

INDIA

SECOND-FIFTH REPORTING SESSION
COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS



**THE MARGINALIZED STATUS OF
MUSLIMS IN GUJARAT:
CONTINUING DEPRIVATIONS OF ECONOMIC, SOCIAL
AND CULTURAL RIGHTS, SIX YEARS AFTER THE
COMMUNAL VIOLENCE OF 2002**

Protecting Economic, Social and Cultural Rights of Muslims In India

The Muslim community in the State of Gujarat continues to suffer serious deprivations of economic, social and cultural (ESC) rights as a result of the ongoing legacy of the 2002 state-sponsored communal pogroms. Muslim persons, women in particular, are denied access to important rights enshrined under this Covenant, specifically the rights to work, an adequate standard of living, education, health, cultural life, and non-discrimination.¹

QUESTIONS FOR THE GOVERNMENT OF INDIA

1. What steps is the Government taking to remedy the significant deprivations of ESC rights confronted by Muslims living in the State of Gujarat in the wake of the communal riots of 2002?
2. What steps has the Government of India taken to implement the Concluding comments the CEDAW Committee issued in 2007? What is the status of the follow-up report that the CEDAW Committee requested be provided in January 2008?
3. What measures are being undertaken to secure adequate housing, livelihood, access to food, health services, and cultural enjoyment for women and children, especially victims of rape and other forms of violence, widows, and orphans?

BACKGROUND

Beginning on February 28, 2002, a wave of violence, targeting primarily Muslims, swept across the State of Gujarat, resulting in thousands of deaths, rapes, and violent assaults.² The attacks were planned, directed and carried out by the *sang parivar* (“family”) of Hindu nationalist groups,³ with the complicity of the State Government of Gujarat and the Gujarat police,⁴ which have since refused to hold the main orchestrators of the violence accountable.⁵ During the pogroms, Muslims were targeted with gross acts of violence and had their homes and businesses looted and destroyed.⁶ The Government of India failed to declare a state of emergency and thereby commit state resources to stopping the violence and preserving the lives and health of victims; it has since continued to deny victims their right under Indian and international law to

¹ See CEDAW Committee, Concluding Observations before Indian State Party (2007), CEDAW/C/IND/CO/3, at ¶¶ 67-68, where the CEDAW Committee recognized that the Massacre contributed to the legacy of denying Muslim women their human rights.

² See NHRC REPORT ON GUJARAT, GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS, LOK SABHA STARRED QUESTION NO. 23, TO BE ANSWERED ON 16.07.2002.

³ The *sang parivar* includes the Visva Hindu Parisad (VHP), Bajrang Dal and the Rashtriya Swayamsevak Sangh (RSS), which collectively advocate for the establishment of India as a Hindu state.

⁴ See Human Rights Watch, “We Have No orders to Save You,” 14 HUMAN RIGHTS WATCH 1 (April 2002), available at <http://www.hrw.org/reports/2002/india/> [hereinafter “We Have No Orders to Save You”]. The National Human Rights Commission later found that the “facts speak for themselves” and that “there was a comprehensive failure on the part of the State Government to protect the constitutional rights of the people of Gujarat.” See NHRC REPORT ON GUJARAT, *supra* note 2.

⁵ See NHRC REPORT ON GUJARAT, *supra* note 2.

⁶ See, e.g., *id.*; Communalism Combat, “Genocide: Gujarat 2002,” 77-78 COMMUNALISM COMBAT 98 (2002).

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remedial measures.⁷ As a result, the suffering borne by Muslims has not ceased with the atrocities themselves but has continued to the present.

Muslims in Gujarat continue to endure the lasting results of the pogroms in the form of ghettoized living conditions, often in ‘relief colonies’ that lack access to clean water and sanitation, causing severe health problems.⁸ They also suffer from unemployment, severely restricted access to schools, and social/cultural ostracism.⁹

In 2006, at its pre-session working group, and again in 2007, the CEDAW Committee recognized the urgency of the situation and expressed its dissatisfaction with the Government of India’s failure to provide sufficient information about the steps it has taken to address the lasting effects on Muslim women resulting from the Gujarat attacks in 2002.¹⁰ Consequently, the Committee requested that India submit a follow-up report by January 2008 describing the impact of the Gujarat violence on women; the legal, compensatory, and rehabilitative measures it was taking for the victims of sexual assault and violence; and the steps it was taking to economically and socially rebuild the Muslim community and resettle displaced Muslims.¹¹

To date, the Government of India has not submitted the report the 2007 CEDAW Committee requested be provided by January 2008. The government continues to fail to take measures to ameliorate the destitute situation of Muslims. The government’s continuing failure to address these issues persists in its State report before this Committee.

Meanwhile, Muslims in Gujarat continue to be deprived of the following rights guaranteed under the Covenant:

1. RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK (ARTICLE 7)

Muslims in Gujarat, especially the tens of thousands still living in ‘relief colonies,’ are seriously deprived of their right to work and pursue a livelihood. Enormous economic losses, amounting to an estimated Rs. 3,800 crore, or US \$760 million, were inflicted upon the Muslim community from the attacks through the large-scale destruction of homes, businesses and properties.¹² These losses continue to economically cripple the Muslim community six years later.

⁷ See, e.g., M.C. Mehta and Another v. Union of India, AIR 1987 SC 1086 (considering remedies available under Constitution Article 32); Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, U.N. Doc. A/RES/60/147 (Dec. 2005); AMNESTY INTERNATIONAL, INDIA – FIVE YEARS ON– THE BITTER AND UPHILL STRUGGLE FOR JUSTICE IN GUJARAT (March 2007) (describing the lack of a remedy for most victims).

⁸ See generally AMNESTY INTERNATIONAL, *supra* note 7.

⁹ See NATIONAL ALLIANCE OF WOMEN, INDIA, SECOND NGO SHADOW REPORT ON CEDAW § 2.1.4 (2006) [hereinafter SECOND NGO SHADOW REPORT ON CEDAW].

¹⁰ See Sheba George and Kalpana Kannabiran, Economic and Political Weekly, “What is Justice for Survivors of Gujarat?” (March 17, 2007) (discussing the CEDAW Pre-session Working Group); CEDAW Committee, Concluding Observations before Indian State Party (2007), CEDAW/C/IND/CO/3, at ¶¶ 67-68.

¹¹ See *id.*

¹² See Human Rights Watch, “Compounding Injustice: the government’s failures to address massacres in Gujarat,” 15 HUMAN RIGHTS WATCH 1 (July 2003) [hereinafter “Compounding Injustice”] (citing Concerned Citizens Tribunal, *Crime Against Humanity*, vol. II, p. 27).

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Many former Muslim business-owners, whose businesses were destroyed during the 2002 pogroms, have yet to resume their operations,¹³ and the Muslim businesses that remain have languished under a continuing economic boycott that has been accompanied by threats and attacks.¹⁴ Further, many survivors of the violence have been forced by destitution or fear of further violence to live in remote communities with limited access to salaried employment and other livelihood options. In the ‘relief colonies,’ 70% of the residents lost their previous employment, and 40% of those persons remained unemployed as of 2005.¹⁵

What specific steps does the Government of India intend to take to combat the effects of the continued economic boycott on Muslim businesses and to enable survivors to find employment and re-establish their livelihoods?

2. RIGHT TO AN ADEQUATE STANDARD OF LIVING¹⁶ (ARTICLE 11)

Muslims displaced in the 2002 attacks have been denied an adequate standard of living, including access to adequate food and housing. **Across the state, over 5,000 families live in abject poverty in self- and NGO-constructed “relief colonies” built adjacent to large landfills and industrial facilities; these families live without potable water, sanitation, electricity, or access to health or education services.¹⁷ The Government of the State of Gujarat has failed to acknowledge the very existence of these colonies, let alone address this ongoing humanitarian crisis.¹⁸**

After visiting the colonies for the first time in October 2006,¹⁹ the National Commission on Minorities (NCM) concluded that:²⁰

- The State of Gujarat had failed to provide a safe environment for residents of the relief colonies or to facilitate their return to their homes;
- The State of Gujarat had failed to compensate these persons for the loss of their habitual places of residence;
- The Government of India should provide an economic package to rehabilitate the colony families, and ensure that basic necessities are provided for in the colonies; and

¹³ For further discussion, *see generally* SECOND NGO SHADOW REPORT ON CEDAW.

¹⁴ *See id.*

¹⁵ CENTRE FOR SOCIAL JUSTICE AND ANHAD, THE UPROOTED: CAUGHT BETWEEN EXISTENCE AND DENIAL – A DOCUMENT ON THE STATE OF THE INTERNALLY DISPLACED IN GUJARAT 28 (Feb. 2007) [hereinafter THE UPROOTED] (citing CENTRE FOR SOCIAL JUSTICE, STATUS REPORT ON REHABILITATION OF VICTIMS OF COMMUNAL VIOLENCE IN GUJARAT (Oct. 2005).

¹⁶ This guarantee includes adequate food and clothing (Art. 11(1)), and the right to be free from hunger (Art. 11(2)).

¹⁷ *See* AMNESTY INTERNATIONAL, *supra* note 7, at 7-8 and US Department of State, Bureau of Democracy, Human Rights, and Labor, India: Country Reports on Human Rights Practices – 2007 [hereinafter “US Department of State Report 2007”] (March 2008), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2007/100614.htm> (quoting The National Commission of Minorities (NCM) October 2006 report on the relief colonies). *See also* Asian Centre for Human Rights, “India: Human Rights Report 2007: Gujarat,” *available at* <http://www.achrweb.org/reports/india/AR07/gujarat.htm>. As of January 2007, 69 relief colonies existed in the State of Gujarat. *See* THE UPROOTED, *supra* note 15, at 10.

¹⁸ *See id.*

¹⁹ *See* AMNESTY INTERNATIONAL, *supra* note 7.

²⁰ *See* THE UPROOTED, *supra* note 15, at 66-80 (citing Report on the National Commission for Minorities Visit to Gujarat (Oct. 13-17, 2006)).

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- The Government of India should formally recognize those persons displaced by the violence as internally displaced persons (IDPs).

Clearly, these actions have not taken place. Both the Governments of India and the State of Gujarat have failed to ensure that Muslims return to their homes or compensate them for homes lost in the carnage.²¹ The Government of India has adopted no official policy to reintegrate and rebuild the lives of an estimated 250,000 persons who were initially displaced,²² as well as over 10,000 families that remain displaced,²³ many of whom fear to return to their homes.²⁴

The communal violence in Gujarat has resulted in the increased ghettoization and marginalization of the Muslim community of Gujarat. Muslims in relief colonies and across the State have been denied almost all of the components essential to adequate housing.²⁵ Many are afraid or unable to return to their previous residences in Hindu-dominated communities,²⁶ yet have few choices of adequate alternative places to live. Many displaced persons who had wished to return to their former homes were in fact forced to live in separate settlements upon their return.²⁷ **Displaced women, many of whom were victims of sexual and physical violence in 2002, remain vulnerable to continuing violence due to their lack of adequate housing.**²⁸

What steps are being taken to provide for an adequate standard of living for those Muslims displaced in Gujarat following the 2002 attacks, especially in the form of adequate housing?

3. RIGHT TO HEALTH (ARTICLE 12)

From the 2002 attacks to the present, Muslims have suffered severe violations of their right to health. After the pogroms, health conditions for displaced Muslims in relief camps were in a state of “general crisis.”²⁹ Widespread cases of physical and sexual violence amongst camp

²¹ See AMNESTY INTERNATIONAL, *supra* note 8, at 1.

²² See Concerned Citizens Tribunal, “Crime against Humanity, An Enquiry into the Carnage in Gujarat, Findings and Recommendations,” Vol. II, at 122 (Oct. 2002).

²³ See THE UPROOTED, *supra* note 15, at 35. See also PEOPLE’S FORUM FOR UPR IN INDIA, STAKEHOLDERS’ REPORT UNDER THE UPR 5 (2007) [hereinafter STAKEHOLDERS’ REPORT] (noting that the Government of India has no official on internally displaced persons (IDPs)).

²⁴ See Nyayagraha: Campaign for legal justice and reconciliation in Gujarat, “The Fight for Justice: the aftermath of the Gujarat carnage of 2002” (Aman Biradari 2006), at 3; SAMERTH CHARITABLE TRUST, ANNUAL REPORT (2005-06), at 8.

²⁵ See Committee on Economic, Social and Cultural Rights, “General Comment 4: The right to adequate housing,” ¶ 8 (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), [hereinafter “General Comment 4”]; Special Rapporteur on the Right to Housing, “Women and Adequate Housing,” ¶ 11, E/CN.4/2006/118 (Feb. 27, 2006). They have been denied, in particular, available services; accessibility; location; freedom from dispossession, damage and destruction; resettlement; restitution, compensation, and return; security; and access to remedies.

²⁶ See US Department of State Report 2007, *supra* note 17 (noting that “[i]n some areas, primarily in Gujarat, Hindutva groups displayed signs stating “Hindus only” and “Muslim-free area”).

²⁷ See, e.g. AMNESTY INTERNATIONAL, *supra* note 7, at 7.

²⁸ See STAKEHOLDER’S REPORT, *supra* note 23, at 5. See also “Women and Adequate Housing,” *supra* note 25, at ¶ 30 (the most vulnerable include “widowed, elderly, divorced or separated women,” “women victims of forced evictions” and “women in conflict/post-conflict situations” or “from ethnic and national minorities...”).

²⁹ See Gujarat Carnage and the Health Services: A Public Health Disaster, Report of an investigation by Medico Friend Circle (May 2002), available at <http://www.onlinevolunteers.org/gujarat/reports/mfc-report.htm>.

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dwellers were reported by medical personnel and members of health NGOs who visited the camps.³⁰ Outbreaks of measles, chickenpox, typhoid and bronchopneumonia were also reported, many of these outbreaks the result of lack of clean water or adequate sanitation facilities.³¹

Today, tens of thousands of Muslims live in far-flung localities or rehabilitated colonies, often without clean water, basic sanitation or garbage disposal systems.³² Serious skin and digestive problems have resulted from the colonies' being surrounded by human excrement, garbage and industrial and landfill waste which wash into the colonies during rain storms. The existing health care facilities in the region are inaccessible to many Muslim residents, as they are often located far away or are too expensive to access.³³

The Governments of India and Gujarat have failed to address the significant mental health needs of the Muslim population. Men, women and children who survived the extreme violence during the pogroms of 2002 have suffered mental and emotional harm that has not been adequately addressed. Many of the survivors confront permanent disabilities and psychological trauma.³⁴

Women who were subjected to gross crimes of sexual violence – including rape, gang rape, insertion of wood and iron rods into their bodies, mutilation of breasts and genitals, stripping, and molestation – urgently require psychological and trauma counseling.³⁵

What specific physical and mental health programs does the Government of India intend to implement for Muslims and especially Muslim women to address the physical and psychological injuries they have suffered as a consequence of the Gujarat attacks?

4. RIGHT TO EDUCATION (ARTICLE 13)

Muslim children living in the State of Gujarat are forced to attend different schools from Hindu children.³⁶ The ghettoization of Muslim children invariably deepens mistrust between Hindus and Muslims, in direct contravention to the Article 13(1) mandate that education shall “promote understanding, tolerance and friendship among all ... ethnic or religious groups.”³⁷ In some cases, fear of residual social instability in Gujarat has caused Muslim parents to keep children away from schools entirely.³⁸

Muslim families displaced by the attacks have not been able to return to their homes and live in resettlement colonies without access to basic education.³⁹ Many children in these colonies do not attend school, severely limiting the economic opportunities for many members of the next generation of the Muslim community.

³⁰ See *id.*

³¹ See *id.*

³² See SECOND NGO SHADOW REPORT ON CEDAW, *supra* note 9, at 147-48.

³³ See *id.*

³⁴ See Gujarat Carnage and the Health Services: A Public Health Disaster, *supra* note 29.

³⁵ See, e.g., Citizen's Initiative, Ahmedabad, “How has the Gujarat Massacre Affected Minority Women? The Survivors Speak,” (April 16, 2002).

³⁶ See UNESCO, New Delhi Second International Conference on Law, Session on Right to Education 15 (2004).

³⁷ International Covenant on Economic and Social Rights, art. 13(1).

³⁸ See SECOND NGO SHADOW REPORT ON CEDAW, *supra* note 9, at 76.

³⁹ See AMNESTY INTERNATIONAL, *supra* note 7, at 9.

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How are the Governments of India and Gujarat reintegrating Muslim children and families into communities and out of relief colonies so as to ensure children's return to mainstream schools?

5. RIGHT TO TAKE PART IN CULTURAL LIFE (ARTICLE 15)

The 2002 Massacres were characterized by the systematic targeting and destruction of “numerous symbols of Muslim culture.”⁴⁰ In all, 297 mosques and dargahs were destroyed.⁴¹ Among them, the famous Urdu poet Wali Gujarati's tomb – a cultural monument of great significance – was desecrated, razed, and tarred over by a road;⁴² the Malik Asin mosque, a 500-year old, nationally protected monument, was destroyed by cranes and bulldozers.⁴³ **Only a handful of cultural symbols destroyed in the attacks have been repaired.⁴⁴ Muslims returning to their homes after the attacks have had their religious and cultural expressions forcibly muted in a manner that violates the entire community's right to cultural life.⁴⁵**

Government bodies in Gujarat continue to be complicit in the marginalization of Muslim culture. On May 1, 2006, the Gujarat High Court, responding *sua sponte* to a news article discussing incursions on ‘public’ space by religious buildings, directed state “authorities to remove all religious structures encroaching public land.” Public authorities in Vadadora, Gujarat promptly demolished a 300-year old dargah and incited a riot, and the Supreme Court of India was forced to intervene to stay the order.⁴⁶ In September 2006, the Gujarat Freedom of Religion (Amendment) Bill⁴⁷ was passed, violating Articles 25 and 15 of the Constitution of India (concerning freedom of faith and equality) by prohibiting conversion to Islam or Christianity without state permission, but allowing conversion to Jainism or Buddhism as “part of Hinduism.”⁴⁸

What steps are being taken by the Government to ensure the preservation and protection of remaining Muslim cultural and religious monuments in the state of Gujarat? What steps is the Government taking to rebuild the cultural monuments that were razed during the pogroms?

6. EQUAL RIGHT OF MEN AND WOMEN TO THE ENJOYMENT OF RIGHTS (ARTICLE 3)

As Muslim women bore the worst of the atrocities committed during the communal violence of 2002, today they bear the worst of deprivations of economic, social and cultural rights suffered by the Muslim community in Gujarat. In particular, women suffer infringements of the right to

⁴⁰ See Concerned Citizens Tribunal, *supra* note 22, at 157.

⁴¹ See STAKEHOLDERS' REPORT, *supra* note 23, at 7.

⁴² See *id.* at 48; “We Have No Orders to Save You,” *supra* note 4, at 31.

⁴³ See “We Have No Orders to Save You,” *supra* note 4, at 31, 62.

⁴⁴ See STAKEHOLDERS' REPORT, *supra* note 23, at 7.

⁴⁵ Nyayagraha, *supra* note 24, at 3-4.

⁴⁶ See ACHR, India: Human Rights Report 2007, *supra* note 17. See also R. Venkataraman, “Centre Cites Tension in Vadodara, SC Stays HC Order on Demolition,” *The Indian Express* (May 5, 2006).

⁴⁷ The Bill amended the Freedom of Religion Bill of April 9, 2003, which allowed conversion only if prior permission obtained from district magistrate. See *Compounding Injustice*, *supra* note 12. See also “Gujarat Religion Bill gets Governor's Nod,” *The Hindu* (April 4, 2003).

⁴⁸ See, e.g., STAKEHOLDERS' REPORT, *supra* note 23, at 7; AMNESTY INTERNATIONAL, *supra* note 7, at 4.

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just and favourable conditions of work (Article 7), the right to earn a living (Article 11), the right to health (Article 12), the right to education (Article 13), and the right to take part in cultural life (Article 15).

How does Government plan to address the unique plight of Muslim women living in Gujarat, as they remain doubly marginalized on account of both gender and religion?

RECOMMENDATIONS

This submission strongly urges the Committee to reinforce the message sent by the CEDAW Committee in 2007 and hold the Government of India accountable to its obligations to provide for basic economic, social and cultural rights of Muslims in Gujarat. We advise that the following recommendations be made to the Government of India:

- Adhere to the CEDAW Committee Concluding Comments of 2007, especially the request for a follow-up report regarding remedial and restorative steps that are being undertaken. **The failure of the Government of India to comply with the CEDAW Committee's Concluding Comments reflects a patent disregard for the collective international treaty body reporting process.**
- Take affirmative steps to provide restorative justice and rehabilitation of the economic, social and cultural status of survivors of the attacks in 2002 in Gujarat.
- Recognize that all arms of India's government, including the state governments, are subject to the international legal commitments of India and therefore should be held accountable for failing to uphold these obligations.
- Recognize those displaced by the violence as internally displaced peoples (IDPs) and comply with international obligations concerning the protection and treatment of IDPs.

Because "a human right is a universal entitlement, its implementation is evaluated particularly by the degree to which it benefits the most disadvantaged and marginalized communities and brings them up to the mainstream level of protection."⁴⁹ **Today, six years since the communal violence directed against Muslims in Gujarat, it is time the Government of India fulfils its commitments obligations under the Covenant, which are guaranteed to all men and women living in India.**

⁴⁹ Committee on Economic, Social and Cultural Rights, Human Rights and Intellectual Property: Statement of the Committee on Economic, Social and Cultural Rights, U.N. Doc. E/C.12/2001/15 (2001).

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A chapter documenting the marginalized status of Muslims in India, and in particular Muslims in the State of Gujarat, is included in the collective submission issued by the Programme on Women's Economic, Social and Cultural Rights (PWESCR). This submission, offered by Gujarat-based NGOs and activists, further elucidates the ongoing deprivations of economic, social and cultural rights suffered by Muslims in Gujarat.

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