



**INDIAN AMERICAN  
MUSLIM COUNCIL**  
Formerly Indian Muslim Council-USA

## **INDIA**

### **13<sup>th</sup> Session of the Working Group on the Universal Periodic Review United Nations Human Rights Council 21 May – 1 June, 2012**

**Joint Written Statement submitted by  
The Advocates for Human Rights, an NGO in special consultative status, in collaboration  
with the Indian American Muslim Council and Jamia Teacher Solidarity Association<sup>1</sup>**

#### **I. EXECUTIVE SUMMARY**

1. Founded in 1983, The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications.
2. Indian American Muslim Council (IAMC) is a Washington, D.C. based apolitical and non-profit organization dedicated to promoting peace, pluralism and social justice through advocacy and outreach across communities. Founded in August 2002, IAMC is the largest advocacy organization of Indian Muslims in the United States with 12 chapters across the United States. IAMC strives to strengthen secular institutions in India and promotes peaceful co-existence amongst all ethnic and religious groups.
3. India's large and religiously diverse population makes it one of the most pluralistic societies in the world. During the period considered under the Human Rights Council's Universal Periodic Review, however, there has been an alarming rise in discrimination and violence against religious minorities such as Muslims and Christians in various states across India, including Gujarat, Orissa and Karnataka.<sup>2</sup> While discrimination and violence against Muslims has long been a problem in India (most notably during the targeting of Muslims in Gujarat in 2002) the increasingly systematic violence can be attributed, in part at least, to a rise in Hindu nationalism.<sup>3</sup>
4. This submission addresses India's failure to comply with its international human rights obligations to protect members of minority groups. In particular, the submission calls attention to serious problems with the treatment of Muslims in India. Major human rights challenges include extrajudicial executions committed by security personnel as well as non-state actors, arbitrary and unlawful detentions, torture and cruel, inhuman and degrading treatment of terrorism suspects in police custody, and harassment of human rights defenders, whistleblowers and witnesses to human rights violations. Additionally, this submission highlights the failure of the Indian government to adequately investigate and effectively prosecute perpetrators of these human rights violations against members of minority groups.

## II. LEGAL FRAMEWORK

### A. *Scope of International Obligations*

5. Relevant to the issue of minority rights, India has ratified the International Covenant on Civil and Political Rights<sup>4</sup>, the International Covenant on Economic, Social and Cultural Rights<sup>5</sup>, the Convention on the Elimination of All Forms of Discrimination Against Women<sup>6</sup>, the Convention on all forms of Racial Discrimination<sup>7</sup>, and the Convention on the Rights of the Child<sup>8</sup>. India has signed but not yet ratified the Convention Against Torture and the Convention on Enforced Disappearances.

### B. *Domestic Legal Framework*

6. The Indian Constitution provides all citizens with the “right to equality before the law,” the right to “the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth”, and the “right to freedom of speech and expression”.<sup>9</sup> Further, it specifies that “no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest” and that every person arrested be presented to the nearest magistrate within 24 hours of the arrest.<sup>10</sup> In 1993, India passed the Protection of Human Rights Act which created the National Human Rights Commission (NHRC). The National Commission for Minorities (“NCM”) is another governmental body charged with monitoring and reporting on human rights violations against minorities and ensuring that minorities are protected and treated equally.<sup>11</sup>

7. In spite of these human rights protections, instances of violence and discrimination against religious minorities have continued since India was last examined under the United Nation’s Universal Periodic Review in 2008. Although India has passed laws to protect human rights<sup>12</sup>, India has failed to implement or effectively enforce these laws in a manner that protects the rights of members of its religious minority communities.

8. Further, in response to the 2008 terrorist attacks in Mumbai, the Indian government promulgated amendments to the Unlawful Activities Prevention Act (UAPA) of 1967 which reintroduced elements of earlier anti-terrorism legislation that had been broadly condemned on the grounds that they targeted political dissenters and marginalized groups and engendered “arbitrary arrests, torture, extrajudicial killings and enforced disappearances.”<sup>13</sup> The 2008 amendments to the UAPA “expand the vague and overbroad definition of terrorism under existing Indian law to encompass a wide range of non-violent political activity”, “authorize warrant-less search, seizure and arrest”, “allow detention without charge of up to 180 days”, “create a presumption of guilt for terrorism offenses where certain kinds of inculpatory evidence are found, without showing criminal intent”, and “authorize *in camera* (closed) hearings [that] use secret witnesses.”<sup>14</sup> The amendments also lack provisions guarding against pre-trial torture of detainees<sup>15</sup>, due process guarantees and the presumption of innocence.”<sup>16</sup> In addition, the Armed Forces Special Powers Act (AFSPA) allows military personnel in government specified ‘disturbed areas’ such as Kashmir complete impunity for “arrest without warrant, shoot to kill, and destroy property.”<sup>17</sup>



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MUSLIM COUNCIL**  
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These provisions violate international human rights law<sup>18</sup>, including Articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).<sup>19</sup>

9. Additionally, the 2008 UAPA amendments conflict with the Indian Supreme Court's 1996 DK Basu Guidelines. The 11 DK Basu Guidelines set forth protections for detainees, including the requirement that police officers submit a memo of the arrest signed by the arrestee and a witness, that a friend or relative of the arrestee be informed of the arrest, and that a medical examination of the arrestee be conducted and signed upon arrest and repeated every 48 hours.<sup>20</sup>

### **III. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND: VIOLATIONS OF THE RIGHTS OF MINORITIES**

#### ***A. Right to life, liberty and security of the person***

10. **Extrajudicial executions, including communal attacks and “Encounter Killings”.** In its 2009-2010 Annual Report, the Ministry of Home Affairs of India reported that 826 incidents of communal attacks had occurred in 2009 in which 125 people were killed.<sup>21</sup> Several violent attacks against religious minorities have occurred since 2008. In Karnataka, Hindu nationalist groups attacked several places of worship belonging to minority communities, targeting inter-religious couples in particular.<sup>22</sup> Amnesty International reports that religious violence against Christians has also increased recently. In August of 2009, a local Hindu leader and four associates who campaigned against conversion to Christianity were killed in the state of Orissa, leading to two months of attacks against the Christian population.<sup>23</sup> These attacks resulted in the deaths of 25 people, arson, looting, sexual assault, and the displacement of 15,000.<sup>24</sup>

11. In addition, extrajudicial executions occur in the context of “Encounter Killings” or killings that occur during clashes between security forces and alleged armed suspects.<sup>25</sup> The NHRC reports that since 2006, at least 345 people have been killed by police officers in “encounter killings.”<sup>26</sup> The practice of “encounter killing”, in which police officers “crusade as judge, jury and executioner,” has increasingly shifted from targeting alleged criminals to targeting alleged terrorists.<sup>27</sup>

12. **Fake “Encounter Killings”:** A fake ‘encounter killing’ is an extrajudicial execution by security personnel that is staged in order to appear as if it were an ‘encounter Killing’. In response to activist Afroz Sahil’s Right to Information request, the NHRC stated that 1,224 of the 2,560 ‘encounter killing’ cases between 1993 and 2009 were discovered to be fake.<sup>28</sup> “The police often staged such killings for personal gain: bumping off a rival of a powerful politician in the hopes of a big promotion; killing a crime boss at the behest of one of his rivals; settling scores between businessmen.”<sup>29</sup> Human Rights Watch reported that police officers had been ordered to commit fake “encounter killings”.<sup>30</sup>

13. In 2008, a police raid on the house of two Muslim suspects after the September Delhi bombings resulted in the deaths of both suspects. The conditions surrounding the deaths in the

“Batla House Encounter” provoked intense and widespread public distrust regarding the official account of the killing, which stated that the men had fired on police officers. The Delhi police refused to release the victims’ autopsy reports and the Delhi lieutenant governor refused to order a magisterial investigation on the grounds that an investigation “would weaken the resolve of the police officers to fight against terrorists.”<sup>31</sup> Subsequent independent investigations of the “Batla House Encounter” revealed that the suspects were executed at close range, and possibly made to kneel, and that their bodies showed signs of torture.<sup>32</sup> The NHRC reportedly ignored “its own guidelines that require all killings to be investigated.”<sup>33</sup> In 2009, the Delhi High Court ordered an investigation into the two suspects’ deaths in response to a petition filed by the People’s Union for Democratic Rights, which included “the report[s] of PUDR, the Delhi Union of Journalists, [and] the Jamia Teachers Solidarity Group, all of which seriously questioned the version of the Delhi police regarding the encounter.”<sup>34</sup> The NHRC then “produced a report that exonerated police while relying almost exclusively on the police version of events.”<sup>35</sup> The Batla House Encounter represents an example of the Indian government’s “[tepid] response to complaints involving terrorism suspects.”<sup>36</sup>

14. In another example, **Ishrat Jahan**, a 19 year-old, full-time college student who supported her widowed mother and siblings, was killed in an ‘encounter killing’ along with three companions on the outskirts of Ahmedabad on June 15, 2004. In spite of the lack of evidence,<sup>37</sup> the police claimed that the four were Lashkar (a Pakistan-based terrorist group) operatives on a mission to kill The Chief Minister of Gujarat, Narendra Modi. In 2009, a judicial inquiry used medical and forensic evidence to prove that Ishrat and the others “were shot at point-blank range, much earlier than the police had said,” and that “none of the four had actually fired a gun.” On November 21, 2011, the Special Investigation Team appointed by the Gujarat High Court unanimously concluded in its report that Ishrat Jahan and three others killed in a police encounter that was fake and that the four victims were not killed in the time, place and manner stated in the report filed by the police party involved in the encounter.<sup>38</sup>

15. **Arbitrary Detention:** In many areas of India, individuals are arrested and indefinitely detained without being informed of or charged with their alleged crimes.<sup>39</sup> After a series of bombings in Hyderabad (May and August 2007), Jaipur (May 2008), Ahmedabad (July 2008) and New Delhi (September 2008) killed 152 people, police “brought in scores of Muslim men for questioning and promptly labeled many ‘anti-national’ - implying they were unpatriotic.”<sup>40</sup> After interviews with 160 suspects, their relatives, lawyers, activists and police officers, it was concluded that many of the Muslim suspects were held “for days or even weeks without registering their arrests”, prevented from meeting with legal counsel, beaten, tortured, forced to signed unknown documents and told that police forces would harm their families unless they agreed to comply.<sup>41</sup> In addition, a bombing at a Muslim Cemetery in Malegaon in 2006 led to the arrest, imprisonment and torture of 9 Muslim men. The men were held for four years until “investigations in late 2010 and early 2011 revealed that Hindu extremists are now the lead suspects.”<sup>42</sup>

16. **Torture and Cruel, Inhuman or Degrading Treatment of Terrorism Suspects:** While in custody, many suspects are also subject to torture and ill-treatment.<sup>43</sup> The **Hyderabad Blast Case** illustrates the problems with arbitrary detention, torture, forced confessions and impunity in the name of anti-terrorism. In the aftermath of the Hyderabad bombings (in Mecca Masjid in May 2007 and in Bhandar and Lumbini Park in August 2007), the Andhra Pradesh State Police arrested 20 Muslim men as suspect. The Ravi Chander Commission, charged by the Andhra Pradesh State Minorities Commission with investigating the cases, reported that the men were held without charge for several weeks (without appearing in court within 24 hours as required by law and without notification to families for several days, in spite of the families filing missing persons reports) at illegal detention center, tortured to extract forced confessions of involvement in the Hyderabad bombings.<sup>44</sup> The report's findings were based on interviews with and physical interviews of the detainees while they were held at the Cherapally prison (where the detainees were later transferred). Interviews with the detainees yielded consistent accounts - the suspects were bundled into cars without number-plates, blindfolded and detained without access to family or lawyers in farm houses and private lodges for several days where they were subjected to physical and mental torture (including being stripped naked, severely beaten, administered electric shocks on various parts of their body, including the genitals, deprived of food and water, subjected to abusive language about their women and their faith, and forced them to hail Hindu deities).<sup>45</sup> The courts have since released all men for lack of evidence but, to date, none of the police officers have faced disciplinary action.

17. In 2009, Human Rights Watch analyzed the effectiveness of Indian police forces and documented numerous instances of human rights abuses committed by police officers.<sup>46</sup> The report interviewed more than 80 officers and 60 victims of police officer abuse from "19 police stations in Uttar Pradesh, Karnataka, Himachal Pradesh, and the capital, Delhi."<sup>47</sup> Many officers, acknowledging the illegality of their actions, believe "that unlawful methods, including illegal detention and torture, [are] necessary tactics of crime investigation and law enforcement."<sup>48</sup> Further, police officers interviewed admitted that instead of collecting "forensic evidence and witness statements, tactics considered time-consuming, they held suspects illegally and coerced them to confess, frequently using torture and ill-treatment."<sup>49</sup> The father of a young man detained after the 2008 Ahmedabad bombings described the pressure from police for a false confession: "The policeman said to me, 'Please speak to your son. Tell him that he must give us a few names. Then we will let him go.' But my son told me, 'I cannot give any names wrongfully.' The police said to me, 'Your son's life will be ruined. Tell him to identify some people.'"<sup>50</sup>

18. Marginalized groups, which include "the poor, women, Dalits (the so-called 'untouchables', and religious and sexual minorities", are particularly susceptible to police abuse.<sup>51</sup> Many abuses have clear religious overtones. In September 2009 in Jaipur Central Jail, guards and jail officials allegedly beat a dozen suspects as they prayed on Eid al-Fitr, an important Muslim holiday.<sup>52</sup> A young Muslim professional interrogated by the Delhi Special Cell in 2008 tells of his experience:

"The very first question was: 'Why have you people become anti-national? You people are bloody Pakistanis.' They kept on targeting my religion, actually my beliefs, my practices."<sup>53</sup>

19. **Harassment of whistleblowers, journalists, and lawyers:** Individuals who speak out against the complicity of state administration officials in violence against minorities are subjected to harsh actions aimed at suppressing dissent and discouraging whistleblowers. For example, Indian Police Service Officer (IPS) **Sanjiv Bhatt** provided material information to the Supreme Court-appointed Special Investigation Team examining the anti-Muslim violence in Gujarat in 2002. In his affidavit, Bhatt stated that he was present in the emergency meeting held at Modi's residence on Feb 27, 2002, during which the Chief Minister instructed the state officials to allow the rioting Hindu mobs "to vent their ire"<sup>54</sup> and wanted "Muslims to be taught a lesson".<sup>55</sup> After media reports on his affidavit in August 2011, Bhatt was suspended on grounds that his conduct was unbecoming of a police officer<sup>18</sup>. In October 2011, Bhatt was arrested and kept in detention for seventeen days on charges of fabricating false evidence.<sup>56</sup> While Bhatt was in jail, Gujarat Police repeatedly raided and searched his residence, harassing his family and ransacking his home.<sup>57</sup> Another IPS Officer, **Rahul Sharma**, provided cell phone call records documenting contact between the police, politicians and rioters during the 2002 Gujarat riots to investigators from the Nanavati Commission, the Banerjee Commission and the Supreme Court appointed Special Investigation Team.<sup>58</sup> In August 2011, the Gujarat government issued a chargesheet to Sharma accusing him of gross misconduct and violation of his Service Rules.<sup>59</sup> **R. B. Sreekumar**, the Additional Director General of Police (Intelligence) during the 2002 Gujarat riots, testified before the Nanavati-Shah Commission that the government about the orders given to police during the riots. In retaliation, the Gujarat government denied his promotion to the rank of Director General of Police. Sreekumar took his case to the Central Administrative Tribunal which ruled in his favor and directed his reinstatement even after his retirement, an order that was upheld by the Gujarat High Court.

20. In April 200, **Rajnish Rai** was the Deputy Inspector General of Police, Ahmedabad with responsibility for investigating the fake "encounter killings" of Sohrabuddin Sheikh, his wife and an associate. Based on phone records of three senior police officers, Rai established that the victims were murdered and that both police and political leadership were involved.<sup>60</sup> The three police officers were arrested and remain jailed, but Rai was accused of insubordination and transferred him to a desk job at State Crime Records Bureau.<sup>61</sup> In 2008, he was again transferred to State Reserve Police Training School at Junagadh. The Gujarat administration downgraded Rai's Annual Confidential Report (performance review) which negatively impacted his chances for future promotions; the Central Administrative Tribunal, however, recently quashed the downgrading.<sup>62</sup>

21. **K. K. Shahina** is a reporter with Tehelka, a New Delhi based newsweekly. On December 4<sup>th</sup>, 2010, she wrote an investigative article for the weekly alleging that the Karnataka State Police fabricated testimony from witnesses to justify the arrest and 10 year detention of suspect Abdul Nasar Madani a popular Islamic cleric and political leader from Kerala.<sup>63</sup> Since the

publication of her article, she has been charged with two counts of criminal intimidation of witnesses in connection with the people she interviewed for the article, as well as a third charge under the UAPA.<sup>64</sup>

22. “In the wake of the 2008 attacks, at least seven bar associations in four states issued official or unofficial resolutions instructing members not to represent terrorism suspects.”<sup>65</sup> These resolutions have the dual impact of vitiating the due process rights of the accused, as well as restricting the lawyers’ rights. There have also been reported incidents of physical violence against lawyers. **Shahid Azmi** was a Mumbai-based lawyer who defended more than 50 individuals charged with terrorism. Azmi was murdered in February 2010 by contract killers because of his representation of terrorism suspects.<sup>66</sup> **Naushad Kashmirji**, a prominent lawyer in Mangalore who had successfully represented dozens of Muslim men rounded up by Karnataka police was shot dead on April 9, 2009. Hours prior to his killing, Kashmirji had confided to a colleague that four police officers had threatened him at the district court complex as he finished his arguments on behalf of defendant Rasheed Malbari, saying “If you argue against granting police custody (of Rasheed Malbari), you will have no more arguments in the future.”<sup>67</sup> Further, **Md. Shoab** and **Noor Mohammed** were beaten up in court premises by fellow lawyers<sup>68</sup>; these beatings left Shoab grievously injured and on one occasion he had to be rushed to emergency room at the local hospital.<sup>69</sup> “In other areas of the country, at least eight lawyers who defied bans on defending Muslim terrorism suspects were physically attacked by other lawyers affiliated with nationalist Hindu parties, threatened, or publicly insulted. In most cases, the authorities have taken little if any action against those responsible.”<sup>70</sup> In some instances, authorities actively dissuaded lawyers from filing complaints against their attackers.<sup>71</sup> The problem has become so acute, however, that the Supreme Court had to intervene in early 2011 saying that lawyers could not refuse to defend the accused.<sup>72</sup>

### *B. Administration of justice, including impunity, and the rule of law*

23. **Impunity for police action:** Despite claims to the contrary, military and police personnel guilty of fake ‘encounter killings’ are rarely, if ever, prosecuted.<sup>73</sup> Other examples of the government’s failure to prosecute perpetrators of abuse include the many instances of torture in police custody. (See Batla House Encounter above at paragraph 13 and the Hyderabad Blast Case in paragraph 16 for illustrations of the problems with police impunity.) Further, the Sri Krishna Commission, which was set up to investigate the communal riots of 1992 in Mumbai has still not been implemented. None of the police officer or political leaders indicted by the Commission’s have been punished.<sup>74</sup>

24. **Failure to prosecute human rights perpetrators:** The UN Special Rapporteur on freedom of religion or belief reported in 2009 that the Indian government’s failure to adequately investigate and prosecute individuals and government officials involved in human rights violations. exacerbates the longstanding tension between many of India’s diverse political and religious groups.<sup>75</sup> For example, in 1984, after Prime Minister Indira Gandhi was assassinated by

her Sikh body guards, an organized reprisal resulted in the deaths of roughly 3,000 Sikhs.<sup>76</sup> Additionally, “from 1984 to 1995 the Indian government ordered counterinsurgency operations that led to the arbitrary detention, torture, extrajudicial execution, and enforced disappearance of thousands of Sikhs.”<sup>77</sup> Government officials feigned ignorance while burying and cremating the thousands they had murdered. Since 1996, numerous commissions have sought to investigate the massacre and prosecute those responsible.<sup>78</sup> Mass graves of unidentified Sikhs continue to be discovered and exhumed, including as recently as January of 2011.<sup>79</sup> “Although there is evidence that at least some of the attacks were orchestrated by senior political figures, none have yet been convicted for the 1984 killings.”<sup>80</sup>

### ***C. Economic and Social Discrimination Against Muslims***

25. Muslims in India report discrimination in access to work, housing, and education, as well as poor government response to their complaints.<sup>81</sup> Muslims are often segregated in India and suffer low literacy in addition to high poverty rates.<sup>82</sup> The UN Special Rapporteur on freedom of religion or belief reported problems with access to quality education in Muslim areas, an abysmally low share of Muslims in government employment, and the poor health of many Muslims, particularly women.<sup>83</sup> Although Muslims make up nearly 14 percent of India’s population, they hold fewer than 5 percent of government posts and constitute about 4 percent of the total student body at India’s top universities.<sup>84</sup>

26. Housing discrimination has become a significant problem in India, particularly since the Mumbai bombings. Muslims from Azamgarh, home of one of the alleged terrorists behind the 2008 bombings, reported particularly strong discrimination and harassment. As Azamgarh Tariq Shafiq testified, “We constantly receive calls and warning to dissuade us from our activities. If anyone from Azamgarh wants to take a room on rent at places or cities like Delhi, on telling their identity, owners refuse to give room to them.”<sup>85</sup> Even popular Muslim Bollywood actors and producers found it difficult to find decent housing in Mumbai.<sup>86</sup> Upon discovering their Muslim identity, landlords deny Muslim individuals rooms and real estate brokers show apartments mainly in impoverished “Muslim-dominated ghettos.”<sup>87</sup> This troubling phenomenon has been called “renting while Muslim.”<sup>88</sup> The religious discrimination many Muslims face directly impacts their enjoyment of important economic and social rights.

### ***D. Negative impact of religious conversion laws on right to religion***

27. Religious minorities have also faced violence and discrimination due to the laws and bills on religious conversion in the Indian states of Orissa, Madhya Pradesh, Chhattisgarh, Gujarat, and Himachal Pradesh.<sup>89</sup> Although these “Freedom of Religion Acts” seem to protect the population from coerced conversion or conversion by improper means, they fail to clearly define an “improper conversion.”<sup>90</sup> The lack of clarity gives the authorities the power to accept or reject the legitimacy of a conversion.<sup>91</sup> The UN Special Rapporteur on freedom of religion or belief has reported that these laws have had adverse consequences for religious minorities and have even sparked violence against them.<sup>92</sup>



#### IV. RECOMMENDATIONS

28. The organizations making this submission welcome India's stated commitment to promote human rights, and to provide security and protection of minorities. India must, however, strengthen its legislation, increase accountability of its security forces and implement effective measures to address issues of religious bias and discrimination against its Muslim minority. Towards that end, we make the following specific recommendations:

#### 29. Changes to Domestic Legislation

- Revise the overly broad definition of "terrorism" under the Unlawful Activities Prevention Act (UAPA) to be consistent with international law and the recommendations of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.<sup>93</sup>
- Repeal provisions of UAPA contrary to international law, including expanded police powers of search and seizure, the presumption of guilt under certain circumstances, and the doubling of the maximum pre-trial detention period for terror suspects to 180 days, of which 30 days may be in police custody and the rest in judicial custody.
- Sign into law criminal procedure amendments passed by Parliament in 2010 that would require the police to record a formal reason under law for making a warrantless arrest.
- Codify the full set of guidelines for police officers making arrests that are contained in the landmark 1997 Supreme Court D.K. Basu case, and consider expanding them to apply to the police and other detaining authorities in circumstances outside a formal arrest to prevent torture and ill treatment.

#### 30. Reform of the National Human Rights Commission

- Require state human rights commissions to report back to the NHRC on actions taken on complaints the NHRC forwards to them for review.
- Make the NHRC guidelines legally binding and require prompt action on NHRC guidelines to investigate "encounter killings"
- Reduce politicization of the NHRC by requiring a transparent appointments process that includes public hearings and participation from civil society groups.
- Empower the NHRC to independently investigate "encounter killings" and to incorporate the involvement of civilians with expertise on these issues,.
- End the NHRC practice of using serving or retired police officers on investigative teams.

#### 31. Standards of Treatment of Prisoners/Law Enforcement Actions

The government of India should ensure that officials responsible for apprehension, arrest, detention, custody and imprisonment follow the international standards set forth in the UN Basic Minimum Standards on Treatment of Prisoners, the UN Code of Conduct for Law Enforcement Officials and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. In particular, the government of India should follow international human rights standards regarding:

- Arrest, including clear identification of law enforcement officials and official documentation of the arrest.<sup>94</sup>
- Access to family and legal counsel.<sup>95</sup>
- Examination upon admission to and regularly during detention.<sup>96</sup>
- Prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions.<sup>97</sup>
- Monitoring of all counterterrorism operations to ensure that respect for human rights.

### 32. **Rehabilitation of Victims**<sup>98</sup>

- Provide individuals who have been wrongfully accused and subsequently acquitted with a certificate of character to enable them to return to a normal life free from the suspicion of being criminally inclined.
- Victims of illegal detention and torture should be provided rehabilitation through employment commensurate with their qualifications. Adequate financial compensation must be paid to such victims and to the family of those killed in fake “encounter killings”.

### 33. **Addressing Accountability and Impunity**

- Investigate all allegations of human rights violations during counterterrorism operations, including in faked encounter killings and other extrajudicial executions, and appropriately discipline or prosecute those found responsible.
- Failure to comply with the procedures shall render the police officer liable for departmental action, and also liable to be punished for contempt of court.
- Launch independent, impartial, and transparent investigations into allegations of faked “encounter killings,” including the Batla House Encounter in New Delhi.
- Release a comprehensive white paper on the problem of “encounter killings”.<sup>99</sup>
- Investigate and prosecute government officials, political leaders, and others who incite religious violence.

### 34. **Rights in the administration of justice**

- Call on national and state bar association to rescind resolutions banning lawyers from defending terrorism suspects and promptly take disciplinary actions against members who threaten or harass lawyers defending terrorism suspects.
- No functionary of the state, such as Lt. Governor, Governor or elected representative should be allowed to overrule the procedure of a magisterial probe.

### 35. **Public Education and training**

- Initiate a public campaign to end discrimination on the basis of religion.
- Ensure that police training in counterterrorism operations includes respecting due process, nondiscrimination, and humane treatment.



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## ANNEXES

- **‘Encounter’ at Batla House: Unanswered Questions (2009).** Report published by Jamia Teachers’ Solidarity Association documenting the killing of two young Muslim men during the “Batla House Encounter” and highlighting the serious problems with the investigation of the case, resulting in police impunity. Accessible at <http://www.teacherssolidarity.org/pdf/JTSG%20REPORT.pdf>
- **Cases of Harassment of Lawyers, Whistleblowers and Journalist (November 2009).** Report by the Indian American Muslim Council with details on the cases of targeting, harassment and killing of lawyers representing Muslim terrorism suspects, law enforcement whistleblowers, journalists and other human rights defenders and social justice activists. Accessible at [www.iamc.org](http://www.iamc.org).

## ENDNOTES

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- <sup>1</sup> Jamia Teachers' Solidarity Association is a democratic rights group of university teachers in New Delhi, India. It was formed in 2008, just days after two young men were shot dead by the police which alleged that the two were dreaded terrorists. Originally called the Jamia Teachers' Solidarity Group, it has since its formation run a vigorous campaign against extra judicial killings and frame-ups, organized legal aid, conducted fact findings and built alliances with numerous civil rights organizations. Jamia Teachers' Solidarity Association, 109-D, Pocket -A, DDA Flats, Sukhdev Vihar, New Delhi-110025 [info.jtsa@gmail.com](mailto:info.jtsa@gmail.com) www. [teacherssolidarity.org](http://www.teacherssolidarity.org).
- <sup>2</sup>United States Commission on International Religious Freedom, *2011 Annual Report* (May 2011), Pages 243-253, found at <http://www.uscifr.gov/images/book%20with%20cover%20for%20web.pdf>.
- <sup>3</sup> United States Commission on International Religious Freedom, *2011 Annual Report* (May 2011), Page 45, found at <http://www.uscifr.gov/images/book%20with%20cover%20for%20web.pdf>. The United States Commission on International Religious Freedom (USCIRF) included India on its "Watch List" in its latest annual report.
- <sup>4</sup> International Covenant on Civil and Political Rights (entered into force 1976). Available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) (last visited 16 November 2011).
- <sup>5</sup> International Covenant on Economic, Social and Cultural Rights (entered into force 1979). Available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en) (last visited 22 November 2011).
- <sup>6</sup> Convention on the Elimination of All Forms of Discrimination against Women, (entered into force 1993), Available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) (last visited 22 November 2011).
- <sup>7</sup> International Covenant on the Elimination of All Forms of Racial Discrimination (entered into force 1968), Available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en) (last visited 22 November 2011).
- <sup>8</sup> Convention on the Rights of the Child (entered into force 1992), Available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) (last visited 22 November 2011).
- <sup>9</sup> National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution, Para 15, found at [http://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=13940](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=13940)
- <sup>10</sup> The Constitution of India, Article 22, found at <http://lawmin.nic.in/coi/coiason29july08.pdf>
- <sup>11</sup> National Commission for Minorities, *Genesis of NCM*, found at [http://ncm.nic.in/Genesis\\_of\\_NCM.html](http://ncm.nic.in/Genesis_of_NCM.html)
- <sup>12</sup> Notably, the government has failed to pass The Communal and Targeted Violence Bill of 2011, legislation that would increase the "accountability of public officials", enhance the "rights of victims and [provide] uniform standards for the affected in case of communal violence"(The Pioneer, *Government didn't defend communal violence bill draft: NAC member* (October 2011) found at <http://www.dailypioneer.com/pioneer-news/top-story/13168-government-didnt-defend-communal-violence-bill-draft-nac-member.html>) and make "public officials legally answerable to the people for their acts—and failures to act—which lead to the brutal and criminal loss of innocent lives." (Business Standard, *'Public accountability is at the heart of the NAC draft bill'* (October 2011), found at <http://www.business-standard.com/india/news/%5Cpublic-accountability-is-atheartthe-nac-draft-bill%5C/453398/>) The future of the 2011 Communal and Targeted Violence Bill remains uncertain.
- <sup>13</sup> The Terrorist and Disruptive Activities Prevention Act was permitted to expire in 1995 and the Prevention of Terrorism Act of 2002 was repealed in 2004 Human Rights Watch, *Back to the Future: India's 2008 Counterterrorism Laws* (July 2010), Pg. 1, found at [http://www.hrw.org/sites/default/files/reports/india0710webwcover\\_1.pdf](http://www.hrw.org/sites/default/files/reports/india0710webwcover_1.pdf)
- <sup>14</sup> Human Rights Watch, *Back to the Future: India's 2008 Counterterrorism Laws* (July 2010), Pg. 2, found at [http://www.hrw.org/sites/default/files/reports/india0710webwcover\\_1.pdf](http://www.hrw.org/sites/default/files/reports/india0710webwcover_1.pdf)

<sup>15</sup> Amnesty International, *India: New anti-terror laws must meet international human rights standards* (18 December 2008), found at <http://www-secure.amnesty.org/en/library/asset/ASA20/031/2008/en/fe8bab12-cdba-11dd-b0c5-1f8db3691f48/asa200312008en.html>

<sup>16</sup> See, e.g., “the court shall presume, unless the contrary is shown, that the accused has committed such offence Section 43E of the UAPA, under sec. 12 of the Amendment Bill, 2008.

<sup>17</sup> Human Rights Watch, *India: Repeal Immunity Law Fueling Kashmir Violence* (September 2010), found at <http://www.hrw.org/news/2010/09/17/india-repeal-immunity-law-fueling-kashmir-violence>. See also, Amnesty International, *India: Parliamentarians Must Repeal the Armed Forces (Special Powers) Act* (December 2009).

<sup>18</sup> Amnesty International, *India: New anti-terror laws must meet international human rights standards* (18 December 2008), found at <http://www-secure.amnesty.org/en/library/asset/ASA20/031/2008/en/fe8bab12-cdba-11dd-b0c5-1f8db3691f48/asa200312008en.html>

<sup>19</sup> International Covenant on Civil and Political Rights, found at <http://www2.ohchr.org/english/law/ccpr.htm>. Art. 9(1) “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.”, Art. 9(2) “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”; Art. 9(3) “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge.” Art. 14(2): Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.”

<sup>20</sup> See Asian Legal Resource Centre, *SHRI D.K. BASU v State of West Bengal*, found at [http://www.alrc.net/doc/mainfile.php/cl\\_india/143/](http://www.alrc.net/doc/mainfile.php/cl_india/143/). See also Ludhiana Police, *DK Basu Guidelines*, found at <http://ludhianapolice.in/CustomPages/dkbasuguidelines.aspx>

<sup>21</sup> United States Department of State, *International Religious Freedom Report 2010: India* (17 November 2010), available at <http://www.state.gov/g/drl/rls/irf/2010/148792.htm>.

<sup>22</sup> Amnesty International, *Human Rights in the Republic of India* (2010), available at <http://www.amnesty.org/en/region/india/report-2010>.

<sup>23</sup> Amnesty International, *Human Rights in the Republic of India* (2009), available at <http://www.amnesty.org/en/region/india/report-2009>.

<sup>24</sup> Amnesty International, *Human Rights in the Republic of India* (2009), available at <http://www.amnesty.org/en/region/india/report-2009>. The attacks continued even in the two camps for the displaced. *Id.*

<sup>25</sup> Human Rights Watch, *India: Impunity Fuels Conflict in Jammu and Kashmir* (September 2006), found at <http://www.hrw.org/news/2006/09/11/india-impunity-fuels-conflict-jammu-and-kashmir>

<sup>26</sup> National Human Rights Commission <http://nhrc.nic.in/>

<sup>27</sup> New York Times, *Questions on Executions Mount in India* (October 2009), found at <http://www.nytimes.com/2009/10/04/world/asia/04ahmedabad.html?pagewanted=all>. “In cities like Mumbai, which was for decades gripped by violent organized crime syndicates, officers who killed notorious gangland figures were often seen as dark fold heroes, selflessly carrying out the messy business of meting out justice.” Many officers even bragged about the number of criminals they had killed. *Id.*

<sup>28</sup> Hindustantimes, *Half of encounters fake, says NHRC* (March 2010), found at <http://www.hindustantimes.com/India-news/NewDelhi/Half-of-encounters-fake-says-NHRC/Article1-523361.aspx>  
Only sixteen of the total 1,224 faked encounters have been granted compensation by the NHRC

<sup>29</sup> New York Times, *Questions on Executions Mount in India* (October 2009), found at <http://www.nytimes.com/2009/10/04/world/asia/04ahmedabad.html?pagewanted=all>

<sup>30</sup> Found at <http://www.hrw.org/news/2009/07/29/india-overhaul-abusive-failing-police-system>

<sup>31</sup> Human Rights Watch, *The “Anti-Nationals”* (Feb 2011), found at <http://www.hrw.org/node/95609/section/3>

<sup>32</sup> Frontline, *Fake Justice* (October 2009), found at <http://hindu.com/fline/fl2620/stories/20091009262002000.htm>

<sup>33</sup> Human Rights Watch, *India: Overhaul Abusive Counterterrorism Tactics* (Feb 2011), found at <http://www.hrw.org/news/2011/02/02/india-overhaul-abusive-counterterrorism-tactics>

<sup>34</sup> Outlook India, *Unanswered Questions* (July 2009), found at <http://www.outlookindia.com/article.aspx?260092>

<sup>35</sup> Human Rights Watch, *India: Overhaul Abusive Counterterrorism Tactics* (Feb 2011), found at <http://www.hrw.org/news/2011/02/02/india-overhaul-abusive-counterterrorism-tactics>. Additionally, “the NHRC is currently required to report to the Ministry of Home Affairs, the same governmental department responsible for immigration, communal harmony, the Armed Special Forces Act, assistance to victims of terrorist violence, border management, and, most notably, internal security-including police and other law and order officials. AiNNI, *An NGO Report on the Compliance with the Paris Principles by the National Human Rights Commission of India*, Page 8, found at [http://www.peopleswatch.org/documents/HRD/NGO%20Report\\_Paris%20Principles\\_NHRC\\_India.pdf](http://www.peopleswatch.org/documents/HRD/NGO%20Report_Paris%20Principles_NHRC_India.pdf). The NHRC has faced increasing criticism for its alleged failure to effectively address many of the human rights violations perpetrated by representatives of the Indian government. In light of the alleged inadequacies of the NHRC, the United Nations recently considered downgrading its status “from a participant (A Status) to an observer (B status). The Times of India, *UN may downgrade NHRC status (23 May 2011)*, found at [http://articles.timesofindia.indiatimes.com/2011-05-23/india/29574012\\_1\\_nhrc-chairman-national-human-rights-commission-paris-principles](http://articles.timesofindia.indiatimes.com/2011-05-23/india/29574012_1_nhrc-chairman-national-human-rights-commission-paris-principles).

<sup>36</sup> Human Rights Watch, *India: Overhaul Abusive Counterterrorism Tactics* (Feb 2011), found at <http://www.hrw.org/news/2011/02/02/india-overhaul-abusive-counterterrorism-tactics>

<sup>37</sup> New York Times, *Questions on Executions Mount in India* (October 4, 2009), found at <http://www.nytimes.com/2009/10/04/world/asia/04ahmedabad.html?pagewanted=all>

<sup>38</sup> *Israt Jahan Encounter Fake: SIT*, Outlook India (November 21, 2011) found at <http://news.outlookindia.com/items.aspx?artid=742081>.

<sup>39</sup> In areas designated as ‘disturbed areas’ under the Public Safety Act, individuals may be jailed for up to two years, though state officials often contravene this provision in order to hold individuals for longer than lawfully warranted. Journalist, politicians, activists, lawyers and even children are frequently detained. Nazir Ahmed Bangay, for example, was arrested and unlawfully held simply as a result of allegations that he joined the banned Hizbul Mujahidin militant group. Instead of charging those guilty of offenses in Jammu and Kashmir, officials simply imprison individuals using the authority of the PSA. Most of those detained were “initially picked up for ‘unofficial’ interrogation, during which time they [had] no access to a lawyer or their families”. According to “one high-ranking Jammu and Kashmir official”, the authorities use the PSA to keep people “‘out of circulation’.” Under the PSA, Jammu and Kashmir have detained between 8,000 and 20,000 individuals over the past twenty years. Amnesty International research data showed the enforcement of the PSA to be an arbitrary abuse of power and “the Indian Supreme Court has described administrative detention, including the PSA, as a ‘lawless law’.”

<sup>40</sup> Human Rights Watch, *India: Overhaul Abusive Counterterrorism Tactics* (Feb 2011), found at <http://www.hrw.org/news/2011/02/02/india-overhaul-abusive-counterterrorism-tactics>

<sup>41</sup> Human Rights Watch, *India: Overhaul Abusive Counterterrorism Tactics* (Feb 2011), found at <http://www.hrw.org/news/2011/02/02/india-overhaul-abusive-counterterrorism-tactics>

<sup>42</sup> Human Rights Watch, *India: Overhaul Abusive Counterterrorism Tactics* (Feb 2011), found at <http://www.hrw.org/news/2011/02/02/india-overhaul-abusive-counterterrorism-tactics>

<sup>43</sup> While abuses happen throughout the country, Human Rights Watch has identified the Ahmedabad Crime Branch of the Gujarat state police as the location of some of the worst abuses. Here, suspects testify that they were “blindfolded and shackled with their arms crossed over their knees from morning to night.” Suspects also claimed to have been denied proper food and water and some were tortured with electric shocks. Human Rights Watch, *Anti-Nationals: Arbitrary Detention and Torture of Terrorism Suspects in India* (February 2011), p. 4. Available at <http://www.hrw.org/sites/default/files/reports/india0211W.pdf>.

<sup>44</sup> Ravi Chander Commission Report, submitted to Andhra Pradesh Minorities Commission (October 2008). [http://www.twocircles.net/files/report\\_ravi\\_chander.pdf](http://www.twocircles.net/files/report_ravi_chander.pdf). See also Report by the Fact Finding Commission appointed by the National Commission for Minorities, found at <http://ncm.nic.in/pdf/Hyderabad%20report.pdf>; Report by the Fact Finding Committee to conduct an independent assessment of the Hyderabad Torture cases. This report is archived here: [http://www.indianmuslims.info/reports\\_about\\_indian\\_muslims/hyderabad\\_blast\\_report\\_arrests\\_detention\\_muslim\\_youths.html](http://www.indianmuslims.info/reports_about_indian_muslims/hyderabad_blast_report_arrests_detention_muslim_youths.html)

<sup>45</sup> Id.

<sup>46</sup> Human Rights Watch, *India: Overhaul Abusive, Failing Police System* (August 2009), found at <http://www.hrw.org/news/2009/07/29/india-overhaul-abusive-failing-police-system#SelectedAccounts>

<sup>47</sup> Human Rights Watch, *India: Overhaul Abusive, Failing Police System* (August 2009), found at <http://www.hrw.org/news/2009/07/29/india-overhaul-abusive-failing-police-system#SelectedAccounts>

<sup>48</sup> Human Rights Watch, *India: Overhaul Abusive, Failing Police System* (August 2009), found at <http://www.hrw.org/news/2009/07/29/india-overhaul-abusive-failing-police-system#SelectedAccounts>

<sup>49</sup> Human Rights Watch, *India: Overhaul Abusive, Failing Police System* (August 2009), found at <http://www.hrw.org/news/2009/07/29/india-overhaul-abusive-failing-police-system#SelectedAccounts>

<sup>50</sup> Human Rights Watch, *India: Overhaul Abusive Counterterrorism Tactics* (Feb 2011), found at <http://www.hrw.org/news/2011/02/02/india-overhaul-abusive-counterterrorism-tactics>

<sup>51</sup> Human Rights Watch, *India: Overhaul Abusive, Failing Police System* (August 2009), found at <http://www.hrw.org/news/2009/07/29/india-overhaul-abusive-failing-police-system#SelectedAccounts>

<sup>52</sup> Human Rights Watch, *Anti-Nationals: Arbitrary Detention and Torture of Terrorism Suspects in India* (February 2011), p. 7. Available at <http://www.hrw.org/sites/default/files/reports/india0211W.pdf>.

<sup>53</sup> Human Rights Watch, *India: Overhaul Abusive Counterterrorism Tactics* (Feb 2011), found at <http://www.hrw.org/news/2011/02/02/india-overhaul-abusive-counterterrorism-tactics>

<sup>54</sup> <http://iamc.com/press-release/iamc-decries-gujarat-governments-misguided-witch-hunt-in-arresting-whistleblower-ips-officer-sanjiv-bhatt/>

<sup>55</sup> NDTV, *Gujarat police officer Sanjiv Bhatt's affidavit* (April 2011), found at <http://www.ndtv.com/article/india/gujarat-police-officer-sanjiv-bhatt-s-affidavit-100775>. Bhatt has further disclosed that as the then intelligence officer, he informed Modi about the impending attack on Gulberg Society apartments and requested police protection for its residents. However Modi not only ignored the information, but also asked the Gujarat police officials to ignore calls from Muslims for help during the riots. IBN Live India, *IPS officer Sanjiv Bhatt suspended by Guj govt* (Aug 2011), found at <http://ibnlive.in.com/news/ips-officer-sanjeev-bhatt-suspended-by-guj-govt/174085-3.html>

<sup>56</sup> IBN Live India, *IPS officer Sanjeev Bhatt suspended by Guj govt* (Aug 2011), found at <http://ibnlive.in.com/news/ips-officer-sanjeev-bhatt-suspended-by-guj-govt/174085-3.html>

<sup>57</sup> IAMC, *IAMC decries Gujarat government's misguided witch-hunt in arresting whistleblower IPS officer Sanjiv Bhatt* (October 2011), found at <http://iamc.com/press-release/iamc-decries-gujarat-governments-misguided-witch-hunt-in-arresting-whistleblower-ips-officer-sanjiv-bhatt/>

<sup>58</sup> *Guj riots: Top cop Rahul Sharma chargesheeted for 'misconduct'* <http://www.indianexpress.com/news/guj-riots-top-cop-rahul-sharma-chargesheeted-for-misconduct/831527/0>

<sup>59</sup> *Gujarat govt targets another IPS officer* <http://ibnlive.in.com/news/gujarat-govt-targets-another-ips-officer/175473-3.html>

<sup>60</sup> *Narendra Modi govt on its knees before Rajnish Rai* [http://articles.timesofindia.indiatimes.com/2011-09-10/ahmedabad/30138946\\_1\\_fake-encounter-rajnish-rai-rajkumar-pandian](http://articles.timesofindia.indiatimes.com/2011-09-10/ahmedabad/30138946_1_fake-encounter-rajnish-rai-rajkumar-pandian)

<sup>61</sup> *Downgrading of Gujarat IPS officer's ACR quashed* <http://www.thehindu.com/news/states/other-states/article1718622.ece>

<sup>62</sup> Id.

<sup>63</sup> *Why is this man still in prison?* [http://www.tehelka.com/story\\_main48.asp?filename=Ne041210Why\\_is\\_this.asp](http://www.tehelka.com/story_main48.asp?filename=Ne041210Why_is_this.asp)

<sup>64</sup> *Police in India must drop charges against Tehelka reporter* <http://www.newswatch.in/violation/police-in-india-must-drop-charges-against-tehelka-reporter.html>

<sup>65</sup> Human Rights Watch, *The "Anti-Nationals"* (Feb 2011), found at <http://www.hrw.org/node/95609/section/10>. See also [http://articles.timesofindia.indiatimes.com/2009-01-26/jaipur/28053471\\_1\\_serial-blasts-bar-associations-lawyers](http://articles.timesofindia.indiatimes.com/2009-01-26/jaipur/28053471_1_serial-blasts-bar-associations-lawyers).

<sup>66</sup> *Advocate Shahid Azmi shot dead in Mumbai:* [http://twocircles.net/2010feb11/adv\\_shahid\\_azmi\\_shot\\_dead\\_mumbai.html](http://twocircles.net/2010feb11/adv_shahid_azmi_shot_dead_mumbai.html)

<sup>67</sup> Four police officers accused of murdering Mangalore lawyer

<http://www.hindu.com/2009/04/11/stories/2009041150190100.htm>

<sup>68</sup> War against terror and the new lawlessness <http://www.pragoti.in/node/2145>

<sup>69</sup> Interview with Muhammad Shoaib in documentary film Out of Court Settlement

<sup>70</sup> Human Rights Watch, *The "Anti-Nationals"* (Feb 2011), found at <http://www.hrw.org/node/95609/section/10>

<sup>71</sup> Human Rights Watch, *The "Anti-Nationals"* (Feb 2011), found at <http://www.hrw.org/node/95609/section/10>

<sup>72</sup> Lawyers can't refuse to defend accused, Tax Guru (Feb. 28, 2011) found at <http://taxguru.in/general-info/lawyers-refuse-defend-accused-sc.html>.

<sup>73</sup> Human Rights Watch, India: Prosecute Soldiers in Kashmir 'Encounter Killing' (June 2010), found at <http://www.hrw.org/news/2010/06/07/india-prosecute-soldiers-kashmir-encounter-killing>

<sup>74</sup> See e.g., <http://www.sabrang.com/srikrish/sri%20main.htm>

<sup>75</sup> Report of Special Rapporteur on freedom of religion or belief, found at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/104/62/PDF/G0910462.pdf?OpenElement>

<sup>76</sup> "Gangs of assailants burned Sikhs alive, raped women, and destroyed their *gurdwaras* and properties." Human Rights Watch, *Protecting the Killers* (October 2007), Pg 4, found at Section <http://www.hrw.org/node/10644/section/4>

<sup>77</sup> Human Rights Watch, *Protecting the Killers* (October 2007), Pg 2, found at Section <http://www.hrw.org/node/10644/section/4>

<sup>78</sup> The National Human Rights Commission's investigation focused solely on testimony and evidence from the "Punjab police, the perpetrators of the" mass cremations, and refused to "independently investigate a single abuse or allow a single victim family to testify". Further, the NHRC "has refused to consider mass cremations, extrajudicial executions, and "disappearances" throughout the rest of the state, despite evidence that these crimes were perpetrated. Human Rights Watch, *Protecting the Killers* (October 2007), Pg 2, found at Section <http://www.hrw.org/node/10644/section/4>

<sup>79</sup> Human Rights Watch, *India: Bring Charges for Newly Discovered Massacre of Sikhs* (April 2011), found at <http://www.hrw.org/news/2011/04/25/india-bring-charges-newly-discovered-massacre-sikhs>

<sup>80</sup> Human Rights Watch, *India: Bring Charges for Newly Discovered Massacre of Sikhs* (April 2011), found at <http://www.hrw.org/news/2011/04/25/india-bring-charges-newly-discovered-massacre-sikhs>

<sup>81</sup> United States Department of State, Country Reports on Human Rights Practices 2009: India (11 March 2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136087.htm>.

<sup>82</sup> The Washington Post, "India's Muslims See Bias in Housing," 19 April 2009. available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/18/AR2009041800792.html>.

<sup>83</sup> United Nations Special Rapporteur Asma Jahangir, On Freedom of Religion or Belief (26 January 2009), p. 10. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/104/62/PDF/G0910462.pdf?OpenElement>

<sup>84</sup> The Washington Post, "India's Muslims See Bias in Housing," 19 April 2009. available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/18/AR2009041800792.html>.

<sup>85</sup> Act Now for Democracy and Harmony, What it Means to be Muslim in India Today: A Combined Report of People's Tribunal on the Atrocities Committed Against Minorities in the Name of Fighting Terrorism and the National Meet on the Status of Muslims in Contemporary India (2011), p. 29.

<sup>86</sup> The Washington Post, "India's Muslims See Bias in Housing," 19 April 2009. available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/18/AR2009041800792.html>.

<sup>87</sup> The Washington Post, "India's Muslims See Bias in Housing," 19 April 2009. available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/18/AR2009041800792.html>.

<sup>88</sup> The Washington Post, "India's Muslims See Bias in Housing," 19 April 2009. available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/18/AR2009041800792.html>.

<sup>89</sup> United Nations Special Rapporteur Asma Jahangir, On Freedom of Religion or Belief (26 January 2009), p. 16. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/104/62/PDF/G0910462.pdf?OpenElement>



<sup>90</sup> United Nations Special Rapporteur Asma Jahangir, On Freedom of Religion or Belief (26 January 2009), p. 17. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/104/62/PDF/G0910462.pdf?OpenElement>

<sup>91</sup> United Nations Special Rapporteur Asma Jahangir, On Freedom of Religion or Belief (26 January 2009), p. 17. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/104/62/PDF/G0910462.pdf?OpenElement>

<sup>92</sup> United Nations Special Rapporteur Asma Jahangir, On Freedom of Religion or Belief (26 January 2009), p. 17. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/104/62/PDF/G0910462.pdf?OpenElement>

<sup>93</sup> See UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Definition of “terrorism” should cover only those acts that are committed with the intention of causing death or serious injury; are committed for the purpose of provoking terror or coercing the government to do or refrain from doing any act. See UN Special Rapporteur report on defining terrorism <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/168/84/PDF/G0516884.pdf?OpenElement>

<sup>94</sup> The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register maintained at the local police station. The police officer carrying out the arrest shall prepare a memo of the arrest at the time of the arrest, and such memo shall be attested by at least one witness, who may be either a family member of the arrestee or a respectable person of the locality where the arrest is made. It shall also be counter signed by the arrestee and shall contain the date and time of arrest. Copies of all documents including the memo of arrest should be sent to district Magistrate for record keeping. A police control room should be provided at all district and state headquarters, where information regarding the arrest shall be communicated by the officer making the arrest within 12 hours of arrest. The police control room must prominently display the information on a notice board.

<sup>95</sup> A person who has been arrested or detained shall be entitled to have a friend or a relative being informed about the arrest or detention as soon as practical. The person arrested or detained must be made aware of this right to inform a friend or a relative. The arrestee must be permitted to meet with his/her lawyer during the interrogation.

<sup>96</sup> The arrestee should be examined at the time of the arrest and any major or minor injuries on the body must be recorded. The “Inspection Memo” must be signed both by the arrestee and the police officer making the arrest, and its copy provided to arrestee. The arrestee should be subjected to medical examination by a trained doctor every 48 hours while in detention. The examination must be conducted by a doctor on the panel of approved doctors appointed by the Director, Health Services of the concerned State.

<sup>97</sup> Post mortem reports of those killed in encounter killings must be made available to the public on demand. The Post mortems of those killed in the encounter killings must be compulsorily videographed.

<sup>98</sup> See UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, C.H.R. res. 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.11 (19 April 2005).

<sup>99</sup> The white paper should include information about: the total number of encounter killings across the country; the number in which NHRC guidelines were followed; the number and details of those encounter killings against which there are allegations that the police did not act in self defense; the number of encounter killings found to be false by either courts/ magisterial/ judicial probes; action taken against police officers found to be involved in fake encounters.