glaring examples. More can be seen in the annexed table.

Some killings are election related. Some of the CPI-ML parties contest elections for Assembly and Parliament. Whenever they do so, the campaign is obstructed by the police by violent means, including 'encounter' killings. The incident in S.No. 20 in which five persons including two elected representatives were killed was one such incident, meant to intimidate voters of the tribal area who were supporters of the local CPI-ML legislator. At the same time, another series of killings in the name of 'encounter' took place in the Sircilla constituency area of Karimnagar district (S.Nos 11, 16, 19), which is also represented by another CPI-ML legislator.

The Government of Andhra Pradesh has for a long time been appealing to Naxalite activists to 'surrender', that is offer themselves up to the police along with their arms (if any) and renounce their politics. Those who thus 'surrender' are offered rehabilitation in the form of land, loans, employment etc. but in fact those who do 'surrender' are constantly harrassed with the allegation that they still have links with the Naxalites. Frequently, they became convenient objects of retaliatory killings by the police since, on 'surrendering' they are required to appear at the local police station periodically, they can be taken away and killed any time.

There are many such surrendered persons who were killed in 'encounters' during the year 1993 (See for instance S.Nos 204, 216, 221, 224, 229, 230, 235, 244, 245, 248, 254, 260, 270, 273 and 278). Some were taken into custody and killed when they contacted the police with the intention

offering themselves for 'surrender'.

### **'Encounter' killings and the law**

Every killing in an 'encounter' is a killing in self-defence. This is what it is claimed to be by the police. At the conclusion of every 'encounter', the police officer in charge of the police party that has participated in the 'encounter' gives a complaint at the local police station which is registered as a crime under Section 307 of the IPC (read with appropriate other sections relating to explosives, arms, etc.). That is, the crime registered is one of Attempt to Murder (by the Naxalites) on the police, as a consequence of which the police, according to the complaint, had to resort to firing in self-defence causing death of one or some Naxalites.

In the law, such an incident must be registered as two crimes under Sections 302, 307 respectively. One, a crime of Attempt to Murder (by the Naxalites) and the other a crime of Culpable Homicide Amounting to Murder (by the police) purportedly in self-defence.

In Andhra Pradesh, the only law that allows the police to open fire on mere suspicion is the AP Suppression of Disturbances Act. An area has to be notified as 'Disturbed' under this Act for the law to apply there. However, from the year 1990 onwards no part of Andhra Pradesh has been notified as a Disturbed Area under this Act.

The police therefore can only justify the opening of fire either under Chapter X of the Criminal Procedure Code (Maintenance of Public Order and Tranquility), in particular Section 129 (2), in which case the procedure laid down therein and in the AP Police Manual (Standing Orders) has to be mandatorily followed; or else the provisions of Chapter IV of Indian Penal Code (General Exceptions) in particular Section 100 relating to an act of private defence causing death.

It is the latter of the two that the AP Police have chosen to explain 'encounter' killings. Having done this, they are bound by Section 105 of the Indian Evidence Act which makes it clear that anyone claiming any of the general exceptions of Chapter IV of IPC has upon himself or herself the burden of establishing a preponderance of probabilities in favour of the exception to the satisfaction of a competent Court.

Thus every 'encounter' has to be registered as a crime under Section 302 IPC (read with other appropriate statutes) against the police, and the concerned police personnel have to be arrested and put on trial for Culpable Homicide Amounting to Murder. The burden of raising sufficient presumption in favour of the plea of self-defence then rests with the accused police officer.

This lawful procedure is not being followed by the law enforcing



authorities in Andhra Pradesh. They are merely conducting magisterial enquiries by executive magistrates under Section 176 of CrPC. These enquiry reports are neither made public nor are they acted upon. In many cases the witnesses are intimidated by the police and not allowed the freedom to depose before the enquiry. Even if the witnesses do depose, no action is taken on the basis of the enquiry report. In only two of the 285 incidents has a judicial enquiry been conducted.

The relatives of the victims who are, as we have seen, almost entirely from the poor and oppressed families are thus not only deprived of justice, but also of livelihood because the victims, other than the Naxalite activists, are bread winners of their families.

In view of the above, we pray that the Honourable Commission may --

1) Call for the magisterial enquiry reports concerning the incidents of 'encounters' appended herewith, peruse them and recommend appropriate action to the Government of Andhra Pradesh.

2) Appoint a commission of enquiry to receive evidence concerning the 'encounter' killings of the years 1991, 1992 and 1993 and submit a report to the Honourable Commission.

3) Recommend to the Government of Andhra Pradesh modalities for the payment of compensation or other rehabilitation to the families of the victims of 'encounters' whether they are Naxalite activists or not.

4) Lay down clear guidelines for the functioning of the police to ensure that extra-judicial executions do not take place.

5) Give concrete suggestions to the local judiciary regarding the taking into cognisance suo motu of 'encounter' killings as cases of murder under Section 302 IPC.

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