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# Confronting the Violence Committed by Armed Opposition Groups

by Ravi Nair\*

¶1 Human rights groups have limited their role to monitoring and protesting human rights violations committed by state actors.<sup>1</sup> With the emergence of armed opposition groups—such as the Sendero Luminoso in Peru<sup>2</sup> and the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka<sup>3</sup>—that murder, torture, and destroy civil society in their respective regions, human rights entities must question whether they should broaden their mandate to include abuses committed by such groups. Focusing on the context of India, this article: (1) develops arguments encouraging human rights groups to critique abuses perpetrated by armed opposition groups; (2) suggests potential problems that may be encountered in making such criticisms; and (3) raises some reasons for caution by human rights organizations that condemn the actions of armed opposition groups.

## I. THE TRADITIONAL MANDATE OF HUMAN RIGHTS GROUPS

¶2 The primary, if not the exclusive, mandate of human rights groups around the world has been to monitor, highlight, and struggle against wanton violations of human rights perpetrated by agencies of the State.<sup>4</sup>

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1. I use the term "state actor" to refer to states and those acting under the color of state authority.

2. See, e.g., *Peru's Shining Path Kill Five in Grisly Attack on Border Town*, AGENCE FRANCE-PRESSE, Dec. 8, 1992, available in LEXIS, News Library, Arcnews File (describing an example of the terrorist activities of the Sendero Luminoso); Simon Strong, *Where the Shining Path Leads*, N.Y. TIMES, May 24, 1992, § 6 (Magazine), at 12 (documenting abuses such as extra-judicial killings, extortion, and dynamiting of those who resist). See generally Carol Lachnit, *Over the Years Shining Path Guerillas Have Left a Bloody Trail in Peru*, ORANGE COUNTY REG., Aug. 14, 1992, at B11 ("Shining Path is the single most vicious social-revolutionary organization in the world today.").

3. See, e.g., Amal Jayasinghe, *Tigers Face International Censure For Temple Bombing, Three Arrested*, AGENCE FRANCE-PRESSE, Jan. 27, 1998, available in LEXIS, News Library, Curnews File (reporting that the LTTE bombed a Buddhist temple, leaving sixteen dead); *Tigers Take Flak from Human Rights Group for Attacking Civilians*, AGENCE FRANCE-PRESSE, June 13, 1996, available in LEXIS, News Library, Curnews File (quoting Amnesty International's condemnation of the Tigers for slaughtering fourteen villagers on the basis of their ethnicity).

4. See HENRY J. STEINER, *DIVERSE PARTNERS: NON-GOVERNMENTAL ORGANIZATIONS IN THE HUMAN RIGHTS MOVEMENT* 9 (1991) (indicating that the mandate of most human rights NGOs

Generally, the State, as the legally constituted entity in control of the territory under its jurisdiction, has the sole legitimate right to use force to protect security, maintain law and order, and guarantee the protection of the fundamental rights of its citizens.<sup>5</sup> Under such a framework, it is understandable that human rights groups focus on protesting the human rights abuses committed by the State.

¶3 The evolution of international human rights law also legitimizes the activities of human rights groups that concentrate exclusively on human rights abuses committed by the state actors. The International Covenant on Civil and Political Rights<sup>6</sup> and other international human rights mechanisms<sup>7</sup> were developed with the understanding that human rights law should be applied to restrain governmental action. International law binds governments not only to follow international safeguards and norms, but also to reform national law in conformity with international human rights standards. In addition, many governments, in their own constitutions, guarantee certain rights to their citizens independently from international law protections.<sup>8</sup>

¶4 On the other hand, the mechanisms of human rights law usually do not address abuses, ranging from terrorism to common criminality, perpetrated by actors other than the State.<sup>9</sup> Human rights organizations have no international legal mandate to condemn non-state actors. Thus,

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centers on criticizing "governmental repression of political activity through intimidation or violence" (emphasis added).

5. See PAUL SIEGHART, *THE INTERNATIONAL LAW OF HUMAN RIGHTS* 20 (1983) (indicating that the role of a national government is to use its monopoly on force to remedy the infringement of rights); *but see infra* p. 7 (explaining that the Universal Declaration of Human Rights itself allows for some forms of violence by non-state actors).

6. See International Covenant on Civil and Political Rights, Dec. 19, 1966, art. 2, 999 U.N.T.S. 171.

7. See, e.g., Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 47th Sess., 61st mtg., Supp. No. 49, at 166, U.N. Doc. A/RES/44/49 (1989), *reprinted in* 28 I.L.M. 1448 (1989); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, June 26, 1987, 1465 U.N.T.S. 85; American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. no. 36, 1144 U.N.T.S. 123; International Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1969, arts. 2-4, 660 U.N.T.S. 195; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, art. 2, 993 U.N.T.S. 3; Convention on the Political Rights of Women of 1952, 193 U.N.T.S. 135; Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 1, 213 U.N.T.S. 222.

8. See, e.g., CONSTITUIÇÃO FEDERAL [C.F.] arts. 5-16 (Brazil); XIANFA arts. 33-56 (1982) (China); GRUNDGESETZ [GG] arts. 1-19 (F.R.G.), INDIA CONST. pt. III, arts. 12-35; KENPŌ arts. 10-40 (Japan); SLOVN. CONST. arts. 14-65; U.S. CONST. amends. I-XV.

9. See SIEGHART, *supra* note 5, at 20 (explaining that international law leaves private actors' violations to be dealt with by the states under whose jurisdiction the violations occur, holding those states responsible to ensure respect for human rights on the part of their own officials and private parties under their jurisdiction); *see also* Nigel S. Rodley, *Can Armed Opposition Groups Violate Human Rights*, in *HUMAN RIGHTS IN THE TWENTY-FIRST CENTURY: A GLOBAL CHALLENGE* 297, 308-11 (Kathleen E. Mahoney and Paul Mahoney eds., 1993) (arguing that the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture all create duties binding on states, not individuals). *But see id.*, at 309, 311-12 (pointing out that international humanitarian law and the Genocide Convention do create duties that inhere not in states, but in individuals or groups).

such condemnation can be controversial. In contrast, activities of human rights groups against a State's violation of constitutionally guaranteed fundamental rights, or against laws that violate the essence of international human rights treaties, are viewed as legitimate, both by the State and by public opinion.

## II. THE EMERGENCE OF ARMED OPPOSITION GROUPS

¶5 The inability of the State to resolve many political problems using the democratic framework has led to the emergence of numerous armed opposition groups around the world. The Sendero Luminoso in Peru and the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka are just two examples of such groups.<sup>10</sup> Many armed opposition groups, even if they do not control territory per se, exercise substantive control over the lives of citizens and often abuse the physical and mental integrity, and the rights to freedom of expression and conscience of the people in the areas of their operation.<sup>11</sup>

¶6 India has witnessed its share of violence committed by armed opposition groups.<sup>12</sup> A significant proportion of the activities of armed opposition groups can be attributed to the handiwork of official agencies in India. First, by turning a blind eye to the perfidious activities of upper-caste Hindu fundamentalist and communal (i.e. sectarian) organizations such as the Bajrang Dal, Shiv Sena, Durga Vahini, and Vishwa Hindu Parishad, and by ignoring the acts committed by private "Senas" (armies) of feudal landlords in Bihar and Andhra Pradesh, the government indirectly sanctions these organizations.<sup>13</sup> Second, the State may have a

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10. Others include the Kosovo Liberation Army (UCK), see *Eur: UCK Says its Fight against the Serbs Will Continue*, Mar. 11, 1998, AFP, available in LEXIS, News Library, Curnews File; the Sudan People's Liberation Army, see *Sudan: Rebel Alliance*, ECONOMIST, Jan. 25, 1997, at 42; and United States militia groups, see Brad Knickerbocker, *Militia Movement Ideas Seep into the Mainstream*, CHRISTIAN SCI. MONITOR, Feb. 7, 1997, at 4.

11. See, e.g., Ian Starrett, *Terror Returns to City Centre: Continuity IRA Claims Armed Bomb Attack on Crowded Bank*, BELFAST NEWSL., Mar. 21, 1998, at 5 (documenting recent bombing attempts by militant Irish Republicans); *11 Algerian Women Killed as Rebel Attacks Continue*, N.Y. TIMES, Sept. 30, 1997, at A5 (reporting the Algerian Armed Islamic Group's brutal slaughter of twelve school teachers, and estimating that the group had killed 500 civilians in a single month); see also Amnesty International, *Amnesty International Report 1996* (visited Apr. 16, 1998) <<http://www.amnesty.org/ailib/aireport/ar96/index.html#WORLDWIDE>> (reporting that armed opposition groups committed abuses including torture, hostage taking and deliberate and arbitrary killings in 41 countries, including Afghanistan, Algeria, Colombia, Sierra Leone, and the United Kingdom).

12. See, e.g., VICTORIA SCHÖFIELD, KASHMIR: IN THE CROSSFIRE 267, 279-81 (1996) (recounting human rights abuses by militant Muslim separatists in Kashmir, including ethnic shootings, extortion, and kidnappings); *26 Relatives of Police Slain In Punjab Separatist Strife*, N.Y. TIMES, Aug. 11, 1992, at A5 (describing how Sikh militants shot and killed 17 relatives of police officers to avenge the death of a guerrilla chief).

13. See, e.g., Amnesty International, *AI Report 1997: India* (visited Apr. 16, 1998) <<http://www.amnesty.org/ailib/aireport/ar97/ASA20.htm>> (concluding that in some parts of India armed militants carry out killings, abductions, and rapes with the apparent connivance of government security forces); *Calamitous Collusion*, ASIA INTELLIGENCE WIRE, Mar. 2, 1998, available in LEXIS, News Library, Curnews File (stating that administrative and

direct role in funding and arming its own auxiliary militant groups in areas such as Jammu and Kashmir.<sup>14</sup>

¶7 Armed opposition groups, although politically motivated, often engage in purely criminal activities. Increasingly, the activities of the armed opposition groups in the North East, Jammu and Kashmir, Punjab, and parts of Andhra Pradesh have become virtually indistinguishable from those of criminals. These groups sometimes commit armed robbery, drug trafficking and extortion, while giving these acts a political cloak.<sup>15</sup> As a consequence of these activities, endemic crime and a generalized breakdown of law and order has occurred in states such as Bihar,<sup>16</sup> causing severe human rights violations.

¶8 On the other hand, mafia-like criminal operations often engage in acts that take on a political hue.<sup>17</sup> Examples of such actions include trade union-type activities of criminal organizations in Dhanbad, Bihar,<sup>18</sup> the lower-caste dacoit (armed robber) gangs, assumption of the mantle of social justice in Uttar Pradesh and Bihar,<sup>19</sup> and the "political" activities of the sandalwood smuggler and bandit Veerappan in Tamilnadu.<sup>20</sup> In

police personnel are widely seen to have succumbed to political pressures to molycoddle LTTE extremist and religious fundamentalist groups).

14. See U.S. DEPT OF STATE, INDIA COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1996 (1997) (affirming credible reports that government agencies fund, exchange intelligence with, sponsor, and direct operations of countermilitants in areas such as Jammu and Kashmir); Rahul Bedi, *Is Peace Possible in Troubled Kashmir?* 8 JANE'S INTELLIGENCE REV. 375, Aug. 1996, available in LEXIS, News Library, Curnews File (stating that Indian army has provided pro-government militias and 'adopted' militants, locally known as 'friendlies,' with arms and logistic support to 'liberate' militant-controlled areas across the Kashmir over the past two years).

15. See Bedi, *supra* note 14 (noting that militant groups are involved in looting, smuggling, and extortion to pay their members).

16. See *The Fleshless Face of Bihar*, THE HINDU, Mar. 29, 1998 (noting that no matter what party is in power, gangsters in Bihar are better armed than police, far better protected, and have been made multi-millionaires through their extortion rackets and arms deals); *Lawlessness in Lalooland*, THE HINDU, Mar. 1, 1998 (noting that the violence in Bihar leads political parties, without exception, to brazenly play the caste card, court and field criminals, and resort to malpractices and violence); *Peaceful End to Repolling in India's Most Lawless State*, AGENCE FRANCE-PRESSE, Mar. 30, 1998 (documenting election-related violence in Bihar and calling Bihar "India's most lawless state").

17. See Amit Baruah, *A New "Weapon" Against Crime*, THE HINDU, Mar. 29, 1992.

18. See *Mafia Dons Training Guns on IPF*, THE HINDU, May 16, 1996. See generally S.N.M. Abdi, *Naked Act of Humiliation*, S. CHINA MORNING POST, Apr. 5, 1998, at 8 (documenting widespread practice in Bihar of publicly stripping women as humiliating summary punishment for, *inter alia*, refusal to pay protection money to local criminal gangs); John F. Burns, *Not a Crook? Voters in India Don't Always Care*, N.Y. TIMES, Feb. 26, 1998, at A3 (underscoring the problem of the criminalization of politics in Uttar Pradesh where more than 1,500 of the 13,886 candidates in the 1996 elections had criminal records, including histories of murder, kidnapping, rape, and extortion).

19. See Burns, *supra* note 18 (noting that criminality has become so commonplace in Uttar Pradesh that politicians do not even try to deny their criminal records, but rather justify their misdeeds by portraying themselves as "Indian Robin Hoods" that break the law in the name of social justice).

20. See Stephen David, *To Catch a Thief*, INDIA TODAY, Oct. 27, 1997, at 46, 47; *Saga of India's Most-Wanted Bandit Goes On, and On*, AGENCE FRANCE-PRESSE, Nov. 25, 1997, available in LEXIS, News Library, Curnews File (indicating that Veerappan shot five policemen and a forest ranger in 1986 and blew up twenty-one policemen with a land mine in Karnataka in

addition, the notorious Phoolan Devi, who has been portrayed in the film *Bandit Queen*,<sup>21</sup> was seen as a protector of the backward castes and a scourge of the upper castes. Even her gunning down of innocent villagers in Behmai was justified as simple retribution by many backward caste politicians.<sup>22</sup> Phoolan Devi herself was until recently a Member of Parliament.<sup>23</sup> These are all cases that are difficult to classify. The problem of categorizing these acts is further complicated by the fact that the government tends to classify all acts of violent protest as criminal;<sup>24</sup> conversely, "subalternists" interpret all challenges made by oppressed classes and groups as political.<sup>25</sup>

¶9 The mere reiteration that the State should maintain law and order, and that human rights groups or activists should ensure State compliance with due process, apparently does not satisfactorily engage the situation on the ground. The actions of armed opposition groups pose a challenge to the work of human rights activists in India and the South Asian region in general. Can human rights groups and activists continue to treat the violence committed by armed opposition groups as irrelevant to their proclaimed mandates and as a problem that the government alone should handle under the laws of the land, subject to due process?

### III. EXISTING INTERNATIONAL NORMS WITH RESPECT TO ARMED OPPOSITION GROUPS

¶10 Major violations of human rights, such as torture, kidnapping, hostage taking, extortion, killing, and suppression of freedom of opinion, routinely occur in many armed conflict situations in India and around the world.<sup>26</sup> Accordingly, human rights non-governmental organizations

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1993),.

21. *BANDIT QUEEN* (Working Title 1998).

22. See V. Krishna Anath, Editorial, *The Phoolan Devi Phenomenon*, HINDU (India), Feb. 24, 1997, at 12.

23. See *Indian 'Bandit Queen' Dethroned in Polls*, AGENCE FRANCE-PRESSE, Mar. 3, 1998, available in LEXIS, News Library, Curnews File (reporting that Phoolan Devi, socialist member of Parliament since 1996 representing a Mirzapur constituency in the northern state of Uttar Pradesh was defeated by Hindu nationalists in the 1998 general elections). Devi, a former bandit leader-turned-politician, was once one of India's most wanted outlaws.

24. See G.S. BAJWA, HUMAN RIGHTS IN INDIA: IMPLEMENTATION AND VIOLATIONS 194 (1995) (describing "right of procession and public demonstration" as valid only when "peaceful").

25. See, e.g., John F. Burns, *In Land of Gandhi Crooks Routinely Run for Office*, COM. APPEAL, Mar. 1, 1998, at A9 (quoting a local political aide's stating that "a political crime. . . is not really a crime").

26. See, e.g., HUMAN RIGHTS WATCH, INDIA'S SECRET ARMY IN KASHMIR: NEW PATTERNS OF ABUSE EMERGE IN THE CONFLICT (1996) (documenting grave human rights abuses, including summary executions, torture, and illegal detention as well as election-related intimidation of voters by state-sponsored paramilitary groups operating as secret, illegal armies); Helsinki Watch, *War Crimes in Bosnia-Herzegovina: U.N. Ceasefire Won't Help Banja Luka*, Summary (visited Apr. 16, 1998) <<http://www.hrw.org/research/bosnia.html>> (documenting appalling brutality and extreme violations of international humanitarian law arising from Serb policy of "ethnic cleansing" in Bosnia-Herzegovina); Human Rights Watch, *Genocide in Rwanda: April-May 1994*, Summary (visited Apr. 16, 1998)

("NGOs") that maintain a focus on the issue of day-to-day violations of human rights need to gain an understanding of how other human rights organizations and international law documents approach armed opposition groups.

¶11 International human rights NGOs such as Amnesty International ("AI") and Human Rights Watch ("HRW") already have begun to address the issue of violence by armed opposition groups. HRW has published numerous reports documenting such violence.<sup>27</sup> In addition, AI has indicated that it will require organizations that constitute "opposition groups" to meet the same standards mandated by humanitarian law with respect to governments.<sup>28</sup> AI defines opposition groups as "groups in opposition to the governments that have acquired the characteristics of the governments."<sup>29</sup> In determining whether a group has acquired the characteristics of a government, AI considers whether the group controls people in its territory in a way similar to the exercise of governmental jurisdiction, is able to implement procedures for the protection of human rights in the territory, and is recognized by governments and international organizations.<sup>30</sup> If a group meets any of these criteria, then AI will demand that it follow the same standards of humanitarian law that apply to governments.<sup>31</sup>

¶12 Although many traditional NGOs in India have not considered abuses of armed opposition groups to fall within their mandate, at least

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<<http://www.hrw.org/research/rwanda.html>> (describing the systematic slaughter, propaganda campaigns, and abuses by both sides in the conflict); Human Rights Watch, *Human Rights Abuses in Algeria: No One Is Spared*, Summary (Jan. 1994) (visited Apr. 16, 1998) <<http://www.hrw.org/research.algeria.html>> (laying responsibility with both the Algerian government and the armed Islamist opposition it is fighting for severe deterioration of human rights conditions, highlighting extrajudicial killings, grossly unfair trials, and suppression of free press); Human Rights Watch, *Return to Violence: Refugees, Civil Patrollers, and Impunity*, Summary (visited Apr. 16, 1998) <<http://www.hrw.org/research/guatemala.html>> (documenting systematic human rights abuses by government troops and civilian self-defense patrols in Guatemala).

27. See HUMAN RIGHTS WATCH, *BANGLADESH, POLITICAL VIOLENCE ON ALL SIDES*, Summary, (visited Apr. 16, 1998) <<http://www.hrw.org/research/bangladesh.html>> (documenting a situation of lawlessness and civil strife in which wanton acts of violence and intimidation have become routine features of the political process in the fierce struggle for power between Bangladesh's main political parties); HUMAN RIGHTS WATCH, *BOSNIA AND HERCEGOVINA, ABUSES BY BOSNIAN CROAT AND MUSLIM FORCES IN CENTRAL AND SOUTHWESTERN BOSNIA-HERCEGOVINA* (1993) (documenting serious human rights abuses by both Croatian and Muslim militant groups in Bosnia-Herzegovina, including extrajudicial killings, ethnically-based arbitrary arrest, mistreatment of prisoners in detention, and forced displacement of tens and possibly hundreds of thousands); HUMAN RIGHTS WATCH, *BRAZIL, FIGHTING VIOLENCE WITH VIOLENCE: HUMAN RIGHTS ABUSE AND CRIMINALITY IN RIO DE JANEIRO* (1996) (noting a tripled homicide rate in the last 15 years and increased violence related to criminal gangs and drug trafficking in Rio de Janeiro); HUMAN RIGHTS WATCH, *INDIA'S SECRET ARMY IN KASHMIR: NEW PATTERNS OF ABUSE EMERGE IN THE CONFLICT* (1996), *supra* note 26.

28. See Amnesty International, *Abuses by Opposition Groups*, AI Index: POL 30/03/93 (visited Apr. 16, 1998) <<http://www.amnesty.org/aboutai/abuses.htm>>..

29. *Id.*

30. *See id.*

31. *See id.*

one organization has condemned certain activities of armed opposition groups. The Andhra Pradesh Civil Liberties Committee ("APCLC") stressed that "all revolutionary parties had a right to chalk out their policies. This should not undermine the civil liberties of the people even in the name of revolutionary struggle."<sup>32</sup> Such activities reflect a growing concern for the violence committed by armed opposition groups.

¶13 International conventions also have addressed the activities of armed opposition groups. The behavior and action of armed opposition groups are covered under Common Article 3 of the Geneva Conventions, which provides:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.<sup>33</sup>

In addition to Common Article 3 of the Geneva Conventions, the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to

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32. *Opinion Divided on Violation of Rights*, NEWSTIME, June 16, 1997.

33. Geneva Conventions of 12 August 1949 for the Protection of War Victims, Aug. 12, 1949, art. 3, U.T.S. 3114, 75 U.N.T.S. 3.



the Protection of Victims of Non-International Armed Conflicts ("Protocol II")<sup>34</sup> provides guidelines for the behavior of armed opposition groups in non-international armed conflicts.<sup>35</sup> Thus, the Geneva Convention and Protocol II together establish minimum standards to which the behavior of armed opposition groups should conform. Although both international law and some human rights groups have developed a skeletal framework with which to evaluate the behavior of armed opposition groups, this framework must be elaborated to take into account the complexities raised in the next section.

#### IV. THE CHALLENGE TO HUMAN RIGHTS NGOS

##### A. Why Human Rights Groups Must Respond to Armed Opposition Groups

¶15 The failure of some human rights groups to critique activities of armed opposition groups, ironically, can eventually lead to toleration of human rights abuses committed by the government. The activities of armed opposition groups generally do not enjoy widespread support and legitimacy. The concerned populace often feels trapped and helpless in a situation marked by governmental brutality and lawlessness on the one hand, and the violence indulged in by these armed opposition groups on the other.<sup>36</sup> Since it is the government that is expected to ensure security of life and property, repugnance for the activities of armed opposition groups may well lead to a grudging appreciation of the need for the forces of law

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34. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims on Non-International Armed Conflicts (Protocol II), *opened for signature* Dec. 12, 1977, U.N. Doc. A/32/144, Annex I, II (1977), *reprinted in* 16 I.L.M. 1442 (1977). Article I of Protocol II states:

This Protocol, which develops and supplements Article 3 Common to the Geneva Conventions of 12 August 1949, without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

*See id.*

35. For a detailed exposition of the International Committee of the Red Cross ("ICRC") position, see Marion Harroff-Tavel, *Actions Taken by the International Committee of the Red Cross in Situations of Internal Violence*, 1993 INT'L REV. OF THE RED CROSS 195.

36. The situation in rural Punjab during the period 1987 to 1993 was a case in point. Village Headmen in Sangrur and Bhatinda districts frequently told SAHRDC researchers that they were caught between the armed militants' extortionate demands after dusk and the depredations of the law enforcement personnel before dusk. As one Village Headman put it to this author in 1991, "during the day, it is the thugs in uniform, during the night it is the thugs without uniform." Interview with anonymous (Nov. 6-14, 1991) (conducted in Punjab) (name withheld by SAHRDC at the request of the interviewee).

and order to accrue further powers, and even to step outside the bounds of the law to work effectively. Given the mindset of the middle-classes, which is likely the result of government rhetoric about the security of the nation being at stake and the imminent breakdown of society,<sup>37</sup> it is easy for a human rights movement under siege to slip into the next logical step and justify the arbitrariness and violence of the State vis-a-vis groups engaged in radical protests.

¶16 The lack of public response to the treatment of LTTE sympathizers who were accused of assassinating India's former Prime Minister Rajiv Gandhi serves as a grim reminder of the fact that abuses against armed opposition groups are tolerated by the public. After the assassination of Rajiv Gandhi, a large number of non-violent sympathizers of the LTTE were arrested, interrogated and in many cases held in administrative detention without judicial review in Tamilnadu.<sup>38</sup> Recently, a special court, sitting in camera, sentenced to death 26 people who were listed as members or sympathizers of the LTTE.<sup>39</sup> The roles of many of the people who were sentenced were only marginally related to the assassination.<sup>40</sup> For instance, several people were given the death penalty simply for finding a safe-house for the assassins. Not only was there no public outcry against these mass death sentences, but there was, on the contrary, active support for the death sentences.<sup>41</sup>

¶17 An illustration of the mistreatment of criminals by police and the citizenry's acceptance of such treatment, is the "blindings episode." In Bhagalpur, Bihar policemen allegedly blinded armed robbers popularly known as dacoits.<sup>42</sup> The policemen responsible for the blinding of suspects in their custody were arrested and prosecuted.<sup>43</sup> In the town of Bhagalpur itself, however, local citizens, led by the local Traders Association, supported the blinding of the suspects arguing that the criminal justice system was too slow in meting out justice to those who threatened society.<sup>44</sup>

37. See, e.g., *Sound Framework Soon for Fiscal, Monetary Policies*, FT ASIA INTELLIGENCE WIRE, Mar. 26, 1997, available in LEXIS, News Library, Curnws File (providing President's K.R. Narayanan's address to Parliament in which he asserted that the security of the nation will not be compromised and will be protected at all costs).

38. See Samar Halarnkar & L.R. Jagadheesan, *Rajiv Assassination: Shock Sentence*, INDIA TODAY, Feb. 9, 1998 (noting that an LTTE supporter has been in detention for the last six years before being sentenced to death). See also INDO-SRI LANKA FRIENDSHIP SOCIETY, REPORT ON THE CONDITIONS OF SRI LANKAN TAMIL REFUGEES, ANNEXURE 2 (1993) (noting that Sri Lankan Tamil refugees in India are often summarily stripped of their refugee status and detained in jails).

39. See *Tamil Tigers Killed Rajiv Gandhi: Indian Court*, AGENCE FRANCE-PRESSE, Jan. 28, 1998.

40. See Halarnkar, *supra* note 38.

41. See, e.g., Editorial, *A Triumph of Justice*, HINDU, (Mar. 8, 1998) (noting that although the accused will appeal the death sentences, "that will not detract from the triumph of justice").

42. See Gobinda Mukhoty, *Torture, Human Rights, Legal Rights*, ECON. & POL. WKLY., May 21, 1994, at 1259, 1260 (describing the blindings).

43. See *id.* at 1261. At the end of the 1970s, police in Bihar, faced with a steep rise in armed robbery carried out by gangs of young men, blinded suspects as a deterrent to others. Over 30 men and boys were blinded between Oct. 1979 and Nov. 1980. See *id.* at 1260.

44. Cf. Carol Honsa, *Indians Take Uneasy Look at Themselves*, CHRISTIAN SCI. MONITOR, Sept. 10, 1982, at 12 ("civic associations marched in the streets to commend police for their novel crime-fighting techniques"); Quaiied Najmi, *Misfortune Faithfully Follows the Bhagalpur Blind*,

¶18 In fact, it needs to be noted that as the State loses legitimacy because of its widespread and endemic failure on both the political governance and developmental fronts, it increasingly takes recourse to the law and order argument in dealing with any protest. The overwhelming reliance on the rhetoric of law and order is evident from the constant accrual of coercive power; the promulgation of draconian laws like the Armed Forces Special Powers Act (AFSPA), the National Security Act (NSA), and the Disturbed Areas Act;<sup>45</sup> and the increasing use of paramilitary and military forces to quell internal disturbances.<sup>46</sup> Through these mechanisms, the State not only removes itself from the ambit of any democratic accountability, but worse, it contributes to a criminalization of official agencies and processes. This has been the case in the Punjab, where an officially sanctioned policy of extrajudicial executions and disappearances existed in the period between 1984 and 1993.<sup>47</sup>

¶19 By not criticizing armed opposition groups, human rights organizations also threaten their legitimacy as unbiased observers. The repeated and vociferous criticism of the government on the human rights front, when seen in conjunction with the apparent silence of some human rights groups regarding the abuses committed by armed opposition groups, meets with a hostile reception. The activities of the human rights groups can be construed as partisan and unfair, if not fundamentally misdirected, leading to an increasing loss of credibility and further marginalization, even with the victim groups. Often, the human rights groups are accused of being mere surrogates for different militant groups, more concerned with protecting the human rights of the militants than of the citizens.<sup>48</sup> None of this increases the efficacy of the human rights groups in holding the government accountable, their primary mandate. Given these considerations, NGOs need to evolve some general guidelines for handling this issue.

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INDIAN EXPRESS, May 15, 1992 (describing the public rejection of two of the blinded men).

45. See Y.P. Chibbar, "Foreign Agents" to National Human Rights Commission, in PERSPECTIVES ON HUMAN RIGHTS 148, 151 (Vijay K. Gupta ed., 1996) (citing laws like the Armed Forces (Special Powers) Act of 1958 and the Terrorist and Disruptive Activities (Prevention) Act of 1987, which give sweeping powers to the police and other security forces to engage in lawless acts).

46. See, e.g., KASHMIR UNDER SIEGE: HUMAN RIGHTS IN INDIA 4-5 (1991) (stating that Indian army soldiers and paramilitary troops increasingly have used lethal force against peaceful demonstrators and that security legislation has increased the likelihood of such abuses, by authorizing the security forces to shoot to kill and by protecting them from prosecution for human rights violations); Patricia Gossman et al., *Asia Watch Update*, 11 UCLA PAC. BASIN L.J. 285, 295 (1993) (reporting that security forces routinely and systematically target civilians); P.A. Sebastian, *Armed Forces and Rule of Law*, ECON. & POL. WKLY., Feb. 26, 1994, at 477, 478 (documenting widespread and growing tendency on part of Indian armed forces to engage in violent incidents around the country for which they are immune from disciplinary action).

47. See INDIRJIT SINGH JAJEE, *POLITICS OF GENOCIDE: PUNJAB 1984-1994* (1995).

48. See, e.g., Chibbar, *supra* note 45, at 152 (noting an impression in the minds of many that activists speaking for rights of the people are in league with those who are trying to put the country's existence in jeopardy).

## B. The Difficulties in Critiquing Armed Opposition Groups

¶20 The real problem for human rights groups emerges in the intermediate, gray situations of political violence. The grey situation can be analytically distinguished from situations of "normal" crime or war. The internal armed conflict situations that are characteristic of Jammu and Kashmir, Assam, other parts of the Northeast, and areas in Andhra Pradesh may be categorized as grey situations.

¶21 It is very difficult to delineate what activities of armed opposition groups should be tolerated as legitimate protest and what activities should be forbidden. By and large, even when human rights groups have formally taken note of the activities of armed opposition groups, they have chosen to restrict their mandate to issues like torture, hostage-taking, and political killings.<sup>49</sup> In addition, there is likely to be a broad consensus about the unacceptability of armed opposition groups' acts that are directed against uninvolved people, women, and children. Such a framework might, however, appear unnecessarily restrictive since it classifies populations into "legitimate" and "illegitimate" targets of political violence.

¶22 Although most human rights groups would not criticize the violence of armed opposition groups in situations of genuine clashes between the security agencies of the State and armed opposition groups, are off-duty policemen considered legitimate targets? Relatedly, can torture or summary executions of security personnel who fall into the hands of militants ever be justified?

¶23 Even more problematic than the cases of security personnel engaged in operations against militant groups is the issue of class violence. Given that the main revolutionary class struggles are directed against an inequitable social order that systematically violates human rights, how should human rights NGOs react when militant groups, ostensibly working for the poor and oppressed, also violate human rights? What if militants systematically annihilate "class enemies" who may well include women and children, or torture and kill suspected police informers and government "collaborationists" during periods of resurgent revolutionary activity? How should human rights groups react to the systematic weeding out of erstwhile "comrades-in-arms" who are seen as deviating from the "true line"? It is clear that human rights groups will have to take an unequivocal condemnatory stand on such acts even if they are perceived as pitting themselves against those who, in the ringing words of the Universal Declaration of Human Rights, "have recourse, as a last resort, to rebellion against tyranny and oppression."<sup>50</sup>

¶24 Another area of concern relates to acts of random violence in

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49. See e.g., AMNESTY INTERNATIONAL, INDIA: HUMAN RIGHTS VIOLATIONS IN PUNJAB 7-11 (1991) (discussing Sikh violence); ASIA WATCH, KASHMIR UNDER SIEGE 6 (1991) (reporting militants in Kashmir); HUMAN RIGHTS WATCH ASIA, DEAD SILENCE: THE LEGACY OF ABUSES IN PUNJAB 91-98 (1994) (describing militants in Punjab).

50. Universal Declaration Of Human Rights, pmb., G.A. Res 217A, U.N. GAOR, 3d Sess., Res. 71, U.N. Doc. A/810 (1948).

which the targets are not pre-selected. The frequent use of explosives, both against security personnel and in clearly marked civilian areas by various armed opposition groups, makes this an issue of pressing concern.<sup>51</sup> Security forces, too, engage in both selective and random acts of arson, such as the infamous bombing of rebel Mizo strongholds in the Northeast, or the razing by arson of private dwellings in Jammu and Kashmir.<sup>52</sup> The brutal acts of government forces, however, do not wipe out or reduce the horror and the senselessness of acts such as abductions and killings by armed opposition groups.

¶25 Another problem that may warrant human rights activity pertains to situations in which the militants seek to impose new conditions on civil society that impinge on the fundamental freedoms of choice, expression, mobility, and association. In such situations, what people can wear, what they will eat, and who they can associate with, are all governed to various degrees by a new fiat, backed by the power to inflict violence.<sup>53</sup>

¶26 NGOs today also confront a situation in which even when no specific act of violence is directed against any individual, the sheer force of the new ideology being put into operation leaves no option for dissident individuals and groups. Citizens are forced to submit and remain silent. An atmosphere of hate, fear, and intimidation is generated that can only lead to the breakdown of civil society.

¶27 Even this synoptic listing of the different kinds of activities engaged in by armed opposition groups raises issues that break down the analytic distinction between actors, activities, ethnicities, and ideologies. As much as it might be deemed useful to maintain these distinctions in order to focus on offenses clearly cognizable under human rights law, ignoring or remaining silent about the more widespread abuses is likely to be detrimental to the human rights movement.

¶28 Another area of concern relates to what label should be put on the activities of armed opposition groups. Should acts by armed opposition groups be classified as "abuses" or "violations"? The latter term is traditionally used with respect to governments. This difference is not merely semantic, but needs to be maintained in light of the effort of governments to have the international community pay greater attention to the acts of armed opposition groups as a means to conceal or deflect criticism of their own unlawful acts.

¶29 Other practical difficulties may be encountered in critiquing the actions of armed opposition groups. Collecting and collating reliable information on abuses by armed opposition groups is unlikely to be easy

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51. See Overseas Security Advisory Council, *India OSAC Crime Report* (last modified May 24, 1996) <<http://www.owens.com/tradescp/cr\CRI02.TXT>> (reporting numerous bombings by militants in Delhi and Bombay).

52. ASIA WATCH, *supra* note 49, at 91 (reporting acts of arson in Kashmir during 1990); HUMAN RIGHTS WATCH ASIA, *INDIA: CONTINUING REPRESSION IN KASHMIR 5* (1994) (reporting killing and arson in Marwar); Gossman, *supra* note 46, at 295 (reporting shootings and arson in Kashmir).

53. See, e.g., ASIA WATCH, *supra* note 49, at 129 (reporting threats against individuals who engage in "un-Islamic" activity).

since much of their activity is conducted covertly. This dearth of information is further compounded by the fact that most reports of such activities that do exist in the media are heavily colored by a governmental point of view, which routinely exaggerates the horrors of these activities, decontextualizes them, and converts all political dissident activity, particularly when it involves violence, into crime.<sup>54</sup>

### C. Cautionary Notes on Critiquing Activities of Armed Opposition Groups

¶30 The political nature of these conflicts may lead to misuse of NGO critiques. The government of India may use criticism aimed against armed opposition groups as a way of deflecting criticism from itself. The government of India repeatedly alleges that human rights NGOs—who quickly condemn even the smallest indiscretion of the official agencies and armed forces personnel during their effort to maintain law and order and ensure the security of life, liberty, and property of ordinary citizens—remain thunderously silent in the face of an increasing recourse to violence, often mindless and barbarous, by political armed opposition groups.<sup>55</sup> This specious and flawed argument must be condemned as a diversionary tactic and as a pathetic covering up of the increasing violation of fundamental human rights perpetrated by the State.

¶31 There is widespread apprehension in the human rights community that an active interest in and action against abuses by armed opposition groups may lead to a dilution of the critique of governmental violations. While it is indeed likely that our disapproval of certain acts by armed opposition groups would be deployed within official propaganda, the needed response is not to eschew this activity, but to be careful about what one says and how. For instance, the inherent inequity in responses to similar acts of abuse and violation by armed opposition groups and government needs explicit recognition by human rights groups. In no case can the two be judged at par. Similarly, NGOs should recognize that action against armed opposition groups can be far less efficacious than action against governments, since governments are, at least in theory, bound by their laws.

¶32 In working out a graded response to armed opposition group abuses, one needs to be careful to avoid taking an overall moral position on violence and getting confined within the liberal framework of the State, which suggests that the State has the sole and legitimate right to recourse to force. It is often argued that the increased recourse to violence by political opposition groups is a reflection of the generalized closure of legitimate, democratic space for dissent, that it is State terrorism and lawlessness that begets political terrorism and violence. Even the

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54. *See id.* at 103, 111-125.

55. *Cf. "No Going Back": The World's Women Set an Agenda for Beijing*, ASIaweek, Sept. 22, 1995, at 28 (describing the assertiveness of Indian NGOs).

Universal Declaration of Human Rights, in its enabling paragraphs, recognizes that, "[w]hereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."<sup>56</sup> Some even quote Gandhi, who in the wake of the popular resentment expressed through violence in 1942 conceded, "I do believe that where there is a choice between cowardice and violence, I would advise violence."<sup>57</sup> Consequently, human rights organizations need to be careful that their critique of abuses perpetrated by *certain* armed opposition groups not be taken to mean a condemnation of *all* such violence.

¶33 Another important point to consider for organizations wishing to protest abuses by non-State actors pertains to the nature of the abuses. The human rights community should not dilute its agenda by concerning itself with every reported act of abuse, but rather should focus on situations which reveal a pattern of abuses.

¶34 The human rights community can make various responses to abuses perpetrated by armed opposition groups. Human rights groups may merely express a disapproval of such acts in various publications, strongly condemn them in media statements or open meetings, or launch campaigns against the armed opposition group. What the response will be should be determined by the circumstances. For example, the abduction and death of Sanjoy Ghosh in August 1997<sup>58</sup> calls for a strong response from the human rights community in the form of a campaign against the United Liberation Front of Assam. Another possible approach human rights groups may take is to issue appeals on particular issues directly to a specific armed opposition group or to contact the group with an offer to mediate, as in a situation in which hostages have been taken.

¶35 For human rights communities, the concrete action plan and the strategy chosen will depend upon the contingent circumstances, the actual ability of the human rights groups, and the efficacy of the different steps. This is because the judgments expressed by the human rights groups have relevance not only to the government and the public, but also to the armed opposition group in question. The legitimization function of human rights activity must not be undermined.

## V. CONCLUSION

¶36 The expansion of the mandate of human rights activity to include abuses by armed opposition groups poses many new problems, including one of possibly overloading our mandate to the point of complete ineffectiveness. If, however, the overall rationale of human rights activity is seen not just as bringing the government in line with constitutional norms and international human rights standards, but as contributing to a

56. Universal Declaration of Human Rights, pmbl., *supra* note 50.

57. THE WORDS OF GANDHI 49 (Richard Attenborough ed., 1982).

58. See Maleeha Raghaviah, *Terrorism—The Malaise of Our Times*, THE HINDU, Sept. 20, 1997 (reporting the death of Sanjoy Ghosh).

1998]

*Confronting the Violence*

15

wider political discourse and action that seeks to mold both the government and society within a more humane framework, then a continuous engagement of these issues is inescapable. Without this, there is no escape from a descent into barbarism.



