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November 29, 2007

Office of the High Commissioner for Human Rights
Civil Society Unit
Ms. Laura Dolci-Kanaan
Palais des Nations
8–14, Avenue de la Paix
CH–1211 Geneva 10
Switzerland

Re: Submission by Ensaaf regarding India for the Universal Periodic Review session scheduled April 2008.

Dear Ms. Dolci-Kanaan,

Ensaaf, an international human rights organization dedicated to ending impunity and achieving justice for gross human rights violations in Punjab, India, submits information regarding gross human rights violations in India and its failure to provide effective remedies for these violations. In addition to this letter, we also submit a joint report (and a 10-page summary of the report) released last month with Human Rights Watch entitled: *Protecting the Killers: A Policy of Impunity in Punjab, India*. The report discusses in detail the failure of India's institutions to investigate and redress gross human rights violations, focusing on the Punjab mass cremations case which implicates over 2,000 disappearances ending in secret cremations. We hope this information will be considered during India's evaluation under the first Universal Periodic Review session of the United Nations Human Rights Council.

While Indian state actors have a well-documented history of perpetrating widespread and systematic disappearances, extrajudicial executions, and torture throughout the country,¹ Ensaaf specifically draws attention to enforced disappearances and extrajudicial executions perpetrated in the state of Punjab during the 1980s and 1990s. Punjab currently presents the best opportunity to challenge systematic impunity for gross human rights violations in India because violent conflict in Punjab ended in 1994, and cases implicating human rights norms have reached the higher courts and are poised to set national precedent on issues such as accountability and reparations for gross human rights violations. Regions such as Kashmir and the Northeast, where violations are ongoing, will greatly benefit from the precedent established by Punjab. Thus, consideration and action on these issues by the Human Rights Council would be particularly timely and appropriate.

We request the Human Rights Council to intervene to help clarify the fate and whereabouts of the thousands "disappeared" and killed in Punjab. The Human Rights Council's attention to this matter would create critical public awareness in India and ensure an appropriate and thorough review of India's failures to implement its international human rights obligations, while at the same time providing constructive guidance to India on the measures it must take to fulfill its international obligations. Without international pressure and censure, India will not investigate these disappearances and killings or otherwise provide an effective remedy to the survivors.

¹ See, e.g., US State Department, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices—2006: India," March 6, 2006, <http://www.state.gov/g/drl/rls/hrrpt/2006/78871.htm>.

We urge the United Nations Human Rights Council to:

- (1) Monitor the progress of the Punjab mass cremations case, which will very likely come under review by the Indian Supreme Court in 2008; and
- (2) Invite an official response from the Government of India on the allegations of mass cremations, disappearances, and extrajudicial executions, and the continuing situation of impunity for these gross human rights violations; and
- (3) Encourage the Indian government to adopt measures to provide effective remedies to survivors victimized by gross human rights violations. Such remedies include: thorough investigations into allegations of human rights violations, prosecutions of the responsible officials, and reparations and guarantees of non-recurrence to the survivors.

India's Mass Cremations

According to domestic and international human rights groups, between 1984 and 1995 Indian security forces killed thousands of Sikhs as part of a brutal counter-insurgency operation characterized by systematic and widespread human rights abuses, including torture, extrajudicial executions, and “disappearances.”² In 1995, human rights activist Jaswant Singh Khalra uncovered proof of the “disappearances” and extrajudicial executions perpetrated by the Punjab Police: official municipal records demonstrated that police officers had secretly cremated thousands of bodies in three crematoria in the district of Amritsar—then one of 13 districts in Punjab. The Punjab Police abducted, illegally detained, and tortured Khalra, killing him in late October 1995.³

Soon after police abducted Jaswant Singh Khalra, the Supreme Court ordered the Central Bureau of Investigation (CBI) to investigate the mass cremations. The December 1996 report by the CBI disclosed 2,097 secret cremations at three cremation grounds of Amritsar district. However, this number does not accurately represent the total number of individuals illegally cremated in Amritsar. Interviews with cremation ground workers disclosed that multiple bodies were often cremated with the firewood normally required for completely burning one body, and Khalra himself documented over 6,000 cremations in Amritsar district alone. Further, the CBI arbitrarily limited its investigation to cremations from 1984-1994, ignoring secret cremations that occurred outside of this range. Therefore, the true scale of disappearances remains unknown.

The Punjab Police falsely reported many extrajudicial executions, custodial deaths, and “disappearances” as “encounters” or “escapes” from custody, to conceal the extrajudicial violence committed against these individuals.⁴ The vast majority of the “disappearances” began with illegal detention and torture. Prior to “disappearing” the victims, security forces failed to properly acknowledge detentions, provide family members with information regarding the illegal detention or “disappearance” of the victim, or present detainees before magistrates within 24 hours, as required by Indian law. Hundreds of perpetrators, including all of the major architects of these abuses, have escaped accountability⁵.

² See, e.g. Ensaaf and Human Rights Watch, *Protecting the Killers: A Policy of Impunity in Punjab, India*, (New York: Human Rights Watch, 2007) (“*Protecting the Killers*”), p.13.

³ *Protecting the Killers*, p. 64, citing *State (CBI) v. Ajit Singh Sandhu & Others*, Additional Sessions Judge Bhupinder Singh, Patiala, Session No. 49-T of 9.5.1998/30.11.2001, Judgment, November 18, 2005.

⁴ *Protecting the Killers*, pp. 13-14, citing US State Department, Bureau of Democracy, Human Rights, and Labor, “Country Reports on Human Rights Practices—1993: India,” January 31, 1994, http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_sasia/India.html.

⁵ *Protecting the Killers*, p. 14, citing US State Department, Bureau of Democracy, Human Rights, and Labor, “Country Reports

Absence/Failure of Domestic Remedies

In 1997, in response to the CBI's investigations into secret cremations in Punjab, the Supreme Court appointed the NHRC as its *sui generis* body in the Punjab mass cremations case to examine all issues raised by the petitioners, granting it the extensive powers of the Supreme Court under Article 32 of the Indian Constitution to redress fundamental human rights violations.⁶ Unfortunately, over the past ten years, the NHRC has consistently refused to adjudicate the full extent of rights violations associated with the practice of "disappearances" in Punjab.⁷ The Commission's major failings in the Punjab mass cremations case include:

- 1) Limiting its mandate to the narrow issue of the procedural correctness of secret cremations, ignoring the violations of the right to life and liberty and excluding cases in which bodies were disposed of by other methods, such as dumping the bodies in canals;
- 2) Territorially restricting its mandate to three crematoria in Amritsar district, one of then-13 districts in Punjab, thus ignoring "disappearances" and killings throughout the state ; and
- 3) Refusing to investigate a single "disappearance," killing or cremation in over 10 years, thus never hearing any evidence from survivor families, and, instead, relying on police admissions to determine the status of the victims

Despite repeated objections from the petitioners and an extensive mandate from the Supreme Court, the NHRC disregarded the evidence of systematic "disappearances" and killings brought before it. Thus, thousands of cases of enforced disappearance remain outside of the jurisdiction of the NHRC.

After ten years of proceedings, the NHRC has offered arbitrary compensation to the next of kin of 1,051 individuals for the wrongful cremation of the decedent, where the Punjab Police did not follow the rules for proper cremations, and 194 individuals for the violation of the right to life, with no admission of wrongdoing, liability or identification of perpetrators. In its October 9, 2006 order, which effectively closed the case, the NHRC also appointed a one-man commission to identify the remaining 814 bodies under its consideration, if possible, within eight months. This commission, which concluded its hearings at the end of June 2007, continued the practice of discarding investigations in favor of police admissions establishing the name, parentage, and address of those "illegally cremated." It rejected relevant evidence offered by victim families.⁸

Given the Indian government's record of secret cremations and fabricating the whereabouts of "disappeared" individuals, government admissions do not give the victim families adequate information as to the fate of their loved ones.⁹ These families instead demand thorough investigation and independent evidence to support the Indian government's claims. However, after more than a decade of proceedings that have excluded victim participation, relied solely on police admissions, failed to identify responsible

on Human Rights Practices—2006: India," March 6, 2006, <http://www.state.gov/g/drl/rls/hrrpt/2006/78871.htm>.

⁶The Supreme Court reiterated the vast powers afforded to the NHRC in 1999. Order of the Supreme Court dated September 10, 1998, Criminal Misc. Petition Nos. 6674 of 1997 and 4808 of 1998, Writ Petitions (Crl.) Nos. 497 and 447 of 1995.

⁷ See, e.g., NHRC Order dated November 11, 2004, Reference Case No. 1/97/NHRC, <http://nhrc.nic.in/Punjab.htm#Reference%20made%20by%20the%20Supreme%20Court> (accessed October 10, 2007): "the scope of the Commission's jurisdiction was confined to matters relating to the alleged 'unlawful cremation' of the 2097 bodies in the police districts of Amritsar, Tarn Taran and Majitha only and rejected the plea raised by Learned Counsel for the petitioners."

⁸ See, e.g., Bhalla Commission order dated April 28, 2007. Reference Case No. 1/97/NHRC and CI/NHRC/2006 (stating that it is not the scope of the Commission to determine the fate of the survivor's son and what happened to the victim's dead body).

⁹ For example, In February 2006, the then-Director General of Punjab Police, S.S. Virk, admitted that the Punjab Police had faked the deaths of over 300 militants who later became informers, cremating innocent civilians in their place (who remain unidentified). *Protecting the Killers*, p. 36, citing "DGP Fears Threat to Sukhi's Life," Tribune (Chandigarh), February 20, 2006, <http://www.tribuneindia.com/2006/20060220/main4.htm> (accessed October 10, 2007).

officials, and offered only arbitrary and meager compensation to a small subset of victim families, many victim families now feel the government condones the abuses and the denial of justice.

Other domestic remedies have been equally ineffective. Habeas corpus petitions, a people's commission, and individual efforts to meet authorities have all failed to resolve the fate of the disappeared or remedy the gross human rights violations. A study published in the Harvard Human Rights Journal documented the futility of the habeas corpus petition to establish the fate of the disappeared in Punjab, demonstrating that petitioners are almost always denied relief.¹⁰ A "People's Commission" set-up by civil society in 1997 in order to help clarify the fate of the disappeared and killed, was banned by the Punjab & Haryana High Court after just one day of operations on the pretext that it was creating a "parallel judiciary"; the Supreme Court declined to hear the matter. And efforts by survivors to trace their loved ones by privately approaching police and government officials have produced no results, and have frequently resulted in further persecution. Finally, the vast majority of families affected by enforced disappearances do not have access to justice that would allow them to pursue legal remedies on their own. The persistent physical and psychological traumas that these family members experience are compounded by significant economic hardship resulting from the loss of the income of the individual "disappeared," 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.¹¹

Role of the United Nations Human Rights Council

India's judicial and human rights institutions have systematically failed to provide truth, justice, and reparations to victims and survivors of enforced disappearances and extrajudicial executions in Punjab, India. The government has instead denied accountability for these abuses, and has refused to take effective legislative, judicial and administrative measures to redress these crimes. As the mass cremations case demonstrates, however, the reality of disappearances and killings has become impossible to deny.

We respectfully request the UN Human Rights Council to urge the Government of India to conduct investigations into allegations of "disappearances" and extrajudicial executions, as well thoroughly address all matters related to the Punjab mass cremations case, discussed above. These investigations should not only uncover the whereabouts of the victims, but also the manner in which they came to their fate, supported by independent evidence, so that the victim families can then take full advantage of the recourses available to them under Indian and International law.

The United Nations Human Rights Council offers the best hope to the victim families seeking to clarify the fate of their loved ones and pursue avenues for redress. Having fallen outside of the protection of the law and India's premier judicial and human rights institution, the families of those disappeared and killed

¹⁰ See, e.g., Jaskaran Kaur, "A Judicial Blackout: Judicial Impunity for Disappearances in Punjab, India," *Harvard Human Rights Journal*, vol. 15 (2002), p. 269. This article analyzes how the Punjab and Haryana High Court disposed of habeas corpus petitions filed on behalf of the disappeared from 1990 to 1997, as well as the personal experiences of the victims' families, lawyers and justices involved. The study draws from 90 habeas petitions, as well as 30 interviews with survivors and 30 interviews with lawyers and retired and sitting justices. Additionally, among the Punjabi "disappearances" under consideration by United Nations Working Group on Enforced and Involuntary Disappearances, submitted in November 2007, six families filed *habeas corpus* petitions, with none resulting in the whereabouts of the "disappeared" individual.

¹¹ A six-member investigative team from Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture conducted a torture and trauma study in Amritsar, Punjab in May and June 2005, finding startling rates of current and past psychological and physical suffering among the families of individuals "disappeared." During this study, the authors observed the financial toll taken on these families due to the "disappearance" of their family member. Physicians for Human Rights (PHR) and the Bellevue/NYU Program for Survivors of Torture (Bellevue), "Evaluation of Litigants Pertaining to Writ Petition (Crl.) No. 447/95 Committee for Information and Initiative on Punjab v. State of Punjab," October 24, 2005, <http://www.ensaaf.org/pdf/reports/PHR-Bellevue.pdf> (accessed October 10, 2007), pp. 20-21.

by the government do not have effective means of addressing the enforced disappearance and killing of their relatives without international intervention.

Please do not hesitate to contact us at jmarwaha@ensaaf.org if you have any questions or require any additional information. We would welcome the opportunity to meet with members of the Council and present this case in person. Thank you for your consideration.

Sincerely,



Jasmine Marwaha
Programme Associate
Ensaaf