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Response to the NHRC (Investigation Division) Chhattisgarh Enquiry Report

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A. BACKGROUND TO NHRC INVESTIGATION

In May 2007, three citizens filed a writ petition titled as Nandini Sunder & Ors vs. State of Chhattisgarh (WP 250 of 2007) in the Supreme Court based on four fact-finding reports, including one in which they themselves had been involved (Independent Citizens Initiative, *War in the Heart of India*). During the course of this fact-finding, the members of the Independent Citizens Initiative (including the petitioners, Nandini Sundar, Ramachandra Guha and EAS Sarma) had themselves been victims of the intimidation and looting of the Salwa Judum, and had their camera taken away by SPOs and Salwa Judum leaders. WP 250/2007 was followed by another writ petition titled as Kartam Joga & Ors vs State of Chattisgarh in August 2007, filed by three residents of Dantewada who had suffered beating, arson, looting and intimidation by the Salwa Judum (being a WP 119 of 2007). The facts and incidents set forth in both petitions were based on accounts from the victims given directly to the petitioners, as well as the personal experience of the petitioners at the hands of the Salwa Judum activists and SPOs. In WP 119/2007, testimonies from 111 villages had been annexed, on the basis of which lists of villagers killed, houses burnt and women raped had been prepared.

The Independent Citizens Initiative of which Nandini Sundar, Ramachandra Guha and EAS Sarma were members, along with Mr BG Verghese (former Editor, *Indian Express* and *Hindustan Times*, Mr. Harivansh, Editor *Prabhat Khabar*, and Farah Naqvi (Writer and Journalist) spoke to 8 government representatives, several Salwa Judum leaders, Internally Displaced Persons (IDPs) and residents of 33 villages in 7 camps and 6 villages, a person stated to be a spokesperson of Maoists and several others like shopkeepers, journalists, and NGO workers.

Petitioner No. 1 (Nandini Sundar), had spoken to villagers from 29 villages, before the petition was filed.

Corroboration of rape, arson and killing by Salwa Judum came from the National Commission for the Protection of Child Rights (NCPCR), which carried out investigations in Dantewada in December 2007. The NCPCR report based on a fact-finding by Prof. Shanta Sinha, Mr. JM Lyngdoh (former CEC) and Mr Venkat Reddy, which involved visits to camps and public hearings at Cherla and Kirandul, noted that "many people shared accounts of family members being killed and women raped by the Salwa Judum." (Cherla) as well as "There were numerous accounts of family members being killed for resisting the Salwa Judum" (Kirandul). (See WP 250/2007, Annexure P 25). Support against vigilantism by Salwa Judum also came from the National Commission for Women, and reported statements by senior people in government, such as the Chairman of the Administrative Reforms Commission, Mr. Veerappa Moily, the former Chief Minister of Chhattisgarh, Mr. Ajit Jogi, the Union Minister for Commerce, Mr. Jairam Ramesh, the Minister for Tribal Welfare, Mr. PR Kyndiah and investigative news reports by independent journalists from reputed Indian as well as foreign media, such as Outlook, LiveMint, the BBC, Guardian, Economist, Le Monde Diplomatique and so on.

In 2008, an Expert Committee on Development Challenges to end Extremism set up by the Planning Commission, and an internationally reputed NGO, Human Rights Watch, also indicted the Salwa Judum for killing, arson and rape, and pointed out that arming civilians, especially children, even under the guise of Special Police Officers, is no solution to the Naxalite problem. The report of the Planning Commission Expert Committee which notes "Encouragement of vigilante groups such as Salwa Judum and herding of hapless tribals in make-shift camps with dismal

living conditions, removed from their habitat and deprived of livelihood as a strategy to counter the influence of the radical left is not desirable. It delegitimizes politics, dehumanizes people, degenerates those engaged in their 'security', and above all represents abdication of the State itself,"

Copy of the report of Planning Commission Expert Committee is annexed hereto as **Annexure A/1**. The reports of the Human Rights Watch on Government, Vigilante and Naxalite abuses in Chhattisgarh, *Being Neutral is our Biggest Crime*, and on the violations of Child Rights in particular, by both Naxalites and Salwa Judum, *Dangerous Duty: Children and the Chhattisgarh Conflict*, are annexed here as **Annexure A/2and A/3** respectively.

The petitioners asked for an independent enquiry into the actions of the Salwa Judum, SPOs and security forces in Dantewada, as well as an enquiry into killings by Naxalites (See prayer (b) in both Writ Petition No. 250/2007 and Writ Petition No. 119/2007). While not individually listing the cases of Naxalite violence since it was presumed that the government was already providing compensation to the NOK of victims of Naxalites, they pointed to the fact that the people of Dantewada are suffering from Naxalite, state and vigilante violence, and asked for compensation to the victims of Salwa Judum violence on par with that provided to victims of Naxalite violence. The fact-finding team constituted by the NHRC has provided details of human rights violations by the Naxalites as well as the Salwa Judum and the security forces. Victims of violence by Salwa Judum are no doubt entitled to similar consideration as that given to victims of Naxalite violence.

In its response the Chhattisgarh government denied any violation by the Salwa Judum, claiming that it was a "peaceful movement", and "any peaceful movement which resists the violent methods definitely gets

support of States" (See Rejoinder Affidavit in the Writ Petition No. 250/2007 at pg 308) that "the villagers are never forced to join the camps" (See sur-rejoinder Affidavit, para c). "It is also denied that any minors are being appointed as SPOs." (See, Rejoinder Affidavit in Writ Petition No. 250/2007, para 5 (e)). It also resisted any independent enquiry, saying "There is no failure on part of state of Chhattisgarh and therefore independent investigation is uncalled for and unwarranted." (See para 15, sur-rejoinder Affidavit in Writ Petition No. 250/2007). The Government of Chhattisgarh also noted "Salva Judum is a voluntary, peaceful initiative of the people and if there is any coercion involved in the matter, the State shall take appropriate action." (See, Rejoinder Affidavit in Writ Petition No. 250/2007, para 12).

On 31st March 2008, this Hon'ble Court allowed the petitioners to file an application asking for an independent enquiry. The petitioners provided the names of independent and well known persons including former justices of the Supreme Court, former CEC, and members of the Planning Commission, including senior women with experience of investigating sexual violence in situations of conflict. On 15th April 2008, the Supreme Court assigned the task of forming an independent fact-finding committee to the NHRC:

"After hearing both sides, we feel that in view of the serious allegations relating to violation of human rights by Naxalites and Salva Judum and the living conditions in the refugee settlement colonies, it will be appropriate if the National Human Rights Commission examines/verifies these allegations. We leave it to the NHRC to appoint an appropriate fact finding Committee with such members, as it deems fit and make available its report to this Court within eight weeks. We request the State of Chhattisgarh and the Union of India to render all

cooperation to the NHRC and the Committee appointed by it. List after two months."

The "appropriate fact finding Committee" that the NHRC deemed fit to make a report to this Hon'ble Court comprised entirely of police personnel.

The Team did not have any representative of the local tribal communities or any independent 'non-police' observer. It is submitted, that the fact-finding team being constituted solely of police personnel would have received inhibited responses especially if the local populace felt victimized by the Salwa Judum and the local police.. That the local administration including the police and the para-military forces have already been implicated in cases of arson, rape and killings is borne by the several testimonies before this Hon'ble Court as well as those given to the NCPCR.

The intimation by the petitioners that an arrival of a convoy of ten four-wheeled drives and an anti-mine tank, along with road clearing exercises which preceded the visit, would do little to instill confidence in villagers, used to running away at the sight of the Salwa Judum and police at whose hands they have suffered severe trauma, were also fully borne out by the findings of the investigating team itself. During the course of the investigation, IDPs from Andhra Pradesh who had come to depose before the NHRC team were intimidated and threatened at Konta by the Salwa Judum leaders in collusion with the Konta police. A copy of the complaint by P. Raghu, Program Manager, Action Aid, who had accompanied the IDPs is annexed hereto as **Annexure A/4** . A copy of a news report in the *Hindustan Times* on intimidation of villagers for speaking out against Salwa Judum is annexed hereto as **Annexure A/5**

The intimation by the petitioners that language barriers would prove to be an impediment in arriving at the truth also appears to be borne out, especially because SPOs and Salwa Judum activists were being used as translators. A letter from Manish Kunjam, one of the petitioners, noting the presence of Salwa Judum activists and SPOs as translators to the NHRC team is annexed hereto as **Annexure A/6** . The NHRC team notes that Hindi speakers in the camps and villages were picked up randomly to act as interpreters, (See page 6 of the report) while also noting that "At present the relief camps are occupied mostly by the leaders/activists of Salwa Judum, ordinary villagers who support Salwa Judum and SPOs family members." (see para 61.5 of the report)

The NHRC team declined the offer of NGOs to accompany it, to create an atmosphere conducive for villagers to talk freely. Given that the situation is one of conflict between Naxalites and the police, with villagers caught in the middle. In fact the petitioners, and members of the core group of NGOs associated with the NHRC, amongst others, had made several representations to the NHRC, that an independent team of people drawn from all walks of life (so as to investigate issues of sexual violence, living conditions in camps and so on) should be constituted. They were assured by the Chairman of the NHRC that there would be opportunity for them to depose before the Commission itself. However, this did not happen.

The NHRC filed its report in a sealed cover to the Supreme Court on August 26th. However, on the morning of August 26th itself, before the Court had seen the report, the *Economic Times* published a report by the reporter Devesh Kumar headlined, 'NHRC gives thumbs-up to Salwa Judum movement'. The selective leak remains a disturbing issue since the reporter claimed that his source was not the NHRC, thereby implying that

someone else had access to the report before it was filed before this Hon'ble Court.

It can be reasonably said, that a prominently all police team in armoured vehicles accompanied by SPOs and Salwa Judum activists would inhibit complaints against the state police and state police supported Salwa Judum. The fact that some allegations were found un-substantiated by such a team is therefore not surprising. Even so, the assumption of state sanctioned force by Salwa Judum and its resultant proneness to crime and excess, without the checks that attend state power, comes through from the report of the NHRC team. Seen in the context of the NHRC's own findings on extra-judicial killings by SPOs, and the NCPCR (Lyngdoh/Shanta Sinha) report, the distinction between legally recruited SPO's and vigilante Salwa Judum activists becomes illusory.

B. COMMENT ON FINDINGS BY NHRC'S INVESTIGATION DIVISION

I. Corroboration of Complaints:

The NHRC team has corroborated the complaints of the petitioners in the following respects:

a. Burning of villages by Salwa Judum:

Allegations leveled in the petition against Salwa Judum are prima facie true to the extent of burning of houses and looting of property. (see para 6.25 of the report). The NHRC team has found that "in some places where the movement encountered resistance from the villagers, atrocities like burning of houses and beating up of people were committed by the Salwa Judum activists. Reportedly, many of those who did not join Salwa Judum were branded as supporters of naxalites." (see para 1.39 of the

report) Salwa Judum activities consist of holding pre-announced meetings in villages, marching to villages, exhorting people to stand up to naxalites, and persuading sangham members to 'surrender'... Those who joined Salwa Judum became targets of Naxalites, who killed the leaders while those who did not became targets of Salwa Judum, which burnt their houses down (see para 6.05 - 6.09 of the report).

These are cases of violence that warrant the registration of criminal cases. A judicial enquiry should be instituted to determine the responsibility of the State administration in not taking action in this matter and the action to be taken against them.

b. Complicity of state police and administration in arson and looting of property:

Since, in order to provide security to Salwa Judum, "the component of security personnel, including SPOs, accompanying the villagers during their movements and rallies became a regular feature" (see para 1.37 of the report) one can presume they were participants or at least silent onlookers in this process. Criminal cases were seldom registered in connection with any incident of arson. (see para 6.09 of the report). These are cases which display the commission of cognizable offences and call for initiation of prosecution. A judicial enquiry should be instituted to determine the responsibility of the State administration in not taking action in this matter and the action to be taken against them.

c. Political Leadership and State Sponsorship of Salwa Judum rallies:

The NHRC report notes that Mahendra Karma provided political leadership to the movement. "Under the leadership of Shri Mahendra Karma, many rallies and processions were organized and efforts were made to

persuade the villagers to join the movement and stand up against the Naxalites.” (see para 1.38 of the report). The journalist who took the photos is scared to go on record, but it is clear that the date which is on all the photos is wrongly put as 2003, since it shows the rally attended by Mahendra Karma, the Collector, K.R. Pisda and others, who could only have been present there in 2006.

NHRC’s report thus recognises that Salwa Judum is a violent movement and not a peaceful people’s movement as the government has consistently claimed, right from 2005 till date, even though repeatedly violations by the Salwa Judum were brought to its notice. The fact that the investigating team itself has reported that Salwa Judum and the SPOs had prima facie committed acts of violence against the tribals under the very nose of the State administration corroborates the close nexus between Salwa Judum and the State administration.

d. Salwa Judum and security forces have forced villagers into camps:

A number of tribals were forced to shift to the camps or flee from their villages (to Andhra Pradesh or forests) by Salwa Judum activists (see para 1.40, 1.48 of the report), while others who supported Salwa Judum went to camps with them. Para 1.40 of the Report mentions that in villages where Salwa Judum meetings were held, a number of villagers used to flee before such meetings were held. The villagers obviously feared both the Naxalites as well as the Salwa Judum.

There are documented cases in the report itself which state that not only the Salwa Judum but paramilitary and police forces were also involved in this forceful dislocation. Some Nelasnar camp residents, for example, “left the village due to atrocities committed by the Naga police.” (see para 8.01

of the report). "Not all tribals came to these camps willingly.....though some villagers had been forcibly taken to the camps in 2005-6, they subsequently came back." (see para 1.48, 6.12 of the Report). The NHRC notes that as far as most villagers are concerned, the 'Judum' is identified with camp existence. (see para 1.57; 6.50.2, footnote 1 of the report).

These are cases of violence that warrant the registration of criminal cases, and a gross violation of the fundamental right guaranteed by Article 19(1)(e) of the Constitution. A judicial enquiry should be instituted to determine the responsibility of the State administration in not taking action in this matter and the action to be taken against them.

e. Inhibitions on freedom of movement and continuing constraint

by Salwa Judum: The continuing constraint on villagers by Salwa Judum is evident from the following statement: "The enquiry team also came across a few instances where though the families have shifted to their village, the able bodied males are compulsorily asked by Salwa Judum leaders to come and sleep in the camps. This is being done in order to keep them away from the influence of the naxalites and also to maintain the strength of numbers in Salwa Judum (see para 1.51 of the report)." The report notes that most of the current inmates of the camps are those who are closely associated with the Salwa Judum, such as its leaders and SPOs, and they cannot return for fear of Naxalites, (see para 1.49 of the report) while others are constrained by fear of Salwa Judum or so that "they are not deprived of the facility of free rations available to the camp dwellers only." (see para 1.50 of the report) It is clear from the Report that the Salwa Judum in effect is as harmful for the tribals and their right to live freely and unmolested as the Naxalite militants.

f. Extra-judicial killings by SPOs:

The NHRC investigation revealed that SPOs have been involved in “certain incidents of atrocities against the tribals.” (see para 1.54 of the report) and in some instances (.e.g Matwada camp killings), the security forces and SPOs seemed to be prima-facie responsible for extra judicial killings (see para 6.24 of the report). Many tribals refer to the SPOs as Judum (see para 1.62 of the report). SPOs are accountable to the State police under the State police regulations. These regulations define their responsibilities. The very fact that they, in league with Salwa Judum, had committed extra-judicial violence shows (i) the nexus between the State administration and Salwa Judum and (ii) the complicity of the State police in such violence.

Although the state government reported to the NHRC that 1579 SPOs had been dismissed on disciplinary grounds (see para 1.54 of the report), as late as April 2007, according to a letter filed by the State Government in response to an RTI, not a single criminal case had been registered against the SPOs. (see Nandini Sundar, WP No. 250/2007, Annexure P 30). Further, the information supplied to the NHRC fact-finding team is contradicted by the DGP’s article in *The Pioneer*, 17th September 2008, in which he says 3250 SPOs have been discharged. The total number of SPOs is also unclear: Rahul Sharma, SP Dantewada told Human Rights Watch there were 3500 SPOs in Bijapur and Dantewada, while DGP Viswaranjan said there were 3800 SPOs in the same area. (Human Rights Watch Report, foot note 381). Either way, if more than half the number of SPOs have been discharged on disciplinary grounds, this does not speak much for the SPOs as a disciplined force nor does it exonerate the State police to whom the SPOs are accountable under the police regulations.

g. Blurred boundary between Salwa Judum and SPOs:

The NHRC team alleges that the petitioners use the term Salwa Judum loosely to include SPOs and security forces. Due to this casualties by the SPOs and Security forces during operations are attributed to Salwa Judum (see para 6.04 of the report). In several testimonies to the NCPCR as well as to the NHRC, villagers have said that Salwa Judum activists, SPOs and security forces jointly burnt the villages. The gravamen of the petitioners' grievance has been that the Salwa Judum is a state sponsored strategy, with the state exercising both overall and effective control and endorsing its acts. With the logistical support of the police and paramilitary forces, the Salwa Judum has attacked villages and forced the villagers to move into camps. The activities of the Salwa Judum has been described by the NHRC in its report as primarily holding pre-announced meetings in which Salwa Judum activists are accompanied by the security forces (See para 6.05-6.09 of the report). The NHRC team itself notes that as far as most villagers are concerned, the 'Judum' is identified with camp existence. (see para 1.57; 6.50.2, footnote 1 of the report). The NHRC team admits that many tribals refer to the SPOs as Judum (see para 1.62 of the report).

In *Nandini Sunder*, WP No, 250/2007, the petitioners have clearly distinguished Salwa Judum and SPOs while showing the symbiotic relationship between the two: "Far from being a peaceful campaign, 'Salwa Judum' activists are armed with guns, lathis, axes, bows and arrows. Up to January 2007, 4048 "Special Police Officers" (SPOs) had been appointed by the Government under the Chhattisgarh Police Regulations. They actively participate in the 'Salwa Judum' movement and are given military and weapons training by the security forces as part of an official plan to create a paramilitary vigilante structure parallel to that of the Naxalites." (synopsis and list of dates). Chhattisgarh Home Minister Ram Vihar Netam has also defined the relationship between SPOs and

Salwa Judum in an interview to *Forces* magazine: "Some members of Salwa Judum have been trained by the police as Special Police Officers (SPOs)." (Annexed as P/8 in Kartam Joga, WP. No. 119/2007). The NCPCR report notes that "According to a government official the criteria for selecting SPOs is that: (a) they should be above 18 years of age; (b) their families should be resident within the camp; and (c) they should be victims of Naxal violence."

Thus it is clear from the reports of the NHRC, the NCPCR, the statement of the Home Minister as well as popular perception by the villagers that the SPOs currently form the core of Salwa Judum, and they have come out of the ranks of those who joined Salwa Judum and are currently resident in camp. The blurred boundary between SPOs and Salwa Judum in fact has been noted by the Lyngdoh report to find that SPOs are often a euphemism for Salwa Judum. Besides human rights violations whether committed by SPO's or others must be checked.

h. SPOs are civilians who are armed and bent on revenge:

The NHRC team notes that "SPOs play a vital role. Initially they were not armed, but later when attacks on camps increased, they were armed. (see para 6.19-6.20 of the report). "Since many of them are victims or NOK of victims of Naxalite violence in the past, they are a highly motivated lot in the fight against the Naxalites." (see para 1.53, 6.19 of the report). The NHRC team has justified recruiting SPOs in the initial phases to protect camps, (see para 1.52, 1.53 of the report) but now that there are at least 10 battalions of paramilitary forces in the district, it is best to disband the armed civil populace. When the Naxalites have attacked camps, as in Rani Bodli in 2007, the SPOs have been unable to protect the camps, and have been the first to suffer casualties. A police force based on personal revenge, can also easily turn into a vigilante force. The role that should

have been played by the State in safeguarding the interests of the tribals has been obviously abdicated.

i. Minors were recruited as SPOs, at least initially: The NHRC team has stated that “the enquiry team did not come across any minors working as SPOs **now**. There were some instances in the initial period, but they were sent back. (see para 6.21 of the report). As late as 2007, however, police memorials to SPOs killed in the Maoist attack on Rani Bodli showed that some of them were minors (see Nandini Sunder, WP No. 250/2007, Annexure P 33). Since those recruitments took place under the State police regulations, the State police had complicity in making such recruitments that were not only illegal but also violative of human rights. In addition, the State Government has consistently denied that there were ever any minors (See, Rejoinder Affidavit, Writ Petition No. 250/2007, para 5 e). It amounts to obfuscation of the facts to suppress information on an illegal process of recruitment and violation of human rights.

j. Forced disappearances: The NHRC report notes that “There are many villagers missing. It is not clear whether they have joined the Naxalites, or are hiding in the jungles or have moved out of Chhattisgarh, or have since been killed.” (see para 6.27 of the report) NHRC has accordingly, recommended creating a register of missing persons. Against this background, on the basis of NHRC’s own investigating team’s report of a large number of missing persons in Dantewada district, this matter calls for a judicial intervention. There are international conventions such as the Declaration on the Protection of All Persons from Enforced or Involuntary Disappearance, adopted by the UN General Assembly in its resolution 47/133 of 18 December 1992. According to its preamble, enforced disappearances occur when persons are arrested, detained or

abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government *or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect,* consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law. *Enforced disappearance when "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack"* has been defined as a crime against humanity in article 7 (1) (i) of the Rome Statute of the International Criminal Court. The Indian state, as a signatory to these Conventions, is committed to treat this matter with utmost seriousness. It appears that the fundamental rights of such displaced and 'disappeared' tribals have been grossly violated. It is incumbent upon the State to investigate the matter.

k. Suspect encounters, non-recording of deaths and arson: In a number of cases, the NHRC team found suspicious circumstances under which encounters were reported (e.g. see paras 6.38.1/2, 6.47.3, 6.61.1, 6.61.2, 6.63.5/7, 6.70.5 of the report). It also noted that in a number of cases regarding deaths and arson, whether by Salwa Judum or Naxalites, that no record had been filed. The Enquiry Team has brought to light "confusion" regarding the killings recorded and the dead bodies discovered (see Para 6.36.6, 6.42.7, 6.44.2, 6.48.1, 6.51.6, 6.72.13, 6.73.6 of the Report), cases of deaths not registered (see para 6.41.2, 6.48.1 of the report) and cases of arson not registered (see Para 6.09, 6.39.1, 6.43.1 of the report). This shows that extra-judicial use of force by the Salwa Judum, Police and Security Forces, as well as violence by Naxalites, has been going on a large scale without the filing of cases and identification of bodies, as required under the law. Each incident of this

kind, whether done by Naxalites or Salwa Judum and security forces involves gross violation of human rights of the worst kind and non-compliance with the judicial process. Each incident thus deserves a full-scale enquiry by a judicial authority. The enquiry into such serious incidents cannot be glossed over by conducting a quick executive enquiry of this kind.

I. **Disruption of education:** The NHRC report notes that the State Government has allowed the security forces to occupy school and ashram buildings which were being used to provide education. "This needs to be checked". (see para 6.30 of the report) We agree with this as well as the finding that Naxalites have damaged many schools. It is urgent that education be prioritized and schools re-started in all the villages. The low literacy rate cannot be attributed only to the Naxalites or the recent conflict, but is symptomatic of the long term neglect by the state and local administration .

As the NHRC report has brought out the general trend of use of illegal force by the Salwa Judum, criminal proceedings must be instituted to find out the persons responsible for such violence. A judicial enquiry should be instituted to determine the responsibility of the State administration in not taking action in this matter and the action to be taken against them.

II. **Conclusions by the NHRC Team which are not supported by their own evidence**

There are a number of instances, where the evidence collected by the NHRC team points in a different direction from their conclusions:

a. **Punishment and intimidation of suspected Naxalites:** The NHRC team's conclusion that "Salwa Judum is not involved in asserting the

right to control, intimidate and punish any one they consider to be a suspected Naxalite.” (see para 6.28 of the report) is contradicted by the Team’s findings in which it itself notes that those tribals who did not join Salwa Judum “were branded as supporters of Naxalites... the Salwa Judum activists too retaliated by burning down houses of known Sangham members who did not join the movement against the Naxalites”. (see para 6.06 and 6.09 of the report). Talking about the first phase, “in some places where the movement encountered resistance from the villagers, atrocities like burning of houses and beating up of people were committed by the Salwa Judum activists. Reportedly, many of those who did not join Salwa Judum were branded as supporters of naxalites.” (see para 1.39 of the report) This clearly amounts to intimidation, if not outright and brutal repression.

b. Withdrawal of services to villages which are not with Salwa

Judum: The NHRC report says that the enquiry team did not find that the district administration had deliberately withdrawn services from those not living in camps or not supporting the Salwa Judum (see para 6.29 of the report). It is not clear how NHRC comes to this conclusion when it notes that rations are available only in camps, (see para 1.50 of the report) and that Salwa Judum is identified with the camps, (see para 1.57; 6.50.2, footnote 1 of the report) and that “the only government agency active in the area is the police” (see para 8.08 of the report) The NHRC team only visited two villages in Sukma block to demonstrate this point, which is hardly convincing since Sukma block is among those blocks not as badly affected by Salwa Judum as compared to other blocks. It is surprising that the investigating team did not choose to address similar questions to the tribals in the villages

which had been affected by Salwa Judum which the NHRC team visited.

The NCPCR report, which concentrated specifically on children and their education, states that 'A big problem is that schools and Anganwadi teachers have been shifted from the villages to the camps leading to a concentration of service-providers in camps and no services available to those who are still living in villages.' Since the Salwa Judum is identified with camps, it would be fair to say that all villages which are not in the Salwa Judum are not getting any services.

The NHRC report notes that "In many villages where houses were burnt around two years ago, when Salwa Judum processions and meetings were common, the tribals have rebuilt their houses and are living there. (see para 7.01 of the report). This indicates that while people are living in the villages, they do not have access to any services, including rations.

c. Continuing Violations by Salwa Judum and security forces/SPOs:

The NHRC team notes that the Darbhaguda blast of February 2006 stopped Salwa Judum (see para 6.13 of the report), which is now largely identified with the 23 relief camps managed by state government. NHRC, however goes on to show that many of the killings and incidents of arson its investigation revealed, occurred in 2007 and even 2008. Even just before or during the course of the enquiry in the summer of 2008, there were complaints made of arson (as in Nendra), extra-judicial killings by SPOs (Matwada, see para 6.24, FN 2 of the report) and killings by CRPF (Cherpal camp, see para 6.24, FN 3 of the report). As shown above, many villagers are under continuing constraint to sleep in Salwa Judum camps.

d. Conditions in camps: The NHRC team concluded that overall conditions in camps are satisfactory, though lacking in certain respects. However, as the NHRC report itself notes, these lacking conditions include employment, sanitation, health, education, rations, i.e. all essential aspects. Most villagers are clearly keen to go back if security conditions improve, as corroborated by NHRC's report itself.

e. Basis of allegations: The NHRC team says that petitioners have hardly verified any of the cases themselves, and their allegations are based on hearsay (See para 6.23, 7.08 of the NHRC report).

Comment: Kartam Joga, Dudhi Joga and Manish Kunjam are not only adivasis themselves and resident in the district but have personally suffered at the hands of the SPOs and the Salwa Judum. The NHRC team accepts that Dudhi Joga's house was burnt by the Salwa Judum (see para 6.32 of the report). At the time of filing the petition, Dudhi Joga was a refugee in Miriwada, but has since returned for the sowing season. (The NHRC report accepts that many villagers have returned in the last 1.5 years (see para 1.48 of the report). While it is accepted that Kartam Joga had a hernia operation, the NHRC report does not deal with the question of his severe beating and torture before the operation which may or may not have affected it. Being the President of the All India Adivasi Mahasabha and a former MLA, Manish Kunjam has the advantage of close interaction with a large number of people on a daily basis, many of whom are also his relatives, and therefore, a better appreciation of the ground realities. It would have been appropriate had the investigating team taken note of this before summarily disposing of their complaints.

The NHRC team notes that it carried out its enquiries in the face of difficult conditions. Other fact-finding groups and the petitioners would agree with them as they themselves have traversed the very same distances across Dantewada under similar conditions, but without any security. However, these other fact-finding teams had the advantage of interacting with the tribals in an environment in which the tribals did not feel threatened. The tribals, knowing that the petitioners and others were not from the government nor did they seek protection from anybody, came forward and disclosed the facts in a fearless manner.

The NHRC team discounted all the evidence from IDPs and almost all the evidence in camps and villages which went against the Salwa Judum and SPOs (see detailed chart) and also did not take into account the evidence collected by different fact-finding teams, including the National Commission for the Protection of Child Rights, Human Rights Watch, PUCL-PUDR, Medico-Friends Circle, a team of students from Delhi University, TISS and NALSAR, as well as reports by NDTV, *Mint*, *Outlook* and others. Apart from the villages and camps visited by other members of the *Independent Citizens Initiative*, including the other two petitioners, Petitioner No. 1 (Nandini Sundar) who is an anthropological expert on this area with knowledge of local languages, had accounts from 29 villages, before the petition was filed. She had personally visited: 3 villages when Salwa Judum was at its peak and the vigilantes and SPOs prevented travel; 5 camps in which she spoke to IDPs from 13 villages; 1 police station where she spoke to 5 villagers in custody; Jagdalpur jail where she spoke to women from 7 villages; IDPs from 5 villages, currently in AP and elsewhere in Bastar. After filing the petition, she subsequently visited 5 villages, and spoke to IDPs from 13 villages. This detailed list of

villages, IDPs and the dates on which she met/visited them was made available to the NHRC. The allegations were thus not based on hearsay

Some mistakes could reasonably have been made, with regard to the age and date, as illiterate villagers do not keep good records of what happened to them, particularly when they are fleeing from attack, and villages and even families have been scattered between camps, forests and refugee settlements in AP. However, wherever these came to their attention, they provided a corrected list to the NHRC team.

The current composition of the relief camp (SPOs and their families, Salwa Judum leaders and those supporting them) also explains why the NHRC police team got mainly pro-Salwa Judum accounts from the relief camp (see detailed analysis village by village), compared to the much wider range of responses received by the petitioners and other fact-finding teams.

f. Illegal checking of vehicles:

The NHRC team notes that during the enquiry the team did not come across any complaints of Salwa judum carrying out illegal checking of vehicles etc. (see para 7.03 of the report)

Comment: All the petitioners have personally suffered illegal checking by the Salwa Judum, including looting of camera, and intimidation while returning from a rally in Cherla, which has been detailed in the petitions and fact-finding reports. The NHRC team admits that in the first phase SPOs were not armed and did not have uniforms which made it impossible to distinguish between SPOs and civilians. Further, the NHRC team were being escorted by a heavy

security detail and thus were not in the same position as an ordinary person on the road.

g. Efficacy of Salwa Judum: The NHRC report states that due to Salwa Judum, many areas which were previously inaccessible have come under police control. (see para 6.17 of the report)

Comment: This appears to be wishful thinking by the police, because all local evidence suggests to the contrary, that Maoist recruitment has increased exponentially among victims of Salwa Judum. Before Salwa Judum began, schools, anganwadis and other services were running in the villages. The Administrations's own lists (Annexure P/41 in Nandini Sunder in WP No. 250/2007) indicate that schools and other services have been shut down and shifted to the camps, following Salwa Judum. Government presence does not imply only the police; it also implies health, education and so on, none of which are working in the villages after Salwa Judum started.

Law and order is the legitimate function of the State and it is illegal to outsource it to a private vigilante force, that too, several of whom are non-tribals in an area that has a substantial tribal population. It also shows the tacit support given by the State to Salwa Judum.

h. State justification of Salwa Judum: The NHRC report argues that 'The State cannot be said to have sponsored Salwa Judum but it certainly has extended support to it by way of providing security to the processions and meetings of Salwa Judum and also to the inmates of the temporary relief camps (see para 7.06 of the report)

Comment: The state government's continued justification and encouragement to Salwa Judum, is expressed in their counters to the

petition. Even passive support by the State to a vigilante force's violent activities amounts to outright complicity.

III. Findings by NHRC Investigation Team which call for rigorous judicial enquiry

a. **Allegations of killing:** According to the NHRC, allegations of large number of killings by Salwa Judum are not true. (see para 6.25 of the report) Many of the villagers whose names figure in the list of those allegedly killed by Salwa Judum were actually killed by Naxalites; Many of the villagers in the list of those allegedly killed by Salwa Judum or security forces are naxalites killed in encounters with security forces; some people died of natural causes or disease. (see para 7.08 of the report)

Comment: In many cases, the Enquiry Team has listed out the witnesses it had examined, documents it had perused and discussed the evidence gathered at site. In most cases, the evidence gathered is not sufficient but the Enquiry Team has chosen to summarily reject the complaints in the petition by saying that they have "not been substantiated". Our own detailed analysis of each of the findings, annexed at the end of this response, reveals that almost every single case regarding killing requires further judicial enquiry.

For example, in see para 6.36.11/ 12 & 13 of the report, the Enquiry Team (ET) came to the summary conclusion that Salwa Judum had not been involved in any extra-judicial killing, even though the Petitioners have complained about extra-judicial killings. A reading of see Para 6.36 of the report, shows that deaths due to disease are usually recorded in the village records, as evident from see paras 6.36.5, 6.36.10 of the report, whereas, the deaths referred in see paras

6.36.7/8 of the report, aid to be deaths due to disease do not find place in the village record. In see para 6.36.10 of the report, the case of reported "suicide" of an erstwhile camp inmate does not figure in police record, as it ought to. The ET has not investigated these patent discrepancies that pertained to loss of human life.

The incentives offered by the State Govt. to next-of-kin of those killed by Maoists are substantial, as evident from the report itself. Such incentives are not available to the kin of those killed by Salwa Judum or Security Forces. This has prima facie tended to influence the kin in their evidence. For example, the kin of those killed as mentioned at See paras 6.34.3, 6.37.3, 6.37.4, 6.40.3, 6.42.6, 6.44.3, 6.56.3 of the report) were paid compensation at the rate of Rs 1 lakh per person killed by Maoists, whereas the kin of those killed as mentioned at see Paras 6.39.2 of the report, (SPO killed Madkam Soma), see para 6.43.1 of the report (Korsa Santo killed, whether it was by SJ not clear; no case; no compensation), see para 6.44.7 of the report (Madvi Anda killed by Naga Police; no case; no compensation), see para 6.44.8 of the report (Vanjam Iriya killed by Naga Police; No case; no compensation) were not given similar compensation. It is possible that in all such cases where complaints are not being filed and compensation not being paid, the Security forces or Salwa Judum or both are involved.

Also, the very fact that the NHRC team has found some complaints of extra-judicial killings to be true, and pointed to the need for an independent investigation into the encounters in Santoshpur (in which 6 villagers were killed) Hirapuram (in which 3 villagers were killed), a prima facie false FIR in killings by SPOs in Matwada camp, and one case where a villager has been prima facie killed by Salwa Judum and

no FIR has been registered (Kawasi Chaitu, Jangla) points to the possibility of many other similar incidents having taken place in the district. (see para 7.08 of the report) An independent judicial enquiry alone will reveal the truth. Even one extra-judicial killing is far too serious a matter to be allowed to be taken lightly. Further, a detailed enquiry may reveal that the incidents in which the NHRC team has found that Salwa Judum has been involved in killings and violence may just be the tip of the iceberg.

Village	Needs further investigation (though prima facie killed by SJ/SPO)	Killed by SPOs/security forces
Jangla	Kawasi Chaitu	
Bhogamguda		Madkami Soma s/o Vello (compensation not paid)
Ponjer		Killing of 5 people by SPOs
Kotrapal	Markami Deva	
	Markami Mudda	
	Madvi Hidma	
	Vanjam Iriya	
Maraiguda	Kadti Dula	

b. Allegations of rape: The enquiry team did not come across any case of rape which could be substantiated. (see para 6.25 of the report)

Comment: The NHRC's conclusions were based on two villages, Polampalli and Potenar. As it happened, in the case of Polampalli (Usur thana), despite the correct details being mentioned in the petition, the

NHRC team visited Polampalli (Dornapal thana). And thus it is not as though the allegations were found to be false, since the wrong village was visited. Even taking into account the evidence elicited by the investigating team on rape, in Potenar in see para 6.76 of the report, the allegations by five women of rape have been summarily disposed of, despite some prima facie evidence, whereas a complaint of this nature (that involved assault and molestation of young tribal girls, many of them minor at the time) is such a serious matter that it calls for a full-fledged independent judicial enquiry. The manner in which the investigating team has tried to arrive at the finding is somewhat hasty.

V. **Shortcomings of the NHRC investigation process and appreciation of evidence**

This section is an illustration and summary of the detailed analysis presented in the chart appended to the end of this response, responding to the findings of the NHRC investigation team in the case of every village and every individual. As shown in the chart every case requires further judicial enquiry.

a. **Wrong village visited:** In at least two and maybe three instances, NHRC team states that the petitioners complaints were not substantiated after visiting the wrong village, despite the correct particulars being given in the petition.

- Karemarka (NHRC team visited Karemarka in Jangla PS, rather than Karremarka, NP)
- Polampalli (NHRC team visited Polampalli Dornapal PS, rather than Polampalli Usur PS)
- Kurti (possibly since names of clans in the village as given to NHRC did not match names of clans in testimony. Apart from Peddakurti

(near Dornapal camp) to whose residents the NHRC team spoke, there is also Chinnakurti and Kurti para of Nendra).

b. Drawing conclusions on denial of services based on wrong

villages: The petitioners' contention that services (medical help, education, anganwadi) were withdrawn from villages which had not joined Salwa Judum is said by the NHRC team to be disproved by visits to villages in Sukma block. This is patently erroneous, since Sukma block is out of the conflict area. This also ignores earlier fact-findings by the National Commission for Protection of Child Rights that all services had been confined to camps.

c. Contradicting evidence ignored: In at least 2 cases, the NHRC team has ignored the evidence provided by independent journalists and others which contradicted the police version and accepted the police version at face value.

- Santoshpur: 4 independent journalists (from ETV, CG Net/Daily Chhattisgarh, Christian Science Monitor and Indian Express) testify to killing of Kodiya Bojja by SPOs, based on interview with NOK and other villagers, soon after incident. NHRC team accepts police version that he was killed by Naxalites.
- Hariyal Cherli: 5 different sources (fact-finding reports by the Independent Citizens Initiative, PUCL-PUADR, Asian Centre for Human Rights, Forum for Fact-finding, Development and Advocacy) as well as the DGP's press release reported in *Hitvad* have been ignored by the team, namely that 9 bodies recovered belonged to ordinary villagers/Naxalites killed by security forces. Instead, the internally contradictory police FIR has been taken at face value, and 7 killings attributed to Naxalites instead. No allowance is made for the fact that compensation is given to relatives of Naxalite victims (as against no

compensation given to relatives of SJ/police victims), the fact that the NOK in this case had accepted compensation, and this might influence some testimonies.

d. Evidence of IDPs in State of Andhra Pradesh inexplicably discounted: In many cases, NHRC team seemed to assign differential weights to the evidence tendered by the tribal villagers, and IDPs in Andhra Pradesh, compared to Salwa Judum activists, the SPOs, and the camp inmates supporting Salwa Judum and the police. All testimonies – including those provided in person – by refugees/IDPs in Andhra Pradesh have been discounted. On the other hand, almost all statements made by Salwa Judum camp residents and SPOs have been accepted, especially when they allege that a person was killed not by Salwa Judum but by Naxalites.

- Kottacheru: Testimonies personally given by IDPs in Andhra to NHRC team regarding burning of village and killing of persons discounted because no-one was available in village or camp to corroborate. The lack of such persons is itself circumstantial corroboration of the IDP claim.
- Lingagiri: Testimonies personally given by villagers to NHRC team in AP of arson and killings by Salwa Judum discounted because there was nobody in the village to corroborate, as the entire village was destroyed and abandoned.
- Hirapuram, PISAIPARA, PUSBAK, Chirpur Bhatti (Chikurubhatti) – all cases where IDP testimony to NHRC team was corroborated by evidence of burnt villages on the ground, but their testimony was not accepted.
- Onderpara, Gorkha, Bheji – all cases where testimonies before SC of widespread burning were corroborated by ground evidence, but

were discarded as 'could not be substantiated' because village was empty.

- Nendra – Despite Next of Kin (NOK) giving testimonies, and even sending photos of the bones of their relatives killed by SPOs in camp, the version of camp residents that they went 'missing' has been accepted. The testimony sent by Smt. Muchki Mutti and ors to NHRC is annexed hereto as **Annexure A /7**

e. Statements by villagers or camp residents which allege killings

by Naxalites accepted at face value: Even if the body is not found and no case is registered, these statements are treated as substantiated, even where they contradict testimony given by other villagers or even NOK. Similarly, statements collected in villages and camps which blame Naxalites for burning houses are treated as substantiated, even though there appear to be some internal contradictions, and there are no police records. The petitioners condemn all killings and violence, whether by the Maoists or by Salwa Judum or by the State agencies. However, to attribute killings by Salwa Judum or by the State agencies to Maoists will amount to obfuscating the acts of violence by Salwa Judum or the State agencies. The same standards of evidence need to be applied across the board.

- Some examples: Poyam Lachu, Jangla camp; Korsa Santo, Pulgatta; Uike Sannu Kotrapal, Vanjam Mangu, Kotrapal; Madvi Vira's son, Neelamadgu; the people killed by Naxalites in Gangalur village; camp residents of Hirapuram alleged Naxalites killed 3, although only one got compensation; 3 killings attributed to Naxalites in Asirguda even though only one is registered and has got compensation.
- Gaganpali and Asirguda camp residents say village was burnt by naxalites, but no police records was registered;

f. Statements by villagers and camp residents indicting Salwa Judum/SPOs treated as unsubstantiated: Such statements, including by NOK which allege killing by Salwa Judum or SPOs or security forces are treated as unsubstantiated if the body is not found, or there is no police record. The investigating team itself has found that police records were silent on several cases of killings and several cases of missing bodies, including alleged killings by Naxalites. To say that, on that ground, the petitioners' complaint has not been substantiated is highly misleading. It amounts to ignoring the strong possibility of an act of violence.

- Some examples of villager testimony ignored: Kawasi Chaitu, Jangla; Ponjer statements about fake encounter; Bhogam Kamlu, Bhogamguda (testimony given to NHRC team by his father), Testimony of Muchaki Mutti of Nendra and other NOK regarding killing of 4 persons in Errabor camp; Dallu Raut, Markapal; Kalmu Waga, Sodi Masa of Arlampalli; Punem Madamayya of Pusbak; Toynar villagers; 3 month old Madvi Kosa and Sodi Joga of Nendra, Muchaki Bhima/so Singa, Nendra
- Some examples of camp resident testimony ignored: Gorgonda camp resident who said her father in law was killed by Naxalites; Padedda camp residents on Korsu Budhram

Testimonies given to NHRC by NOK of Kalmu Waga and Sodi Masa in Arlampalli, are annexed hereto as **Annexure A/8 and A/9** respectively.

g. All statements by the police are accepted at face value: except two (Matwada, and Hirapuram in which an SPO raises doubts), even when they contradict villagers testimony, e.g. Modiyam Somlu, Padedda; Korsu Budhram, Padedda; Nendra house burning in July 2008.

In almost all cases, the NHRC team accepts police version of encounter killings. The report does not mention the violation of the NHRC's own guidelines on encounter killings, according to which in all cases where the police officer involved in the encounter killing is from the same PS as the encounter being investigated/registered, such cases should be handed over to an independent investigating agency like the state CB-CID. The fact that the team itself found suspicious circumstances under which encounters were reported (e.g. see paras 6.38.1/2, 6.47.3, 6.61.1, 6.61.2, 6.63.5/7, 6.70.5 of the report) should raise doubts about the police statements on encounters, as NHRC itself has repeatedly expressed concern at all cases of encounter and issued landmark guidelines on how to deal with them.

10. The NHRC team appears to condone killings of Sangham members (see para 6.44.2 of the report) despite noting in one case that an SPO told them that sangham members are not armed and wear no uniforms.

C. CONCLUSION

1. Tribal society in Dantewada district stands divided today into two groups, namely, those that are with the Maoists and those that are with the Salwa Judum (para 6.69.7). There are others who do not belong to either of these two groups but they stand intimidated to speak out the truth. It is in this context that an independent judicial enquiry is necessary to arrive at the truth about atrocities by the Maoists and those by Security forces and SJ.

2. The NHRC team had elicited logistic support from the State police, SPOs and para-military forces for providing security to them during their

visits. The presence of these along with some Salwa Judum leaders created a sense of intimidation among the tribal witnesses, as documented by the team more than once. In Para 6.65.1, the Team reported that villagers in Puspaka village had run away on seeing police accompanying the Team. In Para 6.66.1, the investigating team has admitted in a forthright manner that the Enquiry Team could not verify the truth of the allegation on a visit to Chikurubatti village because all the villagers ran away on seeing the police/ CRPF (possibly even SJ leaders) accompanying the Enquiry Team. A credible enquiry is not possible when the prospective witnesses are intimidated.

In Para 6.63.7, relating to Hirapuram, the investigating team has rightly taken note of this basic limitation and stated that "though as per police records, Vetti Masawere killed in an encounter and Case FIR No. 3/08 PS Basaguda has been registered in this regard, the same needs to be verified by an *independent* agency "due to the complaint received in this regard and the other reason mentioned above"

Added to this, the scheme of compensation granted by the State to NOK of those that were killed weighed in favour of those killed by the Maoists. The police records did not register cases of violence by Salwa Judum and State agencies. All these factors together had the effect of distorting the weight of the evidence gathered in favour of the version of Salwa Judum and State agencies, thereby making it difficult for the team to arrive at the truth.

3. Despite these limitations, the very fact that the NHRC Team could not help reporting numerous cases of extra-judicial violence including fake encounters, killings, rape and arson points to the state of affairs prevailing in Dantewada district and the complicity of the State in it. What the

petitioners had brought to light in their petition represented only a small sample and, in reality, the magnitude and extent of human right violations taking place in the district are expected to be substantial. Since the Petitioners' complaints involve serious offences such as arson, looting of property, killings and rape and since many of these are complaints against the State itself, the veracity of the complaints should not be ignored because such a team has been unable to substantiate it. Such complaints should be enquired into by an independent judicial enquiry. For example, in Para 6.76, the allegations by five women of rape have been summarily disposed of, despite some prima facie evidence, whereas this is such a serious matter that calls for a judicial enquiry.

4. The NHRC team argues that "The argument that Naxalite violence has increased after Salwa Judum and has further aggravated the problem is a very narrow view of this complicated problem. Surely the petitioners would not support the subjugation and killings of tribals by Naxalites for years before Salwa Judum. The tribals cannot be denied the right to defend themselves against the atrocities perpetrated by Naxalites, especially when law enforcers are themselves ineffective or not present. (7.04)

Comment: Indeed the petitioners oppose all instances of violence and their outright condemnation of all kinds of violence including violence by the Maoists is well known. Nor is it denied that there were Naxal killings before Salwa Judum. The point is that the Naxalite killing has exponentially increased following Salwa Judum and thus even the expediency and efficacy of the operation is completely negated. Salwa Judum is fomenting Naxalite violence and must be stopped forth with.

Defence would imply only self- defence in one's own village, and not going out and burning villages and beating up villagers to force them to

join the Salwa Judum movement. Hence, going by the NHRC's description of Salwa Judum, it can in no way be called a self-defence movement.

Most importantly, killings of tribals by Maoists do not justify killings by a private vigilante force such as Salwa Judum. The tribals have a right to be safe and secure from violence from all parties, and it is the responsibility of the State to ensure their safety. The NHRC itself notes that while the Naxalites have been involved in violations of human rights, there have been instances where SJ, SPOs and security forces have also been involved in similar violations. "The latter violations are more serious, since the state must abide by its own law, no matter how serious the threat to its stability is." (7.05)

5. There are a number of non-tribal persons among the second-order leadership of Salwa Judum (after Mahendra Karma), such as Ram Bhuwan Kuswaha, Ajay Singh, Madhukar and so on. The Enquiry Team has not reported this. Dantewada district is a Schedule V district under the Constitution and the active presence of such non-tribals in a movement like Salwa Judum can lead to the inference that some of them have a vested interest in continuing their presence in the district. It is not just a coincidence that the police and SPOs launched their offensive against the Naxalites at the same time as Salwa Judum (1.43), but it points to the close nexus between the police, SPOs and non-official persons like Mahendra Karma and Salwa Judum activists.

SPOs being officers appointed under the State police regulations are de jure accountable to the police authorities but de facto work under the control of Salwa Judum leaders, as is evident from the representation made by Shri Raghu, after being confined in Konta. The investigating team has been far too simplistic in brushing aside the complaint that

Salwa Judum is indeed a State-sponsored, State-supported vigilante force engaged very often in acts of violence.

6. In the several findings by the NHRC investigating team, the complaints of the petitioners on acts of violence by Salwa Judum, State agencies and Central para-military forces have been prima facie corroborated.* (see list at end of this document; and also chart). In all these cases, the State Government should (i) launch criminal prosecution proceedings against those responsible, if necessary, by instituting an independent judicial enquiry (ii) order withdrawal of state support, direct or indirect, to Salwa Judum and (iii) wind up Salwa Judum camps, effectively rehabilitate those who wish to return to their own villages; and rehabilitate others in places of their choice (iv) disband SPOs and replace them with well trained police to prevent further acts of extra-judicial violence and violation of human rights, (iv) compensate victims of killing and arson by Salwa Judum, and unrecorded killings/arson by Naxalites.

7. Since the report of NHRC team has found such a large number of prima facie incidents of acts of violence on investigating the limited number of complaints made by the petitioners, a full-fledged judicial enquiry needs to be instituted to determine the full extent of human right violations including false encounters, killings, rapes, arson, employment of minors that have taken place and continue to take place in Dantewada district.

8. The NHRC team has found several cases of encounters in which there have been violation of NHRC guidelines themselves. In all such cases, the complicity of the State agencies cannot be ruled out. The proposed judicial enquiry should cover this so that those responsible may be identified and action initiated.

Summary: There are certain shortcomings in (i) the composition of the team which consisted solely of police, given that the primary conflict in this area is between police and Naxalites, with villagers caught in between and unable to speak freely (ii) the presence of SPOs and Salwa Judum leaders along with police during the enquiry intimidated a large number of villagers (iii) appreciation of evidence and (iv) the summary manner in which conclusions have been arrived at by the NHRC's investigating team. Nevertheless, it is evident that there have been extra-judicial killings, arson, looting of property and possibly rape by SPOs, security forces and SJ activists. It is obvious that atrocities have also been committed by the Maoists too. These cases were not individually listed by the petitioners since it was presumed that the government was already dealing with compensation to the NOK of victims. There have been many cases of missing persons, fake encounters, non-recovery of dead bodies, failure to file FIRs etc. The incentives offered by the government have had an unhealthy influence on potential witnesses who could have helped the NHRC team in arriving at the truth.

The Government of Chhattisgarh is directly or indirectly responsible for these incidents, The State has reneged on protecting the rights of the tribals under Schedule V of the Constitution. When human rights are violated on such a large scale, it is imperative that each of these allegations is enquired into through an independent judicial enquiry.

***Some instances where allegations of petitioners have been prima facie corroborated:**

- i. Para 6.09 (Arson by SJ; Criminal cases seldom registered)
- ii. Para 6.12 (Some inmates of Camps have done so unwillingly)
- iii. Para 6.21 (Minors were employed by SJ during initial period)
- iv. 6.22 (Criminal cases had to be registered against SPOs, some had to be dismissed)
- v. 6.24 (Security forces/ SPOs prima facie responsible for extra-judicial killings- This needs to be further enquired into, especially as they were acting on behalf of the State)
- vi. 6.25 (Allegations in Petition against SJ prima facie true, to the extent of arson & looting of property)
- vii. 6.27 (Many persons found to be "missing", could have even be killed)
- viii. 6.30 (security personnel camping in school buildings)
- ix. 6.32 (Dudhi Joga's house burnt by SJ)
- x. 6.36.6 (Kawasi Chaitu was killed in an encounter, his dead body not found, no mention in police record)
- xi. 6.36.12 (Kawasi Chaitu: need for an enquiry)
- xii. 6.38.1/2 (Evidence showed six persons killed in a fake encounter on 31-3-07 in Ponjer village- SHRC is conducting an enquiry)
- xiii. 6.38.3 (SJ has burnt 10 houses in Ponjer V)
- xiv. 6.40.2 (Evidence: SJ has killed Korsa Budhram & Kosra Laku in 2006)
- xv. 6.44.7 (Evidence of killings by Naga batallion)
- xvi. 6.44.8 (Evidence of killings by Naga batallion)
- xvii. 6.47.3(Death of Kadtı Dula, Soyam enka, Bogo Sanna should be enquired into)
- xviii. 6.51.4, 6.51.6 (arson by Police)

- xix. 6.60.1 (Villager beaten by SJ in Pakela village)
- xx. 6.61.1/6.61.2 (Kadti Budhru killed in Keshkutul village by SJ, death of two others in explosions/ encounter not recorded in police records)
- xxi. 6.62 (Arson, killings and rape by SJ in Lingagiri village)
- xxii. 6.63/ 6.63.1/ 6.63.2 (SJ killed and committed arson in Hirapuram village)
- xxiii. 6.63.4 (missing persons in Hirapuram village)
- xxiv. 6.63.5 (Encounter killing suspicious)
- xxv. 6.63.6 (Arson substantiated)
- xxvi. 6.65.3 (SJ/ Security forces beat up villagers)
- xxvii. 6.65.6/ 6.65.9 (Torture and killing of Poonam Mandamayya in Gurganguda village by SPO/ Security forces)
- xxviii. 6.67.1 (Punam Budhi, a woman of Toynar village went to nearby SJ camp in search of her nephew but never returned. Her body has not been recovered)
- xxix. 6.67.2/6.67.3/6.67.4/ 6.67.6 (Kadti Sannu killed when SJ activists visited his village. Kakem Sukda/ Kakem Kosa not similarly traced. Enquiry called for)
- xxx. 6.68.1 to 68.4 (Arson in Palamadgu substantiated. Villagers forcibly shifted to camps; villagers used by SJ in crossfire with Maoists)
- xxxi. Para 6.69.1 to 6.69.8 (Arson, looting of property and beating up of villagers by SJ substantiated)
- xxxii. 6.70.5 (Encounter reported; no police record)
- xxxiii. 6.71.1 (Gorgonda village; Rengapara hamlet; arson by SJ reported)
- xxxiv. 6.71.6 (Present inmate of Dornapal camp stated that her father-in-law was killed by SJ in February, 2008 and 12 houses torched)
- xxxv. 6.73.4 (Tati Dulla and Tati Kanna of Gaganpalli village killed by SPOs on 28-7-06; bodies not recovered)
- xxxvi. 6.75.14 (Killing by SPOs; further investigation recommended)

xxxvii. Page 102 (Santoshpur and Hirapuram incidents to be investigated)