A CONFERENCE ON HUMAN RIGHTS AND IMPUNITY:

TOWARDS ACCOUNTABILITY IN INDIA

CAMBRIDGE AND BOSTON, MA
Nov. 15-16, 2003

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INFORMATION FOR PANELISTS

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A Conference on Human Rights and Impunity: Towards Accountability in India

In the last several decades, various regions of India have suffered from outbreaks of massive communal violence. Characterized as endemic and sporadic riots, or as separatist movements, the state has often taken stringent counter-measures to quell the violence. State actors have perpetrated human rights abuses, committing excesses under the guise of restoring peace. Few, if at all, have been penalized to date. The impunity enjoyed by the perpetrators of such wide-scale organized crime has raised important questions about state accountability in the world's largest democracy.

This conference aims to provide a platform for human rights activists from India to interact with international human rights activists based in the United States and leading academics whose work focuses on impunity, international diplomacy, and international human rights. The conference will focus on human rights violations in the regions of Kashmir, Punjab and Gujarat, and the subsequent impunity enjoyed by the perpetrators. The workshops held during the conference will explore mechanisms to strengthen the linkages between regional and international human rights actors, and expand existing regional advocacy processes internationally.

Goals

The conference aims to:

- **Develop a framework for coordination and solidarity among the participating Indian actors, as well as across relevant international human rights groups**

- **Understand the challenges faced at various levels by the activists in the regions of focus in their struggles for justice for the victims; and explore further domestic and international avenues available to them**

- **Allow the sharing of expertise and tools among the participants to formulate appropriate strategies to bring the issues to the attention of the UN and foreign governments and courts**

- **Provide skills in establishing regular communication channels with international media and learn best practices to be adopted to provide periodic updates to the media, especially in the United States.**

This exercise will focus on the development of definite and pragmatic steps to be undertaken in the respective campaigns for justice.

Saturday November 15 Meetings

8:30	**Ram Kumar, Jaskaran Kaur, Crossette**	
9:00	**MIT 4-149**	**Teesta Setalvad, John Cerone** **MIT 4-153**
10:00	**Ram Kumar, Parvez Imroz, Teesta Setalvad** **MIT 4-149**	**Siddharth Varadarajan, AID/Asha** **MIT 4-153**
10:45	**Kumar, Imroz, Setalvad, Varadarajan,** **MIT 4-153**	**AID/Asha, Alliance**
11:30	**Kumar, Imroz, Setalvad, Susannah Sirkin, Smita Narula;** **MIT 4-149**	
12:30	**LUNCH MIT 4-159**	
1:30	**Omar Khalidi, Ghori, A Khan, Mir Ali, Matthew, Kumar, Imroz, Setalvad, Varadarajan** **MIT 4-149**	
3:00	**PUBLIC PANEL** **MIT 1-190**	
4:00		
5:00		

Snacks will be available throughout the day in MIT 4-159.

Sunday Nov. 16 Program

Kresge Room G2
Harvard School of Public Health
651 Huntington Avenue
Boston, MA 02115

Registration **09:00 – 09:30 AM**

Welcome and Orientation **09:30 – 09:45 AM**
Stephen Marks

Keynote Address **09:45 – 10:15 AM**
Justice J.S. Verma, former Chair of the NHRC
General Q&A Session

Regional Introductions **10:15 – 11:45 AM**
Moderator: Balakrishnan Rajagopal
Kashmir: Parvez Imroz
Punjab: Ram Narayan Kumar
Gujarat: Teesta Setalvad
General Q&A Session

Coffee Break **11:45 – 11:50 AM**

International Human Rights Organizations: **11:50 – 1:00 PM**
Moderator: Peter Rosenblum
Panelists: Smita Narula
Susannah Sirkin
Questions by Regional Representatives
General Q&A Session

Lunch **1:00 – 2:00 PM**

Media **2:00 – 3:30 PM**
Moderator: Henry Steiner
Panelists: Barbara Crossette
Siddharth Varadarajan
Shujaat Bukhari
Questions by Regional Representatives
General Q&A Session

The United Nations and International Law **3:30 – 5:10 PM**
Moderator: Jacqueline Bhabha
Panelists: Stephen Marks
Chris Sidoti
Iftaar Break
Panelist: John Cerone
Questions by Regional Representatives
General Q&A Session

Coffee Break **5:10 – 5:20 PM**

Reflections and Requests from Regional Activists **5:20 – 6:20 PM**

Documentation and Advocacy Resources

Smita Narula

Tools for Human Rights Information Handling: HURIDOCS provides brief practical manuals aimed at enhancing the capacity of NGOs with regard to monitoring and documentation, including the development of data classification schemes and other resources on the internet. Please see http://www.huridocs.org/othtools.htm#hrmonseries.

Handbook on Fact-finding and Documentation of Human Rights Violations
This handbook, written by D.J. Ravindran, Manuel Guzman and Babes Ignacio, discusses the methods and strategies that are normally used by organizations engaged in fact-finding and documentation of human rights violations. It provides practical pointers on techniques of interviewing. It also discusses systematic recording of information. The book is available from Forum-Asia (email: info@forumasia.org).

University of Essex, The Torture Reporting Handbook: This handbook provides an in-depth analysis of collecting documentation, from detailed interview techniques, to interview questions, to ethical issues. It also describes international reporting mechanisms, international complaint mechanisms, and advocacy before the UN, including detailed information on how to write and structure a communication to a UN body or representative. Available at http://www.essex.ac.uk/torturehandbook/ (172 pages).

A Guide to Reporting in Dangerous Situations: The Committee to Protect Journalists discusses training, protective gear, and other precautions when reporting in conflict zones. Available at http://www.cpj.org/Briefings/2003/safety/journo_safe_guide.pdf (70 pages).

Witness Training materials on the use of video. Witness provides both video and written guides to help advocates understand the technical and the strategic dimensions to using video in human rights documentation and advocacy campaigns. Go to www.witness.org and click on the "training" link.

A Working with the Media Guide: The Center for Reproductive Rights provides basic guidelines on writing a press release, establishing contacts with reporters, and other media-related advocacy. Available at http://www.crlp.org/pdf/mediaguide.pdf.

Sample Press Releases:
Gujarat: http://www.hrw.org/press/2002/04/gujarat.htm
Punjab: http://www.hrw.org/press/2003/06/india061003.htm

Letter on Gujarat: http://www.hrw.org/press/2003/09/india090503-ltr.htm

Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity

E/CN.4/Sub.2/1997/20/Rev.1, Annex II

Preamble

The General Assembly,

Recalling the Preamble of the Universal Declaration of Human Rights, which states that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind,

Aware that there is always a risk that such acts may occur,

Reaffirming the commitment made by the Member States under Article 56 of the Charter of the United Nations to take joint and separate action, giving full importance to developing effective international cooperation for the achievement of the purposes set forth in Article 55 of the Charter concerning universal respect for, and observance of, human rights and fundamental freedoms for all,

Considering that the duty of every State under international law to respect and to secure respect for human rights requires that effective measures should be taken to combat impunity,

Recalling the recommendation contained in paragraph 91 of Part II of the Vienna Declaration and Programme of Action, wherein the World Conference on Human Rights (June 1993) expressed its concern about the impunity of perpetrators of human rights violations and encouraged the efforts of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to examine all aspects of the issue,

Convinced, therefore, that national and international measures must be taken for that purpose with a view to securing jointly, in the interests of the victims of human rights violations, observance of the right to know and, by implication, the right to the truth, the right to justice and the right to reparation, without which there can be no effective remedy against the pernicious effects of impunity,

Decides, pursuant to the aforesaid recommendation of the Vienna Declaration and Programme of Action, solemnly to proclaim the following principles for the guidance of States having to combat impunity.

Definitions

A. Impunity

"Impunity" means the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, convicted, and to reparations being made to their victims.

B. Serious crimes under international law

This term, as used in these principles, covers war crimes, crimes against humanity, including genocide, and grave breaches of and crimes against international humanitarian law.

I. The Right to Know

A. General principles

Principle 1. The Alienable Right to the Truth

Every people has the inalienable right to know the truth about past events and about the circumstances and reasons which led, through the consistent pattern of gross violations of human rights, to the perpetration of aberrant crimes. Full and effective exercise of the right to the truth is essential to avoid any recurrence of such acts in the future.

Principle 2. The Duty to Remember

A people's knowledge of the history of their oppression is part of their heritage and, as such, shall be preserved by appropriate measures in fulfilment of the State's duty to remember. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.

Principle 3. The Victims' Right to Know

Irrespective of any legal proceedings, victims, their families and dear ones have the right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victim's fate.

Principle 4. Guarantees to Give Effect to the Right to Know

To give effect to the right to know, States must take appropriate action. Failing judicial institutions, priority should initially be given to establishing extrajudicial commissions of inquiry and ensuring the preservation of, and access to, the archives concerned.

B. Extrajudicial Commissions of Inquiry

Principle 5. Role of the Extrajudicial Commissions of Inquiry

The Extrajudicial Commissions of Inquiry shall have the task of establishing the facts so that the truth can be found, and of preventing evidence from disappearing. In order to restore the dignity of the victims, families and human rights defenders, these investigations shall be conducted with the object of securing recognition of such parts of the truth as were formerly constantly denied.

Principle 6. Guarantees of Independence and Impartiality

In order to found their legitimacy upon incontestable guarantees of independence and impartiality, the terms of reference of the Commissions must respect the following principles: Commissions

(a) Shall be established by law or, depending on the circumstances, by a contractual instrument or treaty clause concluding a process of national dialogue or a peace accord;

(b) Shall be constituted in accordance with criteria making clear to the public the impartiality of their members and on conditions ensuring their independence, in particular by the irremovability of their members for the duration of their terms of office, guaranteed immunities and privileges essential to their safety, including after their mission is over, and the power to require assistance from the public authorities if necessary.

Principle 7. Definition of the Commissions' Terms of Reference

To avoid conflicts of jurisdiction, the terms of reference of the Commissions must be set forth clearly. They shall incorporate at least the following stipulations and limitations:

(a) The Commissions are not intended to act as substitutes for the civil, administrative or criminal courts, which shall alone have jurisdiction to establish individual criminal or other responsibility with a view to reaching a decision as to guilt and, where appropriate, passing sentence;

(b) Their investigations shall relate to all persons cited in allegations of human rights violations, whether they ordered them or actually committed them, acting as perpetrators or accomplices, and whether they are public officials or members of quasi-governmental or private armed groups with any kind of link to the State, or of non-governmental armed movements having the status of belligerents. If the circumstances so warrant, they may also extend to serious crimes allegedly committed by any other organized, armed group;

(c) The Commissions shall have jurisdiction to consider all forms of human rights violations. Their investigations shall focus as a matter of priority on those violations appearing to constitute a consistent pattern of gross violations. They shall endeavour:

(i) To analyse and describe the machinery of the State through which the violating system operated, and to identify the victims and the administrations, agencies and private entities involved and reconstruct their roles;

(ii) To safeguard evidence for later use in the administration of justice;

(iii) To recommend ways of diminishing the effects of impunity.

Principle 8. Guarantees for Persons Implicated

Any persons implicated when the facts are established shall be entitled, especially if the Commission is permitted under its terms of reference to divulge their names, to the following guarantees based on the adversarial principle:

(a) The Commission must strive to corroborate information gathered by other sources;

(b) The person implicated shall have the opportunity to make a statement setting out his or her version of the facts or, within the time prescribed by the instrument establishing the Commission, to submit a document equivalent to a right of reply for inclusion in the file. The rules of evidence provided for in principle 18 (c) shall apply.

Principle 9. Guarantees for Witnesses and Victims

Steps shall be taken to guarantee the security and protection of witnesses and victims.

(a) They may be called upon to testify before the Commission only on a strictly voluntary basis;

(b) If anonymity is deemed necessary in their interests, it may be allowed only on three conditions, namely:

(i) That it is an exceptional measure, except in the case of victims of sexual abuse;

(ii) That the Chairman and one member of the Commission are empowered to satisfy themselves that the application is warranted and ascertain, in confidence, the identity of the witness so as to be able to give assurances to the other members of the Commission;

(iii) That the report will normally refer to the gist of the testimony if it is accepted by the Commission.

Principle 10. Operation of the Commissions

The Commissions shall be provided with:

(a) Transparent funding to prevent them from coming under suspicion;

(b) Sufficient material and human resources for their credibility not to be open to question.

Principle 11. Advisory Functions of the Commissions

The Commissions' terms of reference shall include provisions calling for them to make recommendations on action to combat impunity in their final reports.

These recommendations shall contain proposals aimed, inter alia, on the basis of the facts and of any responsibility that has been established, at encouraging the perpetrators of the violations to admit their guilt.

The recommendations shall, in addition, set out legislative or other measures to put these principles into effect and to prevent any further violations. These measures shall primarily concern the army, police and justice system and the strengthening of democratic institutions.

Principle 12. Publicizing the Report of the Commissions

For security reasons or in order to avoid pressure on witnesses and Commission members, the Commissions' terms of reference may stipulate that the inquiry shall be kept confidential. The complete final report, on the other hand, should always be made public and be disseminated as widely as possible.

Commission members shall be protected by immunity from any defamation or other civil or criminal proceedings that might be brought against them in connection with material contained in the report.

C. Preservation of and access to archives

Principle 13. Measures for the Preservation of Archives

The right to know means that archives should be preserved. Technical measures of a protective nature shall be taken to prevent the removal, destruction, concealment or falsification of archives containing evidence of violations.

These urgent measures shall be followed by legislative or other reforms permanently governing the storage and preservation of and access to the archives in accordance with the principles set out below; specific measures shall be taken in the case of archives containing names in accordance with principle 18. Third countries in possession of such archives are invited to cooperate in their restitution.

Severe penalties shall be laid down for misappropriation of archives, especially with a view to negotiating payment for them.

Principle 14. Administration of Archive Centres

Measures shall be taken to place each archive centre under the responsibility of a specifically designated person. If that person was already in charge of the archive centre during the reference period, he or she must be explicitly redesignated, subject to the modalities stipulated in principles 49 and 50.

Principle 15. Administrative Measures Relating to Archive Inventories

Priority shall initially be given to drawing up inventories of the archives stored including, with their cooperation, those held in third countries, and ascertaining the reliability of existing inventories. Special attention shall be given to archives of places of detention, in particular when such places did not exist officially.

Principle 16. Measures to Facilitate Access to Archives

Access to archives shall be facilitated, in the interest of historical research in particular. Authorization formalities shall normally have the sole purpose of controlling access and may not be used for purposes of censorship.

Principle 17. Cooperation Between Archive Departments and the Courts and Extrajudicial Commissions of Inquiry

The courts and extrajudicial commissions of inquiry, as well as the investigators reporting to them, shall have free access to archives. Considerations of national security may not be invoked to prevent access. In accordance with their sovereign powers of assessment, however, the courts and extrajudicial commissions of inquiry may decide, in exceptional circumstances, not to make certain information public if it might jeopardize the restoration of the rule of law.

Principle 18. Specific Measures Relating to Archives Containing Names

(a) For the purposes of this principle, archives containing names shall be understood to be those archives containing information that make it possible, in any way whatsoever, directly or indirectly, to identify the individuals to whom they relate, regardless of whether such archives are on paper or in computer files.

(b) Everyone shall be entitled to know whether his or her name appears in the archives and, if it does, to exercise his or her right of access and challenge the validity of the information concerning him or her by exercising a right of reply. The document containing his or her own version shall be attached to the document challenged.

(c) Except where it relates to service officials or persons working with them on an ongoing basis, information in information service archives containing names shall not by itself constitute incriminating evidence, unless it is corroborated by several other reliable sources.

II. Right to Justice

A. General principles

Principle 19. Safeguards Against the Use of Reconciliation or Forgiveness to Further Impunity

There can be no just and lasting reconciliation without an effective response to the need for justice; an important element in reconciliation is forgiveness, a private act which implies that the victim knows the perpetrator of the violations and that the latter has been able to show repentance.

Principle 20. Duties of States with Regard to the Administration of Justice

Impunity is a failure of States to meet their obligations to investigate violations, take appropriate measures in respect of the perpetrators, particularly in the area of justice, to ensure that they are prosecuted, tried and duly punished, to provide the victims with effective remedies and reparation for the injuries suffered, and to take steps to prevent any recurrence of such violations.

Although the decision to prosecute is primarily within the competence of the State, supplementary procedural rules should be set forth to enable any victim to institute proceedings on his or her own behalf where the authorities fail to do so, or to become an associated party. This option shall be extended to non-governmental organizations able to show proof of long-standing activities for the protection of the victims concerned.

B. Distribution of jurisdiction between national, foreign and international courts

Principle 21. Jurisdiction of International Criminal Courts

To avoid the need to apply to ad hoc international criminal courts, a standing international criminal court must be set up with jurisdiction binding on all Member States.

It shall remain the rule that national courts normally have jurisdiction, particularly when the offence as defined in domestic law does not fall within the terms of reference of the international court. International criminal courts shall have concurrent jurisdiction where national courts cannot yet offer satisfactory guarantees of independence and impartiality, or are physically unable to function.

To this purpose the international criminal court may at any point in the proceedings require the national court to relinquish a case to it.

Principle 22. Rules of Procedure Applicable in International Courts

The rules of procedure applicable in international courts shall conform to the provisions of articles 8 to 11 of the Universal Declaration of Human Rights and 9, 14 and 15 of the International Covenant on Civil and Political Rights with regard to the right to a fair hearing.

Principle 23. Jurisdiction of Foreign Courts

The subsidiary jurisdiction of foreign courts shall be exercised by virtue either of a provision on universal jurisdiction set forth in a treaty in force or of a provision of internal law establishing a rule of extraterritorial jurisdiction for serious crimes under international law.

Principle 24. Measures to Strengthen the Effectiveness of Treaty Provisions on Universal Jurisdiction

(a) A provision on universal jurisdiction applicable to serious crimes under international law should be included in all international human rights instruments dealing with such crimes.

(b) By ratifying such instruments, States will pledge, pursuant to such a provision, to seek and prosecute persons against whom there are specific, consistent allegations of involvement in a serious crime under international law, with a view to trying or extraditing them. They are consequently bound to take legislative or other measures under internal law to ensure the implementation of the provision on universal jurisdiction.

Principle 25. Measures to Determine Extraterritorial Jurisdiction in International Law

In the absence of a ratification making it possible to apply a universal jurisdiction clause to the country where the crime was committed, States may for efficiency's sake take measures in their internal legislation to establish extraterritorial jurisdiction over serious crimes under international law committed outside their territory which by their nature are within the purview not only of internal criminal law but also of an international punitive system to which the concept of frontiers is alien.

C. Restrictive measures justified by action to combat impunity

Principle 26. Scope of Restrictive Measures

Safeguards must be established against the misuse to further impunity of prescription, amnesty, right to asylum, refusal to extradite, absence of in absentia procedure, due obedience, legislation on repentance, the jurisdiction of military courts and the irremovability of judges.

Principle 27. Restrictions on Prescription

Prescription - of prosecution or penalty - in criminal cases shall not run while no effective remedies are in existence.

Prescription shall not apply to serious crimes under international law, which are by their nature imprescriptible.

When it does apply, prescription shall not be invoked against civil or administrative actions brought by victims seeking reparation for their injuries.

Principle 28. Restrictions on the Practice of Amnesty

When amnesty is intended to establish conditions conducive to a peace agreement or to foster national reconciliation, it shall be kept within the following bounds:

(a) The perpetrators of serious crimes under international law and the perpetrators of gross and systematic violations may not be included in the amnesty unless the victims have been unable to avail themselves of an effective remedy and obtain a fair and effective decision;

(b) Insofar as it may be interpreted as an admission of guilt, amnesty cannot be imposed on individuals prosecuted or sentenced for acts connected with the peaceful exercise of their right to freedom of opinion and expression. When they have done nothing but exercise this legitimate right, as guaranteed by articles 18 to 20 of the Universal Declaration of Human Rights and 18, 19, 21 and 22 of the International Covenant on Civil and Political Rights, the law shall consider any judicial or other decision concerning them to be null and void; their detention shall be ended unconditionally and without delay;

(c) Any individual convicted of offences other than those laid down in paragraph (b) of this principle who comes within the scope of the amnesty is free to refuse it and request a retrial if he has been tried without benefit of the right to a fair hearing guaranteed by articles 10 and 11 of the Universal Declaration of Human Rights and articles 9, 14 and 15 of the International Covenant on Civil and Political Rights or if he has been subjected to inhuman or degrading interrogation, especially under torture.

Principle 29. Restrictions on the Right of Asylum

Under article 1, paragraph 2, of the Declaration on Territorial Asylum, adopted by the General Assembly on 14 December 1967, and article 1 F of the Convention relating to the Status of Refugees of 28 July 1951, States may not extend such protective status, including diplomatic asylum, to persons with respect to whom there are serious reasons to believe that they have committed a serious crime under international law.

Principle 30. Restrictions on Extradition

Persons who have committed serious crimes under international law may not, in order to avoid extradition, avail themselves of the favourable provisions generally relating to political offences or of the principle of non-extradition of nationals. Extradition should always be denied, however, especially by abolitionist countries, if the individual concerned risks the death penalty in the requesting country.

Principle 31. Restrictions on the Exclusion of in Absentia Procedure

Except for establishing a guarantee of impunity, non-recognition of in absentia procedure by a legal system should be limited to the sentencing stage to enable the necessary investigations, including the hearing of witnesses and victims, to be carried out and charges to be preferred, followed by wanted notices and arrest warrants, if necessary international, executed according to the procedures laid down in the Constitution of the International Criminal Police Organization (ICPO) - Interpol.

Principle 32. Restrictions on the Principle of Due Obedience

(a) The fact that the perpetrator of violations acted on the orders of his Government or of a superior does not exempt him from criminal or other responsibility but may be regarded as grounds for reducing the sentence if justice permits.

(b) The fact that violations have been committed by a subordinate does not exempt his superiors from criminal or other responsibility if they knew or had at the time reason to believe that the subordinate was committing or about to commit such a crime and they did not take all action within their power to prevent or stop him. The official status of a perpetrator of a crime under international law - even a head of State or government - does not exempt him or her from criminal responsibility and is not grounds for a reduction of sentence.

Principle 33. Restrictions on the Effects of Legislation on Repentance

The fact that, once the period of persecution is over, a perpetrator discloses the violations that he or others have committed in order to benefit from the favourable provisions of legislation on repentance cannot exempt him from criminal or other responsibility. The disclosure may only provide grounds for a reduction of sentence in order to encourage revelation of the truth.

Disclosures made during the period of persecution may attract a reduction extending as far as absolute discharge in view of the risks the perpetrator ran at the time. In that case, principle 30 notwithstanding, the perpetrator may be granted asylum - not refugee status - in order to facilitate revelation of the truth.

Principle 34. Restrictions on the Jurisdiction of Military Courts

In order to avoid military courts, in those countries where they have not yet been abolished, helping to perpetuate impunity by virtue of a lack of independence resulting from the chain of command to which all or some of their members are subject, their jurisdiction must be limited solely to specifically military offences committed by military personnel, excluding human rights violations constituting serious crimes under international law, which come under the jurisdiction of the ordinary domestic courts or, where necessary, an international court.

Principle 35. Restrictions on the Principle of the Irremovability of Judges

The principle of irremovability, as the basic guarantee of the independence of judges, must be observed in respect of judges who have been appointed in accordance with a procedure consistent with a constitutional State. Conversely, judges unlawfully appointed or who derive their judicial power from an act of allegiance may be relieved of their functions in accordance with the principle of parallelism. They may ask to be afforded the guarantees laid down in principles 49 and 50, in particular with a view to seeking reinstatement, where applicable.

III. Right to Reparation

A. General principles

Principle 36. Rights and Duties Arising Out of the Obligation to Make Reparation

Any human rights violation gives rise to a right to reparation on the part of the victim or his beneficiaries, implying duty on the part of the State to make reparation and the possibility of seeking redress from the perpetrator.

Principle 37. Reparation Procedures

All victims shall have access to a readily available, prompt and effective remedy in the form of criminal, civil, administrative or disciplinary proceedings covered by the restrictions on prescription set out in principle 29. Their exercise of this right shall afford them protection against intimidation and reprisals. Exercise of the right to reparation includes access to the applicable international procedures.

Principle 38. Publicizing Reparation Procedures

Ad hoc procedures enabling victims to exercise their right to reparation should be given the widest possible publicity by private, as well as public, communications media. This dissemination should take place both within and outside the country, through, among other channels, consular departments particularly in countries to which large numbers of victims have been forced into exile.

Principle 39. Scope of the Right to Reparation

The right to reparation shall cover all injuries suffered by the victim; it shall include individual measures concerning the right to restitution, compensation and rehabilitation, and general reparation measures such as measures of satisfaction and guarantees of non-repetition.

B. Individual measures of reparation

Principle 40. Measures of Restitution

Restitution, the purpose of which shall be to seek to restore the victim to his or her former circumstances, entails restoring, inter alia, the exercise of individual freedoms and the right to citizenship, to family life, to return to one's country, to employment and to property ownership.

Principle 41. Measures of Compensation

Compensation must equal the financially assessable value of all damage suffered, particularly:

(a) Physical or mental injury, including pain, suffering and emotional shocks;

(b) The loss of an opportunity, including educational opportunities;

(c) Material damage and loss of income, including loss of earnings;

(d) Attacks on reputation or dignity;

(e) Costs of legal assistance and valuations.

The right to compensation may be exercised collectively, on behalf of groups of victims, under bilateral or multilateral agreements following an armed conflict.

Principle 42. Measures of Rehabilitation
Measures of rehabilitation shall include coverage of the costs of medical, psychological or psychiatric care, as well as social, legal and other services.

Principle 43. Special Measures in Case of Forced Disappearance
When the fate of a disappeared person is elucidated, the victim's family must be notified so that, should the victim have died, the body can be reclaimed after identification whether or not the perpetrators have been identified, prosecuted or tried.

C. General or collective measures of reparation
Principle 44. Measures of Satisfaction
Symbolic measures shall be taken in the following areas as moral and collective reparation and to satisfy the duty to remember:

(a) Public recognition by the State of its responsibility;

(b) Official declarations rehabilitating victims;

(c) Commemorative ceremonies, naming of public thoroughfares, monuments, etc.;

(d) Periodic tribute to the victims;

(e) Acknowledgement in history textbooks and human rights training manuals of a faithful account of exceptionally serious violations.

D. Guarantees of non-repetition
Principle 45. Areas Affected by Guarantees of Non-Repetition
The State shall take appropriate measures to ensure that the victims cannot again be confronted with violations which undermine their dignity. Priority consideration shall be given to:

(a) Measures to disband parastatal armed groups;

(b) Measures repealing emergency provisions, legislative or otherwise, which have been conducive to violations;

(c) Administrative or other measures vis-à-vis State officials implicated in serious human rights violations.

Principle 46. Disbandment of Unofficial Armed Groups Directly or Indirectly Linked to the State and of Private Groups Benefiting from its Passivity
In order to ensure the effective disbandment of such groups, the measures to be taken shall be first and foremost in the following areas:

(a) Reconstruction of organizational structure by identifying operatives so as to reveal their position, if any, in the administration, particularly in the army and the police, and by determining the covert links which they maintained with their active or passive partners, particularly in the information and security services or in pressure groups. The information thus acquired shall be made public;

(b) Thorough investigation of the information and security services with a view to redefining their functions;

(c) Securing the cooperation of third countries which might have contributed to the creation and development of such groups, particularly by providing financial or logistical support;

(d) Drawing up a recycling plan to ensure that members of such groups are not tempted to join the ranks of organized crime.

Principle 47. Repeal of Emergency Legislation and Courts

Emergency legislation and courts of any type adopted or set up during the period of repression must be repealed or abolished insofar as they infringe the fundamental rights and freedoms guaranteed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Habeas corpus, whatever name it may be known by, must be considered a fundamental right of the individual and as such a non-derogable right.

Principle 48. Administrative and Other Measures vis-à-vis state officials implicated in serious human rights violations

These measures are of a preventive, not punitive character; they may therefore be taken by administrative decision, provided that the implementation procedures are provided for by legislation, or by a contractual agreement concluding a process of national dialogue or a peace accord, as the case may be.

They are intended to avoid any administrative obstacle or challenge to the process of restoring, or the transition to, peace and/or democracy.

They are therefore quite distinct from the punitive and judicial measures provided for in principles 19 et seq. to be applied by the courts to persons prosecuted and tried for human rights violations.

Principle 49. Implementation of Administrative Measures

Implementation of administrative measures should be preceded by an inventory of positions of responsibility with important decision-making power and therefore an obligation of loyalty to the process in progress. In the inventory, priority should be given to positions of responsibility in the army, the police and the judiciary.

In assessing the situation of each serving official, consideration will be given to:

(a) His human-rights record, particularly during the period of repression;

(b) Non-involvement in corruption;

(c) Professional competence;

(d) Skill in promoting the peace and/or democratization process, particularly with regard to the observance of constitutional guarantees and human rights.

Decisions shall be made by the head of Government or, under his responsibility, by the minister under whom the official works after the official concerned has been informed of the complaints against him and has been given a due hearing or summonsed for this purpose.

The official may appeal to the appropriate administrative court.

However, in view of the special circumstances inherent in any transition period, the appeal may be heard by an ad hoc commission with exclusive jurisdiction, provided that it meets the criteria of independence, impartiality and procedure laid down in principles 6, 7 (a), 8 (a) and (b) and 10.

Principle 50. Nature of Measures that can be Taken Against State Officials

Except where he has been confirmed in his position, the official concerned may be:

(a) Suspended pending his confirmation or appointment to another post;

(b) Transferred;

(c) Demoted;

(d) Offered early retirement;

(e) Dismissed.

In the case of judges, the decision shall be taken in the light of the relevant provisions of principle 35.

Selections from the Rome Statute of the International Criminal Court

Entered into force July 2, 2003

Preamble

The States Parties to this Statute,

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations,

Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State,

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,

Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,

Resolved to guarantee lasting respect for and the enforcement of international justice,

Have agreed as follows

Part I. Establishment of the Court

Article 1: The Court
An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

Article 2: Relationship of the Court with the United Nations
The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

Article 3: Seat of the Court
1. The seat of the Court shall be established at The Hague in the Netherlands ("the host State").

2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.

3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

Article 4: Legal status and powers of the Court
1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

Part 2. Jurisdiction, Admissibility and Applicable Law

Article 5: Crimes within the jurisdiction of the Court
1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- **(a) The crime of genocide;**
- **(b) Crimes against humanity;**
- **(c) War crimes;**
- **(d) The crime of aggression.**

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6: Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

a) **Killing members of the group;**
b) **Causing serious bodily or mental harm to members of the group;**
c) **Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;**
d) **Imposing measures intended to prevent births within the group;**
e) **Forcibly transferring children of the group to another group.**

Article 7: Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

a) **Murder;**
b) **Extermination;**
c) **Enslavement;**
d) **Deportation or forcible transfer of population;**
e) **Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;**
f) **Torture;**
g) **Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;**
h) **Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;**
i) **Enforced disappearance of persons;**
j) **The crime of apartheid;**
k) **Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.**

2. For the purpose of paragraph 1:

a) **"Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;**
b) **"Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;**
c) **"Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;**
d) **"Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;**

e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

<u>Article 8: War crimes</u>

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

i) Willful killing;

ii) Torture or inhuman treatment, including biological experiments;

iii) Willfully causing great suffering, or serious injury to body or health;

iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

vi) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

vii) Unlawful deportation or transfer or unlawful confinement;

viii) Taking of hostages.

ix) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

x) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

xi) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

xii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

xiii) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

xiv) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

xv) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

xvi) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

xvii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

xviii) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

xix) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

xx) Killing or wounding treacherously individuals belonging to the hostile nation or army;

xxi) Declaring that no quarter will be given;

xxii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

xxiii) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

xxiv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

xxv) Pillaging a town or place, even when taken by assault;

xxvi) Employing poison or poisoned weapons;

xxvii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

xxviii) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

xxix) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

xxx) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

xxxi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

xxxii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

xxxiii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

xxxiv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

xxxv) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

b) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

iii) Taking of hostages;

iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

c) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

d) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

v) Pillaging a town or place, even when taken by assault;

vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

ix) Killing or wounding treacherously a combatant adversary;

x) Declaring that no quarter will be given;

xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

e) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

<u>Article 9: Elements of Crimes</u>

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Elements of Crimes may be proposed by:

a) Any State Party;

b) The judges acting by an absolute majority;
c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

Article 10
Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

Article 11: Jurisdiction ratione temporis
1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.

2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

Article 12: Preconditions to the exercise of jurisdiction
1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
b) The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

Article 13: Exercise of jurisdiction
The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:
a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Article 14: Referral of a situation by a State Party

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

Article 15: Prosecutor

1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court.

2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.

3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.

4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.

5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.

6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

Article 16: Deferral of investigation or prosecution

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

Article 17: Issues of admissibility

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

- **a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;**
- **b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;**
- **c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;**
- **d) The case is not of sufficient gravity to justify further action by the Court.**

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

- **a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;**
- **b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;**
- **c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.**

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

Article 18: Preliminary rulings regarding admissibility

1. When a situation has been referred to the Court pursuant to article 13 (a) and the Prosecutor has determined that there would be a reasonable basis to commence an investigation, or the Prosecutor initiates an investigation pursuant to articles 13 (c) and 15, the Prosecutor shall notify all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned. The Prosecutor may notify such States on a confidential basis and, where the Prosecutor believes it necessary to protect persons, prevent destruction of evidence or prevent the absconding of persons, may limit the scope of the information provided to States.

2. Within one month of receipt of that notification, a State may inform the Court that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States. At the request of that State, the Prosecutor shall defer to the State's investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.

3. The Prosecutor's deferral to a State's investigation shall be open to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances based on the State's unwillingness or inability genuinely to carry out the investigation.

4. The State concerned or the Prosecutor may appeal to the Appeals Chamber against a ruling of the Pre-Trial Chamber, in accordance with article 82. The appeal may be heard on an expedited basis.

5. When the Prosecutor has deferred an investigation in accordance with paragraph 2, the Prosecutor may request that the State concerned periodically inform the Prosecutor of the progress of its investigations and any subsequent prosecutions. States Parties shall respond to such requests without undue delay.

6. Pending a ruling by the Pre-Trial Chamber, or at any time when the Prosecutor has deferred an investigation under this article, the Prosecutor may, on an exceptional basis, seek authority from the Pre-Trial Chamber to pursue necessary investigative steps for the purpose of preserving evidence where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available.

7. A State which has challenged a ruling of the Pre-Trial Chamber under this article may challenge the admissibility of a case under article 19 on the grounds of additional significant facts or significant change of circumstances.

<u>Article 19: Challenges to the jurisdiction of the Court or the admissibility of a case</u>
1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.

2. Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:

- **a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;**
- **b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or**
- **c) A State from which acceptance of jurisdiction is required under article 12.**

3. The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.

4. The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial. Challenges to the admissibility of a case, at the

commencement of a trial, or subsequently with the leave of the Court, may be based only on article 17, paragraph 1 (c).

5. A State referred to in paragraph 2 (b) and (c) shall make a challenge at the earliest opportunity.

6. Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber. Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with article 82.

7. If a challenge is made by a State referred to in paragraph 2 (b) or (c), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17.

8. Pending a ruling by the Court, the Prosecutor may seek authority from the Court:

- **a) To pursue necessary investigative steps of the kind referred to in article 18, paragraph 6;**
- **b) To take a statement or testimony from a witness or complete the collection and examination of evidence which had begun prior to the making of the challenge; and**
- **c) In cooperation with the relevant States, to prevent the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under article 58.**

9. The making of a challenge shall not affect the validity of any act performed by the Prosecutor or any order or warrant issued by the Court prior to the making of the challenge.

10. If the Court has decided that a case is inadmissible under article 17, the Prosecutor may submit a request for a review of the decision when he or she is fully satisfied that new facts have arisen which negate the basis on which the case had previously been found inadmissible under article 17.

11. If the Prosecutor, having regard to the matters referred to in article 17, defers an investigation, the Prosecutor may request that the relevant State make available to the Prosecutor information on the proceedings. That information shall, at the request of the State concerned, be confidential. If the Prosecutor thereafter decides to proceed with an investigation, he or she shall notify the State to which deferral of the proceedings has taken place.

<u>Article 20: Ne bis in idem</u>

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.

2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.

3. No person who has been tried by another court for conduct also proscribed under article 6, 7 or 8 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:

a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or

b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

<u>Article 21: Applicable law</u>

1. The Court shall apply:

a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;

b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;

c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

2. The Court may apply principles and rules of law as interpreted in its previous decisions.

3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

PUNJAB BACKGROUND MATERIALS

Selection from Introduction, by Tapan Bose, to *Reduced to Ashes: The Insurgency and Human Rights in Punjab*

…Less than 2 per cent of India's one billion population, the Sikhs constitute more than 62.1 per cent of Punjab's approximately 22 million people.

Before the partition of 1947, Punjab used to be an overwhelmingly Muslim province. The communal partition of 1947 and the civil war in its wake, took a toll of 200,000 to half a million lives by various estimates. In less than four decades of that traumatic experience, the Sikhs witnessed another spell of a bloody political unrest. This unrest developed from the Sikh political agitation to obtain a radical measure of political devolution. By the middle of the 1980s the unrest became violently separatist and was ruthlessly crushed by the Indian government.

Reduced to Ashes: The Insurgency and Human Rights in Punjab **is the final report of the Committee for Coordination on Disappearances in Punjab (CCDP), which focuses on human rights abuses that occurred in the period from 1984 to 1994. This report, as Peter Rosenblum suggests in the preface, is the "ground work for an honest retelling of a tragic part of history". It is an attempt to tell the truth about political killings, enforced disappearances, torture, arbitrary arrests and prolonged unlawful detentions that became the stock-in-trade of the anti-insurgency operations in Punjab. It reveals the complex denial by the state agencies and their defenders and the institutional participation in the scheme of impunity. It does not take sides on the political guilt or innocence of the victims; eschews rhetoric and, significantly, stays clear from the quicksands of political solutions. The report, however, lays bare the parallelism of the rhetoric of rights and the reality of extreme human rights abuses that bedevils the Indian democratic paradigm.**

It may be asked why another report on Punjab? It could be justifiably argued that already much has been written about the abuse of human rights in Punjab and that by raking up all this once again we might jeopardise the process of "healing". But as we know, the silence of graveyard that obtains in Punjab today is not a reflection of peace. The enquiry being conducted by the National Human Rights Commission (NHRC), under the jurisdiction of the Supreme Court, in the disappearances and illegal cremations in Punjab, shows the deep social divisions that are endangering the prospects of justice and peace in the state. Every attempt to bring justice to the victims, reform the institutions in order to achieve transparency, structural equality and democracy has been frustrated by powerful persons linked with the pervious administration that perpetrated the horrible abuses in the mistaken belief of defending the integrity of the state. Their demand for amnesty has found support in the highest quarters of the Indian government. On 19 August 2001, the union home minister spoke at a function organized by the *Hind Samachar* **group of newspapers at Jalandhar to announce that the government was "contemplating steps to provide legal protection and relief to the personnel of the security forces facing prosecution for alleged excesses during anti-insurgency operations" in Punjab, Kashmir and the north-eastern provinces of India. According to a report in** *The Asian Age***, the Union Home Minister indicated "some form of general amnesty" and suggested that "forces deployed to combat terrorism anywhere in the country must be given special rights and powers".**

K. P. S. Gill, former director-general of Punjab police welcomed the move and, according to a story in *The Indian Express***, repeated his charge that the cases against police officers "were based on concocted evidence by the investigating agencies acting**

under undue and extra-constitutional pressures". The Home Minister's announcement was hailed also by the Communist Party of India (CPI) and the Congress party, which promised to "withdraw all the cases against the innocent cops" if voted to power. The subsequent state assembly elections in Punjab returned the Congress to power and its government in the state is led by Amrinder Singh, the scion of Patiala royalty who converted the issue of amnesty to police officials into an election pledge. It is in this context and the declared positions on impunity by both the state and the Union government that the NHRC will have to weigh the evidence of human rights crimes offered in this volume of the report before proceedings in the matter of abductions leading to illegal cremations by the Punjab police in Amritsar district.

The decade of political violence has left behind a large number of victims who are still seeking justice. These people are trapped in a web of fear, rumour and myth. They need to be released from the psychology of the victim-hood. But their journey from the bewilderment of shattered lives under a complex political conspiracy to a position of purposeful survival is not possible without the acknowledgment of what happened. The complex denial of truth not only serves the purpose of making atrocities invisible, it also makes the experiences of atrocities irrevocable. It also compromises the process of healing and keeps the state embedded in the culture of impunity. It is the most serious roadblock in the path of transition from conflict to sustainable peace, from repression to democracy. As N. J. Kritz has noted, "the assumption that individuals and groups that have been victims of hideous atrocities will simply forget about them or expunge their feelings without some form of accounting, some semblance of justice, is to leave in place the seeds of future conflict."[1]

The data contained in this volume shows troubling contributions to police impunity at all levels of the state and national government and judiciary. For example, the Central Bureau of Investigation (CBI), India's premier investigative agency, failed to seriously and properly investigate the matter of illegal cremations as entrusted to it by the Supreme Court in 1995. At the conclusion of their investigation, the CBI submitted three lists of identified, partially identified and unidentified cremations conducted by the police. These lists reveal several discrepancies. The CBI failed to identify persons it easily could have identified from complaints filed by victim families, interviews with them, police records, and press reports; it duplicated records and listed persons who had been cremated by their families, not by the police; and it failed to properly investigate the cremations of additional persons reported as having died in the same encounters and also the cremations of others listed under the same police reports. Thus, it did not go beyond the police records to examine the actual extent of illegal cremations in Amritsar district.

The report also shows how the police regularly and openly flouted legal procedures for arrest and search. The police failed to respond to families' requests for information regarding the abducted persons; they extorted money from victim families and they travelled outside of their jurisdiction to capture people. The volume documents the prevalence of custodial torture and traces the patterns of its use against family members, the police's destruction, expropriation or damage of property belonging to victim families and the complicity of the judiciary in ensuring impunity for custodial torture and death.

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[1] Kritz, N. J., "Accountability of International Crime and Serious Violations of Fundamental Rights: Coming to terms with atrocities: A review of accountability mechanism for mass violations of human rights", Law and Contemporary Problems, Fall, 1996.

The defenders of impunity in Punjab have been vocal against the human rights litigation that seeks accountability and restitution of hideous abuses of power. On 8 June 2001, K. P. S. Gill published an article in the *Hindustan Times* titled "Man in Uniform Demands Justice". The article argued that "those who risked their lives in the defence of the State" are being subject to "a humiliating process of prosecution in a multiplicity of cases that were intentionally and maliciously lodged ... as a strategy of vendetta by the front organizations of the defeated terrorist movement". Gill asked: "How long will men continue to fight and to die for India, if no one in the country speaks for the men in uniform? Can the power of the state survive the erosion of the confidence and authority of those who protect it?"

This rhetoric of morale and the national security is evidence of attempts to thwart the process of accountability. In his foreword to a book titled *Human Rights and the Indian Armed Forces*, Gill criticised the "systematic adoption of human rights litigation as a weapon against agencies of the State by criminals and by violent groups who themselves reject democracy and seek the overthrow of lawful and elected government". According to him: "An overwhelming proportion of public interest human rights litigation is today being initiated by front organizations of criminal conglomerates and of virulent underground terrorist movements in a systematic strategy to harass and paralyse security forces and the police."[2]

In this context it is important to note what the El Salvador Commission on Truth noted in the introduction of its 1993 report: "A situation of repeated criminal acts may arise in which different individuals act within the same institution in unmistakably similar ways independently of political ideology of the government and decision makers. This gives reason to believe that the institutions may indeed commit crimes, if clear-cut accusations are met with a cover-up by the institution to which the accused belonged and the institution is slow to act when investigations reveal who is responsible. In such circumstances, it is easy to succumb to the argument that repeated crimes mean that the institution is to blame."[3] Clearly it is necessary to prosecute such individuals who formulated, planned and organised grave human rights abuses in the name of national security. The Nuremberg Trials established this principle internationally.

A public knowledge of the truth is therefore necessary not only to release the victims from the past, it is also required for strengthening the legitimacy of the healing process initiated by a new regime for augmenting society's commitment to justice. Without acknowledgement of what has happened, the circle of impunity and injustice cannot be broken and the impartiality and independence of the judicial mechanisms -- trials and legal tribunals -- and the rule of law cannot be restored. Justice is both a means of ensuring accountability for grave human rights abuses and a preventive, deterrent mechanism.

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[2] Air Commodore Ran Vir Kumar & Group Captain B. P. Sharma, Human Rights and the Indian Armed Forces: A Source Book, Sterling Publishers, New Delhi, 1998, pp. xiv - xv

[3] Report of the Commission on Truth, El Salvador, 1993. The Commission on Truth the 1980-1991 Internal Armed Conflict in El Salvador collected information from 2,000 primary sources referring to 7000 victims and information from secondary sources referring to over 20,000 victims of extra judicial killings, enforced disappearances, torture and hostage taking.

The UN Human Rights Mechanisms and the Issues of Accountability in Punjab

Ram Narayan Kumar

India is welded to a number of UN declarations and instruments, including the UN Charter of 1945, 1948 Convention on the Prevention and Punishment of Genocide, 1948 Universal Declaration of Human Rights, also called the Magna Carta of Mankind and described by the 1968 proclamation of Tehran as a "common understanding of the people of the world concerning the inalienable and inviolable rights of all members of the human family," and the International Covenant on Civil and Political Rights, acceded on to 10 July 1979. India also signed, on October 14 1997, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Working Group on Enforced or Involuntary Disappearances, established in 1980, reported large numbers of enforced disappearances, attributing primary responsibility to the Punjab police. The Working Group also held that officers of the Punjab police acted with virtual impunity, disobeyed judicial orders, even ignored writs of *habeas corpus* **and intimidated family members of disappeared persons so as to make them refrain from making complaints. The Group's 1996/97 report also mentioned the disappearance of Jaswant Singh Khalra after he filed the petition regarding illegal cremations in the High Court, alleging that many of the cremated had been arrested by the Punjab police.[4]**

The government of India turned down an application by the Working Group to visit the country so as to discuss the matters with the competent authorities and to meet the representatives of the families of the disappeared. The representatives of the Indian government told the working group that "given the fact that the allegations of disappearances have drastically fallen in the last three years, coupled with the government of India's commitment to investigate the old cases", the suggestion of the Working Group regarding a visit to India is "inappropriate and unnecessary." The government also stated that the matter of illegal cremations was now before the Supreme Court, which had instituted an inquiry by the Central Bureau of Investigation. The report concluded with the observation that under Articles 14 and 7 of the UN Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly on December 18 1992, the government of India was under the obligation to "prevent, terminate and punish all acts of enforced disappearance."[5]

The 1997 report by the Special Rapporteur on Torture Nigel S. Rodley renewed his "outstanding request for an invitation to visit the country...", whose refusal was a matter of concern.[6] This report focused on widespread and systematic use of torture by the Punjab police. It said:

> **By a letter of 28 April 1997, the Special Rapporteur informed the Government that he had received reports indicating that the use of torture by police in Punjab was widespread. The methods of torture reported included beatings with fists, boots,** *lathis* **(long bamboo canes),** *pattas* **(leather straps with wooden handles), leather belts with metal buckles or rifle butts; being suspended by the wrists or ankles and beaten;** *kachcha*

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[4] *E/CN. 4/1996/38*, Commission on Human Rights, Fifty-second session, Report of the Working Group on Enforced on Involuntary Disappearances, *paras. 236-240*; *E/CN. 4/1997/34, para 181*

[5] *Ibid*, paras. 31, 184, 249, 251

[6] */CN. 4/1998/38,* 24 December 1997, Observations

> ***fansi*** **(suspension of the whole body from the wrists, which are tied behind the back); having the hands trodden upon or hammered; application of electric shocks; burning of the skin, sometimes with a hot iron rod; removing nails with pliers;** ***cheera*** **(forcing the hips apart, sometimes to 180 degrees and often repeatedly, for 30 minutes or more); and the roller method (a log of wood or** ***ghotna*** **– a heavy pestle is rolled over the thighs or calves with one or more police officers standing upon it); and insertion of chili peppers into the rectum.[7]**

In the same period, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, appointed by the Commission on Human Rights in August 1982, reported widespread practices of arbitrary executions carried out by the security forces. The 1997 annual report concluded that "despite the existence of legal provisions for the prosecution of human rights violators" there was ***de facto*** **impunity in India. The Rapporteur also reiterated his interest in visiting the country, which he had already expressed in three earlier letters.[8]**

And what was the government of India's response? Mrs. Arundhati Ghose, then India's Permanent Representative at the United Nations Office in Geneva, told the Human Rights Commission that it should adopt a cooperative rather an adversarial and "spotlighting" approach. Ms. Ghose said that instead of undertaking direct investigations, the Commission should work only in consultation with the government. She declared: India had a broad range of guarantees built within its constitutional system to safeguard human rights, and did not require foreign intervention: India's respect for human rights was rooted in its ancient philosophy and culture and, even in the modern context, predated its accession to the United Nations. The tough stand taken by Ms. Ghose received praise in the Indian press, some of them greeting her as the "Iron Lady" for her capacity to "look the western bullies in the eye."[9]

Well, the Indian State kept its pride and the world community failed to intervene when it may still have been possible to save some lives. Jaswant Singh Khalra, and several other human rights activists and lawyers, were disappeared while trying to expose the truth. The international human rights community could not do very much to save their lives. It could certainly, however, have given more attention to the cause of truth and justice it championed. The survivors and the families of the disappeared in Punjab have been, for nearly a decade, engaged in a life-exhausting and fruitless pursuit of accountability and justice in this matter before the NHRC. What has so far remained a futile struggle for acknowledgment, justice and accountability is a long Kafkaesque tale. I cannot tell you the story here but you can read parts of it in *Reduced to Ashes***. It is a story that reveals the contradictions between the constitutional law, as a conceptual framework, and the rule of law as the emanation of power, a pragmatic enterprise run by the Political Establishment whose realities are as banally brutal as noble are its constitutional professions.**

In the interim report of the Committee, published in July 1999 and its summary later published by SAFHR in 2002 as a paper, I have discussed the suicidal bereavement of Ajayab Singh, a fifty-five year old *Sarpanch* **of a village in Amritsar district who took poison and died inside the Golden Temple on 7 July 1997 after writing an "epistle in black**

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[7] *E/CN. 4/1998/38*, 24 December 1997
[8] *E/CN. 4/1997/60*, December 24 1966, Report by the Special Rapporteur, Bacre Waly Ndiaye, Para. 96; 228
[9] www.webpage.com/hindu/960831/22/2520a.html – ; CCPR/C/76/Add.6 17 June 1996, para 4-14, 18-19, 50

ink" to explain his reasons. His eldest son Kulwinder Singh, a public servant associated with village administration, had disappeared after having been taken into police custody at a check post across Amritsar's railway station on 20 December 1991. I have narrated the entire story at length elsewhere. The life-exhausting and fruitless pursuit of accountability and justice, which lasted more than five and a half years, finally broke Ajayab Singh's spirits. His thirty-five years old married son with three young children disappeared in the jaws of the Punjab police, and Ajayab Singh could not do anything to establish that his son's life had not been a chimera. The State's power of denial became so magical that it obliterated life retrospectively against the authenticity of history. The constitutional guarantees of human rights and the rule of law seemed to have no meaning. Ajayab Singh's epistle in black ink said, "self-annihilation is my only way out of a life that leaves no scope for justice."

Ajayab Singh's is not an isolated example. Our survey of 838 incident-reports of enforced disappearances, conducted in the period of one and a half years from November 1997 to May 1999 and published in our July 1999 Interim Report, shows that 222 relatives of the victims died under trauma. In 500 of 838 incidents, the surviving relatives report morbid psychological effects, including clinical insanity. It is in this situation that we seek international solidarity and effective intervention to ensure that the struggle for accountability and justice they have been waging before the National Human Rights Commission is not shipwrecked. You will recognize, if you get to know these surviving families as I have, that their "inner landscapes" of expectations, in spite of their experiences of State atrocities, are not riveted to notions of revenge. They only seek acknowledgment, reparation of wrong to the extent they are legally feasible and end of impunity.

Personally, I am not familiar with how to cross the hallowed portals of the United Nations, in order to obtain a hearing and try to persuade those who control its human rights mechanisms to recognize that there is something worthwhile they can do here. We are not seeking anything dramatic or out of the ordinary. The National Human Rights Commission was created self-avowedly to help the Indian Executive fulfill its international human rights obligations and in this particular case it is drawing from the extraordinary powers of the Supreme Court under Article 32 of the Indian Constitution. In this context, it should be possible for the UN human rights mechanisms to pressure the National Human Rights Commission to embark on the path of accountability, bridge the gap between public knowledge of human rights and the official postures, offer reparations to hapless survivors and thus provide leadership in terminating the culture of impunity in India. It should use our years of methodologically sound documentation of atrocities for these purposes and we shall be happy to assist in any way we can. Those of you with experience with these mechanisms should guide us to make this possible.

In the early 1990s, when we embarked on this work in Punjab, exhilarating developments towards universal accountability with the detention of Augusto Pinochet of Chile in the United Kingdom, constitution of the Hague Tribunals to try crimes against humanity committed by ethnic warlords in the Balkans and in Rwanda and the adoption of Rome Treaty to organize the International Criminal Court seemed like a universal resolve to enforce human rights and to end the global culture of impunity. It is in the context of these trends that many enthusiastically talked about a New World Order, visualizing a global march towards democracy in political and economic sphere, remolding of the sovereignty principle to make the people its referent, and the advent of universal accountability. Perhaps, the dreamers of this vision had failed to reckon with the critical factors of military and political power and their natural tendency to interfere in history to

redefine national conduct and international relations, away from altruistic and normative frameworks, into equations of self-interest and alignments of the strong against the weak.

Over the last several years, we have been watching how the early vision of a "World Order" has been rolling back. I will not go into the subject here to avoid a digression from the agenda. But before concluding, I want to refer to a NY Times article by Michael Ignatieff which appeared on 5 January 2003. A defender of the American role in Iraq, Ignatieff had in this article some harsh words for the lack of enthusiasm within the United Nations for the manner in which America has pursued its war on Iraq. I quote: "The United Nations lay dozing like a dog before the fire, happy to ignore Saddam, until an American president seized it by the scruff of the neck and made it bark. Multilateral solutions to the world's problems are all very well, but they have no teeth unless America bares its fangs…"[10] Pardon me for this quote out of the context, but I want to highlight the language of power that flows from the premise that the strong States do what they will and the weak suffer what they must and the United Nations must not stand in the way. This is not the view I subscribe to although I maintain that the United Nations has radically failed in establishing a reasonable balance between the force and law in international relations and also in subordinating the impulses and the power of carnage of its member States to principles of democracy, human rights and international accountability hyped in its charter. However, we can only hope that the current state of affairs does not represent the future of relations between the powerful and the powerless, in both domestic and international relations, and that the United Nations would be able to redeem itself from the compulsions under which it has so far remained an organization of States dedicated to values of power and coercion without accountability.

[10] NY Times, 5 January2003, Michael Ignatieff, "The American Empire: The Burden", p. 22

Chronology: NHRC Illegal Cremations Matter

16 January 1995: Jaswant Singh Khalra, general secretary of the Akali Dal's human rights wing, and Jaspal Singh Dhillon released copies of official documents that showed that security agencies in Punjab had secretly cremated thousands of bodies after labeling them as "unidentified/ unclaimed". They alleged that these were the bodies of those who had been abducted by the police and the other security forces deployed in Punjab and who had subsequently disappeared from such custody. The allegations were based on a survey of the number of missing persons in the district and an investigation of the records of three crematoria in Amritsar district - one of the 13 erstwhile districts in the state. The press release asserted that an investigation would reveal a similar state of affairs at other crematoria in the state.

January 1995: Khalra's organization filed a writ petition in the Punjab and Haryana High Court, asking for an investigation into the disappearances and the subsequent cremations. The high court dismissed the petition on grounds that it was "vague" and that the petitioner organization lacked the *locus standi* **for filing such a petition.**

3 April 1995: The Committee for Information and Initiative on Punjab (CIIP) moved the Supreme Court of India, in a writ petition under Article 32 of the Indian Constitution, to demand a comprehensive inquiry into the allegations of disappearances and subsequent illegal cremations by the police in Punjab.

6 September 1995: Armed commandoes of the Tarn Taran police, Amritsar district, abducted Khalra from outside his house.

7 September 1995: At the behest of Mrs. Paramjit Kaur Khalra, the wife of Jaswant Singh Khalra, Mr. G.S. Tohra, then president of the Sikh Gurudwara Prabandhak Committee (SGPC), sent telegrams to various people, including one to Justice Kuldip Singh, the then sitting judge of the Supreme Court of India, complaining about Khalra's abduction.

9 September 1995: Paramjit Kaur filed a regular *habeas corpus* **petition before the Supreme Court praying that Khalra be produced before the Court.**

11 September 1995: Justice Kuldip Singh of the Supreme Court treated the telegram from Mr. G.S. Tohra, received at his residence, as a petition for a writ of *habeas corpus* **and directed notice of the petition to the state parties.**

15 November 1995: The Supreme Court directed the Central Bureau of Investigation (CBI), India's premier investigative agency, to enquire into Khalra's abduction and the facts contained in Khalra's press note of January 1995.

22 July 1996: The CBI submitted an interim report disclosing 984 illegal cremations at a crematorium in Tarn Taran, Amritsar district, between 1984 to 1994. The Supreme Court directed the CBI to continue its investigations and ordered it to issue a notice to the public at large seeking assistance in its inquiry.

30 July 1996: The CBI submitted a report stating that nine officers of the Punjab police, acting on the orders of senior superintendent of police (SSP) Ajit Singh Sandhu, were

responsible for Khalra's abduction and disappearance. The Supreme Court directed the CBI to initiate their prosecution on charges of conspiracy and "kidnapping with intent to secretly and wrongfully confine a person".

9 December 1996: The CBI submitted its fifth and final report to the Supreme Court on the issue of police abductions leading to illegal cremations.

11 December 1996: At the request of the CBI, the Supreme Court ordered that the contents of the CBI report be kept secret, since further investigation had to be undertaken by the agency. The Court directed the CBI to undertake the investigation of all the cases that were required to be registered as a result of the final report.

12 December 1996: The Supreme Court, in its order, recorded that the final report by the CBI disclosed that 2,097 illegal cremations were carried out by the security agencies in three crematoria of Amritsar district. The CBI claimed to have fully identified 582 of the bodies so cremated, partially identified 278 bodies so cremated and could not identify 1,238 bodies. The Supreme Court directed the National Human Rights Commission (NHRC) "to have the matter examined in accordance with the law and determine all the issue which are raised before the commission by the learned counsel for the parties". It made it clear that "Since the matter is going to be examined by the commission at the request of this Court, any compensation awarded shall be binding and payable."

January 1997: The NHRC asked all the parties appearing before it to make preliminary submissions on "the scope and ambit" of the reference made to it by the Supreme Court and on the "capacity in which the commission functions", i.e. whether the commission was limited to the powers conferred upon it by the Protection of Human Rights Act, 1993, or whether it was, for the purposes of this reference, a *sui-generis* designate of the Supreme Court, with powers to adjudicate on the issues entrusted to it by the Court, without being fettered by the limitations contained in the act.

4 August 1997: After hearing at length all the views placed before it, the NHRC, in a detailed order on the preliminary contentions, held that it was a *sui-generis* designate of the Supreme Court, appointed to carry out the Court's mandate, and vested with all of the powers of the said Court under Article 32 of the Indian Constitution. It also concluded that the Supreme Court had referred the whole matter to the Commission, with no territorial or other limits on the inquiry. On the same date, by a separate order on "Proceedings", the NHRC stated that in view of the large number of alleged cremations it would be appropriate to invite claims by public notice. After ascertaining the extent of culpability or negligence on the part of the state and its authorities, the basis for quantification of compensation could be formulated, the NHRC stated.

3 October 1997: A 'clarification petition' was filed by the Union of India before the Supreme Court querying whether the 12 December 1996 order of the Court empowered the NHRC to function as a *sui-generis* designate of the Supreme Court, untrammelled by the provisions of the Protection of Human Rights Act, 1993. The application also challenged the NHRC's view that the Supreme Court's order of 12 December 1996 gave it unfettered jurisdiction to investigate human rights violations in Punjab. It was contended in the application that such an interpretation would result in "thousands of false claims".

10 September 1998: The Supreme Court dismissed the Union government's clarification petition and upheld the NHRC's view of the mandate conferred upon it. The Court held, "In deciding the matters referred by this Court, the National Human Rights Commission is given a free hand and is not circumscribed by any conditions."

13 January 1999: The NHRC passed an order on the 'scope' of the inquiry, confining its mandate to the alleged unlawful cremation of the 2,097 bodies in three crematoria in Amritsar district. It rejected the contention that the commission should take a more expansive view under which 'enforced disappearances', 'extra-judicial executions' and other allegations of human rights violations throughout the state would be investigated. The NHRC directed its office to publish public notices inviting claims from legal heirs in a prescribed form. The claimants were required to state on oath that their kin had been cremated at one of the three cremation grounds in Amritsar district that had been investigated by the CBI. The notice also indicated that only the cases of persons who filed these claims would be taken up for consideration.

24 March 1999: The NHRC dismissed the application of the CIIP seeking a review of the 13 January 1999 order. The commission held that it had adopted a two-pronged approach on the issue. One, to invite claims from members of the affected public and the other, to require the state of Punjab to explain each case of alleged illegal cremation in the crematoria of the three police districts of Amritsar.

5 August 1999: The NHRC declined the CIIP's application for the disclosure and inspection of the reports of the CBI, containing the results of the investigation conducted by the CBI, on the ground that it might hamper "smooth investigation".

24 August 1999: The CIIP applied to the Supreme Court for a clarification on the mandate conferred upon the NHRC by the Court's order of 12 December 1996. The application stressed that the illegal disposal of bodies was not confined to three cremation grounds in Amritsar, and that the starting point of the investigation has to be the allegation of disappearance. The CIIP also prayed for access to the CBI's report.

11 October 1999: The Supreme Court rejected CIIP's application and held that it was not prepared to interfere with the proceedings being conducted before the NHRC at that stage.

Thereafter: In an expression of disappointment with the turn of events, the CIIP withdrew from active participation in the proceedings before the NHRC. However, it continued to monitor the proceedings.

19 January 2000: Based on a letter from the Punjab government, its counsel submitted before the NHRC his client's response to the 88 claim petitions received pursuant to the public notice issued by the NHRC. The Punjab government broke up the 88 claims as follows: In 23 claims it was stated that the body of the disappeared persons had been cremated in a cremation ground other than the three specified by the NHRC as falling within the purview of their inquiry in the matter. These were, therefore, not maintainable. It disputed 47 claims on several grounds, including for the reasons that these claimants had approached other fora for compensation or because these cases were

being investigated by the CBI. In 18 cases, the Punjab government offered that it was prepared to pay Rs. 100,000 each as compensation without admitting liability and without going into the merits of the claims. Simultaneously, the Punjab government asserted that the burden of paying the compensation should be borne by the Central government.

18 August 2000: The NHRC, apparently, endorsed the offer of the Punjab government to compensate the 18 families with Rs. 100,000 each (approximately US$2,000) without admission of wrongdoing or prosecution of officials. The commission's order states, "For this conclusion it does not matter whether the custody was lawful or unlawful, or the exercise of power of control over the person was justified or not; and it is not necessary even to identify the individual offer or officers responsible/concerned."
On reading the 18 August 2000 order by the NHRC, the CIIP decided that it had to intervene and, as a first step, traveled throughout Punjab to meet the families of the 18 disappeared persons to elicit their views on the offer of compensation. All the families unanimously rejected the Punjab government's offer of compensation without determination of liability and stated so on affidavit.

31 January 2001: The CIIP filed these affidavits before the NHRC, along with an application pointing out that the case before the commission could not be narrowed down to the claims received as, by the 19 January 1999 order, the commission had bound itself to investigate all the 2,097 cremations carried out at the three cremation grounds in Amritsar district.

15 February 2001: The NHRC reaffirmed its commitment to investigate all the 2,097 cremations, thereby restoring the case to the position that obtained after the 13 January 1999 order.

20 March 2001: The NHRC directed the CBI to furnish a three part list of the persons cremated: List 'A' consisting of fully identified persons, List 'B' consisting of partially identified persons, and List 'C' consisting of unidentified persons.

3 May 2001: The CBI furnished copies of the three lists to the parties before the NHRC. The commission directed the CBI as well as the Punjab government to make available for inspection all of the material in their custody with respect to these cremations.

15 June 2001: In a meeting held at the NHRC office, the Punjab government announced that all the records pertaining to the 2,097 cremations were in the CBI's custody and they, therefore, had nothing to produce by way of records for inspection.

23 July 2001: Counsel for the CIIP, along with a member of the CIIP, inspected the records produced by the CBI. The inspection could not be completed on that date.

26 July 2001: The CIIP continued with its inspection of the CBI's records, albeit under the close scrutiny of over 20 officials from the Punjab government and the Punjab police. Ostensibly, these officials were also present for inspecting the CBI records. However, their real purpose became clear when one of them objected to the CIIP being permitted to inspect a particular bundle of files. The assistant registrar of the commission present immediately stopped the CIIP's inspection.

8 October 2001:, A joint inspection was carried out under the supervision of R. Venkataramani, the *Amicus Curiae* **appointed by the NHRC to assist it. This inspection made it clear that the record produced by the CBI would be of very little help for two reasons. First, because it was, mostly, illegible, and second, because the record produced was very sketchy. If this was, as claimed, the entire record seized by the CBI in the course of its investigations, it was indicative of the poor quality of the investigation done.**

29 November 2001: The NHRC called for submissions from the parties suggesting the "points of substance" (issues) to be framed for further proceedings confined, in the first instance, to the cases of the 582 identified cremations.

4 February 2002: After hearing the parties and the *Amicus Curiae***, the NHRC framed four "issues" that "arise for consideration in respect of the fully identified bodies".**

2 September 2002: After a series of postponed hearings, the NHRC met to resume the proceedings. The Punjab government submitted an application asking for the reformulation of the "points of substance".

16 September 2002: The Punjab government decided not to press its application for a review of the "points of substance" framed by the NHRC. The commission allowed the state government's prayer for permission to inspect the documents seized by the CBI and directed that after such an inspection, it should file affidavits with respect to each of the 582 "identified" cremations by 31 October 2002.
No hearings were held again until May 2003. For an update on recent hearings, please see http://www.punjabjustice.org/news/update.htm.

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GUJARAT BACKGROUND MATERIALS

Teesta Setalvad

Mass Crimes in Gujarat: Questions Unanswered

Nearly nineteen months after the genocidal violence rocked the western Indian state of Gujarat, searing questions related to justice and rehabilitation remain completely unanswered. Specifically, issues of state accountability after mass violence, independent policing, adequate reparation and the response of democratic institutions of the judiciary to such crimes hang suspended in mid-air, as the proverbial shortness of public memory betters the best efforts to keep some of these issues alive.

Post-Independence, India has had its shocking share of mass violence driven not just by community but equally, brutally, by caste during which the archaic Code of Criminal Procedure, penned by colonial masters, has proven itself inadequate. Often official or other Commissions of Inquiry have sat, examined these lapses and made suggestions. One common feature of these has been that the political class, whatever its ideological hue, has simply not bothered to publicly debate or implement these suggestions. The Indian judiciary, at all levels, has restrained itself to minimal intervention in matters of social justice and violence.

What happened after Gujarat 2002? Senior jurists and others sat in a Concerned Citizens' Tribunal and actually recommended the establishment of a Statutory National Crimes Tribunal that must contain its own evolved jurisprudence drawn from the International Law on Genocide and further urged urgent and quick reforms in the Indian Police Force. Drastic reforms in the Indian police system, including guaranteeing its independence and ensuring representation and diversity, had been recommended as far back as 1981 by the official National Police Commission itself. The work of the Concerned Citizens' Tribunal—lasting several months with no assistance from any official machinery—is available in a two-volume report published from Mumbai.

Today, judicial matters related to the genocidal violence in Gujarat have been brought centre-stage through two pivotal cases currently before the Supreme Court. The fact that this has happened at all is due in large measure to the initiatives taken by the statutory National Human Rights Commission (NHRC)—since the justice process in the state was systematically derailed—backed by a gritty citizens group, *Citizens for Justice and Peace,* **that has mandated itself the responsibility to continue the struggle for justice and reparation for the victim survivors, however tough this may turn out to be.**

Efforts are alive through these judicial interventions to move the criminal trials of the worst carnages outside the state of Gujarat. This argument for turning over both the investigation and conduct of the criminal inquiries to an area outside the control of the current chief minister, Narendra Modi, and the state and administration under him, has been made since the start of the carnage last year, both by the NHRC (April 2003) as also by public interest litigations filed in the Supreme Court in April 2003 itself. If these had been heard judiciously and promptly by the Apex Court when it had been first approached last year, concerns relating to the utterly subverted and paralysed local atmosphere in the state of Gujarat would have been met and more promptly answered.

Unfortunately, judicial record in dealing with such mass community-driven carnages remains pathetic. Sikh widow survivors of the 1984 pogrom against their community in the country's capital (that followed the assassination of former Prime Minister Indira Gandhi by her Sikh bodyguards) battle in vain for justice that nineteen years later cynically and brutally evades them. Similarly Muslim women survivors of 53

young males shot dead in cold blood in Meerut-Hashumpura (a town in western Uttar Pradesh) in 1989 still struggle for justice. The recent conviction of Dara Singh and associates for the burning alive of Christian pastor Graham Staines and his two sons in January 1999 is a rare case of a Sessions Court punishing those guilty of communally driven crimes. Most pertinently, the examples of these and many more such survivors, who strive to see justice done decades after the crime, are living testimonies to the fact that human beings need to believe and find justice for unspeakable crimes before peace and reconciliation can be affected. A failure to administer to this cry for justice renders a system vulnerable, torn from within by festering wounds and hurts that do not heal but in fact create their attendant aberrations. This is the unfortunate reality in India today.

Documentation and Legal Action

There was extensive documentation of the genocide in Gujarat by civil liberties organisations and non-governmental agencies. Twenty months later, as the struggle for justice gets intensified due to the efforts made in the Supreme Court of India in the BEST Bakery case and the Godhra victims case, the difference between documentation and legal intervention becomes sharp and clear.

Cumbersome Procedure in Indian Courts: **Except for a brief spell in the eighties and nineties when a few Judges of the Supreme Court of India, especially Justice VR Krishna Iyer and Justice PN Bhagwati, took** *suo moto* **steps to make the Apex Indian Courts intervene in the field of rights abuse, the general attitude of the authorities towards interventions by civil liberties groups is grudging and resentful.**

Law Courts, Institutions and Human Rights Bodies: **The establishment of the National Human Rights Commission (NHRC) in the early nineties and the State Human Rights Commissions (SHRCs) in some states—though others like Gujarat have adamantly refused to establish them and some like Maharashtra have tried to cuckold these bodies—has in a sense drawn the Indian establishment's attention to both the human rights issue as also International Human Rights Law; but the inadequacy of personnel has also severely limited the functioning of the NHRC. This, combined with the fact that no independent investigation power has been given, amounts to a sever lacunae in effective intervention for rights abuse.**

Limitation of the Code of Criminal Procedure, Indian Penal Code and Indian Evidence Act in Dealing with Mass Crimes:

1. Failure of Criminal Justice system
2. Failure of intelligence
3. Preventive Arrests
4. Police participation in the riots
5. Illegal registration of FIRs (Problems with FIRs)
   a) Their failure to record First Information Reports (FIRs) and in fact fie omnibus FIRs;
   b) Police complicity in not naming the accused despite repeated insistence of the victim/survivors that all accused should be named;

c) Worst of all, their insistence on recording omnibus FIRs for whole areas, regions and towns instead of separate detailed ones for every crime and offence committed.

Section 154 of the CrPC deals with the First Information Report of cognisable offences and is the first crucial step in prosecution of offenders.

A. Omnibus FIRs

It is a fundamental principle of criminal law that every offence needs to be separately registered, investigated and tried. Filing omnibus FIRs is one of the simplest ways of avoiding detailed investigations and effective trials. In many cases in Gujarat where 80 or 90 shops have been burnt or a large number of people have been killed, instead of filing separate FIRs in respect to each incident, the police have registered collective FIRs thus virtually scuttling the possibility of detailed investigation or conviction. Apart from this, many incidents separated over time (sometimes days) and place and concerning different victims and accused have been clubbed together. Moreover, when individuals came forward to lodge their FIRs, they were told the FIRs had already been recorded, and that no second FIR was possible.

B. FIRs without names of accused

Most of the FIRs which have been filed, especially where police is the informant, do not contain the names of the accused and only say that an unidentified mob attacked. There are a significant number of cases where the victims actually named the accused but the Gujarat police have refused to lodge their names in the FIRs. Instead, the police took on the role of a partisan intermediary in evidence recorded from Naroda, Chamanpura, Odh, Sardarpura, Bharuch, Ankleshwar, Varodara, Mehsana, Himmatnagar, Sabarkantha and Banaskantha. In these cases, the police told the complainants that the FIR would be lodged only if the name of the accused was deleted. For example, at village Por, 3 women and 3 children were killed. The victims have identified and named 95 attackers but the police refused to include their names in the FIRs.

Points to Be Noted in Deliberate Manipulation on Investigations

i. Minority community victimised
ii. Deliberate obfuscation of identity of accused
iii. Unprofessional investigations
iv. Real culprits not arrested
v. No identification parades
vi. Combing operations
vii. Rape victims
viii. No action against media
ix. No Action against Hate Speech and Hate Writing
x. No action against VHP/ Bajrang Dal
xi. Non-implementation of NHRC recommendations
xii. Status of criminal investigations into major massacres
xiii. Partisan language in chargesheets filed by the police

<u>Status of Prosecution in Major Carnages</u>

The Criminal Prosecution into major mass carnages has been derailed by deliberate manipulation and destruction of investigation.

Including the BEST Bakery case where 14 persons were slaughtered and burnt alive, three other major carnages where 87 persons were burnt alive (Limadiya Chowky, Kidiad) and 70 persons similarly butchered (two incidents in Pandharwada village in Panchmahal district) resulted in acquittals last October 2002. The Gujarat government has compromised its investigations and commitment to the Indian Constitution by not providing adequate legal aid for victims of the carnage and actually appointing persons belonging to rabid outfits like the Vishwa Hindu Parishad and Bajrang Dal as public prosecutors.

Investigations into Godhra Mass Burning

After the Godhra tragedy, the Gujarat police arrested 62 persons, including at least seven boys, all said to be under the age of 16. They were booked under the Prevention of Terrorism Act (POTA) by the Government Railway Police (GRP) for the February 27 attack on the Sabarmati Express in Godhra. Following public outrage, the application of POTA to these seven boys was withdrawn. But all the accused, including the seven boys, still face charges of murder, attempt to murder, criminal conspiracy, arson, rioting and damaging public property. All are in the GRP lockup in Godhra since February 27. Family members of the arrested minors were not informed in direct contravention of the orders of the Supreme Court in the Joginder Singh case. The boys are: Haroon Iqbal, Farooq Kharadi, Firozkhan Pathan (residents of Signal Falia); Asif Kader, Altaf Diwan and Naseer Pathan (residents of Vejalpur Road); and Hasankhan Pathan of Dahod.

The attitude of the police after arresting minors is telling. The inspector of Godhra town police station, K Trivedi, said it was not possible to check their age at the time of arrest. "They were seen near the site of the incident, so we arrested them. The rest will be taken care of by the judiciary," he said. Hasankhan Pathan, who is a Class IX student in Dahod in the Panchmahals district, 150 km. away, had come to Godhra to meet his aunt and uncle on February 26. His date of birth according to school records is October 31, 1986. Evidence recorded by the Tribunal records his relative Hussain Khan Pathan saying: "In the morning, he was playing with some other local boys, including Firoz and Mustaq, when they heard of something going on near the railway track. They got scared and came inside their houses. After a few hours, the police came and picked up Hasan near Ali Masjid on charges of mass murder." Under the Juvenile Justice Act, minors below 16 have to be sent to a juvenile home, not to a police lock-up. "But they have been kept in police custody along with other accused in this case. We showed the age-proof documents of these minors to police, but they did not listen to us," said Soukat I Samor, a senior advocate, who represents some of the accused. This is one more instance of police misconduct in the context of the Godhra tragedy and the genocide that followed.

The Godhra police failed in their first major case, when Additional Sessions Judge Viram Y Desai acquitted all 73 accused of all charges against them on September 22, 2002. The judge accused the police of extracting the names of the accused from those who were arrested first, and the investigating officer (IO) of fabricating evidence. He expressed doubts over whether one of the incidents occurred at all. These findings by the Judge cast a major cloud on the conduct of the police in the Godhra investigations.

Following the Godhra incident, these 73 who were arrested were charged with conspiracy, rioting, arson, inciting communal passions, attacking the police, robbery, etc. All of the Hindus got bail, whereas most of the Muslims (accused of burning property belonging to their own community, including a mosque and school), remained in custody till the trial was over. Some of them continue to remain in custody on the charge of

burning the train. The witnesses for the prosecution were all policemen. The prosecutor argued that since curfew was imposed, it was difficult to find independent witnesses. Hence, the testimony of the policemen should be believed, as also the *panchnamas* **made on the spot by them.**

The Judge found that none of the charges were proved because of the conduct of the investigating officer (IO) who first brought in a set of accused persons to the police station, who in turn named others as co-accused, who were later arrested in combing operations. The Judge held that this revealed that "there is no concrete evidence against the 73 accused who were picked up out of 2,000 people." This verdict of the Sessions Judge points out several serious lacunae in police investigations. Yet persons, allegedly innocent continue to be detained ostensibly for the Godhra Mass Burning Case in Gujarat.

Selective Use of Anti-Terrorism Law Against Minorities in Gujarat

The Prevention of Terrorism Act (POTA) was brought into existence as an ordinance just a few months before the Godhra and Gujarat tragedies but enacted within the state of Gujarat only on February 28, 2002. Since then, this law, which has provisions that militate against basic protection of human rights of the citizen, has been used *selectively against the Muslim minority in Gujarat.*

Medico Legal Issues

During the post-Godhra carnage, government and municipal hospitals that gave post-mortem reports recorded a shocking lapse when detailing causes of injury in the case of police firings. The post-mortem reports in such cases mention nothing about injury by bullet but state that death was due to injury and shock. This lapse, we hope, is not deliberate, as otherwise it would legitimately invite the criticism that hospitals in Gujarat are not different from other public institutions which have been communalised.

Role of the Judiciary

The ostrich-like attitude of the Indian judiciary when such mass crimes take place has never been more evident as in Gujarat. To quote from *Crimes Against Humanity,* **"While we are clear that as a rule the courts cannot play the role of government or executive and take charge of the maintenance of public order, there comes a time when the judiciary is looked upon as the last resort. At such times, and such moments of time were evident during the Gujarat carnage and remain important to date, the judiciary is expected to rise to the full capability of its Constitutional Obligations and Duties, and take swift and clear** *suo motu* **action if necessary to restore the belief of disillusioned, marginalised and alienated sections of our population who have been victims of state sponsored massacres.** *In not doing so, the courts fail in their primary duty***. We state with regret that the casualness with which matters relating to the Gujarat carnage have been handled by the court(s), high and low, is a matter of serious concern for the rule of law and the survival of constitutional principles in any real sense in this country.**

"Even open acts of threats against two High Court judges belonging to the minority community, did not stir the high judiciary into any action against the government. This is a sad reflection on the judiciary which in the past had considered the slapping of a

magistrate a sufficient enough reason to invoke the contempt jurisdiction of the Apex Court! "

Limitations of the Struggle for Justice

The weight of the system that we are battling forces us to pick and choose cases even in our struggle for justice. The magnitude of what happened in Gujarat has died in public memory; worse, even our battles are today constrained to attempting to get justice for only those victim survivors of the *worst* incidents where over a dozen persons were butchered and slaughtered.

What of the innocent victims, many minors who were shot dead by an unaccountable police? What of the girls and women who were killed after brutal sexual violence? What of those who survived and have been forced back to live in the same villages where the crimes were committed?[11]

What of the 10,000-odd homes that were destroyed so thoroughly that the pathetic Rs 5,000 –Rs 40,000 paid in compensation to only a few is barely enough to pick up the threads and start living again? What about the reparation for the businesses destroyed and the agricultural lands seized?

No less than 116,000 persons were internal refugees thrown out of home and hearth and living in relief camps for over seven months last year. During this period, the state of Gujarat refused to give them food, water and medicines despite their Constitutional Mandate that they bear the cost of this internal displacement. Again, it took legal interventions in the Gujarat High Court—two writ petitions supported by *CJP,* which included flying down a senior lawyer from Mumbai since the atmosphere was so communally charged in the state that few wanted to appear in defence of minority community victims![12] As a result of this legal intervention Rs 10 crores had to be paid out from state government coffers to the relief camp organisers.

International aid that flowed easily into the state just a year before the carnage when a tragic earthquake struck Kutch in Gujarat close to the Indo-Pak border (on January 26, 2001) was sorely missing as an utterly callous central and state government simply did not allow international aid agencies to come to the aid of the victim survivors of the genocide. This raises serious questions of the ethics of the international aid, issues that have arisen before, whether it is during the UN sanctions in Iraq or in Afghanistan.

The violence in Gujarat in 2002 was preceded for some months by the systematic distribution of material, some anonymous, that spewed hatred and venom against the Muslim minority in the state. Even during the outbreaks of violence thousands of these pamphlets could be found—some advocated systematic economic boycott of Muslims and even printed an address of the Vishwa Hindu Parishad's office at the bottom[13]; others that were even more graphic and vicious advocated mutilation and rape.[14]

The systematic use of hate speech and hate writing has been a crucial part of the politics of communalism within India, especially since the mid-1980s when the movement of the construction of a Ram temple at Ayodhya began. This period saw the sharp rise of communal forces from both within the Hindu majority and the Muslim minority. The

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[11] *CCT, Volume II,* Short Term Recommendations of Reparation, Relief and Rehabilitation

[12] Mr Aspi Chinoy along with Mr Suhel Tirmizi argued the matter for over five hours before the Judge actually appointed a committee and thereafter passed orders that made the state government liable to make good the damages to the organisers of relief camps.

[13] Pamphlet Poison, *Gujarat Genocide 2002, Communalism Combat March-April 2002*

[14] *Ibid*

opening of the locks of the Babri Masjid in 1986 was preceded by Parliament's enactment of a law that excluded rightful maintenance rights to Muslim women, a demand made by the patriarchal and communal Muslim male leadership. The cleverly constructed movement to 'construct' a Ram temple at Ayodhya was in fact always to *destroy* a Mosque and thereby teach a much-deserved lesson to the Muslim minority. Brute violence and threat was an integral part of this movement led and inspired by none less than India's deputy prime minister, LK Advani, when he began his *rath yatra* from Somnath, in Gujarat in 1990. His close aide and organiser of the procession was none less than Narendra Modi, today Gujarat's chief minister and 'chief architect of the state sponsored genocide'.[15]

Serious questions for the Indian Police Force

The utter collapse of confidence in the police among the citizenry and the dismal deterioration in their collective conduct in the state is more than serious cause for a national debate and concern. It is linked seminally with the wider issue of drastic police autonomy and reform. Senior policemen who have dealt with communally volatile situations have recommended the urgent need for accountability and reform within the police. Three reports of the National Police Commission,[16] a professional body that studies, reflects and analyses the state of police functioning in the country, have also noted with alarm increasing reports of prejudicial conduct and made harsh and specific recommendations. The content of these have unfortunately never become the basis for national debate and concern.[17]

After some in the Los Angeles Police were found through videographic evidence to be kicking suspected criminals or innocents simply because they were black; attempts were made to inject institutional safeguards against racial discrimination within the police in America. Post-WTC, the numerous unrecorded and unaccounted arrests of innocent immigrants has been the focus of a studied campaign by the American Civil Liberties Union. The Stephen Lawrence case in the United Kingdom led to the Macphearson Commission that has attempted some reform within the British police, also on the issue of racial bias. The issue then is not whether we will have institutions and set-ups that are entirely bias-free but whether we have the moral and ethical preparedness to accept that the malaise exists and thereafter set about attempts to cure it.

For this to happen, institutions and those individuals that symbolise or man them need to purge themselves of the state of denial. Psychologists say this is the surest form of defensiveness. Defensiveness suggests that the emotion hides a truth. So it is with communal bias in the Indian Police Force. First there needs to be strong and committed effort to get out of the constant state of denial. Simply because, since 1981 there are just too many concrete examples to show that communal bias not only exists but seriously affects, detrimentally, professional and neutral functioning, trampling on the fundamental rights of a section of the citizenry to equal treatment by and protection from the law.

The radical measures then needed include a re-vamping of the structure of the police. As important are prompt and punitive measures against officers and men guilty of crude and gross misdemeanors that include ethnically driven criminal acts including

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[15] *CCT,* Volume II State Complicity

[16] Sixth Report of the National Police Commission, March 1981:"Several instances where police officers and policemen have shown an unmistakable bias against a particular community while dealing with communal situations" adding that the composition of the police is "heavily weighted in favour of the majority community.'

[17] Who Is to Blame?, *CC,* march 1998

murder, loot and arson. In Hashimpura, Meerut, 1987, the Provincial Armed Constabulary of the UP police shot dead, in cold blood, 40 Muslim youth. [18] Not a single man in uniform has been punished to date. In Bombay 1992-93, the then Joint Commissioner of Police, RD Tyagi shot dead nine innocent men believing them to be Kashmiri terrorists. [19]Though chargesheeted, his trial for conviction is yet to begin. This author tapped police wireless messages during the second round of Bombay riots, in January 1993, the transcribed text of which reveal a deep and abiding anti-Minority hatred operating and affecting actions among a section of the Indian police.[20] In Gujarat, too, in all the scenes of recent massacre significant sections of the police were party to the crimes committed. It is unlikely that the struggle for justice against the criminals in uniform will chart any new path this time, without an outcry following a relentless national debate for drastic and radical police reform.

Excerpted Directly From **Crimes Against Humanity—Gujarat 2002, Volume II, Recommendations, Short-Term and Long-Term***:*

EXCERPTS FROM RECOMMENDATIONS

United Nations/International Community

There is an urgent need for international agencies to intervene and help in the process of justice for the victims of the Gujarat Genocide. Hence the Tribunal appeals to the International Community to use all the influence at its command with the Government of India and Gujarat government to ensure the speedy carriage of Justice.

To impress upon the Government of India through its Parliament to legislate mechanisms for the implementation of the Genocide Convention--- which India has both signed and ratified --- and to use these mechanisms to prosecute and punish all those who participated in the planning and execution of murder, sexual violence, theft, and destruction in the state of Gujarat in the recent months.

Media

Action needs to be taken against those who gave provocative speeches on TV channels and made statements in the newspapers, as well as against the newspapers and the TV channels who have published the same as well as published the news with a communal colour, as confirmed by the report of the Editors' Guild of India.

The role of sections of the media, particularly the Gujarati language press, in spreading and inciting the violence should be investigated and all facilities provided to it, such as advertisements from public authorities and bodies, postal and transport concessions, credentials, entry cards and passes should be withdrawn.

NHRC

In compliance with Article V of the International Convention on the Prevention and

[18] "No Riot Can Continue for More than 24 Hours Unless the State Wants it to Continue', Cover Interview of then DIG, BSF, V.N.Rai by Teesta Setalvad for *Communalism Combat*, February 25, pg
[19] Damning Verdict, Report of the Srikrishna Commission, published by Sabrang Communications, pg 114
[20] see Annexure 2, from Saffron in Uniform, *Communalism Combat*, pg 5

Punishment of the Crime of Genocide, 1948 that India has signed in 1948 and ratified in 1958, a State that is Signatory is bound to effectively act upon and legislate upon the intents of the Legislation. Our country has not done complied with this requisite in the Convention though more than five decades have passed. The Tribunal has clearly held that the crimes in Gujarat were crimes against humanity and Genocide. But, to date there is no law for punishing these people. Under the present political circumstances, the Tribunal does not expect either the State of Gujarat or the Union of India to enact such a much-needed law.

Despite the fact that there is no law on genocide at present, the Tribunal holds that the Covenant on Genocide has become part of the customary law as it doesn't conflict with any other existing law. Such an interpretation of the law, would help the National Human Rights Commission to conduct a detailed investigation into the crimes in Gujarat and submit a detailed Report to the Government and the nation. The facts narrated in the NHRC's Summary Report on Gujarat already add upto a prima facie accusation of genocide. The Commission has a present and urgent obligation to the people and a mandatory obligation to posterity to inquire into Gujarat violence and record its findings so that no political party and no government in future ever resort to such brutal practices.

As part of this obligation the National Human Rights Commission prepare a Model Statute on genocide including provisions for effectively taking preventive measures to protest religious ethnic and linguistic minorities from being attacked. This action in my view is mandatory because under the International Criminal Code genocide and crimes against humanity are declared as offences. State parties may not follow this but Human Rights Commissions set up by various countries will have to enforce them however limited their jurisdiction might be "Genocide is an attack on human diversity as such, that is upon a characteristic of the" human status without which the very words "mankind" or "humanity" would be devoid of meaning" (Hannah Arndt)

RECOMMEDATIONS: LONG TERM

I. A Standing National Criminal Tribunal be established, forthwith, to deal with all cases of,

- **-- Crimes against humanity, pogroms,**
- **-- Offences in the nature of genocide,**
- **-- Cases of mass violence and genocide,**
- **-- Cases of riots and incidents where there is a large-scale destruction of lives and property including caste, religious, linguistic, regional, ethnic and racial violence.**

A. **A suitable Statute should be enacted for the purpose by Parliament**

B. **The Standing National Criminal Tribunal (SNCT) should be an independent body, the personnel of which should be selected by a committee consisting of the Chief Justice of India, the Prime Minister of India and the Leader of the Opposition in Parliament. Persons with legal and judicial background should be appointed on the tribunal for a fixed tenure of not less than 7 years.**

C. **The members of the SNCT should be free to follow such procedure as they may find fit notwithstanding the provisions of any other law.**

D. **The SCNT should have the power to investigate the offences through its own investigating agency created for the purpose. The SNCT should have for its independent use a special investigating and enforcing agency.**

E. **The SCNT should take cognisance of mass crimes as soon as they occur. Once**

the cognisance of such crimes is taken, no court should have the power to deal with them. The SNCT should depose of the cases within a time bound frame.

F. **The SNCT will have the power to arrest, try, and punish the accused as well as to compensate, and rehabilitate the victims and their dependents.**

G. **Jurisdiction, Admissibility and Applicable Law: For the purpose of the statute to be enacted, "mass violence and genocide" should mean, as it does in the international convention on** *Prevention and Punishment of the Crime of Genocide,* **any of the following acts committed with intent to destroy in whole or in part an ethnic, racial caste or religious group:**

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

In addition the following acts should also be punishable under the proposed statutes:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.

II. Crimes Against Humanity

Within the definition of crimes that fall under the definition of crimes against humanity, sexual crimes against women should be recognised as crimes against humanity. Sexual crimes should not include only rape in the conventional sense; but should also include sexual slavery, debasing, enforced pregnancy, enforced sterilisation; forcible insertion of any object into the vagina. The definition of crimes against humanity should also include attacks on the lives and dignity of a section of the people, attempted or actual obliteration of a section of the people, economic annihilation of a targeted section, as well as their religious and cultural obliteration.

III. Gender Crimes

i] The definition of rape and sexual assault under the new statute should recognise that it cannot be restricted to the act or the proof of the penis forcibly entering a woman's vagina. Any object used to abuse a woman's body and even verbal assault should be considered a part of the same crime. The present laws of evidence and procedures involve medical examination of the victim as well as of the accused, as proof of such assault. In situations such as that of mass rapes and gang rapes during the recent violence in Gujarat this is an impossibility because where the victims have fled for days on end if they have survived the assault at all, or where the police has refused to file any complaints or have deliberately filed incorrect complaints no accused may be apprehended. It is important that the onus of proof in all such cases of mass and gang rapes should rest on the accused and the victims should not be burdened with proof of the crime. The testimonies of the witnesses in cases where women have been burnt or killed have to be given due weightage as those of the victims themselves.

ii] In most cases, the accused might be unknown or due to the presence of a large number of people, it might be difficult to identify the persons involved directly in

the crime. In such situations, the State has to be held responsible for the crime, for not protecting its citizens. The persons holding responsible offices must be made accountable for the same.

iii] The concept of justice has to be widened in such cases. It is not only punishment of those found guilty of the crime, but also reparation for the women who suffer bodily and mental injuries should be considered as such assaults further curtail women's right to be a part of mainstream social life besides inflicting a long term damning impact on the coming generation. Precisely for this failure to protect the basic human rights of these citizens the State has to provide reparation. Financial reparations are no doubt extremely important, but ought not to be seen as full compensation. Since all individual women are not in a position to register their complaints, reparation should be provided to all women of the affected community.

iv] Women and witnesses who have come forward to give testimonies should be given adequate protection by the SNCT, holding the State and the offenders responsible and punishable for any harm that may be caused to them.

IV. Justice and the Judiciary

The near collapse of the criminal justice system in our country has made the deliverance of justice an exception rather than the rule. It is a painful reality and has to be acknowledged by all. Hence, when situations like the Gujarat carnage/genocide occur, where mass scale violence takes place; it is unrealistic to expect prompt justice from the present system. It has therefore become necessary to suggest a mechanism such as the SNCT above, with special composition, status, power and procedure. Section 11 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 envisages such a Tribunal.

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Orissa: A Gujarat in the making

With little resistance to its aggressive onslaught, the sangh parivar looks well set to meet its 2006 deadline for reshaping Orissa into the next 'laboratory for Hindutva'

BY ANGANA CHATTERJI

In Gujarat, Hindu extremists killed 2,000 people in February-March of 2002. Muslims live in fear there, victims of pathological violence.

Raped, lynched, torched, ghettoised. A year and half later, Muslims in Gujarat are afraid to return to their villages, many still flee from town to town. Ghosts haunted by history. Country, community, police, courts — institutions of betrayal that broker their destitution. This is India today.

The National Human Rights Commission recognised the impossibility of achieving justice in Gujarat. The Best Bakery murder trial flaunted dangerous liaisons between government, judiciary and law enforcement. Those who speak out are vulnerable. Outcry against the consolidation of Hindu rightwing forces in India is subdued. In a world intent on placing Islam and Muslims at the centre of 'evil', Hindu nationalism escapes the global imagination.

Orissa is Hindutva's next laboratory. This July, in a small room on Janpath in Bhubaneswar, workers diligently fashioned saffron armbands. Subash Chouhan, state convenor for the Bajrang Dal, the paramilitary wing of Hindutva, spoke with zeal of current hopes for 'turning' Orissa. Christian missionaries and 'Islam fanatics' are vigorously converting Adivasis (tribals) to Christianity and Dalits (erstwhile 'untouchable' castes) to Islam, Chouhan emphasised. He stressed the imperative to consolidate 'Hindutva shakti' to educate, purify and strengthen the state.

Western Orissa, dominated by upper caste landholders and traders, is a hotbed for the promulgation of Hindu militancy, while Adivasi areas are besieged with aggressive Hinduisation through conversion. Praveen Togadia, international general secretary of the VHP, visited Orissa in January and August 2003 to rally Hindu extremists. He advocated that Orissa join Hindutva in its movement for a Hindu state in India. 'Ram Rajya', he promised, would come.

In Orissa, the sangh parivar is targeting Christians, Adivasis, Muslims, Dalits and other marginalised peoples. The network divides its energies between charitable, political and recruitment work. It aims at men, women and youth through religious and popular institutions. The sangh has set up various trusts in Orissa to enable fund raising, such as the Friends of Tribal Society, Samarpan Charitable Trust, Yasodha Sadan, and Odisha International Centre.

There are around 30 dominant sangh organisations in Orissa. This formidable mobilisation is the largest base of organised volunteers in the state. The RSS, responsible for Gandhi's death, was founded in 1925 as the cultural umbrella. It operates 2,500 shakhas in Orissa with a 1,00,000 strong cadre. The VHP, created in 1964, has a membership of 60,000 in the state. Born in 1984, at the onset of the Ramjamanbhoomi movement, banned and reinstated since the demolition of the Babri Masjid in 1992, the Bajrang Dal has 20,000 members working in 200 akharas in the state.

Membership of the BJP stands at 4,50,000. The Bharatiya Mazdoor sangh manages 171 trade unions with a cadre of 1,82,000. The 30,000 strong Bharatiya Kisan

sangh functions in 100 blocks. The Akhil Bharatiya Vidyarthi Parishad, an RSS inspired student body, functions in 299 colleges with 20,000 members. The Rashtriya Sevika Samiti, the RSS women's wing, has 80 centres. The Durga Vahini, with centres for women's training and empowerment, has 7,000 outfits in 117 sites in Orissa.

Intent on constructing the 'ideal' woman who decries the 'loose morals' of feminism, the sangh seeks to train Hindu women to confront the 'undesirable' sexual behaviour "endemic" to Muslims and Christians. Such training endorses 'masculanisation' of the Hindu male looking to protect the fictively threatened Hindu woman.

In October 2002, a Shiv Sena unit in Balasore district in Orissa declared that it had formed the first Hindu 'suicide squad'. Responding to Bal Thackeray's call, over 100 young men and women signed up to fight 'Islamic terrorism'. The Shiv Sena appealed to every Hindu family in the state to contribute to its cadre. Squad members, it is speculated, will receive training at Shiv Sena nerve centres in Mumbai and elsewhere.

Why Orissa? The state is in disarray, the leadership labours to sustain a coalition government headed by the Biju Janata Dal and the BJP. The government is shrouded in saffron. As the sangh infiltrates into civic and political institutions seeking to 'repeat' Gujarat not many are paying attention. For the 36.7 million who reside in Orissa, Hindutva's predatory advance aggravates and capitalises on social panic in a land haunted by inequity.

Orissa houses 5,77,775 Muslims and 6,20,000 Christians, 5.1 million Dalits from 93 caste groups, and over 7 million Adivasis from 62 tribes. Around 87 percent of Orissa's population lives in villages. Nearly half the population (47.15 percent) lives in poverty, with a very large mass of rural poor. Almost a quarter of the state's population (24 percent) is Adivasi, of which 68.9 percent is impoverished, 66 percent illiterate and only 2 percent have completed a college education. 54.9 percent of the Dalits live in poverty. Concentrated in Cuttack, Jagasinhapur and Puri districts, 70 percent of the Muslims are poor. In March 2002, Orissa's debt amounted to 24,000 crore rupees, more than 61 percent of the gross domestic product of the state.

In 2001-2002, the government of Orissa signed a memorandum of understanding with New Delhi to secure a structural adjustment loan of Rs. 3,000 crore from the World Bank and an aid package of Rs. 200 crore from the department for international development, the overseas development branch of the government of the United Kingdom. This is conditional assistance, laden with extensive and hazardous consequences. People's movements protested this agreement for tied aid that supports irresponsible corporatisation and works against the self-determination of the poor.

Consecutive governments, including the present coalition, have failed to address entrenched gender and class oppressions as exploitative relations endure between the poverty-stricken and a coterie of moneylenders, government officials, police and politicians in Orissa, perpetuating displacement, land alienation, and untouchability. Floods have affected three million in 2003. Agricultural labourers are faced with serious food shortages with no alternative means for income generation. Scarcity has led to starvation deaths and people have committed suicide. Infant mortality, 236 in 1000, is the highest in the Union.

In the recent past, Rayagada district has witnessed despairing efforts to survive — the sale of children by families. In Jajpur district, a mother, a daily wage earner in a stone quarry, sold her 45-day-old child for Rs. 60 this July. These measures have not evoked reflection and commitment on the part of the State. Rather, unconscionable attempts have been made to show that such action is emblematic of Adivasi and Dalit cultures.

Systematic disregard for the human rights of 'lower' caste, Adivasi and Dalit peoples is a social and structural predicament. In December 2000, Rayagada witnessed state repression of Adivasi communities protesting bauxite mining by a consortium of industries in Kashipur that is detrimental to their livelihood. The industries were in breach of constitutional provisions barring the sale or lease of tribal lands without Adivasi consent. In response, state police fired on non-violent dissent, killing Abhilas Jhodia, Raghu Jhodia and Damodar Jhodia.

The absence of adequate social reform, the disasters of dominant development, economic liberalisation and corporate globalisation further antagonise already overburdened minority and disenfranchised groups, pitting them against each other. Hindutva targets the religion and culture of the disempowered as globalisation abuses their labour and livelihood resources. Such conditions produce the contexts in which marginalised peoples embrace identity-based oppositional movements.

The sangh exploits the fabric of inequity and poverty deviously to weave solidarity built on tales of a mythic Hindu past. Hindutva defames history, speaking of Muslims as the 'fallen traitors' among Hindus who converted to Islam. This revisionist history obfuscates the severity of inequity within Hindu society that led to conversions historically. Alternatively, Hindutva misrepresents Muslims as 'terrorists' and 'foreigners', Christians as 'polluted'. Adivasis are falsely presented as Hindus who must be 'reconnected' to Hinduism through Hindutva. Dalit and lower caste people are raw material for manufacturing foot soldiers of dissension.

At the same time, caste oppression prevails in the sangh parivar's mistreatment of Dalits in Orissa, who have been assaulted for participating in Hindu religious ceremonies. In April 2001, a Dalit community member was fined Rs. 4,000 and beaten for entering a Hindu temple in Bargarh.

Poor Muslim communities are often socially ostracised in Orissa. Cultural and religious differences are diagnosed as abnormal. A Muslim community member from Dhenkanal said, "When Hindus celebrate a puja we are expected to pay our respects and even offer contributions. For them this is an example of goodwill, of how we are accepted into their society, indeed we are no different as long as we do not act differently."

A Muslim woman added, "Women face double discrimination, from men of our own community as well as from the outside". Women fear the sangh will perpetrate violence on their bodies to attack the social group to which they belong.

In witch hunting for the 'enemy within' to blame for India's befallen present, the sangh demands absolute loyalty to its tyranny, requiring an unequivocal display of obedience. The sangh dictates the rightful gods to worship, prayers to recite, legacies to remember. Hindutva imagines its actions above the law. It makes the unification of Hindus central to its mission. To do so, it organises Hindus to fulfil their 'manifest destiny', fabricating Hinduism as monolithic across the immense diversity of India.

Grassroots movements in resistance to the debacle of nation making are combating the sangh. Where Dalits, Adivasis and others are allied in subaltern struggles for land rights and sustenance, Hindutva intervenes, seeking to divide them. Grassroots democracy threatens upper-caste Hindu dominance and contradicts elite aspirations. To domesticate dissent, the sangh invigorates militant nationalism. In village Orissa, emulating Gujarat, the sangh works to create enmity between Dalits, Adivasis, Muslims and Christians. Progressive citizen's groups have initiated opposition, including the 'Campaign Against Communalism' in Bhubaneswar. Their capacity to contest despotic religiosity is linked to redressing political oppression, redistributing economic resources and overcoming injustice.

Fear of the sangh parivar runs deep in Orissa, producing acquiescence. The sangh's methods are sadistic, contributing to violations of life and livelihood. In January 1999, as the vehicle with Australian missionary Graham Staines and his two sons, Philip and Timothy, was torched in Keonjhar district, the mob's homage to 'Jai Bajrang Bali!' pierced the state. Then followed the murder of Catholic priest Arul Das and the destruction of churches in Phulbani district. After much delay, last month, the Orissa district and sessions court delivered a verdict on the Staines' murder case, sentencing Dara Singh, the primary accused, to death, and 12 others to life imprisonment.

The Bajrang Dal continues its virulent onslaught in Orissa. In June 2003, the Dal announced that it would organise 'trishul diksha' (trident distribution), despite chief minister Naveen Patnaik's ban. Praveen Togadia planned on launching the trishul distribution campaign in Banamalipur in Korda district to provoke an area with a significant Muslim population. The Bajrang Dal plans to present trishuls to 5,000 as part of the Janasampark Abhiyan (mass contact programme) that anticipates reaching 100 million people in 2,00,000 villages throughout India.

The objective? To spread aggression. Between July and September 2003, the Bajrang Dal organised intensive programs in Bhubaneswar, Sundergarh and Jajpur. Aimed at securing a 1,50,000 membership in Orissa, this is part of a larger campaign that targets Gajapati, Phulbani, Keonjhar, Mayurbhanj, Koraput, and Nabarangpur districts.

In Orissa today, the sangh mobilises for a Ram temple among people for whom Ayodhya is a tale from afar. By 2006, the birth centenary of RSS architect Madhav Sadashiv Golwalkar, sangh organisations promise that Orissa will be a poster state for Hindutva. The sangh's considerable advance in rural and urban Orissa has helped the BJP consolidate its position in the state, reflected in its gains in the state Assembly from one seat in 1985 to 41 presently. In return for its support, the sangh expects the government to tolerate its excesses. In March 2002, a few hundred VHP and Bajrang Dal activists burst into the Orissa Assembly and ransacked the complex, objecting to alleged remarks made against the two organisations by house members.

Development and education are key vehicles through which conscription into Hindu extremism is taking place. After the cyclone of 1999, relief work undertaken in a sectarian manner by RSS organisations granted the sangh a foothold through which to strengthen enrolment. Today, the Utkal Bipannya Sahayata Samiti works on disaster mitigation with facilities in 32 villages. The Dhayantari Shasthya Pratisthan manages four hospitals and six mobile centres.

In offering social services and carrying out rural development work, the sangh makes itself indispensable to its cadre as a pseudo-moral and reformist force. This continues the sangh parivar's long history of implementing sectarian development. Targeting the livelihood of the 'other' is a technique of saffronisation. The Bajrang Dal has been strident in stopping cow slaughter in Orissa, an important source of income for poor Muslims who trade in meat and leather. Muslims have been beaten and threatened by Hindutva mobs. In India, amid the staggering poverty in which 350 million live, the participation of government agencies in debating a ban on cow slaughter is contemptible. This debate is not about animal rights. It arrogantly contravenes the separation of religion and state. It is anti-Muslim, anti-Dalit, anti-Christian and anti-poor.

In Orissa, egregious infringements of human rights are taking place with the disintegration of Adivasi and other non-Hindu cultures through their hostile incorporation into dominant Hinduism. Sectarian education campaigns undertaken by RSS organisations demonise minorities through the teaching of fundamentalist curricula.

There are 391 Shishu Mandir schools with 111,000 students in the state, preparing for future leadership. Training camps in Bhadrak and Berhampur aim at Adivasi youth.

Vanavasi Kalyan Ashram runs 1,534 projects and schools in 21 Adivasi districts. The sangh has initiated 730 Ekal Vidyalayas in 10 districts in Orissa, one teacher schools that target Adivasis. The primary purpose of the schools is to indoctrinate villages into Hindutva. The teachers are offered Rs. 150-200 per month as honoraria, no salaries. The schools are free, supported through donations from organisations like the India Development Relief Fund. For Adivasi peoples, this facilitates cultural genocide that imperils self-determination movements struggling against a violent history of assimilation. The sangh asserts Adivasi political emancipation is a process of 'tribalism' that jeopardises the nation.

The sangh drives spiritual centres that use religious scriptures to incite sectarianism among Hindus. Vivekananda Kendras and Hindu Jagran Manch are active in Orissa together with Harikatha Yojana centres in 780 villages and 1,940 Satsang Kendras. There are 1,700 Bhagabat Tungis in Orissa, cultural reform centres run by the sangh that aim at Hindus and Christians. Another line of attack is to forcibly convert Christians into Hinduism. Churches and members of the Christian clergy are apprehensive. In Gajapati and Koraput, Christians have sought state protection in the past.

In Gajapati district, RSS and BJP workers torched 150 homes and the village church in October 1999. A Dalit Christian activist said, "RSS workers tell me that Christianity brought colonialism to India, and I am responsible for that legacy. How am I responsible? Feudalism, imperialism, post-colonial betrayal. That is written across our bodies. How am I responsible?" In June 2002, the VHP coerced 143 tribal Christians into converting to Hinduism in Sundargarh district. The Dharma Prasar Bibhag claims to have converted 5,000 people to Hinduism in 2002.

Orissa passed a Freedom of Religion Act in 1967 protecting against coercive conversions. The law, open to problematic interpretations, was overturned in 1973 and returned in 1977. In 1989, the state government activated requirements for religious conversion. In 1999, Orissa enacted a state order prohibiting religious conversions without prior permission of local police and district magistrates. Hindu fundamentalists diligently manipulate these provisions to intimidate religious minorities. Sangh organisations work with sympathetic police cadre to ensure that Hindu's do not convert.

The sangh purposefully confuses the distinction between the right to proselytise and the use of religion to cultivate hate. Hindutva propaganda accuses Christian communities of the former and labels it a crime. The sangh justifies its use of the latter in the interests of a higher truth, the 'righteous' action of reuniting Hindus. 'Reconversion' is working well among the Christian community in Orissa, Subash Chouhan says, but not with Muslims. "Muslim reconversions are going slowly because mullahs, maulvis have created mosques and madrassas in village after village, and guard their children like chickens. That is the kind of people they are and that it why it is not so easy to get them back." For Muslims, the Bajrang Dal anticipates a different approach. Mr. Chouhan said that the Dal would engage in militancy if needed to "get the job done".

Hindutva stampedes across Orissa, inciting tyranny to establish itself. As power, culture and history shape the imagination of a nation, genocide is emerging as India's brutal legacy. In denial, in silent and active complicity, we allow Hindu extremists to march to the guttural call of hate. Hindutva hijacks the nation's aspirations. Its doctrine of 'blood, soil and race' rewrites the circumstances and complex histories that produced

India. While the separation of religion and State in India is attempted at the constitutional level, Hindu militancy derives consent from Hindu cultural dominance.

Hindu ascendancy is assisted by the degree to which the authority of religion and the enabling cultural and gender hierarchies are enshrined deep within the popular psyche of the nation. This dominance assumes that to restrict religion to the private realm would deny India its historical 'consciousness'.

India, a land of 1.2 billion, a profusion of peoples, is bound to the promise of a different destiny. In the flux between yesterday and tomorrow, dreams and desires, inequities and intimacies collide to infuse the hybridity that is India. Her survival is contingent upon the Hindu majority's commitment to an inclusive, plural, secular democracy. The idea of a Hindu state in India is filled with discontent, held together by force. It must never come to pass.

Note: Information used in this article is derived from multiple sources, including interviews with persons affiliated with sangh organisations. Angana Chatterji is a professor of Social and Cultural Anthropology at the California Institute of Integral Studies.

KASHMIR BACKGROUND MATERIALS

Parvez Imroz

Introduction to Kashmir: "The Most Dangerous Place on Earth"

Kashmir, as a result of tensions between India and Pakistan and a political conflict centered on the issue of Kashmiri self-determination espoused by major sections of the Kashmir population and contested by the Indian government, has come to be known as the "Most Dangerous Place on Earth" in recent years.

This nomenclature has emerged since the tit-for-tat nuclear tests conducted by India and Pakistan in 1998. The conflict presents a serious threat to international security, as there is danger that tensions can spiral into a nuclear war, threatening the future of the people of Kashmir, India, and Pakistan. To put the combined population of South Asia into context, one of out of every five human beings on the planet is living under the shadow of this conflict. The risks are high, but even the current costs of war are terrible. India and Pakistan continue to spend massive amounts on an arms race as poverty, illiteracy, and illness face hundreds of millions of people.

With various armed groups clashing with the Indian military and two opposing armies caught in constant artillery shelling across the Line of Control that divides the former state of Jammu & Kashmir, Kashmir has become a war zone. The Indian government has continued to maintain a presence of half a million troops in Kashmir following a local uprising by Kashmiris seeking independence in 1989.

Thousands of people have been killed in Kashmir as the fighting has raged on and as human rights abuses have continued unabated. The Kashmir conflict not only continues to raise the specter of war between India and Pakistan, but it also continues to produce serious human rights violations against Kashmiri civilians: summary executions, rape, and torture. Both the Indian military and armed groups commit human rights abuses. There is a systematic pattern of human rights abuses and a regime of impunity that the Indian government has used to eliminate what it views as a security threat by any means necessary.

A humanitarian crisis of sorts exists in Kashmir. Kashmiri civil society seeking to address urgent issues and nonviolent Kashmiri groups that have eschewed violence, but continue to politically campaign for independence, have found an ever-narrowing space to work within. Their situation has rarely been covered by international media, and 13 millions Kashmiris are isolated from the world as their society continues to be torn apart by the ravages of the conflict.

Documentation and Work Undertaken

The past 14 years of armed conflict in Jammu & Kashmir has affected the entire society. There has been no let up in the situation. The armed groups and more than half a million Indian Security personnel engaged against each other in the valley have resulted in unprecedented massive human right violations which are continuing unabatedly.

Before the onset of conflict in Kashmir, the term Human Rights was not popularly known but, when the conflict started in the early 90's, human rights became a major issue in Kashmir and all sections of the Kashmiri society got involved in Human Rights issues.

They sent memorandums to the United Nations for humanitarian intervention in Kashmir. Overnight, groups like Amnesty International became a household name.

Professionals like doctors, lawyers, social activists, bureaucrats and retired judges constituted District and local level committees.

Physicians for Human Rights, Human Rights Watch, Amnesty International, and other international human rights groups began reporting on human rights in Kashmir. A number of reports were published expressing deep concern at human rights abuses committed on all sides, particularly a systematic pattern of human rights abuses and impunity by the Indian government.

But the Indian government has banned international human rights groups like Amnesty International from visiting. Even the ICRC was banned for a number of years and was only permitted limited access to officially listed prisons and Joint Interrogation centers to ensure the fair and humane treatment of the thousands of imprisoned Kashmiris. ICRC operations in Kashmir are severely curtailed by a very restrictive Memorandum of Understanding with the Indian government which does not permit unfettered access, unannounced visits to detention centers, or access to the "unofficial" prisons and detention centers.

Given that international human rights groups have not been permitted to visit Kashmir, the primary responsibility of human rights documentation, research and advocacy has fallen on local Kashmiri actors. It has been a lonely and dangerous endeavor those who have taken up this important work.

For the most part, Kashmiri society was not adequately prepared to contend with the crisis of human rights issues that has dominated life in Kashmir since the early 1990's. Proper Human Rights work has not been properly addressed and understood by Kashmiri political groupings involved in an independence struggle. At the beginning of the 1990's, Indian human rights organizations visited Kashmir and reported human rights situation through their reports. Groups from South India, such as the Andhra Pradesh Civil Liberty Council (APCLC), also documented the human rights situation in Kashmir, but these reports were dismissed by the government of India as misleading and intended to "demoralize" the army.

In Kashmir, the Kashmir Bar Association and the Jammu Bar association also did some documentation but it was not done in a professional manner. The only organization, which documented the human right violations in Kashmir in an organized manner, was the Institute of Kashmir Studies (IKS). The Institute of Kashmir Studies (IKS) was founded in the year 1992. The IKS emerged as an organized institute and, according to its commitment, it was to provide intellectual impetus, assist and coordinate research on issues and problems relevant to Kashmir. It had many objectives but most of its activities remained confined to human right documentation. The human right division of the IKS, under the name and style of Jammu and Kashmir Human Rights Awareness and Documentation Centre (J&K HRADC), undertook studies on human rights, to highlight the human right violations perpetrated on the people of J&K.

IKS published almost 40 publications mostly relating to human rights violations. The information by IKS was disseminated to more than 400 organizations in India and internationally. Since the IKS office bearers were also affiliated with a right-wing political party, they had a lot of human and financial resources which enabled their work. But independent observers questioned the reports of the IKS as it was accused of politicizing human right issues. After the detention of its chairman in November 2002, who was detained under the Public Safety Act, the president of Jamaat –e- Islami took over the responsibility of IKS. Soon after the detention of its chairman, the president of Jamaat suspended the activities of IKS. Thus, political forces interfered in the human rights work

of the IKS, while the credibility of the well-researched IKS reports were impacted by perceived involvement of the very same.

Recent efforts to initiate objective well-founded human rights documentation work in Kashmir have graduated to a higher level as Kashmir civil society has stepped in. At present, the Public Commission on Human Rights (PCHR), an independent organization of Jammu and Kashmir Coalition of Civil Society (CCS), is documenting human right situation on a monthly basis through its publication "Informative Missive" which is also available on the website: http://geocities.com/informativemissive. Besides the Informative Missive, the Kashmiri Women's Initiative for Peace and Disarmament (KWIPD), a constituent of CCS, through its quarterly magazine "Voices Unheard" is documenting and disseminating violations against women and children. Please see http://www.geocities.com/kwipd2002).

The CCS also monitored the Jammu & Kashmir assembly elections last year in November 2002, through its report Independent Election Observer's Team Report. Besides CCS, the Department of Sociology from the University of Kashmir has written reports regarding the effect of violence on Kashmiri society.

Thousands of people have been the victims of enforced disappearances by the government. Another CCS member, the Association of Parents of Disappeared Persons (APDP), has brought together hundreds of Kashmiri families whose members have been the victims of Enforced or Involuntary Disappearances (EID) by the Indian government. The APDP is a collective campaigning organization that seeks truth and justice on this severe human rights issue in Kashmir. Recently, in April 2003, APDP organized a worldwide hunger strike, coordinated in different cities across the world, pressing for an end to disappearances, prosecution of perpetrators, and appointment of a commission to probe into all enforced disappearances. The APDP, along with other CCS member organizations, has helped families pursue legal cases as well as highlight this issue through reports, videos, and seminars.

Major Obstacles in Continuing Advocacy Work

- **Human right defenders all over the world have always faced difficulties in treading the path of justice and history bears testimony to this fact. The situation in Kashmir is no different. Many eminent human right defenders lost their lives while espousing the cause of human rights. After the assassination of human right activists H.N. Wanchoo, Dr. Ashai, Dr. Guroo, things became more difficult. It caused a setback for the human right defenders working in Kashmir. People who had joined the human rights efforts in early 90's disassociated themselves from the campaign feeling intimidation from the government and other groups. The human rights movement was neutralized after the assassination of Jaleel Andrabi on 23rd March 1996 with the likely involvement of Indian counter-insurgency squads. It was at that time Washington based Asia Watch (Human Right Watch), a world wide human right organization, described Kashmir as the most dangerous place in the world for human right defenders.**

- **The major problem in Kashmir was the weak civil society as a result of the lack of democratic space. There has been no tolerance of dissent in Kashmir. People against the government have been dubbed as "anti Indians" and Pakistani agents. Groups speaking against the excesses of law enforcement agencies have been**

accused of being militant sympathizers and, while highlighting the excesses of militants, they have been accused of being anti-movement and Indian collaborators. Since both the government and militants have their extensions masquerading as civil society and have used human rights as war and political propaganda, it has been a gigantic task for genuine and independent groups to appear independent.

- **Another major obstacle for human right activists is the distrust amongst the people, including the elite. The distrust is so deep that it will take a long time to gain the confidence of the people. People's expectations from the human rights groups in early 90's were very high, particularly from the international monitoring organizations like Amnesty International (AI), hoping that the international humanitarian concern would pressurize the government of India to stop human right violations in Kashmir. But as nothing of the sort happened and disappointment set in, this left a perception of Kashmiri HR groups as ineffective. Even now the victims of human right violations hesitate to seek help from the human rights groups.**

Ideas for Future Strategies and Explorations of Directions in Advocacy Work

- **The primary task is how to rejuvenate the civil society of Kashmir. A strong and powerful civil society is needed to influence the governments and political parties. Public opinion is the only weapon of civil society that could mount pressure on state and non-state actors to respect the international humanitarian law.**

- **There needs to be training and imparting of human rights education and technical expertise to civil society actors and victims for realizing their objectives and empowering them with the latest experience from the advanced global civil society. Actors also need to learn skills for lobbying with press, legislators and other sections of society.**

- **Kashmiri civil society needs engage in alliance building with Indian civil society. While the Indian civil society has mostly failed the people of Kashmir, a section of civil society in India has dared to tell the Indian people the truth about Kashmir and the human rights violations. These Kashmir watchers in India are spread throughout India and are genuinely concerned about the crimes against humanity committed by the law enforcement agencies and about the Kashmir imbroglio. They are concerned that, unless the causes and sources of the violence are not rooted out, peace cannot be ensured in South Asia and the impeding dispute between the two countries of India and Pakistan will have catastrophic effects, particularly after 1998, when the two countries became nuclear powers. But Indian civil society would be more effective to question the government's commissions and omissions in Kashmir.**

- **We must involve the global civil society for humanitarian intervention in Kashmir. The global civil society has emerged as super power as observed by the daily "The Economist" and, due to globalization, the peace and human rights are the major concern today. Besides involving the global civil society for exerting external**

pressure on the government of India, the civil society groups in Kashmir will evolve a sense of protection while aligning with them. It is vulnerable to work in isolation. The CCS has engaged in alliance building with the European Civil Society and Asian Civil Society. Recently the hunger strike observed by APDP, constituent of CCS, was supported by many organizations in Asian countries, which left a impact on the Government of India. They have started doing some damage controlling measures as far as disappearances in Kashmir are concerned.

- **Ignorance of rights: the most important task is to make people aware of their rights. Since the illiteracy rate is very high and often the victims belong to the down trodden section of society, they are unable to agitate for rights. A massive literacy drive is needed to educate people about their basic human rights.**

<u>Information on Impunity Issues</u>

Impunity is granted to the security forces under Section 6 of the Armed Forces (Special Powers) Act (AFSPA) which reads as, *no prosecution, suit or other legal proceedings shall be instituted except with the prior sanction of centre, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act***. There are innumerable cases in which the army officials have carried out liquidations and assassinations of non-combatant Kashmiris, but no action has been taken against them. This has occurred not withstanding the Supreme Court's directive that, while deciding the legal validity of AFSPA, the complaints against armed forces must be investigated.**

The whole system of human right violations functions on the basis of impunity, and legal impunity is one of the facets. The other facets are political impunity which sustains itself on an institutionalized lie. When it comes to political assassinations, the perpetrators are convinced they have better served their country by torturing, killing, or making the enemy disappear, and all this convinces the perpetrators that they are unaccountable and have license to do anything in the name of patriotism and the territorial integrity of India.

<u>Challenges Faced by Activists</u>:

- **Threat and fear of persecution and death**

The major challenge that human right activists face in this conflict area is fear. Fear as a weapon of war has been successfully used by the Indian government to intimidate people. Fear and insecurity has paralyzed the society. There is internal and external fear; internal fear was greater in the early 90's when people were afraid of expressing themselves and external fear still exists because people, due to their political beliefs, expect harm from the law enforcement agencies, particularly in the far flung areas where *de facto* **army is ruling the roost. It was because of this fear that people in Kashmir have chosen individual options rather than collective options. There has been a large scale exodus of Kashmiri professionals to other countries and to Indian states.**

People staying in Kashmir, particularly the elite, are here because they have no other choice. The tragedy of Kashmir has been that intellectuals, instead of rising to occasion at the historical juncture and engaging themselves in carrying a national liberation movement, have been sucked in by government jobs and have become the part of establishment which is anti people and promotes the Indian interests in Kashmir.

- **Lack of Human Resources**

Most of the human right violations are committed in far-flung areas where accessibility of media and human right defenders is almost negligible. The people living in these areas do not report atrocities due to fear. Hardly 10% of the human right violations are reported in media and other organizations. Lack of local contact in far areas is also a big hurdle in reaching out to these people. Due to huge deployment of troops in the area, these areas are totally controlled by security personnel, even to the extent that civil/municipal activities are controlled by the security forces. But there seems to be change, the students are more interested in joining the civil society and working for human rights, as there is a growing realization that to remain silent is no security or safety.

- **Lack of Financial Resources**

Documenting and agitating on behalf of human rights is a very expensive activity, and independent human right groups lack the financial resources. People hesitate to contribute overtly and covertly to human rights organizations for the fear of reprisal from the government. Independent Human right groups are unable to generate funds from the public and are unable to get funding from the international funding agencies because of the Foreign Contribution Regulation Act (FCRA). Independent voluntary organizations questioning the malfeasance of the government are unlikely to get approved for registration under the Registration Society Act, let alone FCRA. Funding agencies contribute millions of dollars to civil society groups working for humanitarian and human right work in India but hardly any of that money is received by any independent group in Kashmir. The government has allowed some NGOs working for humanitarian work.

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Biographies of Participants

Jacqueline Bhabha

Jacqueline Bhabha is Adjunct Lecturer in Public Policy at Harvard University. A graduate of Oxford University, she is the executive director of the Harvard University Committee on Human Rights Studies and a lecturer at Harvard Law School. From 1997 to 2001, she directed the Human Rights Program at the University of Chicago. Prior to 1997, Bhabha was a practicing human rights lawyer in London, and before the European Court of Human Rights in Strasbourg. Her publications include *Women's Movement: Women Under Immigration, Nationality and Refugee Law* **(1994),** *Asylum Law And Practice in Europe and North America* **(1992),** *"Inconsistent State Intervention and Separated Child Asylum Seekers"* **(2001) and** *"Internationalist Gatekeepers? The Tension Between Asylum Advocacy and Human Rights"* **(2002). She is currently writing a book titled** *Moving Children: Migration, Childhood and the Quest for Rights***. She teaches international human rights and refugee law.**

Shujaat Bukhari

Shujaat Bukhari is a Srinagar-based journalist working as *The Hindu's* **Special Correspondent for Jammu and Kashmir. He has covered the conflict in the state for the last 13 years and has witnessed major events in Kashmir's history. Bukhari started his career with the local English daily,** *Samachar Post***, in 1989 and later worked as correspondent for** *Kashmir Times***. He covered the 1999 Kargil conflict between India and Pakistan for 72 days, the siege of the Hazratbal and Charar-e-Sharief shrines in 1993 and 1995, respectively, as well as political events, protests, and human rights issues. Bhukari's work has also put him in danger. In 1995, a militant group kidnapped Bhukari and, several times, Indian security forces have attacked him. This year, Bhukari was awarded a fellowship by St Paul (Minnesota) World Press Institute, along with eight other international journalists.**

John Cerone

John Cerone is Executive Director of the War Crimes Research Office at American University's Washington College of Law, where he also teaches classes in human rights and humanitarian law. He has worked as a human rights legal advisor with the United Nations Mission in Kosovo and as a legal consultant for the International Secretariat of Amnesty International. He has also served as Legal Advisor to the Attorney General of Sierra Leone in negotiations with the United Nations on the establishment of the Special Court for Sierra Leone. Particular areas of expertise include state accountability for the acts of non-state actors, the accountability of intergovernmental organizations under human rights and humanitarian law, and the human rights law applicable to trafficking in persons. Recent publications include *"Genocide in Recent International Jurisprudence"* **(Ethnic Cleansing in Twentieth Century Europe, 2002).**

Barbara Crossette

Barbara Crossette, a distinguished journalist who reported developments in the United Nations (UN) and human rights, retired in 2001, after having served as the *New York*

Times **UN bureau chief and having reported in Canada. Previously a correspondent in South Asia and Southeast Asia, serving as bureau chiefs in Bangkok and New Delhi, Crossette won the George Polk Award for foreign reporting for her coverage of the assassination of Indian Prime Minister Rajiv Gandhi. She has written several books on Asia and has been a member of the Columbia University Graduate School of Journalism, a Fulbright teaching fellow at Punjab University in India (1980-81), and the 1994 Ferris Visiting Professor on Politics and the Press at Princeton University.**

Parvez Imroz

Parvez Imroz is a human rights lawyer and civil rights activist in Kashmir. He has initiated and led campaigns to highlight the human rights abuses perpetrated by Indian security forces and press for accountability in Kashmir. He is co-founder and President of the J&K Coalition of Civil Society (JKCCS) that has worked to build local alliances between Kashmiri civil society groups. Imroz is the founder and director of the Public Commission on Human Rights (PCHR) that works extensively on the documentation of human rights violations and the dissemination of the information through its monthly dossier *Informative Missive***. The PCHR also provides free legal assistance to the victims of human rights violations. Imroz is also co-founder and Patron of the Association of Parents of Disappeared Persons (APDP), which brings together hundreds of Kashmiri families whose members have been the victims of Enforced or Involuntary Disappearances (EID). The APDP is a collective campaigning organization that seeks truth and justice on this human rights issue in Kashmir. Recently, in April 2003, Imroz organized a worldwide hunger strike, coordinated in different cities across the world, pressing for an end to disappearances, prosecution of perpetrators, and appointment of a commission to probe into all enforced disappearances.**

Ram Narayan Kumar

Ram Narayan Kumar, human rights activist and writer focusing on peripheral communities in India, has led the movement for justice and accountability in Punjab, highlighting the abuses committed by state security forces during counterinsurgency operations from 1984 to 1995. He is the lead author of the recently released report, *Reduced to Ashes: The Insurgency and Human Rights in Punjab***, giving detailed case studies of over 600 cases of disappearances in Amritsar district, as well as an analysis of impunity. In November 1984, Kumar led relief efforts for the Sikhs of Delhi during the pogroms that followed Indira Gandhi's assassination. Involved in diverse human rights issues, from prison reform to relief for victims of the Bhopal disaster, Kumar has spent more than four and a half years in jails: nineteen months during the Emergency and three years for leading a strike of colliery workers of Jhagarakhand in Madhya Pradesh. He has written numerous books and analyses on Punjab and Nagaland, among other issues.**

Stephen Marks

Dr. Stephen P. Marks is the François-Xavier Bagnoud Professor and Director of the FXB Center for Health and Human Rights at the Harvard School of Public Health, where he is principal investigator on the Right to Development Project. Before coming to Harvard in 1999, he was Director of the United Nations Studies Program and Co-Director of the Human Rights and Humanitarian Affairs Concentration at the School of International

and Public Affairs (SIPA) of Columbia University. He holds academic degrees in law and international relations from Stanford University, the Universities of Paris, Strasbourg, Besançon and Nice, as well as the University of Damascus. His publications relate to various aspects of international law and organizations, public health, peacekeeping, development and human rights. In 1999 he co-edited and contributed to The Future of International Human Rights (Transnational Publishers, 1999). He has written on impunity for massive violations of human rights in Cambodia and more recently on "The Hissène Habré Case: The Law and Politics of Universal Jurisdiction," which has just been published as part of the Princeton Project on Universal Jurisdiction by the University of Pennsylvania Press.

Smita Narula

Smita Narula, Executive Director of the Center for Human Rights and Global Justice at New York University, previously worked as Senior Researcher for South Asia at Human Rights Watch (HRW). For the past six years, at HRW, Narula investigated and authored several reports and articles on caste discrimination and the rise of religious nationalism in India, including HRW's reports on state complicity in the 2002 massacres in Gujarat. In 2000, Narula founded the International Dalit Solidarity Network, which brings international organizations, donor agencies, and non governmental organizations together to build a world wide movement against caste discrimination. In 1997, Narula graduated from Harvard Law School, where she was editor in chief of Harvard's *Human Rights Journal***. Before law school, Narula received a Masters in International Development from Brown University and worked on HIV and public health at UNICEF and the United Nations Development Fund.**

Balakrishnan Rajagopal

Balakrishnan Rajagopal is Ford International Assistant Professor of Law and Development, as well as Director of MIT's Program on Human Rights and Justice. He is on leave for 2003-2004. His current research is in five areas: a) development-induced displacement including through large projects; b) human rights and globalization, especially relating to corporate social responsibility; c) economic, social and cultural rights particularly relating to environment, land and housing, in comparative public and private law; 4) social movements and multi-level governance including new ways of organizing political power and authority; and 5) the relationship between critical social and legal theory and progressive practice in planning and economic development. Recently, he assisted the World Commission on Dams develop a legal and policy framework on the human rights implications of large dams and has consulted with UNDP on the articulation of a human rights approach to development planning and policy. His research is focused primarily on South Asia and Southeast Asia and also on the legal systems of Brazil and South Africa. Rajagopal has recently published *International Law From Below: Development, Social Movements and Third World Resistance* **(Cambridge University Press).**

Peter Rosenblum

Peter Rosenblum is an Associate Clinical Professor in Human Rights at Columbia Law School. He joined the Human Rights Program at Harvard Law School in the fall of 1996

and served as Associate Director until 2002, when he became Clinical Director. Rosenblum also held an academic appointment as Lecturer at Harvard Law School and oversaw voluntary and for-credit human rights projects with students. During this time, he wrote the preface to *Reduced to Ashes: The Insurgency and Human Rights in Punjab***. In 2003, Rosenblum joined Columbia Law School. He was formerly Program Director for the International Human Rights Law Group and Human Rights Officer for the United Nations Centre for Human Rights. Rosenblum has engaged in human rights research and field missions in Africa, Eastern Europe, and Asia. His recent writing addresses human rights topics affecting Africa and human rights pedagogy in the United States. He is currently Member, International Advisory Council, Swedish NGO Foundation for Human Rights; UN Secretary General's Resource Group on the Democratic Republic of the Congo; Harvard University Committee on African Studies; and advisory board of Buffalo Human Rights Law Review.**

Teesta Setalvad

Teesta Setalvad, Indian journalist and activist, is the Editor of *Communalism Combat***. She is the 2003 recipient of the Nuremberg Human Rights Award. Setalvad is the founding member of Sabrang Communications and Publishing, as well as the founder and coordinator of KHOJ, a secular education project. She leads efforts in Gujarat to document the abuses of the 2002 pogroms against the Muslims, as well as expose the hate mobilization conducted by state parties. Setalvad's reporting in 1993 exposed the anti-Muslim bias of the police force during the 1993 Bombay riots. She has received numerous other awards recognizing her dedication to human rights, such as the 2001 Pax Christi International Peace Award. Setalvad has written several books dealing with women, human rights and Hinduism.**

Chris Sidoti

Chris Sidoti is Director of the International Service for Human Rights (ISHR) based in Geneva. Sidoti was Australian Human Rights Commissioner from August 14, 1995 to August 13, 2000. His career has included serving as National Secretary of the Catholic Commission for Justice and Peace, Manager of Executive Services in the NSW Department of Youth and Community Services, Foundation Secretary of the Human Rights and Equal Opportunity Commission and Commissioner with the Australian Law Reform Commission, as well as Race Discrimination Commissioner (1991) and Disability Discrimination Commissioner (1997-99) within the Human Rights and Equal Opportunity Commission. Sidoti has held many senior honorary positions in non-governmental organizations, including Deputy President of the Australian Council of Social Services, President of the Youth Affairs Council of Australia and Chairperson of the Public Interest Advocacy Centre and of the Uniya Jesuit Social Research Institute. He has also served as visiting professor at several universities in Australia.

Susannah Sirkin

Susannah Sirkin is Deputy Director of Physicians for Human Rights (PHR). She has held this position since 1987 when she joined the organization's staff. Previously, she was Director of Membership Programs for Amnesty International USA. Sirkin has organized medical human rights investigations to dozens of countries, including PHR's exhumations

of mass graves in the former Yugoslavia and Rwanda for the International Criminal Tribunals. She has authored and edited numerous reports and articles on the medical consequences of human rights violations, physical evidence of human rights abuses, and physician complicity in violations. Sirkin co-directed the first post-graduate course in medicine and human rights sponsored by Harvard Medical School in 1992. She served from 1992-2001 for PHR as a member of the Coordination Committee of the International Campaign to Ban Landmines, the co-recipient of the 1997 Nobel Prize for Peace. PHR is one of the six original non-governmental organizations that launched the International Campaign to Ban Landmines in 1992.

Henry Steiner

Henry J. Steiner is Jeremiah Smith, Jr. Professor of Law and Founder and Director of the Law School Human Rights Program at Harvard University. He has served for many years as the chair and co-chair of the University Committee on Human Rights Studies. Steiner has participated in conferences and given lectures on human rights in over 20 countries. He has written on a wide range of human rights topics, including political participation, ethnic minority regimes, the discourse of human rights, and human rights institutions. His co-authored book, *International Human Rights in Context: Law, Politics, Morals* **(2d ed. 2000, Oxford University Press), has been used in many countries as the textbook for human rights courses. Steiner is also Chair of the Board of Directors for the University of the Middle East.**

Siddharth Varadarajan

Siddharth Varadarajan is Deputy Chief of the News Bureau for *Times of India***. He is the editor of the recently published book** *Gujarat: The Making of a Tragedy***, which collects reports, analyses, narratives, and news accounts on the 2002 Gujarat massacre of Muslims. Varadarajan has reported on several important political events, from Kashmir and the royal palace massacre in Nepal, to Pakistan, the weapons-inspection crisis in Iraq, and the NATO bombing of Yugowlavia. He has also written extensively on communalism and the media. Varadarajan studied at the London School of Economics and Columbia University and taught economics at New York University before turning to journalism in 1995.**

J.S. Verma

Justice J.S. Verma retired as Chair of the National Human Rights Commission at the end of 2002, after having served for over three years. He had previously retired as Chief Justice of the Indian Supreme Court on January 18, 1998. As Chair of the NHRC, Justice Verma took suo moto notice of the Gujarat massacres on March 1, 2002, bringing the NHRC into the campaign for justice in Gujarat.

Organizers

Usmaan Raheem Ahmad

Usmaan is currently a graduate student at the Fletcher School of Law & Diplomacy focusing on International Law and International Negotiation and Conflict Resolution. He is researching and writing a thesis on "Negotiating Self-Determination in Kashmir." Usmaan is currently a senior program associate at the Cambridge-based Conflict Management Group (CMG). He is also a participant in the International Council for Conflict Resolution on the intractable conflict in Kashmir being conducted by the Carter Center. He has lectured and published extensively on Kashmir and currently contributes a bi-monthly column to the Greater Kashmir and the Daily Times. In 1996, Usmaan filmed, edited, and produced a full-length documentary film, "Cries from Kashmir." He was featured in a 2003 BBC documentary film on Kashmir, "Nuclear Paradise: India v Pakistan". He is an Executive member of "The Kashmir Project", a new US-based nationwide film and multi-media educational program that seeks to bring understanding to modern war in general and the conflict in Kashmir in particular. Usmaan is a leading member of the nonviolent Kashmiri independence movement and has been an active Kashmiri peace, human rights and environmental activist for years. His work was profiled in an article in the New York Times entitled "Kashmir's Champion Finds Pitfalls to Peace" (2/18/02).

Satchit Balsari

Satchit Balsari is a Research Associate in the Program on Humanitarian Crises and Human Rights at the Harvard School of Public Health. He is a member of the *South Asian Center* **in Cambridge, and the founding director of** *Professionals for Human Security***, a non-profit coalition of young professionals in India, committed to implementing sustainable solutions to socio-developmental challenges that destabilize human security. He has served the communities of Gujarat affected by the earthquake in 2001, and by the communal violence of 2002. A physician and humanitarian worker by training, Balsari has conducted independent investigations on child protection issues in India, in the areas of child labor and emergency health response in disasters.**

Jaskaran Kaur

Jaskaran Kaur is a lawyer focusing on human rights documentation, research and advocacy in Punjab. She is one of the co-authors of *Reduced to Ashes: the Insurgency and Human Rights in Punjab,* **focusing on the analysis of impunity and over 600 specific cases of extrajudicial execution and disappearance by Punjab's security forces. While a student at Harvard Law School, Jaskaran went to Punjab on a Harvard Human Rights Summer Fellowship to study the role of the judiciary in handling habeas corpus petitions filed before the Punjab and Haryana High Court by families of the disappeared. Her study, "A Judicial Blackout: Judicial Impunity for Disappearances in Punjab, India," was published in the** *Harvard Human Rights Journal***. She has also written for the Guild Practitioner and online magazines. Jaskaran has interned for numerous public interest organizations, such as Legal Aid, US Committee for Refugees, Human Rights Watch, and Center for Constitutional Rights.**

Jaspal Singh

Dr. Singh, a poet and philosopher, is a consultant by vocation. He is a regular contributor to the *South Asian Review* **(Canada), and writes on issues pertaining to language, culture and social justice in South Asia. He is a member of the South Asian Center and active participant in community-based human rights and advocacy networks in India, Canada and Massachusetts.**

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