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**20** years of advancing health, dignity and justice

December 8, 2006

Honorable Dr. Justice Shivaraj V. Patil  
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**Re: The Punjab Mass Cremations Case**

Dear Justice Patil,

We write to respond to the 10 October 2006 order of the National Human Rights Commission (NHRC) that challenged the credibility and dismissed an independent report prepared by experts of Physicians for Human Rights (PHR) and Bellevue/New York University School of Medicine Program for Survivors of Torture (Bellevue). This report assessed the torture and trauma suffered by families of the disappeared whose cases were pending before the Commission in the Punjab mass cremations case, referred by the Supreme Court in Writ Petition Nos. 447/95 and 497/95.

By way of background, Physicians for Human Rights is an independent, non-governmental organization that mobilizes health professionals to advance the health and dignity of all people through action that promotes respect for, protection of, and fulfillment of human rights. PHR applies the specialized skills, rigor, knowledge and ethical commitments of health professionals to promote and protect human rights. PHR is a co-recipient of the 1997 Nobel Prize for Peace.

The Bellevue/NYU Program for Survivors of Torture provides comprehensive, multidisciplinary care for torture survivors and their families residing in the New York metropolitan area. Clinicians working with the Bellevue/NYU Program have extensive experience in conducting evaluations of individuals and groups who report having suffered torture and other human rights violations. The Program has established an international reputation for excellence in its clinical, educational and research activities.

A six-member PHR/Bellevue investigative team conducted an evaluation of litigants in Amritsar, Punjab in May and June 2005, based on structured interviews and diagnostic evaluations of 127 family members of victims killed and illegally cremated by Punjab police from 1984 to 1995. As the Commission is aware, almost twelve years ago, human rights activist Jaswant Singh Khalra released official records, demonstrating that the Punjab police had killed and secretly cremated thousands of bodies of Sikhs as part of its counter-insurgency operations. On 12 December 1996, the Indian Supreme Court stated that an inquiry by the Central Bureau of Investigation (CBI) into Mr. Khalra's evidence disclosed "flagrant violations of human rights on a mass scale." It subsequently ordered the NHRC to adjudicate the mass crimes. The NHRC itself, however, restricted its mandate to the narrow issue of illegal cremations in Amritsar district, excluding the fundamental rights violations that occurred throughout Punjab. In November 2004, the NHRC announced an arbitrary compensation award to 109 surviving family members with no admission of liability or investigation into the human rights violations.

The PHR and Bellevue/NYU experts conducted this study to provide the Commission with information that would elucidate the need to devise principles of compensation based on a detailed understanding of the nature and scope of violations suffered by the decedents and their surviving family members. In a separate order on 9 October 2006, in which the Commission granted compensation in more cases, the Commission itself stated: "In matters of grant of compensation, it is the facts and circumstances of each case which alone are required [to] be taken into consideration." The Commission, however, refused to determine the factual circumstances of the violations and rejected our report and the prayer of the petitioner Committee for Information and Initiative in Punjab (CIIP) for award of compensation based on an inquiry into the full scope of violations. The Commission did not entertain or address our intervention application filed through Senior Supreme Court advocate Ms. Indira Jaising. The Commission did not attempt to resolve any of its objections, in writing or at the multiple hearings that occurred between the report's submission on 24 October 2005 and the order issued on 10 October 2006.

Our report documents and discusses findings of systematic human rights violations that require redress. Our assessment revealed that deaths in custody and illegal cremations took place within a context of widespread human rights violations that included repeated torture, extrajudicial execution, and illegal cremation of the decedents. We found alarming rates of current and past psychological and physical suffering among the survivors. Rates of depression, posttraumatic stress disorder, and global psychological distress were extremely high, with nearly 80% of those individuals interviewed reporting a past or present major depressive disorder and more than half reporting symptoms more than ten years after the traumas occurred. In addition, many participants described long-standing physical pain and disability as a result of torture that were substantiated by physical examinations that supported their reported complaints. The persistent physical and emotional burdens that these family members continue to experience are compounded by significant economic hardship resulting from the loss of the decedent's potential income, the destruction of property by law enforcement officials, the inability to resume work activities because of police intimidation and/or disabilities related to reported abuses, and relocation costs associated with flight from persecution.

Honorable Dr. Justice Shivaraj V. Patil  
Page three

In its 10 October 2006 order, the Commission not only rejected our report, it made several false statements attacking our professional credibility. First, the Commission alleged that we failed to attest to the report. This allegation is baseless because the co-authors of the report did attach an affidavit vouchsafing the truthfulness and correctness of the report and further signed each of the copies provided for the Commissioners. Second, again contrary to the Commission's allegations, we explained how we conducted a random sample of immediate family members of those identified by the Commission as having been cremated by the Punjab police. We obtained a systematic probability sample from the list of cases that had been identified by the Commission at that point in the litigation.

Third and most egregiously, the Commission challenged the independence of our study and statistical soundness of our data, stating that the report was "hopelessly vague," and "lack[ed] transparency." As explained in our report, we based our study on systematic, standardized assessment techniques for each of the symptom areas assessed. The assessments consisted of structured interviews and diagnostic evaluations of a random sample of surviving family members. We further administered a test specifically designed to assess symptom exaggeration. Our 25-page report provides extensive statistical analysis, including six detailed tables, supported by illustrative narratives. The inquiry and report were carried out according to the highest standards of forensic evaluation by internationally respected health professionals.

The Commission also questioned the manner in which we conducted the study, focusing mainly on our decision to exclude identifying information of the interviewees. Interviews were anonymous in order to protect the human subjects, consistent with our ethical commitments as health professionals to protect the privacy, confidentiality and safety of participants. Our study design and methods complied with the human subject guidelines of PHR and Bellevue/NYU and was approved by the Institutional Review Board of NYU School of Medicine. The Commission also found fault with our failure to involve the respondents—specifically the Punjab police and Punjab and Indian governments. We neither involved the petitioners nor the respondents in the procurement or analysis of the data. We ensured that only PHR and Bellevue retained authority and complete independence over the scientific conduct of research. Ensaaf, an international human rights organization working to end impunity and achieve justice in India for mass state crimes, organized the logistics, such as arranging interpreters and space for the study. Although Ensaaf is not a party to the litigation, it is one of many international organizations, such as Human Rights Watch, that realizes the significance of the Punjab mass cremations case for measuring India's fulfillment of its obligations under international human rights law.

The study we conducted provides the NHRC with substantial scientific and objective information regarding the extent of human rights violations and the nature of injuries suffered, including physical and psychological damage inflicted on surviving family members, among other issues. Dismissing the credibility of this independent report is inappropriate and unwarranted. We have conducted numerous investigations throughout the world, and our reports and the results of our investigations have been relied upon by domestic and international judicial institutions. For instance, PHR has provided medico-legal assessments of human rights violations for various truth commissions and tribunals including the International Criminal Tribunal for the Former

Honorable Dr. Justice Shivaraj V. Patil  
Page four

Yugoslavia, South African Truth and Reconciliation Commission, Sierra Leone special court and has been called upon by governments to undertake assessments in prominent legal cases such as in Mexico and Kenya and has played a principal role in developing UN standards on the effective investigation and documentation of torture and ill treatment. The Commission, charged with implementing India's human rights obligations, has chosen to ignore the historic opportunity in this case to implement Indian and international human rights law in addressing the subject of mass state crimes. We regret that the Commission has chosen to patently disregard evidence that is critical to the determination of fair and reasonable compensation for the extraordinary losses of surviving members and willfully neglected credible allegations. The families of Punjab, who continue to suffer severe physical and psychological trauma, deserve to receive a fair hearing where the violations of their rights are acknowledged by the Commission and brought on record.

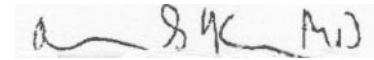
We thank you for your consideration and look forward to your response.

Sincerely,

Leonard S. Rubenstein, JD

Barry Rosenfeld, PhD, ABPP

Allen S. Keller, MD



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