

Threatened Existence: A Feminist Analysis of the Genocide in Gujarat
Report by the International Initiative for Justice (IIJ)
December 2003

Chapter 8
Gujarat Pogrom And Continuing Violence As Crimes Against Humanity

Since the post-World War II Judgments of the International Military Tribunals at Nuremberg and Tokyo, “crimes against humanity” has been recognized as one of the gravest international offences subject to universal jurisdiction. Crimes against humanity can be committed by either a State or a non-State organization. And where, as in Gujarat, the State is complicit in crimes against humanity, its culpability is the most because it lends its power to the perpetration of the crimes and, at the same time, deprives victims of the protection to which they are entitled.

The international crime of “crimes against humanity” as defined in the Rome Statute of the International Criminal Court (henceforth the ICC Statute), refers to one or more of a list of criminal acts when committed as part of a “widespread or systematic attack directed against any civilian population, pursuant to a plan or policy of the State or an organization” under circumstances where the perpetrators, be they leaders or direct assailants, do so “with knowledge of the attack.” The list of criminal acts include murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or severe deprivation of liberty, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, enforced disappearance of persons, persecution against the listed group or collectivity, apartheid, and other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.¹

Some of these acts are recognized as crimes in many national legal penal systems including the Indian Penal Code, as evident from the legal provisions applicable in the Gujarat case listed in chapter 6. However, when these acts rise above a certain threshold i.e. they are committed in a widespread or systematic manner pursuant to a plan or policy of the state or an organization, they constitute the international crime of ‘crimes against humanity.’ India has not recognized and legislated crimes against humanity in their domestic legal systems making it difficult to investigate and prosecute the Gujarat pogrom as “crimes against humanity.”

In this chapter, we focus on the crimes against humanity committed in the February-March attack as well as the on-going persecution of the Muslim community of Gujarat.

8.1 Criminal acts constituting the attack in Gujarat

The criminal acts constituting the attack against the Muslim population during the pogrom from February 28-March 3, 2002 in Gujarat include murder, torture, extermination, persecution based on religion, rape, enforced sterilization, other forms of sexual violence of comparable gravity, and inhumane acts causing intentional suffering. We have explained below how testimonies given to this panel, and information in other reports, show that each of the criminal acts that have been committed in Gujarat constitute crimes against humanity.

¹ Article 7 (1), ICC Statute.

8.1.1 Murder: The constitutive elements of the crime of murder are similar in many legal systems and generally includes wilful and reckless killing. Little needs to be added here to the extensive documentation of testimonies of mass violence causing the death of about 2000 individuals. Testimonies of the present report, those presented before the Concerned Citizens' Tribunal, and the National Commission for Human Rights more than amply demonstrate that people were wilfully and recklessly murdered. The mobs chased many victims for long distances until their capture and were killed. Other forms of violation such as mutilation and sexual violence were inflicted that resulted in immediate or ultimate death of the victim. Witnesses also testified to torching and burning alive of Muslim women, men and children.

8.1.2 Torture: as a crime against humanity is defined as the “intentional infliction of severe physical or mental pain or suffering” in any context where the perpetrator exercises either custody or control over the victim.² This definition differs from the one stated in the Convention Against Torture that understands the crime as the infliction of severe pain or suffering by an official or by non-state persons with official instigation, consent or acquiescence for specific purposes, namely to punish, seek information, intimidate, or effect discrimination of any kind.³ While custody or control is not identified in the Convention's definition, it is axiomatic that the perpetrator must assert some form of control in order to cause the suffering.

The violence inflicted upon the Muslim population was overwhelmingly designed not only to kill, but to kill torturously, in the most painful, inhumane and dehumanizing way. The testimonies of victims which describe being encircled by mobs waiting to attack with weapons, of stabbing, of throwing “white powdery chemicals” to induce burns, of torching victims alive are acts that intentionally inflict severe physical and mental pain and suffering. Witnessing atrocities committed upon the loved ones and neighbours, colleagues and strangers, is being subjected to excruciating and unforgettable mental torture. The physical and mental pain inflicted by rape and other forms of sexual violence is clearly recognized as one of the severest forms of torture.⁴

While the term is no longer confined to custodial interrogation, the pattern of violence was often accompanied by interrogation as to why the victims were born Muslims and about their alleged involvement in criminal activities, particularly in the *Sabarmati* Express train incident. In all the cases of physical and mental violation, the perpetrators most certainly exercised control over the victims either by possession of weapons or other harmful substances, or in the knowledge that outnumbered the victims in mob formation, or by the overt and covert support from police, politicians and other State officials.

Similarly, while, for the purposes of crimes against humanity, the perpetrators need not any longer be public officials or have a nexus with them, there is nevertheless adequate documentation of how the violence was encouraged, perpetrated and acquiesced to by public officials right from the Chief Minister, Narendra Modi to his Cabinet ministers and police officials to meet the official nexus requirement of the Convention against Torture. Moreover, the Newtonian statement made by Narendra Modi, reproduced in subsection

² Article 7(2)(e), ICC Statute.

³ Article 1, Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 1984.

⁴ *Prosecutor v Delalic et al.* IT-96-21, ICTY, November 1998, paras. 495 and 496.

7.13, justifying the violence against upon the Muslim community after the *Sabarmati* Express incident, shows that the violence was meant to be a punishment for Muslims' alleged involvement in it. It was carried out to intimidate and humiliate and was a manifestation of the most extreme imaginable discrimination against Muslim people based on their identity as Muslims and their gender. The violence against the Muslim community in February-March 2002 therefore, by all means and definitions, constitutes the crime of torture.

8.1.3 Extermination: As a crime against humanity, extermination is defined as causing death on a massive scale, directly or indirectly, including by “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.” Such conditions can include the deprivation of access to food and medicine.⁵ Extermination as a crime against humanity differs from the crime of genocide in that it can be committed without demonstrating the specific intent to destroy a population in whole or in part. In other words, if actions taken will foreseeably entail the destruction of a part of the population, such actions may constitute the crime of extermination.

In Gujarat, the pogrom of February-March 2002 constituted a mass killing that took the lives of approximately 2000 members of the Gujarati Muslim community and injured countless others. The deprivation of necessary and appropriate medical care in most hospitals and the lack of resources for follow-up care contributed to death. Many survivors remain physically or emotionally maimed. They are also stripped of the sense of security that is essential for physical and mental integrity; and of their means of livelihood through wholesale destruction of homes, property and businesses and the ongoing obstruction of livelihoods through the economic boycott. After the elections, which returned the complicit government to power, the women we met with expressed desperation for their survival and utter hopelessness. Thus, in addition to genocide, the attack on the Muslim population of Gujarat can also be understood as involving the crime against humanity of extermination.

8.1.4 Rape: Rape is defined in ways that meets some of the gaps experienced in investigation and prosecution of the crime within the national legal system. It is not only restricted to penile penetration and physical force. Even the ICC's narrow definition recognises insertion, “however slight” of objects and other parts of the body into the anal or vaginal opening of the victim as well as a broad understanding of coercion have been recognized as elements of the crime.⁶ Chapter 3 highlights how the *Hindutva* propaganda encouraged and mobilized mobs through false claims that Muslim men had raped Hindu women and incited Hindu men to rape Muslim women. The testimonies in chapter 7 and the one mentioned below speaks of the brutality of the crime:

There were many women bleeding, injured, naked. Many women had bite marks on their breasts. Three women were raped with wooden rods inserted into their vaginas. They were bleeding. We cleaned all these women's wounds after removing all the objects inserted in their bodies. (Tayabba and Gulabi, who worked in AA3 relief camp, Ahmedabad).

While rape by itself is a pervasive form of violence that brutally invades the physical integrity of a woman's person, it is also, as recognized in international law and jurisprudence of the

⁵ Article 7(1)(b), Elements of Crimes Annex, ICC Statute.

⁶ Article 7 (1) (g)-1, Elements of Crimes Annex, ICC Statute.

ad-hoc tribunals, an act that is torturous and contributes to the destruction of people thereby constituting elements of the crimes of torture and genocide as well.⁷

8.1.5 Other forms of sexual violence: Acts of a sexual nature other than rape, committed by force or other forms of coercion, are elements of the crime of “any other form of sexual violence of comparable gravity.”⁸

Witnesses from different parts of Gujarat testified about similar patterns of sexual violence against women and girls in the pogrom of February-March, 2002. In chapters 3, 6 and 7 witnesses testified about men in the mob taunting and stripping by women; about police officials exposing their penises to terrorize women; about these acts being done publicly and repeatedly in front of family members and children; mutilating women’s genitals with swords; and cutting a pregnant woman’s stomach to access the foetus clearly exemplify acts that amount to sexual violence of comparable gravity. Testimonies reproduced in chapter 5 moreover, show that such acts of crimes against humanity continue. Nine months after the pogrom, women have testified about being subjected to acts of sexual violence, particularly by police officials, and reported verbal abuse, sexual innuendos and threats during “combing” operations.

8.1.6 Enforced Sterilization: The sexual violence crimes committed by the Hindu mobs, leaders and public officials, insofar as they control or destroy the reproductive capacity of Muslim women, also constitute the crime of enforced sterilization. The international definition of enforced sterilization adopted by the Elements of Crimes of the ICC Statute does not require permanent or absolute deprivation of biological reproductive capacity, but encompasses acts and means which significantly impair reproductive capacity in practice even if for a limited period of time.⁹

Rape alone can destroy or damage women’s reproductive capacity in physical, mental and societal ways and, thus, may also constitute enforced sterilization. The brutal and repetitive rape suffered by women in Gujarat is often a sexual mutilation resulting in permanent damage to women’s reproductive organs and reproductive health. Psychologically, rape can render heterosexual intercourse impossible for survivors, and thus may preclude both intimate relationships and the bearing of children. In the social context, women and girls who are raped may be treated by partners and society as “ruined property” and therefore ineligible for family life and procreation. Clearly, mutilating women’s bodies and removing foetuses are forms of enforced sterilization that result in the prevention of reproduction.

These acts ought to be seen in the context of long-standing *Hindutva* hate propaganda which exaggerates and portrays reproduction in the Muslim community as a way to out-number the Hindu majority. This propaganda was reinforced by the Chief Minister Modi himself when he referred to the relief camps that housed Muslim survivors as “child-making factories” and called for them to be “taught a lesson.”¹⁰

⁷ *Delalic, Supra n.* 83 and Article 6 (b) footnote 3, Elements of Crimes Annex, ICC Statute.

⁸ Article 7 (1) (g)-6, Elements of Crimes Annex, ICC Statute.

⁹ ICC Elements of Crimes, Article 7(1)(g)-5 defines enforced sterilization as depriving a person of “biological reproductive capacity” which, a footnote explains, applies to birth control methods which are permanent “in practice”—that is, prevent reproduction during a significant period in a woman’s reproductive life even if not biologically permanent.

¹⁰ Chapter 7 (Para. 7.0.6(a) *infra*).

Additionally, in a society where the patriarchal lineage dominates, such as in Muslim and Hindu communities, another way to prevent Muslims from reproducing is to forcibly impregnate the women with the intent that she bear “non-Muslim children. Pregnancy is a statistically predictable and clearly foreseeable consequence of rape. Testimony received by this panel indicates that some Hindu rapists explicitly stated that they were attempting to impregnate women to force them to bear Hindu babies. This constitutes an attempt to commit the crime of “forced pregnancy” as well as forced impregnation.¹¹ Whether or not the women so raped became pregnant, these acts of rape coupled with the intent that the women bear the children of the rapist clearly constitute an attempt to forcibly impregnate a woman.¹²

8.1.7 Persecution: The ICC Statute defines persecution as the “intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”¹³ Thus, the crux of persecution—and the reason that it encompasses non-violent as well as violent measures—is the discriminatory intent or hatred, which underlies the severe deprivation of fundamental rights against a particular group. In the case of Gujarat, persecution is based on identification with the Muslim religion or community, as well as upon gender, all recognized by the ICC Statute.¹⁴ The testimonies and reports make it clear that the Muslim community and identity were targeted and that by burning the bodies were made unidentifiable and thus not able to be buried. The chanting of *Hindutva* slogans and the destruction of Muslim religious and cultural properties reflected and exacerbated the religious impact of the attack. The sexual violence directed at women demonstrates the intersection of religious and gender persecution.

Equally important, the attack constituting “crimes against humanity” did not stop with the cessation of overt, mob-inflicted violence in March 2002. Rather, as reflected in more recent reports and in the testimonies provided to the panel, Muslim society, and women in particular, continue to be threatened and attacked in Gujarat. While this ongoing attack is less visible to the nation and to the international community than the pogroms of last year, it consists of (in addition to the sexual and other physical violence and threats thereof) economic, social and cultural persecution based principally on religion.

¹¹ Article 7(2)(f) of the ICC Statute defines “forced pregnancy” narrowly as a result of the influence of the Holy See on these negotiations as requiring “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.” Forced impregnation, though not listed in the Rome Statute as a crime against humanity, is a constituent element of forced pregnancy (which is listed as a crime against humanity) and a form of **sexual** violence in and of itself.

¹² Under international as well as most domestic law, an attempt is a form of commission of crime. Under the general principles of responsibility adopted by the ICC Statute, a person “(a)ttempts to commit...a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person’s intention.” ICC Statute, Article 25(3)(f).

¹³ Art. 7(2)(g), ICC Statute. Under international customary law, persecution does not require the commission of any violent acts because it is the discriminatory animus plus the widespread or systematic nature of the deprivation that defines persecution for the purposes of crimes against humanity.

¹⁴ ICC Statute, Art. 7 (1)(h) . In this respect the Rome Statute enlarges, consistent with evolved norms of international law, upon the grounds of persecution stated in the Nuremberg Charter which included persecution on political, racial or religious grounds. See Commentary 7() para. 61-62.

While the pogroms themselves constitute an extreme form of persecution, the continuing violence, harassment, threats and economic boycott, coupled with the discriminatory failure of justice and redress exemplify continuing persecution based on religion.¹⁵

The crime of persecution encompasses conduct that severely limits the exercise of basic political, civil, social, economic and cultural rights. In international law, such rights include liberty and security of person, the right to shelter, the ability to establish a home and enjoy family life, the right to education, the right to work and maintain an adequate standard of living, the right to move freely, reside where one chooses, practice one's religion and express and transmit one's culture. The destruction of religious or cultural buildings or memorials in such a context also constitutes core aspects of the persecution.¹⁶

Testimonies show that victims were deprived of all the basic rights stated above. The threat to life if survivors returned to their home and the systematic economic boycott against the Muslim community exemplify deprivation of right to life, security and livelihood. The deprivation of the right to family life has more facets than are obvious at a glance. The trauma and tension of attacks and potential attacks makes daily life and normal relationships difficult, at the same time as it gives rise to intra-familial violence. The denial of women's experience of sexual violation also exacerbates this condition, preventing any return to normalcy in family life.

At the core of the persecution of the Muslim community is a chilling similarity with the Nazi persecution of Jews: the notion that Muslims are "foreigners" to the Hindu nation and inferior or sub-human as compared to the "legitimate" citizens of the India. *Hindutva* propaganda manufactures hatred towards Muslims by depicting them as pollutants of the Hindu nation, as terrorists, and as miscreants who will elope with Hindu women and outnumber the Hindu community.¹⁷ Like the Nazi persecution of Jews, the *Hindutva* persecution of Muslims included pogroms, burning of Islamic religious institutions, looting of businesses, and attacks on prominent people. Seeking to remove Muslim identity and religious practices from India, *Hindutva* advocates and the Gujarat mobs destroyed Muslim sacred places and erected Hindu shrines in their place once the rubble had been cleared.

The inability of the displaced Muslims to return to their homes and work; to obtain education in non-Muslim schools; the continuing threat of sexual attack against women and girls; the economic boycott and the increasing ghettoization of Muslim life all constitute aspects of the persecution of Gujarati Muslims. What the Nazis accomplished through discriminatory laws, the *Hindutva* advocates accomplish through violence, threats,

¹⁵ See ICC Statute, Article 7(1)(h) identifying accepted these grounds as among the grounds of persecution today as a matter of customary international law.

¹⁶ See Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights. The Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture, and the Convention on the Rights of the Child all develop the basic rights of the Universal Declaration and reflect rights protected against discriminatory denial.

¹⁷ For example, the Nuremberg Judgement refers to the Nazi Party Platform, Point 4 which declared: "Only a member of the race can be a citizen. A member of the race can only be one who is of German blood, without consideration of creed. Consequently, no Jew can be a member of the race." Other points of the programme declared that Jews should be treated as foreigners, that they should not be permitted to hold public office, that they should be expelled from the Reich if it were impossible to nourish the entire population of the State, that they should be denied any further immigration into Germany, and that they should be prohibited from publishing German newspapers. The Nazi Party preached these doctrines throughout its history.

discrimination and lack of access to justice and redress. Gujarat officials are continually complicit in this persecution by having immunized the leaders, perpetrators and supporters of the pogrom as well as for failing to prosecute and prevent the continuing violence and discrimination.

8.2 The threshold or chapeau constituting crimes against humanity:

In order to constitute crimes against humanity, the foregoing conduct must be part of a widespread or systematic attack against any civilian population, carried out by the perpetrator – whether leader, instigator, aider and abettor, or direct attacker – with knowledge that his or her acts were part of the larger attack.¹⁸

8.2.1 Attack

The “attack” which is a prerequisite to crimes against humanity need not be a military attack and crimes against humanity do not depend upon a connection to war.¹⁹ Indeed the attack need not even involve any violent force at all. The *Akayesu* Judgment opines, “An attack may also be non violent in nature, like imposing a system of apartheid, or exerting pressure on the population to act in a particular manner, may come under the purview of an attack, if orchestrated on a massive scale or in a systematic manner.”²⁰ Moreover, as confirmed by the ICTY’s Appeals Chamber in the *Kunarac* judgment: “Attack in the context of a crime against humanity encompasses any mistreatment of the civilian population” and “only the attack, not the individual acts of the accused, must be widespread or systematic.”²¹ That there was both a widespread and systematic attack against the Muslim community, comprising all the crimes identified above is beyond doubt, and some of the acts mentioned above were also widespread and systematic, although this is not a legal requirement to prove both.

Chief Minister Modi sought to justify the attack by saying that it was a spontaneous response to the alleged conspiracy of Muslims in torching the Sabarmati Express, which killed 59 Hindu activists. To establish crimes against humanity through, “...The existence of an attack from one side against the other side’s civilian population would neither justify the attack by that other side against the civilian population of its opponent nor displace the conclusion that the other side’s forces were in fact targeting a civilian population as such,” and “... submission that the other side is responsible for starting the hostilities would not, for instance, disprove that there was an attack...”²²

8.2.2 Widespread or Systematic

The purpose of the threshold or “chapeau” requirement of a “widespread or systematic attack against a civilian population” is to exclude isolated and random acts and distinguish ordinary offences from the international crime of crimes against humanity. It is derived from existing customary law and jurisprudence as reinforced by the ICTY in its *Tadic* judgment,

¹⁸ Rome Statute, Art. 7(1).

¹⁹ Rome Statute, Art. 7(2) and Elements of Crimes, Introduction, para. 7.

²⁰ *Akayasu*, *Supra* n. 52, para 579.

²¹ *Prosecutor v Kunarac et al*, Judgment of the Appeals Chambers, Case No. IT-96-23 and IT-96-23/1, International Criminal Tribunal for the Former Yugoslavia, June 2002, para 86 and 96 respectively.

²² *Kunarac*, *Supra* n.99, para 87 and 88.

which notes acts can, “occur on either a widespread basis or in a systematic manner. Either one of these is sufficient to exclude isolated or random acts.”²³

The concept of “widespread” includes “massive, frequent, large scale action, carried out collectively with considerable seriousness” and “systematic” means “thoroughly organized and following a regular pattern.”²⁴ The attack on the Muslim population of Gujarat was clearly widespread: tens of thousands of people participated in attacking Muslim communities throughout Gujarat and reduced their communities to ruin. The attacks were particularly intense in the Eastern part of the State, both where the Muslim population was substantial and also where it was more dispersed. Isolated Muslim communities, places of worship as well as Muslim-owned businesses in Hindu areas (that by outward appearances seemed Hindu) were attacked. Testifiers confirmed the finding of the National Human Rights Commission that “the size of the marauding crowds involved in major incidents was found to be between five and fifteen thousand.”²⁵ The preceding sections describe the widespread nature of the individual crimes of murder, burning, rape and other sexual violence as well as the burning, razing and looting of Muslim properties and mosques.

The legal criteria “widespread” is not measured by absolute numbers. As discussed above, it is estimated that at least 2000 people were killed during the pogrom in Gujarat. The scope of the attack is not measured by the number of deaths, but by the scale of the population affected by the combination of crimes comprising the attack, which is assessed by a relative exercise that depends on the civilian population that was attacked.²⁶ Entire Muslim communities were under attack and the number of people that were physically violated and tortured by being forced to watch attacks on their loved ones and neighbours is substantial.

While the legal requirement is in the alternative, there is no question that the Gujarat attack was also “systematic” in that it was not random but rather the product of a long-standing policy of destruction and subordination of the Muslim community as well as extensive planning despite being cast by BJP leaders as an “inevitable” and “spontaneous” response to the Godhra incident.²⁷ Since direct proof is often impossible, the requirement of “systematic” can be inferred if the pattern of activity is similar in different places or among different actors. An attack can be ‘systematic’ even if it is or appears to be spontaneous where information and discernible patterns indicate pre-planning or a common understanding of the goals or methods of attack.

The testimony of Kartik, a lawyer from Ahmedabad provides crucial evidence of the existence of a plan to justify the carnage and reduce the significance of the crimes that took place by suggesting a “provocation theory.” The testimony states:

If one studies all the FIRs which are filed, they all start with the same paragraph describing what happened to Sabarmati Express. It is as though they were instructed

²³ *Tadic*, *Supra* n. 102, para 646.

²⁴ *Akayesu*, *Supra* n.52, para 580.

²⁵ National Human Rights Commission (NHRC), *Gujarat Carnage: A Report* (New Delhi: NHRC, April-May 2002) p.4; Concerned Citizens Tribunal, *Crimes Against Humanity: An Inquiry into the Carnage in Gujarat* Vol.II, (Mumbai: Anil Dharker, 2002) 25-26, 29.

²⁶ *Kunarac*, *Supra* n.99, para 95.

²⁷ The ICC Statute sets a higher threshold than the ICTY jurisprudence in demanding that even where an attack is shown to be widespread, it must also be demonstrated that it is carried out “pursuant to or in furtherance of a policy of a state or organization.” Rome Statute, Article 7(2). This requirement is more than met here by the evidence of systematicity discussed in the next paragraph.

on how the FIRs should be recorded. There could be an exception where a Muslim constable has filed the FIR. The wording in such case is different, which means that he was not part of the planning of how FIRs were to be drafted.

8.2.3 Knowledge of the attack

Under international law, persons are responsible for crimes against humanity when they act with awareness that their acts are part of a larger, widespread or systematic attack on any civilian population. The negotiators of the Rome Statute of the ICC made clear that it is not necessary for a person to know the details of either the policy of the organization instigating, or supporting the attack, or of the plan of attack itself.²⁸ Further, the requirement that the perpetrator had knowledge of the attack does not require knowledge of the details or specific acts that constitute the attack, but rather an awareness that his/her acts are part of a larger attack of widespread or systematic dimension. Such knowledge “is examined on an objective level and factually can be implied from the circumstances.”²⁹ There is no question that both State and *Hindutva* leaders, adherents of the *Hindutva* organizations and those who joined the mobs or who participated in the persecution of the Muslim community, for the most part, knew that their acts were part of a larger attack. The notoriousness of the violations, their concerted nature, the numbers of participants and the scale of the attack make ignorance virtually impossible.

8.3 Conclusion

The February-March 2002 attack was the product of the joint action of *Hindutva* forces, including active participation by and complicity of BJP party members and State officials, to build, train, equip and enable a movement whose goal is the elimination of non-Hindus from India. The same steps that demonstrate the genocidal nature of this project, as discussed in chapter 7, also establishes systematicity for the purpose of crimes against humanity.³⁰ The findings of major fact-finding teams have confirmed that the size of the crowds and scale of the violence indicate long planning and indoctrination.³¹ The ideological preparation and militaristic training of *Hindutva* adherents is a significant part of the planning. *Hindutva* leaders and literature preached hatred of Muslims and portrayed them as “the other,” as “foreign invaders,” and as enemies of the “Hindu nation” through false assertions and claims. Such false claims have been circulating for many years now but were rampantly used during the election campaign in November-December, 2002. Some such assertions include for example, that Muslims were terrorists amassing arms to “take over;” that Hindu women were being abused by or being made to elope with Muslim men; and that Muslims were threatening to “out-breed” despite the fact that they constitute only 11% of the Indian population.³² Hindu youth were recruited for training in hatred and violence and some *Adivasi* and Dalit communities were incited to take part in the anti-Muslim attacks as well.³³

²⁸ Rome Statute, Article 7(1) and Elements of Crimes, Article 7, Crimes Against Humanity, Introduction, para. 2.

²⁹ *Prosecutor v Tadic*, Opinion and Judgment, Case No. IT-94-1-T, International Criminal Tribunal for the Former Yugoslavia, May, 1997, para 657.

³⁰ It should be noted, however, that the threshold for crimes against humanity does not require proof of genocidal intent or any specific intent. It is enough that the acts are voluntarily and knowingly carried out.

³¹ NHRC, 4; Concerned Citizens Tribunal, Vol. II, 25-26; Human Rights Watch, *We Have Orders Not to Save You* (2002) 31.

³² Concerned Citizens Tribunal report, Vol. II, pp. 33,36; Human Rights Watch, p. 43.

³³ Concerned Citizens Tribunal report, Vol. II, pp. 34-35.

Planning is also apparent in the collection and distribution of the widely used weapons of destruction—*trishuls*, gas cylinders and a “white powdery chemical” to enhance the burning.

It is also clear that State officials played a significant role in both the preparations for and execution of the pogrom. Information from the unscheduled census of minorities organized by the Gujarat government in 1999, and the more recent voter registration roles, permitted the mobs to identify Muslim homes and businesses while sparing their immediate Hindu neighbours. Computer printouts of this information were seen in the hands of *Hindutvavadi* leaders of the attack. Equally important is the fact that the Gujarat State government not only consciously failed to take steps that could have prevented such an attack, but deliberately encouraged and endorsed the attacks as legitimate retaliation. The State failed to counter utterly false rumours that a Hindu girl had been raped by Muslims, it permitted a cavalcade of bodies from Godhra; it failed to enforce a curfew when the potential for violence was overwhelmingly clear; and ordered the police “not to save” Muslims under attack. These facts have been documented in other reports and persons testifying before this panel have also stated that the police refused them protection or refuge from the mobs.

Testifiers before the panel witnessed BJP ministers of the State government leading the mobs. They also witnessed how policemen, along with the mobs, took off their pants—threatening women and taking part in the rape, burning and murders. It is important to note that the widespread pattern of sexual and reproductive violence against women alone meets the threshold for crimes against humanity even though they were part of the overall attack, which constitutes crimes against humanity. Moreover, as described above, sexual violence against women and young girls has continued on a lower intensity and less visible basis, since the pogrom of February-March 2002, as part of an on-going persecution of women and the community.

The reports of other investigations and the testimonies received by our panel make clear that the attack on the Muslim community was committed on a widespread and systematic basis during the pogrom in Gujarat and that religious animus motivated the attack. The State of Gujarat actively encouraged and promoted this attack through direct participation, by precluding protection and delaying the entry of the army until sufficient damage was done. The Central Government subsequently failed to condemn these attacks, lauded the Modi government and generally refused to hold the State government accountable. The official impunity with which the State of Gujarat and the Central government have subsequently clothed these atrocities is further evidence of official complicity in crimes against humanity.