

**CRIMINAL COMPLAINT
AGAINST "NARENDRA MODI" PRIME MINISTER OF INDIA
FORMER CHIEF MINISTER OF THE STATE OF GUJARAT
(Under Sections 268.8, 268.9, 268.117, 15.4 and 16.1
Of The Criminal Code Act of 1995)**

To: Honorable Robert Bromwich SC
Commonwealth Director of Public Prosecutions
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From: Asifbhai Vahora, an individual, national and citizen of India; AND
American Justice Center Inc. ("AJC")
through
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Sub: Prosecute visiting Indian PM Narendra Modi pursuant to Criminal Code Act 1995 &
International Criminal Court Act 2002 for committing Crimes Against Humanity

Date: November 12, 2014.

SUMMARY

1. The abovementioned, on behalf of widows, victims, and survivors of 2002 Massacre of Muslims urge you indict and prosecute Narendra Modi, former Chief Minister of the State of Gujarat and current Prime Minister of India, for ordering, facilitating, inciting, participating, conspiring, aiding, abetting and carrying out organized attacks on civilian population of the State of Gujarat belonging to Muslim faith, during February-March 2002. Modi is due to arrive in Australia to attend the upcoming G-20 Summit¹.

THE ACCUSED

2. Narendra Modi is a citizen and national of India who is due to be visiting Australia between November 15-18 to attend the G-20 Summit. Modi who is currently Prime Minister of India was the Chief Minister of the State of Gujarat from 2001 till 2014. In 2002, when Modi was head of the State of Gujarat and responsible for peace and order and protection of the lives and properties of all the citizens living there, he provoked, abetted, facilitated, oversaw and connived the mass massacre of civilian population of Gujarat belonging to Muslim faith. Owing to his political influence and India's flawed justice system, Modi has never been prosecuted for his crimes of 2002, despite ample evidence. Due to Modi's involvement in gross human rights violations, the Government of the United States revoked Modi's visa in 2008 under Religious Freedom Act of 1998².

¹ <http://www.bbc.com/news/world-asia-india-29999880>

² Please attached copy of official records of the Government of United States released pursuant to Freedom of Information Act about revocation of Modi's US visa due to his involvement in human rights abuses.

THE COMPLAINANTS

3. The complainant American Justice Center Inc. ("AJC") is a US based non-profit rights organization, established with the objective of seeking justice for human rights violations committed against the religious minorities of India, particularly justice for the 2002 Massacre of Muslims in the state of Gujarat, by pursuing legal actions against perpetrators and by running advocacy and public awareness campaign.

4. The complainant Asifbhai Vahora is a citizen of India, born and raised in Gujarat. In 2002, Asif was living in the city of Anand in Gujarat. His grandmother was murdered by the attackers who were BJP (Bhartiya Janata Party) and RSS workers and were acting by virtue of the "free hand" given by Chief Minister Modi. On March 03, 2002, plaintiff Asif received a phone call from local police asking him to go and check up on his grandmother's house in the nearby village. When Asif went to the village, it turned out to be a trap as an armed contingent of BJP-RSS workers was waiting there for Asif and they beat him severely and left him to die. Later when plaintiff was working as volunteer in the relief camps set up by NGOs for the victims of Muslim massacre, Asif was tortured, beaten, hounded, intimidated, threatened by the workers of BJP and RSS. Upon approaching the authorities for help, Asif was turned away by officials stating that there are orders "from the Chief Minister Narendra Modi not to save or help any Muslims". As a result of the actions of the defendant, the plaintiff Asif suffered physical torture and severe mental torture.

FACTS

1. It has been widely reported and documented noted that there have been extremely violent, unprovoked, and inherently barbaric attacks against the Muslim population in India resulting in death, injuries and displacement of several hundred thousand members of Muslim community. These events commonly misnomered as "communal riots" but in reality they are nothing short of attempted genocide against a population persecuted for their religious beliefs. There were many incidents of struggle and disaster for the Muslim people of India, but the most profound by far was that which occurred in early 2002 in the south western part of India, the state of Gujarat of which Modi was Chief Minister at that time. This event will forever be known as the "2002 Gujarat Genocide, a carnage of Muslims in the state of Gujarat. This led to outbreaks of anti-Muslim violence in other parts of the country lasting for several weeks resulting in mass killings of people of the minority Muslim population. According to the eyewitnesses, the travesty that the violence began with the accidental burning of a train at Godhra on February 27, 2002. That accidental fire at Godhra was used by Modi to provoke, unleash, plan and organize vast anti-Muslim violence throughout the state of Gujarat. The investigations by human rights organizations and various other investigating agencies revealed that as a result of the Gujarat massacre of 2002, the death toll of members of the Muslim community exceeded two thousand in Gujarat alone. On top of that, some 20,000 Muslim homes and businesses and 360 places of worship were destroyed, and over 150,000 Muslims were displaced. (See New York Times report of April 16, 2014 "Timeline of Riots in Modi's Gujarat" http://www.nytimes.com/interactive/2014/04/06/world/asia/modi-gujarat-riots-timeline.html?_r=0&#time287_8514). Reports showed occurrences of rape, live burnings of adults and children, destruction of private property, theft, torture, and homicide.

2. The cause of such a massacre is well known as through the actions and inactions of the then Chief Minister of Gujarat Narendra Modi, the subject of this complaint, whose anti-Muslim sentiment, nefarious conduct, and outspoken doctrine of maintaining Hinduism as the dominant religion actually initiated and condoned the mass killing and violence that was perpetrated towards the Muslim

community. The police and government agents under his authority were used as tools in the renegade endeavor of Minister Modi to persecute the Muslim people. There is evidence to support the conclusion that Narendra Modi committed both acts of intentional and malicious direction to authorities in India to kill and maim innocent persons of the Muslim faith but also acted negligently in failing to consider the rights and principles of all the people of India, not just those who worship the mainstream Hindu religion. There is evidence that Modi, acting through his inner circle, actually pin-pointed Muslim-owned businesses and homes as targets of attack during the 2002 spree of violence.

3. Under Modi's leadership, specifically during the time period of February 28, 2002 to March 2, 2002, there were a large number of Muslims killed in the Gujarat massacre. Thousands were killed and thousands more displaced. The state of Gujarat was known to be completely complicit in these events and Modi specifically as the state's Chief Executive Officer possessed complete command over the local law enforcement authorities. Modi was therefore liable for the intentional and grossly and willfully negligent actions of those under his watch and command, including providing leadership and material and necessary support, security, relief, resettlement and rehabilitation measures to the victims in the politically- and bias-motivated attacks on the Muslim minorities in Gujarat, India.

4. The European Union, and every major Indian and international human rights organization such as, Amnesty International, Human Rights Watch, Commonwealth Initiative for Human Rights, Citizen's Initiative, People's Union for Civil Liberties (PUCL), People's Union for Democratic Rights (PUDR), have condemned the Gujarat violence, and pointed to the complicity of Modi in the execution of the massacre. Coverage in the Indian and international press, including the New York Times (July 27, 2002), Washington Post (June 03, 2002), and Boston Globe (July 12, 2002)³, reported the failure, connivance and facilitation by Modi and the state machinery in Gujarat.

5. Haren Pandya, the then Home Minister of Gujarat, testified before a Citizen's Tribunal about a meeting which took place on the evening of February 27, 2002, where Chief Minister Modi asked his officials "not to come in the way of what will occur [to Muslims] in the next few days."⁴ As a directive from his position as Chief Minister, such action constitutes an endorsement of violence and the state's complicity in the events that followed. Pandya was forced to resign from government after he testified. On March 26, 2003, Haren Pandya was assassinated in his hometown of Ahmadabad.

6. It is known that Modi was a member functionary of the Rashtriya Swayamsevak Sangh (RSS), a Hindu nationalist party motivated in part by Nazi and fascist ideologies. Modi incorporated such ideals in his running of the government of India. Modi and his regime also spread religious bias and violence in Gujarat against other religions such as Christianity.⁵

7. Hundreds of Complaints and Lawsuits with the Courts of India have gone without redress and have been unsuccessful at seeking justice for the victims.

8. Consequently, Modi is responsible for the deaths of thousands of people, organized violence, large-scale displacement of members of the Muslim minority population, and the continuing denial of

³ Celia W. Dugger (2002) 'Religious Riots Loom Over Indian Politics' in The New York Times, July 27, 2002, URL (consulted February 2005): <http://www.genocidewatch.org/Indianriots27July2002.htm>; H. D. S. Greenway (2002) 'Rising Threat of Hindu Extremism' in The Boston Globe, July 12, 2002: http://www.dailymail.com.pk/default.asp?page=story_13-7-2002_pg4_12; and Rama Lakshmi (2002) 'Rapes Go Unpunished in Indian Mob Attacks; Muslim Women Say Claims Are Ignored' in The Washington Post: <http://www.muslimnews.co.uk/news/news.php?sub=155>

⁴ "Modi told officials 'not to act' in The Tribune, August 09, 2002, URL (consulted February 2005): <http://www.tribuneindia.com/2002/20020810/main1.htm>

⁵ Testimony of Attorney Tehmina Arora before the Committee on Foreign Affairs, U.S. House of Representatives

justice resulting in a climate of terror in Gujarat and elsewhere in India, lasting for years since the 2002 massacre.

9. The government of India has classified what qualifies as this attempted genocide⁶ as a "communal riot"⁷ and a tainted Special Investigative Team (SIT) has submitted a report that is both questionable and lacking in credibility to the Supreme Court of India recommending that Modi be cleared from complicity in the 2002 Gujarat genocidal violence. However, there are serious doubts as to the veracity and impartiality of these investigative reports based on actual eyewitness accounts collected by the Human Rights NGOs and by those eyewitnesses brave enough to come forward and file the instant lawsuit seeking justice and redress, specifically the named and pseudonym-named Plaintiff's herein. The combined testimony of these eyewitnesses and the allegations of the plaintiffs directly contradict the official report of the government of India and clearly retells the horrors that occurred in that year surrounding the ethnic cleansing of the 2002 Gujarat genocidal violence.

LAW

10. It is clear that Modi and his ilk are never prosecuted in India and enjoy absolute impunity. Despite ample evidence, Modi and his compatriots have never been indicted or prosecuted for the heinous crimes against humanity they committed. This, therefore, further necessitates the filing of this complaint to hold Modi accountable for his acts and omissions.⁸

11. Modi's actions and his role in the killing of Muslims in Gujarat during 2002 clearly violate Australia's Criminal Code Act of 1995, specifically sections 268.8 & 9 which provide:

268.3 Genocide by killing

A person (the perpetrator) commits an offence if:

- (a) the perpetrator causes the death of one or more persons; and
- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
- (c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.

268.4 Genocide by causing serious bodily or mental harm

(1) A person (the perpetrator) commits an offence if:

- (a) the perpetrator causes serious bodily or mental harm to one or more persons; and

⁶ "[G]enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group." [See (Article 2 of the UN Convention on the Prevention and Australia's "The Genocide Convention Act 1949".

⁷ By the very definition, the word "communal riots" denotes fight between two or more communities resulting in equal or proportionate loss of life and property to all the communities involved. Unlike any riots, in 2002 the Gujarat violence targeted only Muslims. Besides the incidental killing of Hindus in the accidental train fire, there were hardly any Hindus killed or injured. During the so-called "Riots", the victims were almost entirely members of the Muslim community.

⁸ As a mechanism for raising awareness and the pursuit of justice for the victims against the remarkable wrongs committed against the Muslim people of India as alleged herein, the complainant AJC has also filed a civil law suit against PM Modi in the Federal District Court of New York under Alien Tort Statute and Torture Victims Protection Act ["American Justice Center" (AJC), Inc. et al v. Modi, Case #: 14-cv-07780-AT (SDNY).

- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
- (c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
- (2) In subsection (1) causes serious bodily or mental harm includes, but is not restricted to, commits acts of torture, rape, sexual violence or inhuman or degrading treatment.

268.5 Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

- (1) A person (the perpetrator) commits an offence if:
 - (a) the perpetrator inflicts certain conditions of life upon one or more persons; and
 - (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
 - (c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and
 - (d) the conditions of life are intended to bring about the physical destruction of that group, in whole or in part.
- (2) In subsection (1): conditions of life includes, but is not restricted to, intentional deprivation of resources indispensable for survival, such as deprivation of food or medical services, or systematic expulsion from homes.

268.8 Crime against humanity—"murder"

- A person (the perpetrator) commits an offence if:
- (a) the perpetrator causes the death of one or more persons; and
 - (b) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

268.9 Crime against humanity—"extermination"


- (1) A person (the perpetrator) commits an offence if:
 - (a) the perpetrator causes the death of one or more persons; and
 - (b) the perpetrator's conduct constitutes, or takes place as part of, a mass killing of members of a civilian population; and
 - (c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

12. The Criminal Code Act 1995 provides that Australian courts can have jurisdiction in cases involving crimes against humanity. Jurisdiction of Australian Courts is available whether or not the offense was committed in Australia (Id. §§ 268.117(1) & 15.4). Under this Act the mere presence of a foreigner in Australia is a sufficient basis for jurisdiction over acts of genocide, war crimes, and crimes against humanity committed abroad, thus it adopts a mode of jurisdiction equivalent to universal jurisdiction (see sections 268.117, 15.4 and 16.1 of the Criminal Code).

CONCLUSION

13. On the basis of the above, we urge the Commonwealth Director of Public Prosecution to indict and prosecute PM Modi for inciting, participating, facilitating, conspiring, aiding, abetting and carrying out attacks on Muslim population of Gujarat during 2002.

Submitted on November 13, 2014


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