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Five years on - the bitter and uphill struggle for justice in Gujarat



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India

Five years on - the bitter and uphill struggle for justice in Gujarat

1. Introduction

Five years since the 2002 communal violence in the Western Indian state of Gujarat in which more than 2,000 people were killed, Amnesty International remains concerned about the ongoing impact of that violence on the Muslim minority in Gujarat.

Amnesty International is particularly concerned that:

1. The direct victims of that violence and their relatives continue to face serious challenges and obstacles in securing justice;
2. An overwhelming number of the criminal cases relating to the Gujarat violence remain un-investigated and unresolved, or closed with the result that the majority of the perpetrators of the violence have gone unpunished and remain at large in the state – this is despite the reopening of 1,594 cases for reinvestigation after the Supreme Court of India (Supreme Court) order in August 2004;
3. The plight of those internally displaced from their homes as a result of the violence is a continuing one. As many as 5,000 families are living in “relief colonies” without basic amenities or official recognition from the Government of Gujarat. The Government of Gujarat however continues to assert that all those displaced as a result of the violence have been rehabilitated;
4. Human rights defenders, tenaciously engaged in pursuing justice for the victims of the violence, face frequent harassment;
5. There is an ongoing practice of social and economic boycotting of Muslim communities in the state.

Amnesty International believes that, five years on, the Government of Gujarat remains unrepentant for its failings to protect the Muslim minority and to ensure that victims obtain justice, truth and reparations. The organization strongly disagrees with the claim by the Government of Gujarat (under the leadership of the Bharatiya Janata Party (BJP) who were also in power during the 2002 communal violence) that normalcy has returned to the state.

Human rights activists report that a climate of alienation and fear has been deliberately fostered among the Muslim minority in Gujarat since the violence in 2002.¹ Reports of this alienation have recently been corroborated by the findings of a Central government-appointed high level Committee led by a former Supreme Court judge, Rajinder Sachar (the Sachar Committee), and mandated to look into the “social, economic and education status of the Muslim community in the country.”² Commenting on the committee’s findings, which had been tabled before the Indian parliament in November 2006, one of the committee members, Prof. T. K. Oommen, stated that Gujarat continues to reel under a state of “economic apartheid and ghettoization”³ of Hindus and Muslims and that “ever since the 2002 riots, the polarization of communities in Gujarat has acquired a physical dimension.”⁴

2. Reopening of cases in Gujarat

Five years after the Gujarat violence, there has been very little or slow progress on the related cases both within the state of Gujarat and in the Supreme Court. Expectations that justice would be delivered through court action after the reopening and reinvestigation of cases have now been confounded in the overwhelming majority of criminal cases being heard in Gujarat.

¹ Aside from those concerns highlighted in this document, activists have pointed to the passing of the Gujarat Freedom of Religion (Amendment) Bill, 2006, which criminalizes religious conversion in certain instances. Others have highlighted the seemingly unofficial censorship of any expression of criticism of the Gujarat Government or its handling of the communal violence. In January 2007, *Parzania*, a film focusing on the communal violence in Gujarat was not shown by theatre companies in Gujarat after they reportedly received threats from members of ideologically right wing Hindu nationalist groups allied with the ruling BJP. In mid-2006, *Fanaa*, was not screened in Gujarat at the behest of political parties after the lead actor had extended his support for those affected by the Narmada dam project and shared a platform with the social activist Medha Patkar who has been campaigning for relief and rehabilitation of those affected by the project. In November 2003, Amnesty International also issued a report which highlighted reports of the use of arbitrary and illegal detention, torture and ill-treatment of Muslim detainees by Crime Branch police in Ahmedabad, Gujarat. Many of these detainees were being held for their suspected involvement in a number of conspiracies against the state including the burning of the train compartment in Godhra in February 2002. The report more importantly, highlighted how the overwhelming fear of retribution from Gujarat police officials amongst relatives and even lawyers of those illegally detained prevented many of them from filing *habeas corpus* petitions. For further information, please see, “Amnesty International, Abuse of the law in Gujarat: Muslims detained illegally in Ahmedabad,” AI Index: ASA 20/029/2003, 6 November 2003.

² “*Social, Economic and Educational Status of the Muslim Community of India*” Prime Minister’s High Level Committee, Cabinet Secretariat, Government of India, November, 2006.

³ See “Gujarat emerging as polarized state,” NDTV, June 4, 2006.

⁴ *Ibid.*

In August 2004, following a Supreme Court inquiry,⁵ the Government of Gujarat was forced to order the reopening of 1,594 cases which had earlier been closed by the state police. In the majority of cases the police had originally closed the cases after finding them to be “true but undetected.”⁶ In addition, the state government was then forced to announce that it would initiate departmental inquiries against 41 police officers for failing to investigate these cases adequately.

However, at the end of January 2007, only 13 convictions were reported to have taken place and a further 40 cases closed for “lack of evidence.”⁷ Activists who spoke to Amnesty International have laid the blame on the police and lower judiciary in Gujarat. In a substantive report issued in January 2005,⁸ Amnesty International highlighted how following the communal violence in Gujarat, the organization learnt that in many cases police registered the complaint themselves, identifying the perpetrators as *toila* (mobs), for instance “a mob of 1-2,000 people” or an anonymous “unruly mob”, making effective investigation and trial virtually impossible. When individual witnesses of the violence later approached the police to register their own complaints, police pointed to the existing First Information Reports (FIRs) and refused to take down individual complaints which would have details of victims and accused. The report illustrated how affidavits listed a number of discrepancies between their statements including the omission of people identified as perpetrators and the inclusion of people who had not been named in the FIR and the subsequent charge sheet. Amnesty International is therefore seriously concerned to learn that despite the reopening of cases, fresh statements are rarely being taken by police and is deeply worried that this will once again lead to the closure of cases. Activists who have spoken to Amnesty International have

⁵ Following the developments in the Best Bakery case (see below), human rights activist Harsh Mander filed an affidavit in 2003 with the National Human Rights Commission (NHRC) highlighting the number of case closures. Subsequently, the Supreme Court issued an order in which it said that it would monitor all the proceedings related to the communal violence cases and appointed an *amicus curiae*. In August 2004, the Supreme Court further ordered the reopening of the 2,108 cases which had been closed by the state government on the basis that those responsible could not be found or that the police did not have enough evidence to file a charge sheet. Following protests from the Gujarat authorities, human rights activists engaged in a protracted legal battle to force the Government of Gujarat to reopen the cases. The cases were finally reopened in February 2006.

⁶ The majority of cases closed were done so under what is known as ‘A Summary’ procedures which refers to those offences found to be “true but undetected,” i.e. that those responsible could not be found or that police did not have enough evidence to file a charge-sheet. For example, in January 2003, police closed the Bilqis Rasool Bano case under Summary A. Acting on Bilqis’ petition, the Supreme Court in December 2003 directed a central police agency, the Central Bureau of Investigation (CBI) to reinvestigate the case. The CBI found evidence of police attempts to cover up the crime and arrested 12 persons accused of rape and murder, six police officers who are alleged to have covered up the crime and two doctors who were alleged to have provided distorted post mortem examinations. The Supreme Court in August 2004 directed that this case be tried in Mumbai; it began in late September 2004 and is still ongoing at the time of publication.

⁷ www.hardnewsmedia.com/portal/2006/10/610

⁸ See “Amnesty International, India, Justice, the victim – Gujarat state fails to protect women from violence,” (AI Index: ASA 20/001/2005), January 2005.

further pointed to several cases in which the lower judiciary is alleged to be encouraging out of court settlements. Moreover, the reopening and re-investigation of cases in the absence of a witness protection scheme⁹ is itself cause for concern.

In its order of August 2004, the Supreme Court ordered that the re-investigation of cases be overseen by an 11-member Committee which is comprised of a Director General of Police and 10 Inspector Generals of Police from Gujarat. It was entrusted with a mandate to review those criminal cases closed by the Gujarat police. In an effort to make the process transparent, the Supreme Court ordered that the reasons for re-closure of any cases be posted on a specifically designed website. At the time of publication and despite repeated attempts, Amnesty International could not access the website supposed to contain this information. The Supreme Court also ordered that the Committee submit it quarterly action-taken reports about the progress made on those cases which were opened for reinvestigation.

In August 2004, when the Supreme Court first gave a direction to review Gujarat violence-related cases, Amnesty International welcomed the move. At the same time, the organization expressed concern that a review and possible reinvestigation of cases by the very institutions which may have failed the victims in the first place, would not guarantee justice. These concerns now appear to have been justified.¹⁰

⁹ In its report on sexual violence in Gujarat, Amnesty International highlighted how the state's failure to provide timely and comprehensive witness protection was another facet of its failure to exercise due diligence with regard to ensuring the right to redress of Muslim victims of the communal violence (for further information see, "Amnesty International, India, Justice, the victim – Gujarat state fails to protect women from violence," (AI Index: ASA 20/001/2005). Following the widespread acknowledgement of this failure, including by the Supreme Court of India, the Law Commission of India in August 2004 presented a Consultation Paper on Witness Identity Protection and Witness Protection Programmes. Amnesty International submitted its recommendations to the Law Commission of India in November 2004. Amnesty International is aware that the Law Commission subsequently finalized its paper and submitted it to the Government of India for consideration in early 2006. However to date, the organization is not aware of any further developments in the drafting of a Bill.

¹⁰ The Banerjee Commission had been mandated by the Government of India to inquire specifically into the burning of the train compartment at Godhra in Gujarat on 27 February 2002, in which 59 Hindus were killed and which is reported to have led to the retaliatory attacks on the Muslim community. On October 13 2006, the Gujarat High Court had declared as 'unconstitutional, illegal and void' the setting up of the Banerjee Commission, on the grounds that the Nanavati Shah Commission – set up by the Gujarat Government - was already inquiring into the violence. Many human rights activists remain deeply doubtful of the integrity of the Nanavati Shah Commission. Amnesty International does not wish to pre-empt the findings of either Commission, nor comment on ongoing criminal proceedings. However, the organization points to the fact that numerous inquiries on other issues in India have taken years to conclude and that often their findings have been ignored. These considerations and the fact that almost five years after the violence in Gujarat, justice remains elusive for the majority of victims are matters of serious concern to Amnesty International.

In March 2006, the Mumbai High Court in the neighbouring state of Maharashtra delivered its judgment in the Best Bakery case¹¹ – in which 14 Muslims were killed during an attack on a bakery in Vadodara, Gujarat on 1 March 2002. This was the first of the high-profile cases relating to the Gujarat violence tried outside the state under the Supreme Court directive. At that time, many human rights groups continued to argue that despite this particular conviction, in which nine persons were sentenced to life imprisonment and eight others were acquitted, the overwhelming majority of those responsible for the 2002 Gujarat violence would go unpunished.

Today 15 key petitions relating to the Gujarat violence seeking re-investigation and transfer to a state outside Gujarat are pending in the Supreme Court and decisions on these are now imminent. The trials in these cases have been stayed since 2002. The cases relate to the violence in Godhra; Gulberg Society, Naroda Patiya and Naroda Gaam (all three in Ahmedabad) and Sardarpura in Mehsana district. Amnesty International believes that the inordinate delays on these cases have meant that in effect justice is being denied to victims and survivors. Many of those charged in these cases are reported to be intimidating witnesses whilst released on bail. Activists have moreover reported that many of the survivors and eye witnesses in these cases cannot return to their villages for fear of repercussions and so become, “refugees in their own land.”¹² Activists have also received reports of cases in which Muslims have been told by those Hindus living in their neighbourhood to drop legal cases if they want to return home.

Human rights defenders who persist in supporting victims and victims’ families are themselves subjected to harassment and intimidation. Amnesty International continues to receive worrying reports that human rights defenders, particularly those living in Gujarat, regularly have false criminal cases filed against them, receive threatening phone calls at any time of the day and night and sometimes face physical threats.

Human rights activists also point to the dramatically different treatment of those accused in the burning of Godhra train compartment – the incident which is alleged to have sparked the communal violence against Muslims. These 87 persons (44 are alleged to have absconded) have remained in pre-trial detention for the last four years - despite several legal attempts by human rights organizations to secure bail. All of them are Muslim. They continue to face charges under the provisions of the Prevention of Terrorism Act (POTA) two years after its

¹¹ In July 2003, following the acquittal by a fast track court in Gujarat of all of the accused in the torching of the Best Bakery in Vadodara – which resulted in the death of 14 people including several women and children -- the National Human Rights Commission filed a Special Leave Petition in the Supreme Court requesting it to set aside the judgment of the trial court and direct further investigation by an independent agency and retrial of the case outside Gujarat in order to ensure a fair trial. The Supreme Court ordered a retrial of the case based on a statement by Zahira Sheikh, a key witness in the case, claiming that she had been intimidated by BJP politicians into submitting false evidence to the trial court resulting in the release of all the accused. The Supreme Court also ordered that the retrial be conducted outside Gujarat.

¹² Teesta Setalvad, Secretary Citizens for Justice and Peace, Mumbai, February 2007.

Comment [c1]: Please delete “while suspected perpetrators often enjoy freedom”. Please delete this. We are not in principle opposed to bail, quite the opposite – particularly given the length of detention this would have necessitated. The point about many of those on bail resorting to intimidation is a valid concern, but can be addressed separately.

repeal, even though the POTA Review Committee appointed by the Government of India recommended that POTA charges be dropped.¹³

The POTA was repealed by the United Progressive Alliance (UPA) government in September 2004 on the grounds that it had been misused against political opponents, minorities and other marginalized sections of society.¹⁴ In Gujarat itself,¹⁵ POTA was known to have been widely used to target the Muslim minority. There are reports that the number of those detained under it have been as high as 200 as against the official figure of 87.

In 2005, the Gujarat government assigned some of the cases against alleged perpetrators of the 2002 violence to "fast track" courts to overcome delays, resulting in some convictions. Some of these convictions reportedly have been followed by a rise in local tensions and swift reprisals against the local Muslim population through reinforcement of social and economic boycotts.

In 2005, Amnesty International's report on Gujarat¹⁶ noted how before but particularly after the communal violence in 2002, leaflets circulated by the ruling BJP in collaboration with the Vishwa Hindu Parishad (VHP) called for a systematic economic boycott of Muslims.¹⁷ The leaflets circulated by the BJP and VHP urged Hindus not to buy from Muslims or to sell to them, not to use their services of any kind, not to employ them or be employed by them, with the clearly expressed objective to drive them from the state. Without work many Muslims had sunk into penury. Amnesty International has information which strongly suggests that the boycott was strictly enforced, with those ignoring it being threatened by right wing groups.

¹³ The POTA Review Committee was set up by the Government of India in 2003, to review whether POTA should have been applied in these and other cases in India. The POTA Review Committee had recommended that the majority of those arrested under POTA in Gujarat could have been tried under existing laws and that there is insufficient evidence for charging them with conspiracy against the state. The Government of Gujarat has legally challenged this recommendation.

¹⁴ Since the introduction of the POTA ordinance in 2001 Amnesty International had expressed concern that it did not contain sufficient pre trial safeguards, did not conform to the principle of certainty in criminal law and posed a threat to freedom of association and expression. See Amnesty International, "Briefing on the Prevention of Terrorism Ordinance," (AI Index: ASA 20/049/2001), 15 November 2001.

¹⁵ See Amnesty International, "India: Continued detention two years after the repeal of POTA," AI Index: ASA 20/026/2006), 20 September 2006.

¹⁶ See Amnesty International, "Justice, the Victim - Gujarat state fails to protect women from violence," section 7.6.c.

¹⁷ The Vishwa Hindu Parishad [the World Hindu Council] is a religious organization which along with the BJP belongs to the Sangh Parivar (the Collective Hindu Family) which believes in Hindutva – a political ideology of an exclusively Hindu nation.

The effect of economic boycotts on Muslim families, many of whom have been forced into daily wage labour because of the violence and have not been able to return to their traditional livelihoods is significant.¹⁸

3. Internally Displaced Persons (IDPs) and issues of compensation

*“What we are witnessing over the last five years has been the progressive transformation of a secure family unit into a state of absolute pauperization where most of them are living on less than one square meal a day. This is the slow death, which no one counts.”*¹⁹

An estimated 250,000²⁰ individuals were displaced as a direct result of the Gujarat violence. The vast majority of them have reportedly left the state or have moved to other mostly Muslim localities within the state. An approximate 5,000²¹ families are still living in what are being referred to as “relief colonies” in four districts of Gujarat - Panchmahals, Sabarkantha, Dahod, Anand and in the cities of Ahmedabad and Vadodara. Aman Biradari²² which conducted a detailed survey of these colonies in December 2006, defines a relief colony as one in “which residents have come from entirely a different area within village/city or from outside of it.” Over the last five years, they point out that these habitats have become permanent places of residence for those who are too frightened to return home. There are an estimated 81 “relief colonies” which are mostly located in urban areas. The size of each colony greatly varies. According to the survey conducted by Aman Biradari, there are 14 colonies which contain up to 15 families, about 15 colonies with 31-50 families, a further 15 colonies with 51-100 families whilst the largest six colonies have 151-210 families residing within them.

In October 2006, for the first time in five years, India’s National Commission of Minorities (NCM) visited these “relief colonies” following an official complaint by Gagan Sethi from

¹⁸ Observations made by human rights activists and organizations regarding the social and economic boycotting of Muslims were confirmed in the findings of the Sacchar Committee. Several human rights activists have documented cases which reveal an emerging pattern of economic discrimination – they report that whilst it is informally enforced there are many examples where the majority community has refused to trade with or employ Muslims.

¹⁹ Comment received from activist Farah Naqvi, 14 February 2007.

²⁰ “Crime against Humanity, An Enquiry into the Carnage in Gujarat, Findings and Recommendations”, Concerned Citizens Tribunal, October 2002 vol. II, p. 122.

²¹ A figure compiled by the Centre for Social Justice and Delhi based activist Farah Naqvi.

²² “A Survey of Relief Colonies for People Affected by Mass Violence in Gujarat 2002 -A Report Surviving State Hostility and Denial”. Harsh Mander, Kiran Nanavati of Aman Biradari. December 2006. Aman Biradari – which describes itself as a people’s campaign for justice and reconciliation -- in its study examines the availability of food security and provisioning of basic amenities to families living in the relief colonies.

the Centre for Social Justice, an Ahmedabad-based human rights organization and Delhi-based social activist, Farah Naqvi.

The NCM's findings²³ contested the Government of Gujarat's claim that all those displaced by the violence had been adequately rehabilitated. The NCM's report submitted to the Government, pointed out that:

- large numbers of internally displaced Muslim families in Gujarat were living in sub-human conditions in colonies entirely constructed by NGOs;
- abject poverty prevails in these colonies;
- these colonies lacked basic civic facilities including potable water, sanitation facilities, electricity, access to health services and education etc;
- the majority of families in the colonies were destitute but were given Above Poverty Line cards by the state authorities rather than being given Below Poverty Line cards which entitles them to food grains cereals, kerosene and other basic consumer items at subsidized rates;
- residents of these colonies were "frustrated by their inability to earn their own livelihood and to support themselves in the manner to which they were accustomed," and are finding it extremely difficult to survive;²⁴
- families were living there not by choice but because they were too frightened to return to their original place of habitation;
- even in these colonies, there was an air of insecurity and hostility from state agencies including the police;
- some of the residents of these colonies were witnesses in some of the key cases relating to the Gujarat violence.

The NCM report went on to assert that:

- the Gujarat government had failed to provide a safe environment for these people or facilitate their return to their homes;
- there has been no support from the state to compensate them for their loss of habitual place of residence.

During its visit to the state in October 2006, the NCM raised the issue of compensation (an amount of Rs. 19.10 crores [approximately \$4,3million]) which the Government of Gujarat

²³ For a summary of the National Commission of Minorities findings on its visit to Gujarat in October 2006 see: www.ncm.nic.in/pressnote.pdf

²⁴ Many human rights activists have also highlighted how the culmination of living in "relief colonies," enforcement of economic boycotts and reliance on daily wage labour has meant that many Muslim families have been forced into penury.

Comment [c2]: Unless the NCM pointed to the human rights activists highlighting these issues, move this part to a footnote and add human rights activists **have also etc.**

had returned to the Government of India on the grounds that there were no unfinished tasks of rehabilitation arising from the communal violence. Human rights activists and the NCM have highlighted that their observations in visits to the “relief colonies” very much contradict the state government’s assessment.

The NCM also recommended that the Government of India:

- urgently provide a special economic package for the rehabilitation of those families living in camps and called on the Government of Gujarat to ensure that basic amenities are provided in the camps;
- formally recognize those displaced as a result of the violence as IDP’s.
- draft a policy to deal with the displacement of individuals as a result of communal as well as other types of conflict.²⁵

After receiving the report, the Ministry of Home Affairs announced that it would send an assessment team to review the living conditions in these camps, but nothing has happened as of end-February 2007. Activists are urging the government provide each family with Rs. 400,000 [US \$ 9,170] as compensation.²⁶

Activists have argued that when communal violence takes place, the state should be duty bound to provide adequate reparation rather than capriciously handing out arbitrary sums of money to victims. Given these recommendations, the Government of India is reported to be considering reviewing existing policies governing the payment of compensation to victims of communal violence.²⁷ The Central Minister of State for Home Affairs, Prakash Jaiswal in November 2006 announced on television that the Government of India would award a further Rs. 700,000 [US \$15,900] compensation to the victims of Gujarat.²⁸ Many activists

²⁵ A policy focusing on relief and rehabilitation of those displaced as a result of planned industrial development is currently being drafted by the Government of India. However, there is no existing policy on internal displacement caused as a result of communal violence or other kinds of internal conflict.

²⁶ A writ petition was filed by Citizens for Justice and Peace (CJP) in March 2003. The CJP was authorized by the Gujarat High Court to undertake district-wise surveys of the actual amounts of compensation awarded to victims of the communal violence so far. The CJP in their petition suggests that Rs 400,000 [US \$9,170] be awarded to families for loss of life and this be included in a wider reparation package that also covers the victims of sexual violence.

²⁷ India (including Gujarat) has witnessed a series of communal conflicts since independence and rates of compensation awarded to victims of these conflicts have varied greatly. Amnesty International in previous reports (see Amnesty International, “Justice, the Victim..” see footnote 16) concurred with the views of domestic human rights community that the Government of Gujarat has failed to pay adequate compensation to the victims of the 2002 violence and contrasted it to the comprehensive relief, compensation and rehabilitation packages put in place a year earlier after the earthquake in Gujarat

²⁸ The Government of India’s announcement was also reported on in the Indian press – including the Times of India, The Hindu and The Indian Express on 27 November 2006. The government stated that

emphasised that this compensation must encompass not only families of those victims who were killed during the violence but also those who survived but nevertheless suffered serious harm and injury. This would include victims of sexual violence, victims of serious injuries, those who suffered significant damage to their property but were not properly recompensed under the state government's disbursement.²⁹ However, Amnesty International learnt shortly after this announcement, when the issue of a one-time compensation to the victims of the communal violence in Gujarat was raised in the Lower House of the Indian Parliament in December 2006, the Government of India responded that "no final decision has been taken in this regard."³⁰ Amnesty International is concerned that the Government of India appears to have backtracked on its promise.

The NCM have stated that a specific policy dealing with IDPs in the context of communal violence is important especially in situations where the threat against minorities is perceived to be continuing, where the criminal justice system – as in Gujarat – appears not to be working and discrimination and exclusion persist. The NCM have further recommended that a policy on IDPs should provide mandatory agreed sums of immediate compensation; money for rehabilitation, provisions to facilitate voluntary return and to restore the displaced families to their original conditions of living. Amnesty International concurs with these views. The organization believes that a policy ensuring respect for all IDPs' rights of reparation, especially their right to adequate housing, should be set up and implemented promptly, efficiently, systematically, through consultation with IDPs and without discrimination.³¹

Amnesty International remains concerned that the Gujarat government has failed to provide full or, in most instances, any, reparations to victims and their families, including restitution, rehabilitation, satisfaction and guarantees of non-repetition, in accordance with international standards.³² This includes the failure to adequately recompense those families whose houses were partially or completely destroyed during the 2002 violence.

this compensation would be consistent with the compensation awarded to the survivors of the anti-Sikh riots which took place in Delhi in 1984 following the assassination of the then Prime Minister, Indira Gandhi. It is unclear whether the compensation in the case of Gujarat would be awarded per family or per victim.

²⁹ The CJP have legally contested the compensation awarded by the state government to those families whose houses were partially or completely destroyed in the communal violence. The state government had awarded an arbitrary and grossly inadequate ceiling of Rs. 50,000 [US \$ 1,130] per destroyed dwelling.

³⁰ The Central Minister of State for Home Affairs responding on behalf of the Government of India in the Lok Sabha (Lower House) to a question raised by Eknath Mahadeo Gaikwad and Nivedita Mane on 12 December 2006. For full details please see: <http://164.100.24.208/lsg14/quest.asp?pref=35425>

³¹ See UN Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998, especially principles 28-30.

³² For the scope of the five forms of reparations see principles 19-23 of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

Amnesty International strongly believes that the Government of India should ensure that it respects its obligations under international law to provide appropriate and adequate reparation commensurate with the harm suffered and sufficient to enable victims and their families to rebuild their lives.

Amnesty International urges the Government of Gujarat and the Government of India to ensure that where reparation for victims of the 2002 violence is incomplete or inadequate, this should be urgently dealt with.

4. Sexual violence in Gujarat

“Violent communal conflicts, especially like some recent ones in a state (Gujarat), in which there is large-scale targeted sexual violence against Muslim women has a spread affect even in regions of the country not directly affected by the violence. There is immense fear, a feeling of vulnerability, and consequently a visible impact on mobility and education, especially of girls. The lack of adequate Muslim presence in the police force accentuates this problem in almost all Indian states as it heightens the perceived sense of insecurity, especially in a communally sensitive situation.”³³

In its January 2005 report, Amnesty International described in detail how the Government of Gujarat had failed to fulfil its obligations under national and international law to exercise due diligence to protect its citizens from violence, killings, sexual attacks and destruction. The report detailed how in particular the state government failed to protect Muslim women who were the targets of rape and other forms of sexual violence and how the 2002 attacks appear to have been part of a widespread attack on the civilian Muslim population pursuant to government and organizational policies to commit these attacks. Amnesty International concluded that some of these acts constituted crimes against humanity under international law. It further noted that both the Indian and Gujarat authorities have a responsibility under international law to prevent and protect against such crimes, to provide an effective remedy and to bring the perpetrators to justice.

The report cited numerous cases where police are reported to have stood by or actually participated in acts of sexual violence against Muslim women. It showed how elements of the criminal justice system including the police and the judiciary failed in their constitutional duty to objectively record and investigate complaints and prosecute offences. It illustrated how the Government of Gujarat and other authorities failed to provide medical relief and secure medico-legal evidence of victims who had been sexually attacked. The report furthermore illustrated how deficiencies in penal provisions relating to rape – long recognized in India by women rights activists and quasi-governmental bodies (including the Law Commission) alike

³³ Social, Economic and Educational Status of the Muslim Community of India Prime Minister’s High Level Committee, Cabinet Secretariat, Government of India, November, 2006, p.34.

– meant that many of the sexual crimes inflicted on women during the violence fell outside the existing legislative framework and were thus not registered by the police.

Closer inspection of those handful of cases which have been registered – a couple of which are at more advanced stages of investigation – also clearly revealed the failings of the judiciary in Gujarat and how, without incessant efforts by victims and human rights defenders, these few cases would never have progressed. As one social activist stated:

“The Government of India has held up its handling of the case of Bilqis Bano as evidence of the resilience of the existing Indian legal system. But we activists see it as evidence of the colossal failure of the criminal justice system to address the systematic targeting of women during a mass crime situation of communal conflict. The Bilqis case has only got to where it has got today because of the tireless and exhaustive efforts of a group of human rights activists and lawyers – otherwise it would have suffered a similar fate to those other cases.”

She goes on to add, *“The bottom line is that five years since the communal violence in Gujarat, there’s not been a single conviction in a sexual violence case.”*³⁴

Whilst only a handful of cases have been registered, a confidential report submitted to the UN Committee monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (hereafter referred to as CEDAW Committee) in July 2003, by the “Citizen’s Committee for Extraordinary Report on Gujarat, India”³⁵ states that at the very least 300-400 women were victims of sexual violence during the 2002 violence. The CEDAW committee thereafter asked the Government of India *“to indicate, by 15 December 2003, the anticipated date of submission of its combined second and third periodic reports (due on 8 August 1998 and 8 August 2002, respectively), including information on the events in Gujarat and their impact on women.”* Following receipt and the hearing of this subsequent report in January 2007, the CEDAW Committee in its questions and answers session and in its concluding observations severely reprimanded the Government of India for the inadequacy of its reporting on the “impact of the Gujarat massacres on women”³⁶ It requested that a follow up report be submitted by January 2008 to include:

“ information (a) disaggregated by sex, on the 2,000 or so cases relating to the massacres that have been reopened and the resolution of these cases; (b) on the number of cases of sexual assault and violence against women that have been reported and the resolution of such

³⁴ Comment received from Farah Naqvi, 14 February 2007.

³⁵ The Citizen’s Committee is comprised of various women’s rights activists who have been closely monitoring the situation in Gujarat.

³⁶ For further information on questions posed to the Government of India regarding the situation in Gujarat, please see “Responses to the list of issues and questions for consideration of the combined second and third periodic report of India,” Committee on the Elimination of Discrimination against Women, 37th session, 15 January – 2 February 2007. Concluding Comments of the Committee on the Elimination of Discrimination against Women: India, s, UN Doc. CEDAW/C/IND/CO/3, 2 February 2007, para 67

cases; (c) on victim protection measures and other measures to support victims that have been put in place and the impact of such measures; (d) on arrests made and punishments imposed, including on state officials who were found to be complicit in such crimes; (e) on the gender-specific measures taken by the State party to rehabilitate and compensate women victims of such crimes and the number of women who have benefited from such measures; (f) on compensation awarded to women victims, especially of violence against women; (g) disaggregated by sex, on the 5,000 or so Muslim families displaced by the violence and measures taken by the Government for their resettlement and rehabilitation; and (h) on measures taken to enable economic rehabilitation of the affected communities and rebuilding of basic infrastructures destroyed during the riots.”³⁷

5. Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005

In its Common Minimum Program of May 2004, the UPA government announced that it would be enacting a “model comprehensive law to deal with communal violence and encourage each state to adopt that law to generate faith and confidence in minority communities.” In light of events in Gujarat, many domestic human rights organizations as well as Amnesty International hoped that this new legislation would address the deficiencies identified in the legislative framework which had hampered the many serious efforts of human rights organizations and human rights lawyers to secure justice for the victims of Gujarat. In particular, it was hoped that new legislation would: address the occurrence of mass crimes, incorporate the notion of command responsibility and include expanded definitions of gender based crimes in situations of communal violence to ensure that it incorporated the experiences of the victims of the 2002 violence.

During a visit to New Delhi in February 2006, Amnesty International’s Secretary General Irene Khan impressed on the Government of India the need to ensure that the provisions for offences contained within the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 (hereafter referred to as the Communal Violence Bill) were defined as under international law, in particular crimes of sexual violence, as reflected in the Rome Statute and other international treaties and customary international law and in the most recent jurisprudence of international criminal tribunals.

In January 2007, the CEDAW Committee, in its concluding comments, expressed concern that:

“the proposed Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005, does not include sexual and gender-based crimes against women perpetrated during

³⁷ Concluding Comments of the Committee on the Elimination of Discrimination against Women: India, s, UN Doc. CEDAW/C/IND/CO/3, 2 February 2007, para 68.

*communal violence or create a system of reparations for victims of such crimes, as these elements are not covered effectively by the Indian Penal Code or other relevant legislation.*³⁸

Amnesty International also concurs with the recommendations made by the CEDAW Committee, that the Government of India ensure that the Communal Violence Bill incorporates “sexual and gender based crimes, including mass crimes against women perpetrated during communal violence; a comprehensive system of reparations for victims of such crimes; and gender-sensitive victim centred procedural and evidentiary rules.”³⁹

Amnesty International notes the Government of India’s statement to the CEDAW Committee that it would consider the inclusion of the Committee’s recommendations into the proposed Bill.

However the present version of the Bill, which the Union Cabinet approved for enactment on 1 March 2007, fails to expand on definitions of violence against women beyond those currently contained within the Indian Penal Code. These often do not correspond with the range of violations provided for under international law, nor sufficiently recognize the gender-specific nature of offences inflicted on women, such as those perpetrated during the violence in Gujarat.

Amnesty International therefore reiterates the need for any legislation containing provisions relating to all acts of sexual violence against girls and women to be adequate and reflect the wide variety of abuses including those reported in Gujarat.

Moreover, the Bill, in its proposed form, does not in any way address the critical issue of the chain of command responsibility. In other words, it does not hold the relevant officials and leaders within the state government to account in situations where the state government is itself accused of being complicit in orchestrating, planning or being otherwise complicit the violence – as has often been alleged in the case of Gujarat. Instead, it fixes personal responsibility on government officials who fail to discharge their duty of preventing and controlling communal violence. Moreover prosecution of military and law enforcement officials – under the Bill – still requires the consent of the central government.

As far back as 1997, Amnesty International called on the Government of India to review all provisions protecting public servants from arrest and prosecution. To this end, Amnesty International called on the Government⁴⁰ to amend sections 197 and 45 of the Code of Criminal Procedure, (1973) under which sanction by the Government of India is required for

³⁸ *Ibid*, para. 24.

³⁹ *Ibid.*, para 25,

⁴⁰ See, Amnesty International, “Submission to the Human Rights Committee concerning the application of the International Covenant on Civil and Political Rights” (AI Index ASA 20/027/1997). 1 July 1997.

prosecution of state officials.⁴¹ Amnesty International continues to call on the Government of India to amend both these provisions which it believes facilitate impunity.

Amnesty International strongly urges the Government of India – as also recommended by the CEDAW Committee – to ensure that the Communal Violence Bill addresses the inaction or complicity of State officials in communal violence situations.

6. Conclusion

Amnesty International strongly believes that justice continues to elude many of those who were victims of the violence in Gujarat in 2002. The complete failure of the Government of Gujarat – itself accused of direct complicity in the violence which left over 2,000 people dead – is further evident in its persistent unrepentant attitude, as shown in their non-recognition of those still internally displaced by the 2002 violence and by its failure to provide basic amenities to “relief colonies.”

The Government of India’s response is furthermore disconcerting. The delay in acting on the findings of the National Commission of Minorities on the conditions prevalent in the relief colonies, the delay in enacting witness protection schemes, despite the Law Commission’s submission of its recommendations in 2006, the failure to encompass the broad range of experiences of the victims of Gujarat within its framing of the Communal Violence Bill, all heighten Amnesty International’s concerns that justice for the victims remains a bitter and uphill struggle. This is particularly the case when many of the victims continue to live in relief colonies, under the imposition of social and economic boycotts and face intimidation for their role in ensuring conviction of perpetrators.

7. Recommendations

A. Re-opening and investigation of cases:

- Amnesty International urges the Committee overseeing the 1,594 cases which were reopened under the directions of the Supreme Court in August 2004 to closely monitor the process of re-investigation and ensure that investigators take all necessary steps to uncover the facts, including taking fresh witness statements, where necessary. The organization also urges the Committee to guarantee that these cases are vested with officers not already connected with the earlier investigation into the cases.

⁴¹ Under Section 197 of the Code of Criminal Procedure (CrPC), a public servant cannot be prosecuted without the sanction of the appropriate authorities for acts done “while acting or purporting to act in the discharge of his official duties.” Section 45 of the CrPC protects members of the armed forces from arrest “for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government”. This can also be extended by individual states to any forces charged with the maintenance of public order within states.

- Further, Amnesty International calls on the Committee and the Government of Gujarat to ensure that the website containing all information pertaining to the progress in 1,594 cases is fully functional, available and accessible and that the reasons for any closure of cases are fully outlined.
- Amnesty International calls on the National Human Rights Commission (NHRC) to play an active role in monitoring all ongoing investigations, prosecutions and trials of cases relating to the communal violence of 2002. The organization further urges the NHRC to investigate all cases of closure, acquittal and bail in this regard, with a view to determining whether government policies, police investigations, judicial proceedings and decisions were carried out in accordance with international human rights law and standards. The conclusions and recommendations resulting from such NHRC investigations must be seriously considered by state and national authorities.
- Amnesty International urges the Government of India to publicly outline what steps it is taking towards implementing a witness protection scheme – particularly in light of the submission by the Law Commission in early 2006. The urgency to introduce a rigorous witness protection system is prompted by the Supreme Court’s order of August 2004 for the reopening and reinvestigation of cases. No victim survivors and witnesses should be placed at risk of further attack because of their willingness to come forward to testify.
- Amnesty International urges the Government of Gujarat to drop all cases under the Prevention of Terrorism Act (POTA) and immediately release all individuals held without charge under POTA, unless in those cases where it decides, expeditiously, to transfer them to ordinary courts to face ordinary criminal charges. Even in such cases, continued detention should be the exception rather than the rule, and trials must meet international standards of fairness.
- Amnesty International urges the Government of India to review all provisions protecting public servants from arrest and prosecution. To this end, it should amend sections 45 and 197 of the Code of Criminal Procedure, 1973, to remove the requirement of the sanction of the central or state government for the prosecution of members of the police or armed forces.

B: Sexual violence:

- Amnesty International calls on the Government of India and national legislature to pay urgent attention to the need to ensure that the substantive and procedural legal provisions relating to prosecution of all acts of sexual violence against girls and women are adequate and reflect the wide variety of abuses reported. The current laws

are clearly inadequate; this inadequacy has hampered victims' chances to obtain legal redress.

- Amnesty International calls on the Government of India to incorporate into the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005; sexual and gender based crimes, including mass crimes against women perpetrated during communal violence; a comprehensive system of reparations for victims of such crimes; and gender-sensitive victim centred procedural and evidentiary rules.
- Amnesty International calls on the Government of India to incorporate provisions within the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005, to deal with situations where the state government is accused of acquiescence, connivance or complicity – in other words addressing the chain of command – in situations of communal violence.
- Amnesty International urges the Government of India to ensure that it obliges with the request for a follow-up report into the sexual violence in Gujarat by the CEDAW Committee by the end of January 2008.
- Amnesty International urges the Government of India to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The Optional Protocol provides for individual petitions and for inquiries into systematic violations of the Convention, affording an international remedy for women who have suffered human rights abuses.
- Amnesty International urges the Government of India to ratify the Rome Statute of the International Criminal Court and implement it in national law as set forth in the Amnesty International paper, *The International Criminal Court: Guidelines for Effective Implementation*, AI Index: IOR 40/011/00, July 2000.

C. Reparations:

- Amnesty International strongly believes that the Government of India should respect its obligations under international law to provide the victims of the 2002 communal violence in Gujarat appropriate and adequate reparation commensurate with the harm suffered and sufficient to enable victims and their families to rebuild their lives.
- Amnesty International urges the Government of India to ensure that it fulfils its promise which was announced in November 2006 to award further compensation to the victims of the 2002 communal violence in Gujarat.

- Amnesty International further calls on the Government of India to award appropriate compensation to the victims of sexual violence, victims of serious injuries and those who suffered significant damage to their property in Gujarat.
- Amnesty International urges the Government of India to draft a specific policy dealing with internally displaced persons (IDPs) in the context of communal violence – which is in line with the UN Guiding Principles on Internal Displacement. This policy should be set up and implemented properly, efficiently, systematically, through consultation with IDPs and without discrimination. It should incorporate:
 - a mandatory agreed sum of immediate compensation which is promptly provided to victims;
 - funds for rehabilitation;
 - provisions to facilitate the voluntary return and to restore the displaced families to their original conditions of living;
 - respect for all IDPs' rights of reparation, especially fulfilment of their right to adequate housing.