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INDIA

Justice, the victim – Gujarat state fails to protect women from violence (Summary Report)

Introduction

"The state shall not deny to any person equality before law or the equal protection of the laws within the territory of India." Article 14 of the Constitution of India.

"Everyone has the right to an effective remedy by a competent national tribunal for acts violating the fundamental rights granted him by the constitution or the law." Article 8 of the Universal Declaration of Human Rights.

Over 2,000 people, mostly Muslims, were killed in targeted violence in the State of Gujarat in Western India in 2002. The violence followed a fire on a train at Godhra on 27 February 2002 in which 59 Hindu activists had died. While the cause of the fire remains disputed, state officials and right wing Hindu groups claimed that local Muslims had planned and started it. In the subsequent large-scale violence against Muslims, girls and women were particular targets of Hindu mobs. By systematically and brutally abusing Muslim girls and women, they intended to humiliate and pollute the whole Muslim community. Several hundred girls and women were verbally abused, threatened, publicly stripped naked, raped, often gang-raped, had swords thrust into their bodies and were thrown onto fires while often still alive. Pregnant women and children were particular targets.

This document summarizes Amnesty International's report, *India: Justice, the victim – Gujarat fails to protect women from violence* (AI Index: ASA 20/001/2005), which describes in greater detail the failings of the governments of India and of the state of Gujarat to secure the human rights of Muslim girls and women in Gujarat.

The report focuses on the consistent failure of the state of Gujarat to fulfil its and obligations under national and international law to exercise due diligence with regard to the state's Muslim minority, particularly girls and women. This obligation entails efforts to prevent abuses and ensure that abuses by state and private agents are effectively and independently investigated and perpetrators brought to justice. The state and the central governments also have obligations to address crimes that violate international law some of which amount to crimes against humanity. (For details see section on state responsibility for abuses by private actors below and in the main report.) Gujarat state agents failed to prevent sexual abuses as police stood by or participated in the violence. Once the abuses had occurred and victims sought redress, elements of the criminal justice system, including the police, the judiciary and the public prosecutor's office, failed in their constitutional duty to record and investigate complaints objectively and prosecute offences. Medical documentation of abuses was frequently fraught with deliberate or careless inaccuracies which frustrated survivors' attempts to secure justice. Deficiencies in penal provisions relating to rape, though long recognized, have not been addressed. As a result, existing laws failed to fully criminalize the range of abuses suffered by women in Gujarat and so

hampered women's efforts to seek justice. Three years after the frenzy, virtually none of those responsible for rape and murder in Gujarat have been brought to justice.

The Gujarat state government led by the Bharatiya Janata Party (BJP, Indian People's Party) since 1995, has for years failed to curb hate propaganda against Muslims and to maintain a non-discriminatory attitude to the state's minorities. It assumed a partisan role during the Godhra incident and subsequent violence, failed to co-operate with the judiciary to provide legal redress and to ensure the impartiality of public prosecutors. It also resisted public scrutiny, failed to fully cooperate with the National Human Rights Commission (NHRC) and to protect human rights defenders and victims and witnesses seeking redress. It made it hard for victims to obtain relief, compensation and rehabilitation.

The Central Government of India, which up to May 2004 was also led by the BJP, failed to distance itself from the state government despite its clear failings to protect the human rights of members of the state's Muslim minority. In doing so, it failed to fulfil its obligations under Article 50 of the (International Covenant on Civil and Political Rights) ICCPR.[1]

Amnesty International was not able to directly investigate the violence. The organization's request for visas to conduct research in the state in 2002 was not granted within the mutually agreed timeframe. The present report is consequently not based on original evidence from girls and women affected by the violence. It does not document the rape, torture and killings perpetrated in the state – on which a large number of investigative reports have been issued by Indian women's and civil rights groups. This report relies on such investigations but also on court documents which are in the public sphere. While keeping in mind the wider picture, it focuses on two cases in which women, who are survivors or witnesses of abuse.

Amnesty International, in accordance with long standing practice, provided the Government of India the opportunity to comment on the full report before publication. The Central Government of India stated in its response that it "wholeheartedly condemned" the 2002 violence in Gujarat and pointed to an ongoing commission of inquiry and pending cases before the Supreme Court. The State Government of Gujarat called the full report "one-sided" and denied allegations in the report that it failed to prevent and investigate properly the crimes against the Muslim community and in cases even participated in the violence. These and other comments of the Central Government and the State Government of Gujarat have been reflected elsewhere in full report.

Violence against girls and women in Gujarat

The state of Gujarat has a history of "communal violence", a term used in India to describe violence between religious communities. Unlike patterns reported earlier, the violence following the fire on the train at Godhra on 27 February 2002 was almost exclusively directed by Hindu right wing groups and mobs at members of the Muslim minority. According to official sources, 762 persons were killed but human rights groups believe that over 2,000 people, mostly Muslims, were killed.

Over the past two decades, a group of organizations collectively called the *Sangh Parivar* (the collective Hindu family, which includes the BJP and other political and religious organizations) has advocated and spread *Hindutva*, the political ideology of an exclusively Hindu state which portrays Muslims and other non-Hindus as hostile to Hindu India, threatening Hindus and eroding their rights. Its distorted history of India describes Muslim invaders of the past as violators of Hindu women and metaphorically, of "Mother India". The image of Muslim men as violent and sexually aggressive has been further reinforced by the widespread projection of Muslims as "terrorists" in the US-led "war on terror". Proponents of *Hindutva* have consequently not only called for the elimination of Muslims from India but also defined women's bodies as the battleground on which the struggle to establish a Hindu state was to be carried out. Girls and women were targeted by Hindu mobs in 2002 specifically because they were seen as the biological and cultural reproducers and embodiments of the Muslim community, which Hindu right wing activists saw as their duty to defile, violate and destroy.

In 16 of Gujarat's 24 districts, attacks on Muslim homes, business enterprises and properties resembled each other: mobs apparently using data from official tax lists, electoral rolls and other official records collated well in advance, targeted Muslims shouting the same slogans and made use of the same Hindu

[1] ICCPR, Article 50 states that "the provisions of the present Covenant shall extend to all parts of federal states without any limitations or exceptions."

symbols. Unlike in earlier violence reported in India, women were particular targets of attack. Hundreds of girls and women were dragged out from their homes, stripped naked before their own families and thousands of attackers, who taunted, insulted and threatened them. They were then raped, often gang-raped, beaten with sticks, Hindu tridents and swords, had their breasts cut off and their wombs slashed open and rods violently pushed into their vaginas. Finally the women victims were mutilated or burned to death. The victims included young girls and old women, pregnant women and babies. Local investigators believe that between 250 and 330 girls and women were amongst the dead, most of whom were raped or gang-raped before their deaths. Dozens of reports by local investigators agree that the sexual assault on girls and women everywhere was not only deliberate but designed to inflict maximum suffering and humiliation.

The logic of hatred against Muslims also explains the attacks by Hindu mobs on children, both born and unborn, which added a further layer of suffering on their parents. Pregnant women were violently raped and mothers had their children killed before their eyes. Kausar Bano who was nine months pregnant, had her womb cut open with a sword, the foetus was ripped out, killed and thrown into a fire before she herself was burned to death. At least 33,000 children, many orphans, who reached relief camps, had seen their close family members deliberately killed before their eyes.

Women seeking justice

Many Muslim victims of the violence in 2002 had witnessed police siding with the attackers. Muslim women had seen police officers exposing their penises to them, shouting sexual innuendo and threatening rape. Police had stood by when the victims themselves or their mothers, sisters or daughters were sexually assaulted, raped and killed. Understandably, many women survivors found it difficult to turn to police to report rape and other sexual violence. Police are obliged under the law to truthfully register every individual complaint in a First Information Report (FIR) after which they are to investigate the complaint and submit their findings in a charge sheet. On the basis of this report, criminal prosecution may be initiated. As it is the first step towards legal redress, it is important that police take utmost care to accurately record every complaint.

Many victim survivors were too traumatized, injured or frightened in the days following the mass violence to approach the police and file complaints; others were occupied with searching for missing family members or caring for traumatized children and other family members. Many had lost all their belongings and had to search for food and shelter. Fear of leaving makeshift shelters close to other members of their own community and apprehension of further assault by Hindu mobs also paralyzed victim survivors and made them delay or avoid going to the police to register complaints.

Some victims, including women victims of sexual assault, however, tried to obtain legal redress, so far with little or no success. The hurdles faced by these women who sought justice are shown in the following cases of Bilqis Yakoob Rasool and Zahira Sheikh. These two cases are in a more advanced stage of investigation and prosecution than others reported from Gujarat and therefore able to indicate systemic failings most fully. In both cases, agencies outside the state of Gujarat have investigated these failings and offered their observations. Their recommendations, if fully implemented by relevant institutions, could ensure justice to other women victims in Gujarat.

The case of Bilqis Yakoob Rasool

Bilqis Yakoob Rasool, five months pregnant and fleeing violence in her home village, was gang-raped on 3 March 2002 when a Hindu mob caught up with the family near the town of Limkheda. On several earlier occasions, the family had asked police for help but were simply told to try to escape. Bilqis Yakoob Rasool saw at least three other relatives raped. Her three-year-old daughter, Saleha, was killed before her eyes. She was left for dead and so escaped being killed as well. On the following day, she reported the rape and killings of 14 relatives, but the police recorded only seven deaths claiming that the other bodies could not be found. They also refused to record her complaint of rape and the names of the rapists. In January 2003 the police closed the case stating that "the offence is true but undetected" in the sense that those responsible could not be found. They claimed that she had not complained of rape in her initial report to the police, an allegation she strongly denied.

Acting on Bilqis Yakoob Rasool's petition, the Supreme Court of India in September 2003 issued a notice to the Gujarat state to explain why the case had been closed. Harassment by police followed almost immediately. On 16 September, a police officer visited Bilqis Yakoob Rasool at night asking that she accompany him to the forest where the rape

and murders had taken place. She refused, stating that no further evidence could be found there at night. After further harassment and threats and moving house over a dozen times, she and her family left Gujarat. The Supreme Court on 16 December 2003 directed the Central Bureau of Investigation (CBI), a federal police agency, to reinvestigate the case. Having found evidence of deliberate cover up by police and medial officers, the CBI in early 2004 arrested 20 people, 12 of whom were charged with rape and murder, six police officers alleged to have covered up the crime, and two doctors who had failed to collect medico-legal evidence.

The six police officers were charged on 19 April 2004 with criminal conspiracy and obstructing the course of justice. They were alleged to have fabricated and tampered with evidence and to have failed to secure vital forensic evidence. They were also charged with failing to correctly carry out investigations, such as by taking Bilqis to the scene of the crime to identify the dead or ensuring that she was medically examined. A police photograph of the crime scene of 4 March 2002 showed the bodies of five of her relatives, including that of Saleha, her three-year-old daughter, but a police photograph of 5 March showed seven bodies, none of whom was Saleha. When the CBI carried out its investigations, it uncovered bodies that witnesses said had been buried clandestinely and covered in salt to hasten decomposition on the orders of the police. Several bodies have not been traced yet.

The doctors who had carried out the post mortem examinations were charged with dereliction of duty and suppression of facts for allegedly failing to record details of injuries to the bodies or take samples from the bodies or clothing for forensic analysis. The post mortem reports said that the bodies were decomposed, although this was contradicted by photographic evidence. The Supreme Court in August 2004 directed that the case of Bilqis Yakoob Rasool and her family be tried outside of Gujarat. Their trial in Mumbai, Maharashtra, began in September 2004.

The Best Bakery case

Zahira Sheikh, a 19-year-old woman, witnessed a mob burning down her family's business, the Best Bakery in Vadodara. During the night of 1 March 2002, 14 people, including women and children, were killed. Despite repeated phone calls to the local police, a police vehicle reportedly only drove by once but none of the police officers took any steps to stop the attack, which lasted through the night.

Police investigated the complaint filed by Zahira Sheikh which led to criminal prosecution against 21 men. A court in Vadodara began to hear the case in February 2003 but it acquitted all the accused on 27 June 2003 after 37 of the 73 eye witnesses, including Zahira and her mother Sherunissah had withdrawn their statements in court. Days later, Zahira Sheikh and her mother publicly declared that they had "trembled with fear" in court as they had been threatened with harsh consequences by associates of the accused if they did not withdraw their eye-witness accounts. The National Human Rights Commission (NHRC) petitioned the Supreme Court stating that the circumstances of the acquittal had violated the victims' right to a fair trial and sought direction for re-investigation and retrial of the case outside of Gujarat.

Meanwhile, the Gujarat High Court, hearing the appeal of the Gujarat state against the trial court judgment, in December 2003 rejected the appeal thereby confirming the acquittals of the accused. Zahira Sheikh in January 2004 filed an appeal against the acquittals. On 12 April 2004 the Supreme Court overturned the High Court judgment and ordered a retrial outside Gujarat state. In its landmark judgment it emphasized the trial court and the High Court's duty to actively search for truth rather than passively record evidence presented to it. It said that the duty of the trial court and the High Court was greater "in a case where the role of the prosecuting agency itself is put in issue and is said to be hand in glove with the accused, parading a mock fight and making a mockery of the criminal justice system itself".

The retrial began in October 2004 in a court in Mumbai, outside of Gujarat state. Several witnesses were heard and they identified several of the accused. On 3 November 2004, Zahira Sheikh announced that she had been forced by the organization that had sheltered and provided her legal assistance, to lie in court and implicate innocent people. The first judgement, she said, was right. The organization's secretary filed a petition in the Supreme Court seeking a probe as to what and who had led Zahira Sheikh to make this dramatic statement. Issues of witness protection and possible interference in the course of justice were widely discussed in India after this event.

Zahira Sheikh, her mother and two brothers were at the time under the protection of Gujarat police and, out of reach of the media, moved from one undisclosed location to another in different cities of Gujarat. Nafitullah Sheikh, Zahira's elder brother had

earlier told the court that the organisation Janadhikar Samiti, a Vadodara based organization with links to the *Sangh Parivar*, had organised and financed Zahira's press conference on 3 November. This was confirmed when Tushar Vyas, an advocate from Vadodara, stated that Zahira had approached the organisation for help. Vyas and Ajay Joshi, the Vadodara VHP President, had set up the organisation after the Godhra incident; it reportedly took formal shape after the Supreme Court judgment in the Best Bakery case.

At earlier stages of the retrial in Mumbai, four witnesses identified several of the persons accused in the original trial. In November and December 2004, Zahira Sheikh, her brothers Nasibullah and Nafitullah, her mother Sehrunissa and her sister Saira stated in court that they did not know any of the accused, did not know how their own relatives had died as thick smoke had enveloped the bakery during the incident and that they could not recall their own earlier statements. They were declared hostile to the prosecution. On 22 December 2004, the weekly magazine Tehelka released secretly filmed material which purports to show Zahira and her family negotiated payment of a large amount of money obtained from a relative of BJP MLA Madhu Srivastava in return for withdrawing earlier statements implicating the accused. Chandrakant Srivastava and Madhu Srivastava have denied the allegations. The veracity of the Tehelka materials has not so far been scrutinized and established.

State responsibility for abuses by private actors

The sexual offences and violence described in this report violate international and national law and some of them amount to crimes against humanity. They are violations of internationally recognized human rights of women for which the state bears responsibility. This includes responsibility firstly for the acts and omissions of state agents and apparatus, and secondly if it fails to exercise due diligence in preventing, investigating and punishing such violence.

As crimes against humanity, these abuses constitute some of the gravest crimes of concern to the international community. Crimes against humanity include acts such as murder, torture, enslavement, rape and other crimes of sexual violence, "disappearance" and other inhumane acts. They are committed as part of a widespread or systematic attack directed against a civilian populations pursuant to a state or organizational policy. Crimes against humanity are regarded as crimes under both customary and international treaty law. All states have a duty to investigate and, where there is sufficient admissible evidence, to prosecute crimes against humanity by persons found in their territory, regardless when they were committed or who committed them, to extradite suspects to a state able and willing to do so in fair trials without the death penalty or to surrender them to an international criminal court. Crimes against humanity entail individual criminal responsibility and can occur in conflict situations or times of peace. No official immunities or statute of limitations apply to crimes against humanity and states have the primary responsibility to bring to justice those responsible, to establish the truth about what occurred and to provide reparations to victims and their families.[2] Accordingly, the Governments of Gujarat and India have an internationally recognised obligation to bring to justice the perpetrators of these crimes, to establish the truth and to enable victims and their families to obtain full reparations. In Gujarat in 2002, the governments of Gujarat and India failed to fulfil this fundamental duty by permitting the worst possible crimes, including murderers and rapes, some amounting to crimes against humanity, to be committed against the Muslim civilian population, in particular, against girls and women. Sadly, the government of Gujarat continues to fail to take effective action to investigate and prosecute these serious crimes or to prevent them in the future. Meanwhile, despite various promises the State of India has taken few concrete steps in this regard.

The Governments of Gujarat and India are also responsible under international human rights law for failing to exercise due diligence to prevent, protect and provide an effective remedy for these abuses. The understanding of state responsibility for human rights violations has significantly widened in recent years to include not only violations of human rights by the state or its agents but also abuses by private actors which the state ignores. If the state fails to act with due diligence to prevent human rights abuses and fails to investigate and punish abuses once they have occurred, it has obligations under international human rights law. This view of state responsibility is

[2] States are also obliged to exercise universal jurisdiction over crimes against humanity, i.e. to prosecute or extradite perpetrators of such crimes no matter where the crime occurred or nationality and status of the perpetrator.

established in core human rights treaties. The ICCPR which India ratified in 1979 requires state parties to respect the rights of the Covenant. The Human Rights Committee, a body of experts monitoring state parties' implementation of the ICCPR, has stated that this obligation extends to protecting against acts inflicted by non-state actors, those acting in their private capacity. The Declaration on the Elimination of Violence against Women, adopted by the United Nations (UN) General Assembly in 1993 as a "commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women", affirmed that states must "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons". Radhika Coomaraswamy, then UN Special Rapporteur on violence against women stated that states which fail to act against crimes of violence against women are as guilty as the perpetrators. States are under a positive duty to prevent, investigate and punish crimes associated with violence against women.

The state of India is also under an obligation to protect a range of fundamental rights provided for in the Constitution of India. These include the right to equality before law and equal protection of the law (Article 14), the right to freedom from discrimination, (Article 15), the right to freedom of religion (Article 25) and the right to life and liberty (Article 21). India has assumed international responsibility to promote and protect human rights when it ratified the ICCPR, the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child.

Amnesty International believes that in relation to the violence in Gujarat in 2002, India has not fulfilled its obligations to protect fundamental rights guaranteed in its constitution and in international treaties to which is a party.

Reports received from human rights groups in India indicate that the Government of Gujarat may have been complicit in at least part of the abuses perpetrated in Gujarat in 2002. There is evidence of connivance of authorities in the preparation and execution of some of the attacks and also in the way the right to legal redress of women victims of sexual violence has been frustrated at every level. Furthermore, the Gujarat state has failed to meet their international obligations to bring to justice perpetrators of crimes against humanity.

Amnesty International believes that the Governments of India and Gujarat have failed to exercise due diligence with regard to Muslim women in Gujarat when they failed to prevent grave abuses of their rights and to ensure that legal provisions, law enforcement, judicial structures and rehabilitation measures guarantee legal redress for victims of a range of sexual and other abuses of their rights. The rights of Muslim girls and women which were violated by private actors in Gujarat in 2002 include the right to life, the right not to be subjected to torture or to cruel, inhuman and degrading treatment, the right to liberty and security of the person, the right to equal protection under the law, the right to the highest attainable standard of physical and mental health and the right to legal redress for abuses suffered.

Areas of state failings

"When the investigating agency helps the accused, the witnesses are threatened to depose falsely and [the] prosecutor acts in a manner as if he was defending the accused, and the Court was merely acting as an onlooker and there is no fair trial at all, justice becomes the victim." The Supreme Court, overturning the High Court acquittal in the Best Bakery case, 12 April 2004.

Police failings

There is extensive evidence of a lack of care taken by police to prevent violence against the Muslim minority in Gujarat in 2001 and the connivance, complicity and participation of police officers in the abuses perpetrated against members of the Muslim community. Furthermore there is evidence of police failing to uphold their constitutional duty to accurately record and investigate complaints as a first step of legal action against perpetrators. Many of these failings are evident in the cases of Bilqis Yakoob Rasool and Zahira Sheikh outlined above.

Failure to prevent violence: Despite experience of decades of communal violence, Gujarat police failed to take measures to guard the train journey of Hindu activists through Gujarat. Once the fire on the train on 27 February had been officially ascribed to the Muslim minority and a state-wide protest strike announced, there was a strong likelihood of violence against members of the minority. However, no steps were taken to prevent it. Senior police officials reportedly came under political pressure to allow the

attacks to run their course without police intervention. Army support for state law enforcement personnel was only requested by the state government on 28 February after the violence had run its first destructive course. Their deployment was delayed as the state reportedly failed to give information about where assistance was most urgently required and failied to provide adequate transportation.

Failure to protect victims: Once the attacks started, the police, with a few notable exceptions, took no action to stop them and failed to provide protection to Muslims pleading to be saved. Police officials later said that their officers had been completely outnumbered, although small police and army contingents did succeed in stopping mob attacks in some instances. On 28 February the police in Vatna and Gomtipur were reported to have told Muslims under attack that they would have to defend themselves. In dozens of cases they stood by when women were gang-raped or when Muslim women laid their children at their feet pleading that police save them from certain death at the hands of attackers. Former member of parliament and trade unionist Ehsan Jafri was among at least 72 men, women and children killed after a siege of the Gulberg Society building by 20,000 people in Chamanpura, an area of Ahmedabad on 28 February. Despite dozens of desperate appeals by phone to the state Chief Minister, other leading members of the Gujarat administration and police as well as members of the national government throughout the day, no police reinforcement was sent to prevent the killings which unfolded over several hours. When no help was forthcoming and Ehsan Jafri realized that he could not protect Muslims of the neighbourhood who had sought shelter in the building, he gave himself up to the mob. In the following hour, he was stripped naked, had first his fingers, then his hands and feet chopped off, was dragged, still alive, along the road and thrown into a fire. Mutilations and burning of other Muslims, including women and many children followed. Between 10 and 12 women were raped or gang-raped and cut into pieces before being thrown into the fire.

Connivance in the violence: In some cases, police officers allegedly joined or led attacks and provided fuel to burn down homes. In several instances police fired on Muslims who put up any resistance rather than come to their aid. Of 40 people known to have been shot dead by police on 28 February alone, 36 were Muslim. Police were reported in several areas to have beaten Muslim people, including many women and children who were trying to flee the violence. Some police officers were also reported to have led panic stricken Muslims back to the attacking mobs. Senior police officials tried to explain the widespread involvement of police in the violence by saying that they were part of the society and shared the bias of the majority.

Police officers were also reported to have participated in sexual humiliation and intimidation of girls and women when they publicly exposed themselves to them and shouted sexual abuses.

Failures to register complaints: In violation of legal requirements, police in dozens of cases refused to record complaints or registered FIRs which did not accurately reflect the complaints. When mobs surrounded police stations, police did not ensure that victims could reach the police station to register their complaints. In other cases they told victims that no complaints from Muslims would be entertained. Police routinely refused to include names of prominent state or party officials if identified as participants or instigators of violence in the FIRs, whether from outright pressure by such people, fear of repercussions or police sympathies for them. In many instances, instead of registering names of attackers given by witnesses, police recorded that "unruly mobs" of unidentified people had perpetrated abuses, making effective investigation and trial virtually impossible. In numerous instances, police also merged several complaints in so-called "omnibus FIRs". In this way important details were lost, including the names of perpetrators and the nature of the offences. Amnesty International has obtained several affidavits of witnesses alleging that the FIRs registered by police failed to name the people they had earlier identified as attackers and instead named people who had nothing to do with the attacks. Requests to police to change the record were not answered.

The number of victims and their identity reported by complainants were also routinely ignored and not included in the FIRs. Police in many cases asked witnesses to bring evidence of the deaths they reported which was made difficult if not impossible by the fact that many of the victims had been burned beyond recognition. If no evidence could be brought, the victims concerned were simply listed as "missing". In the case of Bilqis Yakoob Rasool described above, who was subjected to gang-rape and whose 14 family members were killed by a Hindu mob, police registered only seven persons as dead and the rest were declared "missing". Observers have told

Amnesty International that this may have been done to keep the known number of dead in Gujarat low, to reduce the number of offences with which perpetrators could potentially be charged and to deprive survivors of compensation. Survivors of the violence unable to prove a death and obtain a death certificate could not claim compensation, despite the fact that numerous witnesses may have witnessed the killing. In some cases, FIRs were ostensibly lost or those registering complaints were subsequently harassed or pressured to withdraw them.

Difficulties encountered in registering complaints were compounded when Muslim women sought to file complaints of rape, gang-rape or other forms of sexual violence. Reporting rape or other forms of sexual violence to often hostile or insensitive male police officers is difficult in any circumstance. This is enhanced when police are known to have ignored or connived in such abuses and to have sympathized with the perpetrators. Bilqis Yakoob Rasool's complaint that she had been gang-raped was ignored by police. Police also claimed that the persons she had named were "respectable persons" whom she had arbitrarily named. The police officer on duty also told her that she would have to be medically examined in a hospital where she might be given a poisonous injection if she persisted with her complaint of rape. In the Gulberg Society case where 10 to 12 women were said to have been raped, the FIR did not include any reference to rape.

The attitude of police to women reporting rape is summed up by a public statement in September 2002 made by a Deputy Superintendent of Police in Ahmedabad where dozens of rapes were reported. He said: "In my view it is not scientifically and psychologically possible to have a sexual urge when the public is rioting". When confronted by journalists with the case of Sultana Feroze Sheikh, a 24-year-old woman who had been stripped naked and raped by several men in the village of Delol, he admitted that there might have been "isolated cases" of rape.

Many survivors also failed to emphasize in their complaints that female members of their families had been raped or gang-raped before being killed. Lawyers, too, sometimes encouraged victims to emphasize the murder following rape as this is more easily proved than rape, especially if the victims were burned, and as murder carries a higher penalty. Often, too, rapes were not understood by survivors as separate offences but merely as a context in which murders occurred.

Failure to investigate: Almost invariably, complaints were not investigated by police or important material evidence was ignored or destroyed. Forensic evidence was not collected from the scene of the crime or from suspects, and the police did not accurately record on-site witness accounts. In scores of cases, the bodies of those killed had been burned by the attackers or buried without post mortem examination. Such victims were declared "missing" but police made no effort to trace them or collate witness accounts of their deaths. No searches were conducted for looted property or weapons. Witnesses were not accurately recorded or sought out for questioning. Suspects were not required to attend identification parades. Although the large number of incidents in a short period of time must have stretched capacity, police flaws were of a magnitude that must be attributed to a deliberate attempt to conceal the truth. Political pressure on police may have contributed to distortions and delays of police investigations and the formulation of inadequate charge sheets (the police reports drawn up at the end of an investigation on the basis of which criminal prosecution may be started). In several cases investigations were entrusted by senior police authorities to police officers with known sympathies with right wing groups who then protected members of such groups named in complaints.

Police failure to adequately investigate was compounded by the reluctance to seek the arrest of those named in complaints and the readiness of the state not to oppose the bail applications of those who were arrested and the willingness of the magistrates to grant bail. As a result, most of the perpetrators, particularly those belonging to right wing groups or those connected to the government, continued to be free during the investigative phase and reportedly used their freedom to destroy evidence or to harass, threaten or bribe complainants.

While over 4,000 complaints were registered by police, nearly half of these cases were subsequently closed. In most of these cases, police acknowledged that an offence had been committed but that the investigation had failed to establish who the offender was. One of these cases is that of Bilqis Yakoob Rasool described above. While in her case, the Supreme Court directed a reinvestigation by a police agency from outside the state of Gujarat which revealed a large number of police failings, for most complainants, a "closure" report meant the end of their search for justice.

Failings of the state judiciary

"Though justice is depicted as blind-folded, as popularly said, it is only a veil not to see who the party before it is ... and not to ignore or turn the mind/ attention of the Court away from the truth of the cause or lie before it, in disregard of its duty to prevent miscarriage of justice." Supreme Court of India judgment on the Best Bakery case, 12 April 2004.

The right to an effective remedy is recognised under international law and is provided for in core human rights treaties. It provides that every person is entitled to an effective remedy, to have the right determined by a competent judicial, administrative or legislative authorities, and that the competent authorities shall enforce such remedies. Moreover, international criminal law obliges states to bring to justice perpetrators of crimes against humanity.

In Gujarat, the judiciary at all levels appears to have failed to provide justice to Muslim victims, particularly women victims of violence in 2002.

When police are unwilling or unable to present thorough and factually correct investigation reports based on strong evidence to courts, witnesses' testimonies become crucial to the legal process. In many cases in India, witnesses and complainants have been known to withdraw their statements in court after being subjected to pressure from accused who had been released on bail. This leads to the collapse of criminal cases. In such cases, courts firmly committed to finding the truth must make every effort to protect complainants and witnesses from extraneous influence. As long as effective witness protection programs are not in place, bail should not be granted lightly to prevent the accused from being released on bail as they may exert undue pressure on complainants and victims.

In Gujarat, police officers, magistrates, sessions courts and public prosecutors dealing with bail matters appear to have unduly accommodated bail applications of suspects without considering the consequences for the witnesses and complainants. Most of those named by victims were freed on bail or were not named by police in the initial stages of the criminal prosecution process. Many of the perpetrators are reported to have put pressure on complainants and witnesses to withdraw their statements. Courts trying such cases have made no effort to deal with this problem and ensure justice to complainants. The state of Gujarat similarly has taken no measures to put in place witness protection measures even though it became clear soon after the first trials began that witnesses would not be able to withstand pressure from the accused and their associates.

In dozens of cases intimidation or bribing of witnesses and the destruction or inadequacies of collected evidence presented to courts which failed then to question the evidence presented to them have taken their toll. To date there has been only one conviction. In November 2003, a court in Nadiad, Anand distict, found 15 of 63 accused guilty of the killing of 14 Muslims in Ghodasar on 3 March 2002. On that day, Hindu mobs had attacked over 100 Muslim homes and killed 14 people including 12 women in an open field where they had run to hide.

Complaints in cases relating to five key incidents have been pending for months in the Supreme Court which stayed proceedings in these cases in November 2004; petitioners are seeking direction for trials to be transferred to courts outside the state of Gujarat as they believed that they would not obtain justice there. The cases relate to Godhra; the Gulberg Society in the Chamanpura area of Ahmedabad; Naroda Patiya and Naroda Gaam; and Sardarpura. In the latter four incidents, altogether hundreds of Muslim men, women and children were killed. At the time of writing this report a decision by the Supreme Court in this regard was widely considered imminent.

In some other 200 cases relating to violence against Muslims in 2002, courts have acquitted the accused. Lawyers in Gujarat have told Amnesty International that the high acquittal rate points to the dire situation in which most complainants and victim-witnesses find themselves. If they have lost loved ones, often in a brutal fashion, lost all their property and are without hope for a worthwhile future, they may accept a financial "compromise" with the accused and withdraw their statements rather than face a prolonged trial with an uncertain outcome. Threats, bribes and sheer weariness of victims must also be counted as causes of the large number of acquittals. A Superintendent of Police, Panchmahal district was quoted as saying, "It is very difficult to prove riot cases. Witnesses turn hostile. They have to live in their villages. Even people who lodge FIRs have gone back on their initial statements". While acknowledging that victims having lived through weeks or months of fear and violence may lack the will to pursue a long legal battle, Amnesty International believes that the high acquittal rate is another indication of the failure of the Gujarat state to exercise due diligence. It has failed to provide adequate compensation and full psychological,

medical and economic rehabilitation to complainants, victims and witnesses and effective protection against threats and harassment to enable them to pursue their complaints in safety.

The inadequacy of judicial proceedings at both the trial and appeal stage is very clear in the Best Bakery case (see above). In pointing to these failings, the Supreme Court in its judgment of 12 April 2004 has reminded the judiciary of the meaning and importance of a fair trial and pointed to the wide powers and obligation of the judiciary to make every effort to find the truth and ensure justice.

The trial court in the Best Bakery cases did not question why 37 eye-witnesses of the killings in the Best Bakery withdrew their statements in court. The presiding judge described his court as "a court of evidence, not of justice" and concluded that on the evidence available to him, the guilt of the accused could not be established. The Supreme Court criticized the trial court's passive attitude saying that courts have to take a "participatory" role in the search for the truth and make full use of the range of remedial powers available to it. These include holding trials *in camera* to protect witnesses, recalling and re-examining witnesses and seeking additional evidence. The trial court had also passively accepted the public prosecutor's dropping of important eye-witnesses and failed to ensure a peaceful atmosphere in court. Its unruly and threatening atmosphere had vitiated the proceedings.

The High Court which heard the appeal against the acquittal by the trial court had similarly failed to use its powers to arrive at the truth by seeking additional evidence or ordering re-trial of the cases despite acknowledging that the police investigation had been faulty. In fact, it defended the trial court's performance claiming it could not but have arrived at the decision it reached. It failed to hold the trial court responsible for its failure to question why witnesses withdrew statements or were not presented in court or why it relied on a prosecution witness who appeared to have been improperly induced to change his statement. The Supreme Court also censored the High Court for inappropriately commenting on the presumed "anti-national" intentions of organizations and individuals who had supported the victims. Finally it reprimanded the Gujarat government for acting like "modern-day Neros [who] were looking elsewhere when the Best Bakery and innocent children and helpless women were burning, and were probably deliberating how the perpetrators of the crime can be saved or protected". It ordered that the case be retried in a court in Maharashtra and the trial began in October 2004.

Inadequate state medial services

Muslims injured in the 2002 attacks could not count on receiving medical assistance. Hospitals, nursing homes, doctors' practices and ambulances taking the injured to hospital came under attack by Hindu mobs. Injured Muslims sought help in private Muslim-run hospitals and nursing homes, but many of these were burned down or vandalized in the course of the violence. Armed youths of Hindu right wing groups were reported to have patrolled hospital wards and corridors, telling doctors whom to treat and whom to turn away, with Muslim victims almost invariably being refused admission. The state took no measures to protect patients or medical staff, or to ensure safe access for patients in urgent need of medical care.

Some medical practitioners were unwilling to provide assistance to injured Muslims. Traumatized and injured survivors of the Gulberg Society killings were told by staff of one of Ahmedabad's hospitals that they could only be treated if they had a police referral. Members of a voluntary organization of health professionals, Medico Friends Circle, who visited Gujarat in April 2002, found that many doctors were associated with right wing groups and had participated in the violence, without being censored by professional medical associations. The partisan attitude also affected their work in that many doctors ignored the evidence of women injured in violent sexual assaults. Consequently medical records of the dead and injured frequently failed to mention sexual violence. Though many victims with burn, stab or gunshot injuries died in hospitals, dying declarations which could have identified the attackers and the nature of the attack, were rarely recorded as neither police nor hospital authorities pursued this. In some cases, medical records were deliberately destroyed. A human rights activist reported that a medical examination report establishing that a woman had died after gang-rape was torn up by a right wing activist who also threatened the doctor concerned. The resulting lack of medico-legal evidence made it even more difficult for victims to seek to bring their attackers to justice or to obtain compensation.

Human rights defenders not protected

'It is not my fight alone, but numerous other Muslim women who also had to suffer the same fate during the communal riots in 2002, will get the courage to speak up after my case was

transferred outside the state ...I know I am not the only one." Bilqis Yakoob Rasool, addressing a press conference in Ahmedabad on 8 August 2004.

In situations in which institutions whose duty it is to safeguard human rights, including police, the judiciary, the state and national governments, as well as state medical services side with the perpetrators of abuse, human rights defenders assume special importance. Often it is they alone who, at considerable risk to themselves, stand up for the victims and assist them in their quest for justice. In Gujarat, human rights defenders who have defended Muslim victims, have themselves become victims of attacks and been subjected to threats, intimidation and abuse by state and party officials.

Many people from both communities spontaneously became human rights defenders during the months of violence. They protected fleeing victims, provided them with food, clothing and transport and looked after children who had lost their relatives. Some helped victims to register complaints with police. Human rights defenders who sheltered Muslim neighbours were often threatened or attacked and received no protection from the state.

A human rights defender reported to Amnesty International in detail how police had stood by while a mob threatened his team during its protection work and in fact led them into danger. He said: "When we reached there we saw the police who tried to direct us to the wrong street. They said we should go to a particular street but when we got there we saw a large mob of Hindus standing there with stones in their hands. The police told them that these are the human rights people. In a desperate attempt to try and save our lives we started asking where the houses of the Muslims were as though we were on the side of the Hindus. When we rushed to the houses of the Hindus, we found police inside beating men and women and swearing at them. When the police saw us they said we were 'troublemakers' and pointed guns at us..."

Organizations and individuals who had assisted victims to pursue legal remedies were called "five star activists" intent on maligning Gujarat, by state officials and members of the higher state judiciary. Several of them received threatening phone calls that they would be taught a lesson. Police protection was given reluctantly and often arbitrarily withdrawn again.

Despite such pressures and lack of protection, women in some places took on responsibilities to maintain or restore peace. In Taiwada, Vadodara, women formed peace committees to mediate whenever tension arose, protect potential victims and prevent violence. They held vigils on terraces and balconies. In Sabarkantha and Banaskantha districts, members of the Hindu community reportedly came together in efforts to isolate those who had instigated violence and to prevent further violence. In a mixed community with a Muslim majority in Tandalja, Vadodara, peace committees informed members of both communities whenever rumours of violence were received, diffused potential crises and protected potential targets of violence.

Inadequate relief, rehabilitation and compensation

State authorities showed a callous indifference to victims of violence and hampered private agencies efforts to provide relief. Government responses to requests to assist the camps set up by the Muslim community were consistently negative. They were publicly described by the Chief Minister as "child-making factories" and police reportedly harassed people in the camps. While the violence was still going on, the Gujarat government took steps to close the camps to create the impression that normalcy was returning to the state. This was done without providing rehabilitation for people in camps or their relocation to other secure locations.

Under pressure from civil rights groups, individuals and the media, the state government announced some "assistance" to victims but refused to call it "compensation" to avoid the impression that victims were entitled to it. Without proper and independent assessment of losses, the amounts paid to victims were inadequate, difficult to obtain and not available for relatives who could not prove that their relatives had died. No "assistance" was paid for injuries or medical treatment of burn, stab or internal injuries sustained by violence sexual abuses. Compensation due to widows was usually handed to their male relatives and applications for widows' pensions were often not answered. With new and unaccustomed responsibilities of caring alone for traumatized family members, widows were thus left in particularly vulnerable situations.

The Gujarat government rejected responsibility for rehabilitation outright despite the obvious need of large numbers of victims and witnesses of violence for physical, psychological and economic rehabilitation. Many women victims' reproductive

and sexual health had been destroyed in sexual assaults and many were deeply traumatized. They were also dismayed by the effects the violence had on their children and they feared for their own and their families' future and possible further attacks. The only counselling available was provided by camp volunteers who had no training or support for such demanding work. What little medical care was provided by the state did not include trauma counselling and health administrators were found to be in fact dismissive when such needs were expressed.

Let down by the law

Women seeking legal redress for crimes of sexual violence have been hampered by the inadequacy of relevant legal provisions in the Indian Penal Code. The law relating to rape fails to deal with the many forms of violent sexual assault experienced by girls and women in Gujarat as it only refers to penal penetration. Other forms of assault which do not amount to rape are defined as acts "outraging a woman's modesty", a notion which is ill-defined and fails to reflect the range and nature of such violence which constitutes an invasion of a woman's person and threatens their bodily integrity.

The Law Commission of India and India women's rights groups have over the years made suggestions for a reform of the law on rape to make it more comprehensive but none of these proposals have been implemented as yet.

The procedural law relating to sexual assault underwent some reform in 1983 when trials of rape cases were directed to be held *in camera*. The Supreme Court of India in a number of decisions has laid down further guidelines on how such trials are to be conducted but these have not been incorporated in law.

Trials of cases involving sexual assault in Gujarat were distressing for witnesses and victims. In most cases, several offences including murder, assault and rape were tried together with courts failing to separate out the elements of sexual abuse and hearing related testimonies in an open court. Women speaking about intimate details had to contend with mobs in the courtroom who made loud vulgar remarks and laughed at the description of the suffering they or their relatives had undergone.

Government Reaction

In keeping with longstanding practice, Amnesty International submitted this report to the Government of India about four weeks before the intended date of publication for comment. The Government of India sought more time and said it would reply by the end of November 2004.

The Central government in its response of 6 December 2004 to Amnesty International's draft report declared that it "wholeheartedly condemned" the violence in Gujarat in 2002. It pointed out that the role of the state police and government during and after the violence was being investigated by the state appointed judicial inquiry, the Nanavati Shah Commission, and that several cases were pending in the Supreme Court. It concluded that "as such, it would be premature to form an opinion on a matter which is sub judice".

Amnesty International does not wish to pre-empt the findings of the Commission nor does its report comment on ongoing criminal proceedings. This report reflects critical comments regarding the composition and terms of reference of the Commission made by Indian activists. It also points to the fact that numerous inquiries on other issues in India have taken years to conclude and that often their findings have been ignored. These considerations and the fact that almost three years after the violence in Gujarat, justice remains elusive for the majority of victims are matters of serious concern to Amnesty International.

The Central government pointed out that the 9th report of the Lok Sabha Committee on Empowerment of Women (2002) had covered problems relating to evidence of violence against women, medical relief and issues of relief and rehabilitation. Amnesty International notes that many of the concerns voiced by the Committee coincide with those expressed by Amnesty International. The 17th report by the same Committee issued in 2003 which the Central government forwarded show that the Committee was dissatisfied with several of the state government responses, questioned parts of these and requested further clarification.

The Central government in its response further reiterated the UPA government's human rights commitments, including inter alia its repeal of POTA, the planned adoption of a "model comprehensive law to deal with communal violence" and the intention to improve substantive and procedural provisions in the law on rape. Amnesty International has acknowledged and welcomed these initiatives in this

report. The Central government did not in its response specifically mention the need for legislation on witness protection and the organisation hopes that this crucially important element in the pursuit of justice will be given due attention as well.

Commenting on Amnesty International's concern that the criminal justice system in Gujarat failed many victims, the Central government stated that "there exists a sound constitutional and independent and effective judicial system to safeguard the rights of people in the country. The impartiality and effectiveness of the Indian judiciary is well-known and has been appreciated [the] world over. [The] judiciary does not function in [a] vacuum but acts on the basis of evidence and facts [before] it. Therefore the comments on the judiciary are uncalled for". Amnesty International has throughout its report appreciated the active and valuable role of the Supreme Court and statutory bodies like the NHRC in safeguarding human rights in India. Observations about failings of the judiciary in Gujarat cited in the report have been almost exclusively those made by the Supreme Court of India.

Amnesty International has in this report acknowledged the constitutional and legal safeguards against discrimination on grounds of religion and gender. It also pointed to the range of legal provisions which members of the criminal justice system in Gujarat could have but failed to use to ensure justice to victims. Amnesty International therefore calls on the Government of India not only to address identified legal lacunae but also to ensure that the whole rich range of legal provisions are fully applied in the pursuit of justice. The Government of the state of Gujarat in its response of 10 November 2004 stated that Amnesty International's report appeared "to be based on secondary, unverified sources" and its observations were "one-sided". It denied Amnesty International's allegations that the Government of Gujarat had failed to prevent the violence in the state, that individual state and party members had participated in the violence in pursuance of the ideology of the *Sangh Parivar* and that it had failed to ensure redress. It stated that it had "taken adequate steps to file cases, carry out proper investigations and provide justice to victims". The state government further stated that it was aware of its constitutional obligations and accordingly its actions had been "necessary and appropriate to protect the life, liberty and property of the citizens". It claims to have provided adequate relief and rehabilitation to the victims, had responded fully to national statutory bodies and set up an independent commission of inquiry. Penal and administrative provisions, it said, had been adequate to deal with violence against women.

In response to Amnesty International's specific allegation of the consistent failure of the criminal justice system to record, investigate and try cases of sexual violence against girls and women, the state government stated that six cases of rape of Muslim women had been reported in the violence against Muslims in 2002 which had involved 11 women victims and that all these cases had been properly investigated by a senior woman police officer. A closer examination of the six cases listed in the government's letter showed that one of the cases is that of Bilqis Yakoob Rasool in which the CBI had pointed to serious irregularities in the police investigation.

The state government further stated that a special women's cell had been set up on 15 May 2002. It claimed it had heard 856 women and recorded 1,116 complaints, but "not a single complaint of sexual harassment was received by the cell".[3] Amnesty International believes that in light of the evidence collated by local human rights groups this claim points to a serious malfunctioning of the cell.

The government further insisted that police investigations and trials had been adequate. However, when pointing to the current reinvestigation of "closed" cases and a review of acquittals it omitted to mention the criticisms of the criminal justice system, in Gujarat, expressed by the Supreme Court on numerous occasions leading to it directing the review of "closed" cases.

In conclusion the state government said that it considered Amnesty International's analysis "inappropriate" and, pointing to the fact that cases were pending in courts and subject to an inquiry, concluded that "Amnesty International should not publish the proposed report, as the cases are sub judice and affect [sic] the judicial proceedings".

[3] The special cell was comprised of Ms. Hemangini Zaveri, Secretary, Legislative & Parliamentary Affaris (Retd), Kum. Manorama Bhagat, MD, Gujarat Women's Economic Development Corporation, and Mrs. R.I. Hakim, Deputy Secretary, Gujarat Legislature Secretariat.

Amnesty International considers the state government's response inadequate and evasive. The organisation regrets that the state government has once again failed to acknowledge any of the glaring failings of the state which have been consistently documented by national institutions and local human rights organisations which - unlike Amnesty International - had the opportunity to directly investigate complaints of abuses and subsequent failings of the state to provide justice to victims.

Hopes for some victims – but not for others

Despite the widespread and consistent failures of Gujarat state institutions to ensure the human rights of Muslims, particularly girls and women in Gujarat, hope has returned in 2004 to some victims of abuses. The Common Minimum Programme issued by the new United Progressive Alliance government at the centre made a number of commitments to ensure human rights protection in India. Several cabinet ministers have acknowledged the need to ensure prompt legal redress in Gujarat, to promote harmony between religious communities and to further investigate events in Gujarat in 2002. The Gujarat state government meanwhile remains unrepentant for its failure to protect the minority community and ensure redress to victims.

The courage with which some women victims of violence have pursued their quest for justice, supported by an alert national media, dedicated Indian women's and human rights groups, the NHRC and a Supreme Court which understands itself as activist in the pursuit of human rights protection has also begun to yield results at last. The two key cases described above have on the direction of the Supreme Court been transferred for trial to courts outside Gujarat. These trials began in the autumn of 2004.

The Supreme Court in August 2004 also directed that over 2,000 complaints closed by police - as in Bilqis Yakoob Rasool's case - and some 200 cases which ended in the acquittal of the accused in the trial courts - as in Zahira Sheikh's case - be reviewed with a view to possible remedial action. This may open the door to further investigation of cases where police claimed they could not establish who the perpetrators were. In those cases ending in acquittal the Supreme Court directed that the state Advocate General scrutinize these cases and recommend whether the state should file appeals against the acquittals.

Amnesty International welcomes these initiatives of the Supreme Court but remains concerned that a review of closed reports and possible reinvestigation by the very police force that may have failed the victims in the first place, does not guarantee that justice will be done now. Similarly, in cases leading to acquittals in trial courts, a mere mechanical reconsideration of the evidence on record which led to the acquittals by the reviewing authority and in case of appeal by the High Court may not ensure justice to the victims. As the Supreme Court has repeatedly pointed out, judicial officers will have to assume a more searching attitude than was evident in the Best Bakery case.

For many of the victims of the violence in Gujarat, particularly girls and women, such hopes come too late. Many were burned to death after gang-rape with no trace of their ordeal or their deaths. They were simply declared "missing". Many rapes were not recorded by police and in other cases, women victims of sexual assault withdrew their complaints in so-called "compromises" with the perpetrators in order to stop the latter threatening them and their families. Many victims never reported sexual assault because they were ashamed, feared rejection by their community or were too busy looking after injured or traumatized children and other relatives to seek redress for themselves. In scores of cases, evidence has been lost, perhaps irretrievably, making comprehensive reviews difficult if not impossible and justice unattainable.

Amnesty International appeals to the new central government to live up to its promises to secure human rights to all citizens and to address the legacy of the 2002 violence in Gujarat with speed and earnest commitment. The organization also urges the Government of India to pay special attention to the forgotten women victims in Gujarat.

Recommendations

Amnesty International calls on the Governments of India and Gujarat to take seriously their obligations to prosecute perpetrators of crimes against humanity and to exercise due diligence in ensuring fundamental rights including, but not restricted, to the right to life; the right not to be subjected to torture or to cruel, inhuman and degrading treatment; the right to liberty and security of the person; the right to equal protection under the law; the right to the highest

attainable standard of physical and mental health; and the right to legal redress for abuses suffered. From information received by Amnesty International there is evidence of connivance of the authorities in abuses of several of these rights and of failure to protect girls and women from abuses of these rights by private actors in Gujarat.

Amnesty International urges the Governments of India and Gujarat to condemn clearly and publicly all acts of sexual violence suffered by girls and women in Gujarat whether committed by law enforcement personnel or private individuals. Since all the sexual violence experienced by girls and women in Gujarat in 2002 and elsewhere, is decisively influenced by the perception of the victims' gender and discrimination against women at all levels of society, the issue of gender-based discrimination urgently needs to be addressed. In this, Amnesty International believes, everyone has a role to play – the government, political parties, religious groups, all elements of civil society and individuals. Everyone has a responsibility to commit themselves to the equality of all human beings, irrespective of gender, age, social status, racial, national or ethnic origin or sexual orientation.

Crimes of violence, including crimes of sexual violence, committed against girls and women in Gujarat appear to have been part of a widespread attack on the civilian Muslim population pursuant to government and organizational policies to commit this attack. These crimes also appear to have been committed as part of a systematic attack pursuant to government and organizational policies to commit these attacks. On both grounds, these crimes constitute crimes against humanity under international law. The Indian Government and Gujarat authorities have a responsibility under international law to protect against such crimes and to bring the perpetrators to justice.

The prospect for girls and women victims of crimes, including crimes of sexual violence, in Gujarat obtaining justice, establishing the truth and receiving full reparations has been significantly hindered because sections of the police force and the judiciary have been appointed despite their commitment to an ideology which affected the impartial exercise of their professional duties, Amnesty International calls on the Government of Gujarat to cease this practice, to establish an effective screening system for recruitment and to appoint only persons who are known for their commitment to non-discrimination and neutrality. An effective vetting procedure should be set up to identify police or judicial officers already in place who have shown a bias against people on grounds of political ideology, religion or gender. As a first step, they should be transferred to posts where such bias does not affect the conduct of their professional duties.

Recommendations to the Government of Gujarat:

- investigate promptly, thoroughly and impartially all reports of police connivance or participation in acts of sexual violence against women, and bring to justice those responsible
- investigate effectively and independently the reported failure of police officers to protect girls and women who sought protection from imminent sexual and other violence, with a view to punishing officers found to be in dereliction of their duty
- take urgent steps to end impunity in Gujarat state, including by issuing clear guidelines to police that deterring women from reporting sexual violence, inaccurately recording their complaints and failure to investigate violate their constitutional duties will not be tolerated and by bringing those responsible to justice
- issue clear instructions to all police officers to respect the human rights of all, regardless of their political or religious beliefs, ethnic origin or sex
- institute training for all members of the criminal justice system, including police officers, prosecutors and judges in human rights and gender sensitivity based on human rights standards and aimed at ensuring the highest standards of professional conduct, with particular emphasis on treating women who have suffered sexual violence with respect and sensitivity
- recruit an adequate number of women police officers, and appoint investigating officers who specialize in cases of sexual violence and receive specialist training, including in the requirements of collecting, analysing and preserving of medical and other forensic evidence, and in techniques of interviewing and taking statements from suspects and witnesses
- institute adequate witness protection programmes to ensure that witnesses can

depose without fear for their own or their families' safety
- make information available to women victims on rights and remedies and on how to obtain them, in addition to information on their anticipated role in criminal proceedings
- make medical and psychological support, where still required, available and easily accessible to women victims of sexual violence. Compensation and rehabilitation where inadequate should be re-assessed and provided commensurate with the harm suffered and sufficient to enable victims to rebuild their lives
- recognize the valuable work of human rights defenders, including journalists, lawyers and human rights groups and ensure that they can pursue their legitimate activities without harassment, or fear for their safety
- take seriously their obligations to prosecute all perpetrators of crimes against humanity and to exercise due diligence in ensuring fundamental rights, including, but not restricted to the right to life; the right not to be subjected to torture or to cruel, inhuman or degrading treatment; the right to liberty and security of the person; the right to equal protection under the law; the right to the highest attainable standard fo physical and mental health; and the right to legal redress for abuses suffered.

Recommendations to the Government of India and the legislature:

- review and modify existing legislation relating to sexual violence against women to ensure that its provisions are adequate and reflect the wide variety of abuses suffered and that they conform with the ICCPR and the UN Convention on the Elimination of All Forms of Discrimination against Women

- India should ratify the Rome Statute and implement it in national law (see Recommendation 8.5 in full report) as set forth in the Amnesty International paper, *The International Criminal Court: Guidelines for Effective Implementation*, AI Index: IOR 40/011/00, July 2000.

Recommendations to the Government of India:

- ratify the Optional Protocol to the UN Convention on the Elimination of All Forms of Discrimination against Women which provides for individual petitions and for inquiries into systematic violations of the Convention, affording an international remedy for women who have suffered human rights abuses
- ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment which it signed in 1997
- permit UN human rights mechanism and international human rights organizations free and regular access to enable them to research human rights issues in the country.

This report summarizes a 107-page document, *INDIA: Justice, the victim - Gujarat state fails to protect women from violence* (AI Index: ASA 20/001/2005) issued by Amnesty International in January 2005. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at http://www.amnesty.org.

STOP VIOLENCE AGAINST WOMEN