

## *Human Rights Defenders Alert - India*

National Coordination Office  
No.6, Vallabhai Road, Chokkikulam, Madurai 625 002, Tamil Nadu, INDIA  
Tel: +91-452-2539520 Cell Phone: +91-9994368540 Email:hrda.india@gmail.com

**May 15, 2011**

Special Rapporteur on the situation of human rights defenders,  
Mrs. Margaret Sekaggya  
c/o Office of the High Commissioner for Human Rights – Palais Wilson  
United Nations Office at Geneva  
CH 1211 Geneva 10  
Switzerland  
Email: [urgent-action@ohchr.org](mailto:urgent-action@ohchr.org)

Dear Ma'am,

**Sub: HRD Alert - India - Urgent Appeal for Action – Continued persecution of Teesta Setalvad and other human rights defenders fighting for justice in the Gujarat riots cases - Reg**

Greetings from Human Rights Defenders Alert - India!

HRD Alert - India is a Forum of Human Rights Defenders for Human Rights Defenders. It endeavours to initiate actions on behalf of Human Rights Defenders under threat or with security concerns.

We are now writing to express our grave concern at the continued persecution of human rights defender Teesta Setalvad, Secretary, Citizens for Justice and Peace (CJP). Further, Advocate Sohail Tirmizi, and several other human rights campaigners are also being harassed. These people have been in the forefront of the struggle to secure justice for the victims of the 2002 Gujarat riots. Ms. Teesta Setalvad is a human rights activist and journalist for the victims of human rights abuses. Her efforts to secure justice and dignity for the poor and dispossessed are a source of inspiration for upcoming human rights proponents. Instead of awarding her a high place of honor in society, the divisive elements are now attempting to stifle her voice, by organizing an intimidatory and malicious campaign.

### **Background Facts**

The attack against Teesta Setalvad is four pronged - all aimed at threatening her personal liberty through arrest, a widespread disinformation and malicious campaign

to affect the process of justice, aimed at distracting her from the demands of the struggle.

Most serious and imminent is the harassment Setalvad is facing by being falsely implicated in the Pandharwada Mass Graves case by arraigning her as absconding accused five years after distraught survivors claimed bodies of their near and dear ones and moved the Courts to establish their identity. A detailed note on this is attached below. There is a strong possibility that the Gujarat Police may try to stage an arrest of Teesta Setalvad on false grounds in the **Pandharwada Mass Graves Case soon.**

Setalvad is also being harassed in four separate criminal investigations, one to do with the ongoing criminal trials in Naroda Gaam and Sardarpura, in which she and her organisation have been giving consistent legal aid to the witnesses and victims; the third is a Crime Branch related Inquiry spearheaded by a former employee who is believed to have been won over by top level BJP functionaries and now the Yasmeen Shaikh affidavit in the Bombay High Court. Details of all these attempts are also explained below.

Ironically the core and substance of the false allegations being levelled today have been since the genocidal carnage of 2002 made by an unrepentant Gujarat government. Absent is any concern for the lives lost or justice processes subverted or perverted. While persons making the allegations have changed, the allegations have remained the same. Since September 2010, the agency for dissemination of this malicious campaign has been a former employee who was asked to leave CJP after financial irregularities were suspected in January 2008. The allegations made by him twenty months after being disassociated with CJP have been widely publicized by *The Pioneer*, edited by the BJP's Member of Parliament Chandan Mitra.

The patently false allegations of doctoring evidence are being orchestrated at a time when crucial trials are nearing completion and accused among whom are powerful politicians and policemen face charges of criminal conspiracy and murder. What is at stake is the conviction of over 350 accused in the nine major trials (Gulberg, Sardarpura, Odh, Naroda Patiya, Naroda Gaam) that are underway some nearing completion. Despite the threat of intimidation and repression, eye witnesses and survivors have deposed without fear in Gujarat Courts facing a hostile police and

court atmosphere, standing by the contents of their affidavits filed through the CJP in the Supreme Court of India. At the heart of this sustained and malicious campaign is a calculated and cynical desire by the Gujarat state to derail the course of justice being monitored by the apex court and ensure the acquittal of these accused, many of whom are functionaries of the BJP, VHP and Bajrang Dal and also policemen and administrators. It is an unfortunate fact that the SIT (Special Investigation Team) appointed for the purpose of further investigation into these cases has sided, for the most part with the arguments of the Gujarat State.

The timing of the malafide allegations are also aimed attacking the individual and group responsible for sustaining the criminal investigation currently afoot against the chief minister Narendra Modi and 61 others. Over the past few months, the apex court has passed orders directing the Amicus Curiae to see if an offence of conspiracy to commit mass murder and destroy evidence has been made out against the accused chief minister Narendra Modi and others. This is the result of a complaint, and tireless legal battle waged by Zakia Ahsan Jafri and Teesta Setalvad of the Citizens for Justice and Peace. It is no surprise then, that a government that has acted vindictively and maliciously against serving and retired IPS and IAS officers who have stood by the Indian Constitution is today training its guns on human rights activist Teesta Setalvad.

The charges in the criminal complaint against Modi and others are serious and despite all the efforts of the Gujarat Government, its political mentors and allies to subvert the course of public justice, preliminary investigations have revealed details of a high level involvement of the CM and chosen others to indulge in a series of criminal and unconstitutional acts to ensure the mass massacre of 2,500 Muslims post Godhra, destruction of their bodies, manipulation of evidence and subversion of witnesses etc. On March 15 2011 the SC pulled up the SIT saying that the evidence gathered by them does not match inferences. On March 20, 21 and 22 the SIT was compelled to records the statement of yet another serving IPS officer Sanjeev Bhatt who has recorded (media reports tell us) that he was present at a meeting at the Chief Minister's residence when the latter clearly said "allow Hindus to vent their anger against Muslims." On May 5, 2011 the apex court has directed the Amicus

Curiae to arrive at an assessment of whether or not a criminal offence is made out, without consulting the SIT.

The allegations against Modi and the government of Gujarat, of issuing criminal instructions to their police officers and thereafter the illegal stationing of ministers in the state and city police control rooms, the macabre violence, killings rapes and burnings that were unleashed on minorities in 19 districts of the state are empirical testimony to these instructions being followed out. These allegations and the current investigation are unprecedented in the history of independent India. The illegal handing over of the bodies of victims of the Godhra mass arson to a functionary of a rabid right wing outfit – the Vishwa Hindu Parishad (VHP) and not an official of the administration or police as also the inflammatory media coverage of the Godhra incident by leading Gujarati newspapers further points to how premeditated the conspiracy actually was. That functionary of the VHP is today accused for instigating mass murder in the Naroda Gaam case.

Hence, the intimidation in four separate criminal cases, and consistent threats to Teesta Setalvad need to be seen in the context of the historic inquiry afoot. Attacks on her are brazen attempts to scuttle that process.

**Most imminent danger and concern is the threat of arrest in the Pandharwada Mass Graves Case. In a nutshell, the background of the case is as follows:**

On Dec 27, 2005 victim survivors of the Pandharwada massacre (where officially 27 persons were massacred...actually figure is higher on 1.3.2002) who were frustrated after the studied refusal of the state authorities to hand back skeletal remains of their dead which were dumped illegally by the state's police, began the digging themselves. The spot where they had been illegally dumped was off the Paanam River Lunawada in Godhra district.

For months before they started digging they had approached the authorities to dig out their remains. There was no response. Frustrated, they started the digging they had informed some members of the electronic media and also Citizens for Justice and Peace (CJP). The CJP's then coordinator Rais Khan (who is since not with the organisation following irregularities since January 2008) contacted its Secretary in Mumbai. CJP through its Secretary Teesta Setalvad clearly told them to wait at the spot till the authorities came, we informed the Collector and SP and contacted

lawyers and moved the High Court of Gujarat the next day. The local police was informed by fax of the frustration of the victims by a senior functionary from Gandhinagar.

The victims and CJP together moved the Gujarat HC the next day for DNA sampling from Red HILL Hyderabad. The DNA sampling proved that the victim survivors were right. Eight of the 22 skeletal remains were found to be of the relatives of the victims of the Pandharwada massacre. After the initial order in the Gujarat HC which was a breakthrough, year later the Gujarat HC dismissed the victims' petition asking for transfer of investigation of the massacre to the CBI. Ironically we had pointed out that the panchnamas related to the crimes had nowhere mentioned the skeletal remains.

The state has tried to say that this was never an illegal dumping but a proper burial on Forest land off a river. Legally speaking not only has the panchnama of the original crime of mass murder not listed the skeletal remains disproving the version of the Gujarat state and police. Victims and rights activists have argued that Lunawada has a large Kabristan of more than a hundred acres and hence, if Gujarat Police could in fact not trace relatives, what was the need to so dump the remains rather than according them a dignified prayer cum burial in the Kabristan? Why dump them in an obscure spot off the river rather than give them to community leaders for a dignified burial?

***Worse in the midst of this propaganda what is being missed is that despite the fact that victims did through their efforts and the order of the Gujarat High Court establish the identity of their dead relatives in 2005-2006, it took an order from the Supreme Court (February 2008 and a subsequent order of the Trial Court in December 2008) that dignified burial was finally conducted with no one being allowed to be present in August 2010, i.e. six years after the brutal massacre.***

Following in its tradition of victimising human rights defenders and victims, the local police lodged an FIR on Jan 1 2006 against victim survivors and Rais Khan of the CJP. CJP gave full legal aid to them and bail was granted and a stay against their arrest also granted by the Gujarat High Court. In the interim Rais Khan has today is no more with the organisation, he was dismissed from service. He is today under the influence been won over by the accused in the Naroda Patiya case—. Inexplicably on

November 24, 2010 the matter that had been stayed by the Gujarat High Court was listed and the stay vacated. Rais Khan surrendered and has in statement recorded under section 164 made false accusations against media persons and Teesta Setalvad. He appears to enjoy full immunity and security within the state of Gujarat. Teesta Setalvad obtained anticipatory bail first from a Mumbai and thereafter from a Godhra Court. This bail order stands. The date of the Godhra Bail Order was 15.2.2011. On March 18, 2011 she received summons under section 160 of the CrPC asking her to remain present at the Lunawada police station for questioning. Since the section gives women the protection of being questioned / examined at her place of residence Teesta Setalvad replied immediately saying she was prepared to meet the police at her residence in Mumbai. Suddenly the Investigating Officer was changed and thereafter a falsified charge sheet was filed naming her an "absconding accused" which belied the facts and detailed correspondence with the authorities. Under the law this makes her more vulnerable to arrest. She has since pointed this out in response to the second and third summons issued to her requesting an immediate correction in the charge sheet. There is no response to that and she faces threat of illegal arrest.

The brazen attempts at intimidation and threat need to be seen for what they are given the seriousness of the charges against the Gujarat state and its functionaries. In 2004 too, after the Best Bakery trial was shifted to Mumbai, a star witness made similar allegations. She had thereafter to serve a jail term for perjury while those found guilty of inducing her into falsehood escaped penal punishment. The allegations, baseless as they are, remain the same though persons making them have changed. Making false accusations of doctoring testimonies (FIR lodged under the IT Act, February 10 2011), affidavits and also of instigating victims to exhume the dead bodies of their loved ones (CR 3/2006), the Gujarat state's police is using discredited persons to trump up charges against a person and an organisation that has stood for nine years supporting the legal battle of the survivors. There is no guarantee that more false cases will also be cooked up by police pressurized by a vindictive state government. After Tehelka's exposure of the SIT report indicting Modi, *The Smoking Gun (February 10, 2011)*, IPS officer Rahul Sharma was served with a show cause notice for placing crucial telephone records before the Nanavati Shah Commission

and the SIT. Clearly the Gujarat government, worried by indications that offences could be registered against its chief functionaries for not simply aiding a massacre in 2002 but thereafter destroying evidence and subverting the course of justice, is doing all it can do intimidate victim survivors and human rights groups who have stood by them.

This despicable campaign was initially launched in May 2009, by the State of Gujarat's counsel in the Supreme Court, and is now being echoed by Mr. Rais Khan. The purpose of this campaign is plain and simple – it is designed to disrupt the trials, derail the course of justice and influence the course of conviction. Earlier, in 2004, after the historic decision of the Supreme Court to transfer the BEST Bakery trial to Maharashtra, similar efforts were made through star witness Zahira Shaikh. Then, on an application made by Teesta Setalvad of CJP, the Honourable Court had ordered an inquiry by the Registrar General of the Supreme Court that cleared Ms. Setalvad of malicious charges, and in fact punished the witness for perjury. It can be seen therefore that from the outset the government of Gujarat through agent provocateurs has subverted all efforts to punish the perpetrators of the anti minority pogrom of 2002. This vindictive onslaught against Setalvad and her lawyers is a vindictive bid to derail the course of public justice.

### **Appeal**

We, therefore, urge you to immediately take necessary steps to ensure that:

- Guarantee, in all circumstances, the physical and psychological integrity of Ms. Teesta Setalvad and all other human rights defenders involved
- Ensure that the attempts at intimidation and false implication in Criminal cases on Teesta setalvad is stopped
- Guarantee in all circumstances that human rights defenders are able to carry out their legitimate human rights activities without fear of reprisals, and free of all restrictions.

Looking forward to your immediate action in this regard,

Yours sincerely,

***Henri Tiphagne***

National Coordinator

Human Rights Defenders Alert - India