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VIA EMAIL & FACSIMILE

March 26, 2019

The Right Honourable Justin Trudeau
Prime Minister of Canada
80 Wellington Street
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The Right Honourable Ralph Goodale
Minister of Public Safety and Emergency
Preparedness
House of Commons
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Re: 2018 Public Report on the Terrorist Threat to Canada

Sub: Khalistan Is a Political Opinion Not Extremism.

Dear Prime Minister Trudeau and Minister Goodale:

Sikhs For Justice (“**SFJ**”), is a human rights advocacy organization registered in Canada and the United States. We are dedicated to the peaceful advocacy for Sikhs’ rights of self-determination to establish Khalistan in the Sikh historical homeland comprising of the region of Punjab currently held by India.

SFJ is spearheading the Referendum 2020 campaign to help realize the right of self-determination for the Sikh people on the basis of principles enshrined in the United Nations *Charter* and the *International Covenant on Civil and Political Rights*. We are pursuing our peaceful goals within the framework of domestic and international law¹ and in consonance with established democratic norms.

We are deeply troubled to read the report published by the Ministry of Public Safety and Emergency Preparedness, entitled “2018 Public Report on the Terrorist Threat to Canada: Building a Safe and Resilient Canada” (the “**Report**”). In the Report, you identify “Sikh (Khalistani) Extremism” as one of the five major domestic terrorist threats to Canada. **We urge you to remove that section and to issue a formal retraction.**

¹For more details on the legal basis of the Sikh people’s right of self-determination, please see attached as Appendix A, *Self-Determination for the Sikh Peoples: An Overview of the International Law*, a report of Global Diligence LLP [“Global Diligence Report”], an international law and human rights compliance law firm.

Labelling “Khalistanis“ as extremists and identifying them as a significant national security threat is deeply misleading and unfair to Canadian Sikhs. Propagating the Khalistani Sikhs as “threat” only serves to stigmatize the Canadian Sikh community and provides unwitting support to the right-wing Indian Government’s narrative, which paints pro-Khalistan activists as terrorists and extremists.² The Report will have the unfortunate effect of lending credibility to India’s otherwise discreditable position and will undermine the freedom of expression of Canadian Sikhs in particular and human rights of Sikhs around the world in general.

The Report Sends a Misleading Message

The Report is all the more troubling given Canada’s lack of public support for the human rights and rights of self-determination of Sikhs in Punjab today, which is particularly concerning given Canada’s historical support for the principle of the right to self-determination of all peoples.

The combination of highlighting the supposed threat of Khalistani terrorists and the notable absence of any public comment on the rights of Sikh sovereigntists sends the inescapable (even if unintended) message that the Canadian Government believes that pro-Khalistan activists are terrorists.

Non-partisan reports show that, across North America, terrorism perpetrated by right-wing hate groups is on the rise and far more of a threat.³ Yet the Canadian Report downplays the threat posed by the right-wing extremism, dismissing it as “sporadic and opportunistic”, even though the two most deadly recent domestic terrorist attacks were committed by right-wing extremists.⁴ The downplaying of the very real threat of right-wing extremism and the emphasis on the non-existent threat of Khalistani violence is deeply disturbing.

² Indeed, the Indian Government does not hesitate to stigmatize anyone who shows sympathy for Sikh rights, as it did with Canada’s Defence Minister, with whom a Punjab Minister refused to meet. See John Ivison, National Post, “Long chilly, relations between Canada and India are now frigid under Liberals”, available at: <https://nationalpost.com/opinion/john-ivison-long-chilly-relations-between-canada-and-india-are-now-frigid-under-liberals>.

³ See, e.g., https://www.washingtonpost.com/national/in-the-united-states-right-wing-violence-is-on-the-rise/2018/11/25/61f7f24a-deb4-11e8-85df-7a6b4d25cfbb_story.html?utm_term=.808d8cc06b87; see also Southern Poverty Law Center, “Terror from the Right”, available at: <https://www.splcenter.org/20180723/terror-right>.

⁴ In April 2018 in Toronto, Ontario, Alek Minassian drove onto a crowded sidewalk, resulting in the deaths of 10 people. See Report, p. 8. In January 2017, Alexandre Bissonette, shot and killed six individuals and injured 19 more at the Islamic Cultural Centre of Quebec City in Ste-Foy, Quebec. See Report, p. 9.

Sikhs' Rights of Self-Determination

Advocating for a people's right to self-determination is not violence or extremism. To the contrary, the right to self-determination is one of the pillars of modern international law.⁵ Indeed the basic principle of self-determination has been carried forward and addressed in so many U.N. conventions and resolutions that, as one learned author has noted, "[t]he sheer number of resolutions concerning the right of self-determination makes their enumeration impossible."⁶

Protecting the right to self-determination is one of the primary purposes of the United Nations, as declared in Art. 1 of the U.N. *Charter*.⁷ Article 55 of the U.N. *Charter* further states that the U.N. shall promote its various goals "based on respect for the principle of equal rights and self-determination of peoples".⁸

Article 1 of both the U.N.'s *International Covenant on Civil and Political Rights*,⁹ and the *International Covenant on Economic, Social and Cultural Rights*¹⁰ both emphasize the inviolability of the right to self-determination:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Similarly, the U.N. General Assembly's *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, states:

⁵ *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 at para. 114 ("The existence of the right of a people to self-determination is now so widely recognized in international conventions that the principle has acquired a status beyond "convention" and is considered a general principle of international law."); see also A. Cassese, *Self-determination of peoples: A legal reappraisal* (1995), at pp. 171-72; K. Doehring, "Self-Determination", in B. Simma, ed., *The Charter of the United Nations: A Commentary* (1994), at p. 70.

⁶ K. Doehring, "Self-Determination", in B. Simma, ed., *The Charter of the United Nations: A Commentary* (1994), at p. 60.

⁷ *Charter of the United Nations* (done at San Francisco, United States, on 26 June 1945) (United Nations [UN]) 1 UNTS XVI, 59 Stat 1031, TS 993, 3 Bevans 1153, 145 BSP 805, 892 UNTS 119, Ch.I Purposes and Principles, Art.1 ["U.N. Charter"].

⁸ UN Charter, Art. 55.

⁹ *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171 ["ICCPR"]. Canada became a State Party to the ICCPR on August 19, 1976.

¹⁰ *International Covenant on Economic, Social and Cultural Rights*, 993 U.N.T.S. 3 ["ICESCR"]. Canada became a State Party to the ICCPR on August 19, 1976.

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.¹¹

The Canadian Supreme Court and the Canadian Government Have Acknowledged the Right to Self-Determination of Nations Within States

India maintains that its territory is indivisible. That position is untenable in international law. Nations within States also have the right to self-determination and independence. This right was recognized by the Supreme Court of Canada in the *Quebec Secession Reference*.¹² When a people are blocked from the meaningful exercise of its right to self-determination internally, “it is entitled, as a last resort, to exercise it by secession.”¹³

Following the Supreme Court of Canada’s decision in the *Quebec Secession Reference*, which set out the domestic and international law parameters for independence for Quebec, Canada’s federal government passed the *Clarity Act*,¹⁴ which outlined the conditions under which Canada would recognize Quebec independence in the event that a “clear majority” of Quebecers expressed such a preference.

The rights of nations within States to seek independence has also been recognized by international courts and tribunals for decades. In 2010, in its latest case to deal with the issue of self-determination, the International Court of Justice (ICJ) was confronted with the issue of whether “the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo [was] in accordance with international law” and the Constitutional Framework of Kosovo created by Security Council Resolution 1244 (1999).¹⁵ The ICJ noted the creation of many new states by oppressed peoples:

During the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation,

¹¹ GA Res. 2625 (XXV), 24 October 1970 [“*Declaration on Friendly Relations*”].

¹² *Reference re Secession of Quebec* at para. 131.

¹³ *Ibid.* at para. 134.

¹⁴ “An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the *Quebec Secession Reference*”, S.C. 2000, c. 26 [“*Clarity Act*”].

¹⁵ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 22 July 2010, ICJ Reports 2010, p 403 [“*Kosovo Advisory Opinion*”].

domination and exploitation. A great many new states have come into existence as a result of the exercise of this right.¹⁶

The ICJ went on to find that international law, in general, contains no prohibition on unilateral declarations of independence, even if these are contrary to the wishes of the parent state. The ICJ thus upheld the lawfulness of Kosovo's 2008 declaration of independence.¹⁷

There are other recent examples in the late 20th and 21st centuries in which the act of self-determination of a Nation within a State has been recognized by international courts and the international community, including East Timor (seceding from Indonesia following a referendum), and Montenegro (seceding from Serbia following a referendum).¹⁸ Both States were quickly recognized by the international community, including Canada.

Sikhs within Indian held Punjab have not only been subjected to genocide by the Indian government but has also not been permitted to meaningfully exercise their rights to self-determination internally. To the contrary, since Indian independence, the Indian government has violently thwarted the peaceful attempts of Sikhs to exercise any degree of autonomy within the Indian State. As set forth more fully in the attached Global Diligence Report on Sikhs' Right of Self Determination, since India's independence, Sikh communities have experienced regular acts of violence and attacks on their economic resources, religious rights and the freedoms of speech, assembly and association.¹⁹

Referendum 2020 and Freedom of Expression Values

The legitimate, lawful means through which a people exercises its right to self-determination is the referendum. Sikhs would like to hold such a referendum, but those efforts are being met with violence and oppression from the Indian State²⁰. Accordingly,

¹⁶ Kosovo Advisory Opinion, para. 79.

¹⁷ *Ibid* at para. 84.

¹⁸ Global Diligence Report, p. 11.

¹⁹ Global Diligence Report, pp. 18-26.

²⁰ See news report: "John Ivison: How a trickle of Sikhs fleeing India for Canada became a torrent" at: <https://nationalpost.com/news/politics/jeff-danzigers-editorial-cartoon-11>

"A frequent basis of claim cited by Indian nationals is the fear of arbitrary arrest or abuse by the police based on accusations of supporting militant organizations. It should be noted the vast majority of these claims are filed by Indian Sikhs," it said.

The report cited rising tensions between the Indian government and the country's Sikh population over renewed support for separatism in Punjab for the increase in claims.

"Contemporary support has re-emerged around proposals for an unofficial referendum of the global Sikh diaspora in 2020 on the question of independence.... As government pushback against the Sikh

SFJ is organizing an unofficial global referendum for Sikhs living around the world including Canada and Indian held Punjab. In November, 2020, SFJ will hold balloting in approximately 100 cities worldwide among Sikhs on the question of whether Indian held Punjab should be established as an independent and sovereign country - Khalistan.²¹ This initiative is known as “Referendum 2020”.

Your Report undermines the legitimacy of these peaceful, lawful and legitimate efforts at self-determination by the Sikh people.

The Supreme Court of Canada has frequently emphasized the primacy of freedom of expression in a democratic society.²² Writing for the Court in *Edmonton Journal v. Alberta*, Justice Cory emphasized:

It is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression. Indeed a democracy cannot exist without that freedom to express new ideas and to put forward opinions about the functioning of public institutions. The concept of free and uninhibited speech permeates all truly democratic societies and institutions. The vital importance of the concept cannot be over-emphasized. No doubt that was the reason why the framers of the *Charter* set forth s. 2 (b) in absolute terms which distinguishes it, for example, from s. 8 of the *Charter* which guarantees the qualified right to be secure from unreasonable search. It seems that the rights enshrined in s. 2 (b) should therefore only be restricted in the clearest of circumstances.²³

The peaceful advocacy of the rights of self-determination lies at the core of the right to freedom of expression protected under s. 2(b) of the *Canadian Charter of Rights and Freedoms*. As the Supreme Court of Canada held in *Harper v. Canada*:

This Court has repeatedly held that liberal democracy demands the free expression of political opinion, and affirmed that political speech lies at the core of the *Canadian Charter of Rights and Freedoms*’ guarantee of free expression. It

community continues, fear of arbitrary arrest and abuse by authorities will likely prompt more Indian Sikhs to leave the country,” it concluded, estimating claims in 2018 will reach 4,200.

²¹ See Sikhs for Justice, “Referendum 2020”, online: <https://referendum2020.org/>.

²² *Reference re Alberta Statutes*, [1938] S.C.R. 100; *Boucher v. The King*, [1951] S.C.R. 265; *Switzman v. Elbling*, [1957] S.C.R. 285; *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712; *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927; *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326; *R. v. Keegstra*, [1990] 3 S.C.R. 697; *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139; *R. v. Butler*, [1992] 1 S.C.R. 452; *R. v. Zundel*, [1992] 2 S.C.R. 731

²³ *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326 at p. 1336.

has held that the freedom of expression includes the right to attempt to persuade through peaceful interchange.²⁴

The Supreme Court of Canada has repeatedly emphasized that because political speech lies at the “core” of the right to freedom of expression, the government faces an extremely onerous burden if it attempts to limit that speech in any way.²⁵

In November 2012, former Prime Minister Harper pushed back against the Indian government’s warning of “Sikh extremism” in Canada, saying that the federal government will not interfere with the rights of Sikh Canadians to free expression.²⁶ According to reports, during his visit to India, Mr. Harper stated that separatist calls from within Canada’s Sikh community for the creation of the state of Khalistan in India’s Punjab region may be objectionable to governments but will not be silenced.²⁷ Mr. Harper properly responded to India’s rhetoric by affirming that “violence and terrorism cannot be confused with the right of Canadians to hold and promote their political views.”²⁸ As Mr. Harper made clear, the act of advocating for Khalistan is not a crime, rather it is a protected right.

The Report undermines — if not outright contradicts — that position. To lump Khalistani sovereigntists in with violent extremist groups sends the message that pro-Khalistan free speech is extremism and violence — an idea that runs counter to Canadian and democratic values.

We expected more from Canadian Government, which has historically been a champion of *Charter* rights, including the rights of religious minorities. We ask that you immediately take steps to undo the harm already done by the Report, and remove the section about Khalistani extremism and issue a formal retraction.

²⁴ *Harper v. Canada (Attorney General)*, [2004] 1 SCR 827 at para. 1 per McLachlin CJ (dissenting but not on this ground).

²⁵ See *Libman v. Quebec (Attorney General)*, [1997] 3 S.C.R. 569 at paras. 29-84.

²⁶ Bruce Campion-Smith, “Stephen Harper pushes back on India’s warnings of Sikh extremism,” (Nov. 8, 2012), available at: https://www.thestar.com/news/canada/2012/11/08/stephen_harper_pushes_back_on_indias_warnings_of_si_kh_extremism.html

²⁷ *Ibid.*

²⁸ Steven Chase and Kim Mackrael, “On Sikh separatism, Harper in India defends freedom of expression” (November 8, 2012), available at: <https://www.theglobeandmail.com/news/world/on-sikh-separatism-harper-in-india-defends-freedom-of-expression/article5085143/>



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We look forward to hearing from you at your earliest convenience on this important matter.

Sincerely yours,

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Encl: *Self-Determination for the Sikh Peoples: An Overview of the International Law*, a report of Global Diligence LLP [“Global Diligence Report”],

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