

IN THE SUPREME COURT AT NEW DELHI
CIVIL ORIGINAL JURISDICTION
(PUBLIC INTEREST LITIGATION PETITION)
WRIT PETITION (CRIMINAL) NO. OF 2007

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

KARTAM JOGA and Ors.

...PETITIONERS

VERSUS

STATE OF CHATTISGARH

...RESPONDENTS

UNION OF INDIA

INDEX

SR.NO.	PARTICULARS	PAGES
1.	Check List	
2.	Synopsis and List of Dates	
3.	Writ Petition with Affidavit	
4.	<u>ANNEXURE –P/1:</u> Newspaper report of Speech made by Shri Raman Singh, Chief Minister of Chhattisgarh on 15.8.2007	
5.	<u>ANNEXURE –P/2:</u> Village wise, age wise and gender wise break up of the killings perpetrated by the Salwa Judum and security forces	
6.	<u>ANNEXURE –P/3:</u> Village wise break of rapes	
7.	<u>ANNEXURE –P/4:</u> Two lists showing a village wise and crime wise breakup for the districts of Bijapur	

and Konta tahsil of Dantewada district

ANNEXURE – P/5: Photographs of villages burnt
and temporary shelters of refugees in Andhra
Pradesh

ANNEXURE – P/6: Sample statements/petitions
from villagers

ANNEXURE – P/7: Statements by the DGP and Home Minister of
Chhattisgarh, justifying Salwa Judum

ANNEXURE –P/8: Complaint by Kartam Joga against Salwa Judum
and hospital records

ANNEXURE –P/9: Article in The Hindu on Salwa Judum and the Violation of
International Humanitarian Law.

SYNOPSIS AND LIST OF DATES

This writ petition is filed by three residents of Dantewada district of Chhattisgarh on behalf of the people of that district seeking an appropriate remedy to acts of systematic human rights and humanitarian law violations committed by an organized group called Salwa Judum, with the active connivance and participation of agents of the state, the state police and paramilitary forces. The petitioners fear reprisals if these complaints are brought to the notice of the state authorities. In any event since the state agents are either active or passive perpetrators of such acts no remedy is feasible from those quarters. The petitioners further state that the victims of such human rights violations are forced to run away into the jungles or neighbouring states to escape violence and they are in no position to come forth and seek redress on their own. The violations form a pattern, which has all but been exalted to state policy by the state of Chhattisgarh on the pretext of combating Naxalite violence. However, those who bear the brunt of these operations in the form of killings, mutilation, rapes and enforced migration are the ordinary tribal citizens of the state who rely on subsistence agriculture in the main. The victims in fact are barely political and have borne the brunt of Naxalite, state and vigilante violence. The facts and incidents set forth in the present petition are based on accounts from the victims given directly to the petitioners. The petitioners are themselves affected by some of the incidents. They have personally been beaten, displaced and received threats from the perpetrators of the violations. Petitioner No. 1 was badly beaten by the Salwa Judum and police and had to be operated upon. Petitioner No. 2 has had his house burnt and all his belongings looted by the Salwa Judum. He is now a refugee in his own state. Petitioner No. 3 has been threatened by the Salwa Judum and barely escaped being assaulted. This Hon'ble Court is already seized of a public interest petition

being WP Civil No. 250 of 2007, Nandini Sundar and ors. Vs. State of Chhattisgarh. The said petition challenges the creation and continued fostering of a vigilante group called Salwa Judum by the state of Chhattisgarh. The present petition seeks appropriate legal action and redressal for the violations committed by the said Salwa Judum, as detailed in this writ petition. The present writ petition is for remedial action to restore the rights of life and liberty and dignity of the residents of Dantewada who are citizens of India and entitled to the constitutional guarantees of life and liberty.

List of Dates

June 2005 A group called Salwa Judum came into being in Dantewada district. This was projected as a spontaneous people's movement to counter Naxalite violence. It started with meetings held in and around Kutru village of Dantewada district under the aegis of the Jan Jagran Abhiyan. The Patels and Sarpanches of several villages were threatened by higher political functionaries with consequences of whole villages being burnt if they did not ensure the participation of their respective villages in these meetings. Individuals were fined if they did not attend the meetings. Within a short time the operation was re-christened Salwa Judum. In the months that followed Salwa Judum activists often accompanied by security forces, the district police, the CAF, the CRPF, and the Naga India Reserve Battalion went into villages, burnt houses, looted grain, livestock and money and even raped women and killed individuals.

June 2005 – 1. **Enforced Migration**

the present:

15,000 people living in Bhairamgarh and Bijapur blocks were compelled to leave their homes on account of the depredations caused by Salwa Judum along with security forces as mentioned above. While the area has seen Naxalite presence since 1980 and the local people were harassed by some incidents, there was never occasion for them to move out of their homes and villages. After Salwa Judum started, they were herded by members of the Salwa Judum and security forces into camps. Whole villages were thus evacuated for no valid reason. This meant that the little freedom and dignity that these poor residents had in their own surroundings was now destroyed. The people lost all access to their farm cultivation and forests which sustained them, and children lost access to schools, and their cattle were stolen. They were left at the mercy of the Salwa Judum activists in these camps and these camps became virtual torture centers where members of the Salwa Judum armed by the state and given the status of special police officers did as they liked with the women folk. They were also forced to go to Salwa Judum meetings and participate in attacks on other villages. If they try and return to their villages they are threatened that they will be implicated in false cases as Naxalites, or killed.

Though in full know of the real circumstances of the shifts, the state of Chhattisgarh chose to disguise this as a protective measure for the villagers against Naxalite violence. Since 2005, they are continuing in these camps in virtual captivity. Their prospects of return to their homes seem dim.

People from other blocks of Dantewada like Konta and Usur have

been forced to join camps in like manner, and the operation continues. In the last two years, the number of villagers in the camps has swelled to 47, 238, and the number of such camps has increased to 20. The state agents as well as members of the Salwa Judum are looting the public exchequer by fabricating expenses on this score.

The result of this enforced migration has also been that even those who manage to escape camps are unable to return to their erstwhile homes as nothing remains there for them to be able to live. This apart they live in constant fear of being attacked by the Salwa Judum. Their attempts to escape camp by running to the forest have been foiled by the Salwa Judum which chases them and destroys their grain. They have been forced to migrate to the neighbouring state of Andhra Pradesh to work as daily labour and eke out a barely human subsistence.

2. Killings

June 2005- August 2007: 33 children and adolescents have been killed by the Salwa Judum, including some as young as 2 years and 5 years old. They have been killed by burning them alive, dashing their heads against rocks, repeated drowning in water, being thrown into a pond and so on. On 13 March 2007, eleven children aged between 2 and 16 were killed by the Salwa Judum while bathing near the boring pump in village Nendra.

June 2005 – August 2007: 11 women were killed by the Salwa Judum from the villages Phulgatta, Dorum, Mukabelli,

Peddakorma, Ettepad, and Karremarka of Dantewada districts, They were between the ages of 20 and 50. In 2006, 30 women were killed in the villages of Dorum Gangalur, Gornam, Idwada, Jangla, Lingagiri, Mumpad, Netikakler, Palnar, Parkeli, Puladi, Rangaiguda, Toynar, Kakekorma. 18 of them were killed after being raped. In 2007, killings of women continue in Peddakorma, Bijapur district and in villages in Konta tahsil.

June 2005- August 2007: At least 415 men have been killed in the tahsils of Dantewada, Bijapur, Konta-Sukma.

2005- 2007: At least 33 children, 45 women, 416 men and 43 unnamed persons have been killed by the Salwa Judum from June 2005 till the present. In all reported deaths amount to 537 persons, and this is a small fraction of the likely killings, most of which have gone unreported.

3. Arson and damage to property by Salwa Judum

Between June 2005 and 2007: At least 2825 houses have been burnt in the undivided district of South Bastar (Dantewada).

Between 2005 and 2007, at least 1733 houses in Bijapur district were burnt and property looted from these and many thousands of other houses.

Between 2006 and 2007, at least 1092 houses were burnt in Konta tahsil of Dantewada district, and the property of many thousands more has been looted.

Killing and arson are inevitably accompanied by looting, damage to grain and other property. Since most of the disposable income in this area is invested in livestock, the Salwa Judum's practice of stealing and eating cattle, pigs, fowl and other animals constitutes a severe attack on people's assets. Burning of paddy is a common feature found across villages which have been attacked by the Salwa Judum.

4. Rapes

June 2005-August 2007: At least 99 women were raped by the Salwa Judum and security forces. In 18 cases, the women raped were subsequently killed, including 12 women in village Korsagudem. 81 cases of rape in addition have been reported, including 25 women raped in village Bhandarpadar, 20 raped in village Pusbak, 19 raped in village Kottaguda, 4 women raped in village Maraiguda and 3 women raped in village Pidmel.

March 2006: Petitioner No. 1, Kartam Joga was severely beaten by the Salwa Judum and police in Dornapal camp and hospitalized from 11.3.2006 – 21.3.2006. Again on 24.4.06, his family members were threatened by the Salwa Judum.

16 April 2006: 160 houses of Village Arlampalli were burnt by the Salwa Judum, including that of Petitioner No. 2, Dudhi Joga.

3 June 2007: Petitioner No. 3, Manish Kunjam barely escaped assault by the Salwa Judum while returning to his home in Sukma.

These violations are separate from and in addition to the Naxalite violence in that district, the stark difference between the two being that complaints of Naxalite violence are entertained by local authorities and victims compensated. In cases of violation by Salwa Judum, the state participates either actively or passively and fails to take any remedial action whatsoever.

In fact, as a consequence of the fostering of Salwa Judum whose members are permitted to run amuck, Naxalite violence has increased in the region and the lives of ordinary people have become intolerable.

Since the state which is bound to protect the lives of citizens has by fostering the Salwa Judum set into motion a policy of systematically violating those very rights, the petitioners have no recourse except to move this Court by way of a writ petition.

3. Union of India

To

The Hon'ble Chief Justice of the Supreme Court and his Companion Justices of the Supreme Court of India

The Writ petition of the petitioner above named

MOST RESPECTFULLY SHOWETH:

1. This writ petition seeks to draw the attention of the Hon'ble Court to the violation of the fundamental rights of the people of Chhattisgarh living in Dantewada district. The state which is bound to protect the people has fostered a group named Salwa Judum, and armed its members in the name of combating Naxalite violence. In practice, the members of this group, often with the participation of security forces and the state police and always with their protection, enter villages, loot, kill, rape and commit arson with impunity. Whole villages have been evacuated by force by the Salwa Judum and the state, and they are being kept in camps in virtual captivity. The result is just the opposite of the stated objective and Naxalite violence has actually increased following the starting of Salwa Judum. Despite the fact that Salwa Judum operates entirely under its protection and with its funding, the state government is mendaciously claiming that the movement is a spontaneous people's movement. Even on that assumption, the fact that the state takes no action even when members of the Salwa Judum commit the most heinous crimes is testimony to the fact that the operation has the state's patronage. This is a case where the state, both directly, and through a third agency is assaulting the rights of citizens. Annexures to the writ petition, and the

compilation in volume II also detail the presence and participation of the local police as well as paramilitary forces in acts of killing, rape and arson.

2. The Indian state is bound by its own Constitution as well as international covenants which must be read into the content of fundamental rights to put an end to these violations, restore the rule of law and provide remedial justice. Hence this writ petition seeks appropriate directions to the state of Chhattisgarh as well as to the Union of India to check such abuse of power by the state. In any event, the fostering of vigilante violence is far too serious a matter and it adversely impacts the constitutional machinery and the rule of law. Besides, there is the danger of these operations spreading to other states. The matter eminently warrants the attention of this Hon'ble Court. This Hon'ble Court is already seized of another WP No. 250 of 2007 challenging the fostering of Salwa Judum. Notice has been issued in the same. While endorsing the prayers in the said writ petition, the present petition seeks additional reliefs, such as action against individuals named in specific complaints and immediate compensation to the victims as specified in the annexures to this writ petition and the accompanying volume.

4. The Petitioner No. 1 is Kartam Joga, resident of Misma village of Dantewada district. He is an elected member of the Zilla Panchayat, from Jagargunda panchayat constituency No. 11. He has himself been severely beaten by Salwa Judum and the local police and had to have an operation on his private parts. He is unable to live in his own village and is currently resident in Sukma town. Petitioner No. 2 is Dudhi Joga, who was a resident of village Arlampalli in Konta tahsil. His entire village, including his own house, was burnt down by the Salwa Judum in the presence and with the active encouragement of Mr. Mahendra Karma, leader of the Opposition in the Chhattisgarh assembly. Petitioner 2 is now leading the life of a refugee in Miriwada village

of Dantewara. He is an elected member of the Janpad Panchayat. The Petitioner No. 3 is Manish Kunjam, resident of Sukma, Dantewada district. He is the president of the All India Adivasi Mahasabha, a platform for adivasis across India, and a former MLA of Konta. He barely escaped being assaulted by the Salwa Judum and has personal knowledge of several of the incidents mentioned.

Being elected members of the local self governing bodies, and therefore responsible for the people, they have filed this petition in a representative capacity and in public interest. While they continue to be subjected to intimidation they feel there is no other way of getting redressal and the only proper course is to draw the facts to the attention of the Supreme Court.

5. The petitioners are all citizens of India. The residents of Dantewada are citizens of India too, and entitled to the guarantees of Part III of the Constitution. Anything interfering with their peaceful life ought in fact to be corrected by the state instead of which the state has turned on them. A public statement of the Chief Minister made as recently as on 15.8.2007 and published in the local newspapers would indicate that the state of Chhattisgarh is publicly endorsing the acts of the Salwa Judum. The said statement of the Chief Minister is annexed hereto as **Annexure P1**. It is clear that no redressal can be expected from the state of Chhattisgarh.

6. From 2005 when Salwa Judum began with the active support of the state of Chhattisgarh and its political functionaries, its members have caused at least 537 deaths, numerous rapes, and burnt several thousand houses from approximately 118 villages. The full figures of deaths, rapes and arson are likely to be at least six times that, since the number of villages affected by Salwa Judum is at least 644. Annexed hereto as **Annexure P2** is a list showing a village wise, age wise, and gender wise break up of the killings perpetrated by the Salwa Judum as

reported to the petitioners; annexed hereto as **Annexure P3** is a list showing a village wise break up of rapes of women as reported to the petitioners; annexed hereto as **Annexure P4** are two lists showing a village wise and crime wise breakup, for the districts of Bijapur and Konta block of Dantewada district of the incidents of depredation wrought such as arson and looting of property culled from the narratives annexed in a separate volume for the courts persual. These lists are far from exhaustive. The people involved are ordinary poor farmers who have nothing to do with any kind of politics leave alone Naxalism. They have been rendered homeless and without succour by the Salwa Judum. Some photographs taken by the petitioners of villages which have been devastated by arson and the current temporary shelters in which villagers are forced to live are annexed collectively here as **Annexure P 5**.

7. As stated above the villagers fear reprisals if they go to any authority and even those who have tried to register complaints in the police stations have been turned away. However, they have given complaints to the petitioners, some of which are annexed hereto as **Annexure P6** collectively. The remaining are in a compilation separately filed along with this writ petition as Volume II. These incidents are detailed in the form of handwritten individual or joint statements of some of the villagers, in Hindi or in Gondi, given to the petitioners personally, petitions to dignitaries like the President and Prime Minister, and other narratives as orally stated to the current petitioners personally. These are true translations of the same. The petitions are far too numerous to be converted into individual affidavits.

8. In the years 2005-2007, members of the Salwa Judum who have otherwise no claim to act on behalf of the state were armed with bows and arrows. Some of them who were made into Special Police Officers were armed with .303s. Armed with this kind of protection, the members are using their power to terrorise villagers, and for purposes of extortion and worse. In most of these incidents

security forces like CRPF and IRB participated as did the local police. Although the crimes committed are all cognizable offences in which the law requires action whether or not the victim is able to complain, no action is taken because the state is the perpetrator. On the other hand, at the instigation of the Salwa Judum, people are implicated in false cases and sent to jail. In addition, people who have protested against Salwa Judum are being intimidated in every possible way. Thus an atmosphere of absolute impunity has been created. The DGP of Chhattisgarh and the Home Minister of Chhattisgarh have justified these actions in interviews which are annexed hereto as **Annexure P7** collectively.

9. The justification for Salwa Judum on the grounds that it is countering Naxalite extremism is completely wrong. Naxalite violence has actually escalated.

Between 1968 and 1998, the Naxalites killed 70 persons, according to figures provided by the IG Bastar. Between 2000 and 2004, the Naxalites were responsible for 119 killings in undivided Bastar district. Since Salwa Judum began on 2005, they have been responsible for the killings of 469 civilians and 88 police personnel. 119 Naxalites have been killed, according to a statement by the Home Minister of Chhattisgarh to the Chhattisgarh Assembly in March 2007. The Salwa Judum is thus neither peaceful, nor efficacious in countering Naxalite extremism.

10. The petitioners themselves have been intimidated and assaulted by the Salwa Judum and by security forces. Petitioner No. 1 was beaten by Salwa Judum and was hospitalised for approximately 15 days. He returned from Raipur where he had gone for work, to his village Misma, at the end of February 2006 around 4 pm. He was told by other villagers that the Thanedar of Dornapal was looking for him. As it was getting late that evening, he went to Dornapal camp the next day around 1 pm to meet the Thanedar. Before he could go into the thana, he was told by Salwa Judum members to go to the boring pump. There they instantly set upon him and beat him for three hours continuously. They tied his legs together, passed a pole through them and then hung him upside down.

He fell unconscious. Then they left him unconscious by the side of the police station. The local police officer-in-charge (SDOP), Mr. Khujur, then found him and hit him again for lying there. One police man, Mr. Sahu and one Salwa Judum member, Savlam Bhima from Dubbatota, then hit him again and paraded him through Dornapal camp. They put a sword to his throat. Then they handed him over to other Salwa Judum members, who guarded him for five days. His body was swollen, and he was unable to eat. In the camp he was given two tablets, and no other check up was carried out. The Salwa Judum's complaint against him was that he had not gone immediately to the thana when called. After they let him go he was hospitalised in Apollo hospital in Bacheli for approximately 15 days. After coming out of hospital he was unable to return home, and since then has been residing at Patnampara, Sukma. Again on 24.4.06, the Salwa Judum came to his house in village Misma and threatened to burn the house and kill his family. He is being threatened with the implication of providing help to the Naxalites, because he is not in camp. His life and that of his family are in grave insecurity. His hospital record and a true translation of his complaints to the Collector which was forwarded to the SP, but on which no action has been taken by the police authorities to which it was forwarded are annexed hereto collectively as **Annexure P8**.

11. Petitioner No. 2, Dudhi Joga is a resident of village Arlampalli but currently residing in village Miriwada with his wife's family, after his entire village, including his house, was burnt down. He lost 40 *phut* of paddy (2400 kg of paddy), 80 cattle, 50 goats, 40 fowls, pucca house, vessels, clothes worth Rs. 1000, 20 sacks of mahua, tora (mahua fruit), 10 sacks of corn, 7 sacks of dal, 1 cycle, and all household possessions. There are 16 members of his family who have been rendered homeless. His parents have fled to Andhra Pradesh, along with one brother; ten members are still in Arlampalli living in temporary shelter while they cultivate their fields. He is living with his wife and child in Miriwada.

The Judum continues to threaten him because he has not come to camp and therefore accuses him of supporting Naxalites. He is in fear of his life.

12. 160 houses in Arlampalli village were repeatedly burnt in three separate attacks by the Salwa Judum. The Salwa Judum first came on 15/16 March 2006 and burnt all the houses. In that attack, one Kalma Waga was killed in his field where he had just harvested and heaped grain. They tied him with his hands behind his back to a pole and burnt him alive. One Sodi Masa was shot while drinking water from the boring pump. One Vetti Kosa was also shot in the village. After two months, the Salwa Judum attacked again. Since people had nowhere else to go, they had re-built temporary shelters of thatch. The Salwa Judum burnt these also. In the third attack, a month later, the Salwa Judum burnt all the grain heaps in the field (*ladis*) and all the mahua in the village, and other food items. In this attack, one Vetti Bhima was taken by the Salwa Judum to the nearby village of Jagavaram and killed there.

13. The third petitioner, Manish Kunjam, was on his way back to Sukma, where he lives, after a public meeting in Cherla, Andhra Pradesh on 2.6.2007, attended by approximately 40,000 people where the villagers had given him statements and petitions asking for an end to Salwa Judum. These are the statements which are attached here in the separate volume. Early morning on 3.6.2007, three jeeps carrying companions of the petitioner were stopped at Dornapal Camp and seven people were injured by a Salwa Judum mob. The Petitioner was stopped at Injeram camp by the police. Finally, he managed to reach Sukma by afternoon. The freedom of movement contained in Article 19(1)(d) of the Indian Constitution and under the ICCPR has been severely curtailed by the Salwa Judum.

14. A recent newspaper article written by a senior and well-regarded journalist in the Hindu reflects the current state of affairs and the concerns intellectuals have

about state sponsored vigilantes and the violation of international human rights law. A copy of the said article is annexed hereto as **Annexure P9**.

The petitioners have not filed any other petition in any other court seeking the same reliefs. The petitioners are therefore moving the present Writ Petition on the following, among other....

5. Grounds

1. Part III of the Constitution has been interpreted by this Court to cast a positive obligation on the State to do all that is necessary to protect not only the bare existence but also the dignity and quality of life of its people. The State is thus both protector and provider and its failure to fulfill this role is a violation of the right to life itself. Here, the State has actively engineered a mechanism to deprive people of even their bare existence. The mechanisms of state have been set up by the Constitution to fulfill the protector and provider role and the State of Chhattisgarh has converted these very mechanisms into agencies of terror. This Honourable Court has been not only empowered but mandated by Article 32 to reach injustice where it occurs and when injustice is brought to the Court's notice in any manner whatsoever.
2. The Indian State is bound by International Covenants and this Court has held that these covenants would have to be read into the content of Fundamental Rights. India has ratified the International Covenant for Civil and Political Rights (ICCPR) and the Geneva Conventions. The ICCPR and the Convention against Torture both injunct deprivation of life, livelihood and cruel and degrading treatment, physical and mental torture. The events detailed in this writ petition would show that every such requirement has been flouted in every possible way by the Salwa Judum and the State. It is a virtual state of terror that has been unleashed in the

area. The petitioners are entitled in public interest to seek the intervention of this Court under Article 32 of the Constitution.

3. International Tribunals like ICTY have dealt with atrocities committed by non-state actors by reviewing the role of the state in three different ways.

A.) **Overall control by the state.** In *Prosecutor v. Tadic*, Case No. IT-94-AR72, 37 (App., Oct. 2, 1995) Para 117, the Appeals Chamber of the International Criminal Tribunal for Yugoslavia (ICTY) formulated a flexible “overall control” test to determine State responsibility –

137. ...Under international law it is by no means necessary that the controlling authorities should plan all the operations of the units dependent on them, choose their targets, or give specific instructions concerning the conduct of military operations and any alleged violations of international humanitarian law. The control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the Party to the conflict) has a role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group. Acts performed by the group or members thereof may be regarded as acts of de facto State organs regardless of any specific instruction by the controlling State concerning the commission of each of those acts. (Para 137, <http://www.un.org/icty/tadic/appeal/judgement/tad-aj990715e.pdf>)

“The rationale behind this rule [Article 8] is to prevent States from escaping international responsibility by having private individuals carry out tasks that may not or should not be performed by State officials, or by claiming that individuals actually participating in governmental authority are not classified as State organs under national legislation and therefore do not engage State responsibility. In other words, States are not allowed on the one hand to act de facto through individuals and on the other to

disassociate themselves from such conduct when these individuals breach international law.”

B. Effective control by the state

C. Public Endorsement of the Act

In *United States of America v. Iran (Iran Hostages case)* (International Court of Justice, Case Concerning United States Diplomatic and Consular Staff in Teheran (Iran v. U.S.A.), 1980 I.C.J. 4 Judgment dated 24 May 1980 at <http://www.icj->), when student activists stormed the American Embassy and took US staff hostage, the International Court of Justice held that even though the act was done by non-state actors, the approval of the act by the Iranian Government “fundamentally... transform[ed] the legal nature of the situation.....The approval given to these facts...and the decision to perpetuate them, translated continuing occupation and the detention of the hostages into acts of that State.”

In the present situation, the participation of police and paramilitary forces in the acts of the Salwa Judum and the public statements of the Chief Minister, the Home Minister and public officials justifying the Salwa Judum are sufficient to hold the state liable for all these violations. Thus the responsibility on every one of these counts, overall control, effective control and public endorsement of the acts, can be attributed to the State of Chhattisgarh. A writ should therefore issue to the State of Chhattisgarh for grant of reliefs in this petition.

4. The Union of India is also liable in the present case. Its executive powers extending to all matters in the Union list would cover treaty obligations and this executive power must be used in furtherance thereto. Further the whole of Dantewada is a 5th Schedule area and the majority of its population are tribals. The 5th Schedule of the Constitution also extends the Union’s executive power “to the giving of directions to the State as to the administration” of such an area. Two things follow from this. First, that the Union of India must be deemed responsible for administrative

- actions in that area. Secondly, the object of the 5th Schedule is to protect the unique identity of the tribal people of India; and as the Salwa Judum directly threatens such an identity and creates dissensions within the already marginalized tribals, the Union of India has a constitutional obligation to remedy the situation forthwith.
5. The State cannot take refuge behind the argument that there is a serious conflict in the region. Even in a situation of armed conflict, non-combatants have the recognized right to protection of their person and dignity. This Court has repeatedly held that maintenance of law and order can never justify the state turning terrorist or encouraging terrorism (DK Basu v. State of West Bengal, 1997 1 SCC 416 and Neelabati Behera v. State of Orissa 1993 2 SCC 746). Common Article 3 of the Geneva Conventions, 1949, to which India is a signatory, prohibits violence against non-combatants, including: (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.
 6. The Salwa Judum is neither lawful nor efficacious in terms of its stated objective of countering Naxalite violence. On the contrary, it has escalated Naxalite attacks, including on civilians. The security of its citizens is the responsibility of the state and it cannot knowingly expose them to acts of violent retaliation. This petition is on behalf of those poor villagers who are not only facing violence from the Salwa Judum, but also from the Naxalites. They are caught in the cross-fire between the two.
 7. The National Human Rights Commission is mandated by the Protection of Human Rights Act 1993 to suggest steps for bringing the law and procedure in this country into consonance with well established principles of human rights. The spirit in which Articles 21, 19 and 14 have been interpreted by this Court and statutes like the Protection of Human Rights Act, the Code of Criminal Procedure and others has kept the rule of law

alive in this country despite threats by insurgency and other dissensions. Rule of law has been recognized by this Court to be the only genuine answer to any form of extremism. Combating any violation of the rule of law is indeed the duty of the state and the measures taken by the state to deal with extremist violence is meant for the protection of the people. The policy followed by the Union and the State of Chhattisgarh has nevertheless turned those very people into casualties in their stated objective of combating Naxalite extremists. As a result the ordinary people have become victims of state, Naxalite and vigilante violence and are on the verge of losing their extremely fragile existence. Several petitions have been sent to the NHRC on the Salwa Judum and no action has been taken. The petitioners are therefore coming to this Court as a court of last resort.

8. All International Tribunals and this Honourable Court itself in judgements including DK Basu and Neelabati Behera referred to above have held that redressal for human rights violations includes guarantees of non-recurrence, action against the guilty and compensation to victims, and comprehensive rehabilitation of victims. In light of these well-known principles of reparation, the petitioners are entitled to the reliefs sought in this petition.
9. The scale of this is wide and cannot be redressed within the machinery of the state of Chattisgarh. For the protection of their lives and resumption of normalcy, it is imperative that action be taken for all these violations.

PRAYER

(a) It is therefore prayed that

1. Direct the Respondents to refrain from supporting, associating, encouraging or promoting, in any manner whatsoever, the activities of the 'Salwa Judum' movement.

- (b) Direct an independent and impartial enquiry under the aegis of the Supreme Court into the incidents of killings, abductions, rapes, arson and gross violation of human rights by the security forces and the 'Salwa Judum' activists, in endeavouring to counter the Naxalites from Dantewara district of State of Chattisgarh, as well as investigate the killings by the Naxalites
- (c) Direct the Central Bureau of Investigation to investigate criminal offences and register cases against all those implicated in the narratives referred to in this Writ Petition.
- (d) Direct the respondents to identify the victims from the narratives in the writ petition, restore them to their homes and grant them compensation.
- (e) Direct the respondents to take immediate steps to disband Salwa Judum camps and keep vigilance to ensure that no such camp is set up in future.
- (f) Disband the Special Police Officers and stop the state from arming any member of the public in the districts of Bastar, Narainpur, Dantewada and Bijapur
- (g) Direct protection to the three petitioners herein and
- (h) Pass such other orders as thought fit.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY Sumita Hazarika

FILED

BY Sumita Hazarika

ADVOCATES

(ADVOCATE FOR THE PETITIONER)

DRAWN ON : 7.10.2007

FILED ON :