

IN THE SUPREME COURT AT NEW DELHI

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 250 OF 2007

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

NANDINI SUNDAR AND ORS

PETITIONERS

VERSUS

STATE OF CHATTISGARH

RESPONDENTS

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AFFIDAVIT IN REPLY TO THE ACTION TAKEN REPORT

I, Nandini Sundar, aged 41 years, resident of New Delhi, do hereby solemnly affirm and state on oath as under:

1. I am one of the petitioners in the present petition. I am fully aware of the facts and circumstances of the case and competent to swear this affidavit.
2. In its last order dated 16.12.2008, this Hon'ble Court was pleased to give the Government of Chhattisgarh time till end January 2009 to file an Action Taken Report (hereinafter referred to as ATR) on the registration of FIRs and magisterial enquiry where killings had taken place, as well as ATR on the other recommendations of the NHRC.
3. The Chhattisgarh government has filed an ATR on 30/1/2009, which is misleading and does not give the correct factual scenario. In para 2 of the ATR, it is submitted that the Chhattisgarh Government is committed to implementing the recommendations of the NHRC. However, despite the clear indications by the NHRC that the Salwa Judum and SPOs had burnt villages and destroyed property, beaten up people, and even been responsible for killings, the Chief Minister of Chhattisgarh has continued to justify the Salwa Judum. A copy of the

Zee news report, dated January 26 2009, titled, Chhattisgarh Govt extends full support to 'Salwa Judum' is annexed hereto as **Annexure**

1. The Government of Chhattisgarh has even seen fit to glorify the Salwa Judum, and the arming of civilians, to impressionable young minds, in the Class X textbook of the state board. A copy of the newspaper report, titled 'A New Chapter in Chhattisgarh: textbooks hailing Salwa Judum', dated January 20, 2009 is annexed hereto as **Annexure 2.**

Encouraged by this support from the highest levels of government, SPOs and security forces are continuing to loot villagers. Annexed hereto as **Annexure 3** is a letter from Madvi Hidme, resident of village Gorkha, stating that the SPOs and security forces had looted her house of money, jewelry, chickens and eggs on 23 February 2009. Ever since the entire village was burnt in 2006, (corroborated by the NHRC report, para 6.52) the villagers have been residing in small makeshift shelters in the surrounding jungle, and now the SPOs are looting those too. Annexed hereto as **Annexure 4 colly** is a **letter** from villagers of Chinger, saying that police forces and SPOs burnt their grain stores on March 9 2009, and a **photo** of one of the villagers surveying her burnt grain heap.

Because of the ongoing nature of the violations, the state's willful disregard for the Hon'ble Supreme Court's observations, and the state's sponsorship of the Salwa Judum at the highest levels, the matter therefore requires the urgent intervention of this Hon'ble Court. The Hon'ble Court may be pleased to provide an independent high level committee to monitor violations, provide rehabilitation etc.. This Hon'ble Court may also be pleased to ban the Salwa Judum as an extra-legal 'armed' organization (see para 7.02 NHRC report for

reference to Salwa Judum as an armed movement).

II. Summary Tabular Comparison of NHRC recommendations and Action Taken Report

Listed in tabular form below is a summary of the NHRC recommendations in Chapter 9 of the NHRC report (pg 108-111), and action taken by the Chhattisgarh government on these recommendations

Reco No.	Recommendations in Chapter 9 NHRC	ATR by CG Govt.
1.	Adequate security cover should be provided to camps, and conditions created for their safe return	Nil
	Conditions should be created for the safe return of displaced families in Andhra Pradesh and elsewhere	Nil
	All displaced families should be rehabilitated according to national and international norms	Annexure R/10 deals only with facilities to camp residents, who are SPO families or Salwa Judum supporters. R/10 is silent on majority of displaced families: 1.) refugees in AP, 2.) those living in jungles near destroyed villages,

		3.) those who have returned home from camps, but lack means to restart cultivation, build homes etc. There are no facilities in villages affected by SJ.
2.	There should be free registration of FIRs on receipt of complaints regarding cognizable offences	FIRs in Annexure R/1 cover only a fraction of cases indicated in the NHRC report & no further enquiry has taken place on these; complaints by public are not being registered – see detailed response below
	The investigation in all cases should be completed expeditiously	Magisterial enquiries are pending since 2006; none of the cases listed for magisterial enquiry pertain to our specific allegations, hence irrelevant
	Any cases registered against	Nil

	security forces/police should be investigated by CB/CID	
	Police station records should be properly maintained	Nil
3.	Those who have lost their houses/belongings should be given compensation irrespective of perpetrators	Nil compensation to victims of Salwa Judum/SPO/Security forces. R/7 only summarises compensation to victims of Naxalite violence.
4.	Cases against SPOs should be enquired into	R/3 only mentions one case relating to murder by SPOs; does not pertain to NHRC findings or our allegations; see detailed comments
5.	A village wise list of missing persons and the circumstances in which they have disappeared should be prepared; efforts should be made to gather credible evidence regarding their existing status	Nil. R/4 is not a village wise list, or even a list of missing persons.
6.	Security forces should be moved out of school and ashram buildings	R/5 is only a partial list, does not cover the schools listed in

		NHRC annexure E1.5; and anyway, moving is incomplete
7.	There should be a proper transfer policy for police personnel	Nil
8.	Police/security forces should be sensitized about human rights	R/9 lists some guidelines; but does not appear borne out in practice as shown by Singaram false encounter, January 2009, Gorkha looting by SPOs, February 2009; burning of grain in Chinger March 2009.
9.	There should be uniform policy regarding ration distribution in camps; medical facilities etc at camps should be improved	R/10 details regarding employment, electricity, schools and medical facilities pertains only to Dantewada district; silent on Bijapur district; majority of camps don't have toilets
		ATR silent on these facilities for villages

		in areas affected by SJ- which currently have no PDS, schools, medical facilities etc.
10.	Mechanisms must be devised to end malpractices in distribution of rations to camps	Nil
11.	A security centric approach not enough, multi-pronged strategy required.	-

III. DETAILED COMMENTARY ON INADEQUACY OF ACTION TAKEN REPORT

A. Creating conditions for safe return and rehabilitation of all displaced families (NHRC recommendation 1)

The ATR submitted by the Chhattisgarh government is completely silent on any mechanism that will ensure the safe return of the displaced people from camps or from Andhra Pradesh to their villages. While R/10 mentions some facilities being provided to camps, no action has been taken on the condition of the refugees in Andhra Pradesh, people whose houses were destroyed but have continued to stay in shelters in the forests around their villages trying to cultivate, or those who have returned from camps. According to the NHRC report (para 6.15) "Many of the tribals who were previously staying in the relief camps have already gone back to their villages. 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." In other words, by providing

rehabilitation and facilities only to camp residents, the Government is providing rehabilitation only to Salwa Judum members and SPOs and not to victims of Salwa Judum. Even in this respect, there are serious doubts about their commitment since *Dainik Bhaskar* on 2 March 2009 reported three deaths in Errabor camp, possibly due to dysentery.

However, the situation of displaced persons in AP and in and around the villages is far worse and has reached alarming levels. Annexed hereto as **Annexure 5** is a representation by a group of NGOs in Andhra Pradesh to the Director, Women Development and Child Welfare Department, Government of Andhra Pradesh, based on a survey of 482 children conducted in refugee settlements of AP, to which people have fled to escape Salwa Judum/SPO/Naxalite violence. This shows that 76.6% of the children are in various stages of malnutrition, with 27.2% suffering from third grade or severe malnutrition. This representation includes a report by Professor Kodandaraman, Advisor to the Commissioners to the Supreme Court on food related schemes which points to the seriousness of the situation regarding malnutrition and lack of drinking water, based on field visits. The National Commission for the Protection of Child Rights, (visit to Dantewada and Khammam districts to investigate status of health and education of children affected by Civil Unrest, 17th to 19th December 2007), had also noted that " all the people, adults and children, looked emaciated. The children had protruding bellies, a telling sign of malnourishment. One 2-year-old girl looked hardly older than a three-month baby" (NCPCR report p.7 reproduced as NHRC annexure I-2).

Despite the fact that, according to the NHRC report (para 6.15), many villagers have returned home from the camps, there is no attempt at rehabilitating them in their villages. The administration is not providing services to people living in villages and only serving those in camps. These villages have no PDS, handpumps, schools, health workers or anganwadi workers, and the

administration has completely withdrawn from the area. NHRC has noted that rations are available only in camps, (see para 1.50 of the report). This is also substantiated by NHRC annexure C (Information collected about temporary relief camps), which notes, for example, that in Maraigudem camp, "government have diverted the ration quota of the affected villages to those camps." The population of Maraigudem camp according to the NHRC investigation is 2000 persons, while the population of the 15 villages from which the camp residents have come is much higher. According to the 2001 census in 9 of these villages alone, there is a population of 6569. This means that rations meant for some 7-10,000 people are being restricted to 2000 people in camp. The NCPCR-Lyngdoh report (NHRC annexure I-2) also 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." This means that those who are resident in the villages are not getting any basic services whatsoever leave alone being rehabilitated in any way. The ATR submitted by the Chhattisgarh government is completely silent on this vast majority of internally displaced persons.

Rehabilitation would mean rebuilding houses, giving them seeds, implements and irrigation to reclaim their cultivation, giving them livestock, chickens, pigs, goats to replace the ones which have been stolen, giving them vessels to cook and eat, clothes, blankets, compensating for their stolen jewelry and money, and other basic necessities. This is in addition to restoring basic services such as drinking water, rations, schools, anganwadi and health workers.

**B. Compensation to those who have suffered property damages
irrespective of perpetrators (NHRC recommendation 3)**

ATR-Annexure R/7 pertains only to compensation to victims of Naxalite violence and not to victims of Salwa Judum/SPO violence, whether living in and around

villages or in neighbouring states like Andhra Pradesh.

The Chhattisgarh Government in its response to the NHRC report, Annexure R 5 dated 17.10. 2008, had agreed to compensate property damages to victims of Salwa Judum and security forces and to rehabilitate displaced persons, whether in camps or elsewhere. The contempt with which the Chhattisgarh Government is treating the Supreme Court and the recommendations of the NHRC with respect to compensation and rehabilitation is also obvious from the fact that when the petitioners met the Collector of Dantewada on 24.12.2008, a full two months after the issue of the letter from Mr. Sanjay Pillai, Home Secretary to the Collectors of Dantewada and Bijapur (Annexure R 5, dated 17.10.08), he had not even seen the letter. We, the petitioners, gave him a copy of the letter. Even after this, there has been no announcement of the rate of compensation, and no survey of the extent of damages.

There has been no attempt to survey refugees in Andhra Pradesh and elsewhere with a view to bring them back and rehabilitate them. Villagers, such as those of Nendra and Lingagiri are desirous to return, and have submitted representations to the District Administration in this regard.

Nor is there any attempt to rehabilitate those already living in Chhattisgarh. Petitions by 381 residents of 18 villages, addressed to the Supreme Court show conclusively that people who are living in villages damaged/looted by Salwa Judum, SPOs and police are not getting any compensation for damages to their houses/property. Copies of these complaints have also been sent to the SP for registration of FIRs, and to the Collector for compensation. A sample of such cases, one from each village, and the list of persons who have submitted claim forms for compensation is annexed hereto as **Annexure 6 colly**. These claims show a.) that the adivasis are truthful about their property losses and do not claim more than they have actually lost, b.) that they were pitifully poor to begin

with, c.) that rehabilitation must involve compensation on several fronts to restore a standard of life at least commensurate with what they had before Salwa Judum, and d.) that it is not the case that survey is difficult in these villages. If NGO workers can go freely to villages to assess damages, there is no reason why panchayat secretaries (gram sachivs) or school teachers cannot.

It is clear from the inadequacy and bias of the ATR with regard to rehabilitation and compensation to the majority of displaced persons and victims of arson and loot, that these tasks cannot be left to the Government of Chhattisgarh. Instead an independent high level committee is required to receive submissions regarding property loss, damages, award compensation, and ensure full rehabilitation of all displaced persons in their villages. This task is urgent before the next agricultural season, as for many villages, almost five years have elapsed since they were able to cultivate and live a normal life.

C. Registration of FIRs, speedy enquiry and independent investigation of killings by SPOs/security forces (NHRC Recommendation 2)

Annexure R1 of the CG Affidavit pertains to only 22 cases of killing. Within the cases investigated by the NHRC, 114 cases of killing out of 145 or 78.6% required further investigation. This itself was only a sample of the 537 names listed by the petitioners. FIRs have been registered only with respect to 6 villages in which burning/looting has taken place as against the 16 villages listed by the NHRC, and the over 100 villages listed by the petitioners. In all the villages the NHRC visited, it found allegations of arson substantiated, including some villages like Bheji which were not even on the petitioner's original list, showing that the petitioners' allegations themselves pertained to only a sample of the total destruction. In other words, the petitioners had only touched upon the tip of the iceberg, the NHRC investigated a sample of these, and the ATR is a minuscule

response to even this sample. Even any ATR which pertained only to those cases mentioned by the NHRC cannot be said to do justice to the petitioner's allegations.

Table of Cases investigated by NHRC in response to charges in WP 250/2007 and 119/2007

No. of Killings Alleged by petitioners	No. of murder cases investigated by NHRC*	No. of villages burnt/property damaged in petitioners list	No. of villages investigated by NHRC where arson/looting alleged***	No. of rapes alleged	No. of rapes investigated by NHRC**
537	145	103	16	99	5

* The 145 killings investigated by NHRC do not include their investigations in Karremarka and Polampalli where NHRC clearly went to the wrong village. (If these names were included it would bring the number of murders investigated to 158, and not 168, which appears to be a typographical error in para 7.08 of the NHRC report). Some of the names they investigated were not alleged in the original WP, so the number of allegations actually investigated goes down further, i.e. less than 145.

** These girls were not even listed among the original 99, but a new case which came before the NHRC, showing that our original list itself was not exhaustive.

The following is a tabular summary of the cases indicated by NHRC for further enquiry and the number of cases where any action has been taken by the Chhattisgarh government, as listed in the ATR.

Comparison of NHRC indications for further enquiry and ATR

NHRC - No. of cases indicated for further enquiry	ATR- No. of cases where registration of FIRs/magisterial enquiry ordered	NHRC - No. of villages where arson was substantiated	ATR - No. of villages where FIR registered for arson
114	22	16	6

The following is a tabular analysis of NHRC findings

Analysis of NHRC findings on allegations of killings (145 cases taken up for investigation)

Substantiated	Need for further enquiry	Could not be substantiated, i.e. need further investigation	NHRC silent – no findings	Not substantiated	Found to be killed by Naxalites, not SJ/SPO	Naxalite and not civilians	Total
3	23	55	33	13	10	8	145

Total of cases which support petitioners or call for further enquiry: 114 or 78.6%

Total of cases which are not substantiated: 31 or 21.4%

Total: 145

- The list of those which *could not be substantiated* includes all villages which were burnt and hence deserted and no one was found to talk to; hence the crime is *not denied*.
- In all those cases where NHRC was silent, the crime is not denied, hence need for further investigation
- There are many instances where we disagree with NHRC's conclusions that the allegation was not substantiated, the reasons for which have been provided in the detailed chart. However, for the purpose of this table we are taking NHRC findings as given.
- Ten persons have been identified as killed by Naxalites rather than Salwa Judum in those cases investigated by NHRC. While we do not agree with some of these cases, e.g. as in Hariyal Cherli, in this tabular analysis, we are taking NHRC's findings as given.

The NHRC findings do not fully reflect the testimonies that were submitted to it by NOK in the case of killing by Salwa Judum, or the statements based on cross examination of relatives, even though these are on record in the NHRC annexures (Annexures B-1 to B-4 of NHRC report). For example, in the public hearing at Cherla, testimonies submitted by the relatives of the victims include 60 cases of killing, (though those taken on record in NHRC Annexure B-4 pertain only to 37 deaths). Similarly in Annexures B-1 to B-3 there are many testimonies which show that villagers were forcibly taken to Salwa Judum camps, their villages were burnt and looted by Salwa Judum, SPOs and police forces, and people in the village were killed. Since the Court has asked the State of Chhattisgarh to take action and file FIRs, it should be directed to conduct further enquiry into all these testimonies.

D. Commentary on inadequacy of FIRs and police investigation

The FIRs listed in ATR-R/1 are vague and lacking in particulars, despite the police having actually been present at the scene. For example, FIR No. 0/09 attributes burning of houses in Arlampalli village to unknown Salwa Judum activists. According to petitioner Dudhi Joga and other villagers, the first attack took place on March 15 and the next one a month later, when more houses were burnt. They have said that both Mahendra Karma, then Leader of the Opposition

and Ram Bhuwan Kuswaha, Salwa Judum leader in Dornapal camp were present at the burning. This is corroborated by the Police Daily Diary of Dornapal Thana (NHRC annexure D-3), for 15 April 2006 which records that the police provided protection to Mahendra Karma's Salwa Judum rally in village Arlampalli. The order for filing the FIR was given only at the end of December 2008, and since then no further investigation has taken place. The petitioner, Dudhi Joga, and other villagers of Arlampalli were not even informed that an FIR had been filed regarding the burning of their houses.

There is also no FIR on the killing of Kalmu Waga, Sodi Masa also residents of Arlampalli who, according to their NOK, were killed by Salwa Judum and SPOs, or any independent enquiry into the death of Vetti Kosa and Vetti Bhima, who in the police FIRs, are shown as Naxalites killed in an encounter. This claim is contested by the villagers, who say they were ordinary villagers on their way from nearby Jagavaram village. As per NHRC guidelines, there should be an enquiry into all encounter deaths. Indeed, police records are so shoddy that in the police verification list submitted to NHRC in 2008 (NHRC annexure E-1.1), despite filing an FIR against Vetti Bhima in 2007, the police have described him as "person by this name does not reside in the village".

In FIR no. 49/07 and 50/07 regarding the murder of 6 villagers of Ponjer and 1 villager from Santoshpur (R/1, 6.38.3), an FIR has been registered against Naxalites and against unknown uniformed persons. Villagers told NHRC that it was a fake encounter, and this was also widely reported at the time by ETV, The Christian Science Monitor, Indian Express, Daily Chhattisgarh and other media as a fake encounter based on their investigations. A copy of the Indian Express report of 5 May 2007 titled, "Why this Chhattisgarh 'encounter' that killed seven a month ago is still a secret" is annexed here as **Annexure 7**. Other reports on this encounter can be read at Annexure 18 in Nandini Sundar and ors. (WP 250 of 2007). NHRC had noted that the SHRC was taking cognizance, and further

enquiry was needed. But the government has not mentioned any further enquiry in ATR-R/1.

Even with regard to victims of Naxalite violence, there are at least 35 instances where the police verification report submitted to NHRC (NHRC annexure E-1.1) lists people as killed by Naxalites but no FIR has been registered, and in all but one case, no compensation appears to have been paid. Many of these cases appear even more suspicious as some of these individuals are listed as "Naxalites killed by Naxalites". A police force, which is both shoddy in its investigation and confident of impunity, cannot be trusted to carry out a responsible investigation. Some independent body is required to investigate all these cases.

Unfortunately, the NHRC police investigation team has failed to carry out an independent investigation. A comparative table of our allegations (list of names submitted in WP 119/2007), the police verification list (NHRC annexure E-1.1), and NHRC findings in the case of a few names in two villages alone, Kotrapal and Hariyal Cherli, will make clear the problems in leaving this task to the Chhattisgarh police or the police investigation team sent by the NHRC. The NHRC police investigation team has relied selectively on the version provided by the local police or that provided by the administration, without questioning discrepancies between the two, or questioning discrepancies between statements given by the villagers and official records, or even coming to the same conclusion when two people are said to have died in similar circumstances.

Village Kotrapal

	Name	Villagers testimonies to NHRC/SC	CG Police finding (E-1.1, NHRC annexures)	NHRC findings (Main report)	Remarks
1.	Uike Sannu	Testimony of Kotrapal villagers given to NHRC on 10.6.08 says he was killed by CRPF after being	FIR 15/05 Naxalite killed in police encounter Collectors list records him as	Camp residents say he was killed by naxalites; compensation taken by NOK	Was he a Sangham member, a Naxalite or killed by the Naxalites? Straight contradiction between police verification & FIR and

		found by SJ and brought to the village;	sangham member killed on 11.8.05		NHRC findings, which shows killing was suspicious and compensation is being used to influence testimonies
2.	Vanjam Mangu	Testimony of Kotrapal villagers given to NHRC on 10.6.08 says he was killed by CRPF after being found by SJ and brought to the village	FIR 15/05 Naxalite killed in police encounter	Police records and camp residents allege he was killed by Naxalites; compensation taken by NOK	Was he a Naxalite or killed by the Naxalites?
3.	Ichchami Ludru	Originally an SPO; then killed by SPOs according to 10.6.08 testimony to NHRC	Naxalite, whereabouts not known	Camp residents told NHRC Team he was a sangham member, now missing	Was he an SPO or a Naxalite?
4.	Tati Sukku	10.6.08 testimony to NHRC says he was taken across river on SJ procession, never came back	Person by this name does not reside in the village	Camp residents told NHRC he was missing NHRC: allegation could not be substantiated	According to police no such person exists in the village, even though villagers testify that he is missing
5.	Vetti Paiku	10.6.08 testimony to NHRC says he was shot by Naga IRB, could not run away from house in time	Person by this name does not reside in the village	Camp residents & one relative told NHRC he was killed during exchange of fire between security forces and Naxalites on day when SJ had come in large numbers, along with Lekam Budhram NHRC: allegation could not be substantiated	According to police no such person exists in the village, even though villagers testify that he was shot. NHRC has come to a different conclusion in this case from that of Lekam Budhram, who is said to have died in same incident
6.	Madvi Anda	10.6.08 testimony: old man, could not walk properly, killed in house by Naga police	Person by this name does not reside in the village	Villagers said he was killed by Naga police; not borne out by police records; further enquiry needed	Magisterial enquiry ordered in ATR R-1, but place of incident shown as Bhogamguda PS
8	Lekam Budhram	3 different fact-findings (PUDR, p. 20, HRF, p. 48. ACHR, p. 10) and Hitvada 13.8.05 all say he was killed by Naga IRB; corroborated by testimony from Kotrapal	FIR 20/05 Naxalite killed in police encounter	NHRC team interacted with villagers in camp and village; Villagers gave contradictory version Collectors list records him as sangham	3 different contradictory versions – was he a sangham member, a naxalite, killed as an innocent bystander in cross fire, killed in a police encounter, or killed by the Naga IRB in cold blood?

		villagers given to NHRC on 10.6.08		member killed on 11.8.05 NHRC: he was killed during cross fire between police and naxalites	
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Similar contradictions are observed in villagers' statements, the police FIR and NHRC findings in the case of village Hariyal Cherli. In WP 250/2007, we had alleged, on the basis of our fact-finding (Independent Citizens Initiative report, *War in the Heart of India*) that 10 villagers of Hariyal Cherli had died on 2.9.05 in suspicious circumstances, which needed investigation. The DGP Police had issued a press release which was reported in Hitvada September 6, 2005 saying that 10 armed Maoists were killed in an encounter during Operation Green Hunt. According to FIR 13/05 (NHRC annexure D1), the police party from Mirtur surrounded a Naxalite camp in the jungles between Okenar and Kondapal, as part of Operation Green Hunt. There was an encounter and taking advantage of the darkness, the Naxalites ran away. Because of the dark, the police could not search the area, but the next morning they found 3 bodies: Ojji Meshram (Masaram) s/o Sukda, Kadi Kamlu s/ Pandu and un-named/Kadi Bhadrus/so Butta. The police registered an FIR saying they were killed in police-Naxalite crossfire. According to FIR 10/05, filed on 3.9.05 around the same time (12.35-12.40 pm) villagers had come in with 5 bodies found in the same jungle, who they said were ordinary villagers who had been taken away by Naxalites a day or two earlier for a meeting. These include Kadi Bhadrus, Kadi Chinna, Kadi Sannu, Ojji Jayaram and Kadi Kumma. The Police FIR says they were killed in the police-Naxalite crossfire on 2.9.05. In other words, all eight people died in the same manner, and their bodies were found on the same day, as per the police records.

The district administration subsequently gave 8 people compensation, and listed

them as having been killed by Naxalites, which includes the above 5 (Bhadru, Chinna, Sannu, Jayaram and Kumma) as well as three others, Katti Aitu, Katti Rama and Hemla Sukka (not mentioned in the FIRs).

The question then arises, were they killed in cross-fire between police and Naxalites, or were they killed by Naxalites? Why was an FIR not registered in the case of three people, Aitu, Rama and Sukka? And why were only the first three bodies found (Masaram, Kamlu and un-named/Bhadru) shown as Naxalites? These discrepancies should raise concern. Far from raising these questions, the NHRC investigation team has uncritically accepted the government version that 8 of them were killed by Naxalites (on the basis that compensation was given), and 2 were Naxalites killed in the encounter.

We see both in this case and the case of Kotrapal, that compensation, when given only to victims of Naxalite killings and not to victims of Salwa Judum/SPO/security force killings, has influenced the truth.

In response to the NHRC's recommendations to investigate cases/complaints which are referred to in its detailed findings, the Chhattisgarh Government set up an enquiry team consisting of the Inspector General of Police, Mr AN Upadhyay, Mr. Himanshu Gupta DIG Police, and Ms. Neha Champawat, of the 7th Battalion, Bhilai. The Committee set up by the Chhattisgarh government is neither independent nor impartial. Indeed, the IG Police Mr Upadhyay, has been involved in justifying a heinous and chilling fake encounter which took place on 8th January 2009, in which 19 innocent persons were killed at Singaram village, by a group of Salwa Judum SPOs and state police. In Annexure R2 of the ATR, the Chhattisgarh Government has listed the Singaram encounter at entry 20, as an example of an enquiry it has ordered.

The Singaram encounter has been widely questioned in the media by journalists

who have actually been to the spot (A copy of some newspaper reports on the Singaram encounter are annexed hereto as **Annexure 8 Colly**). Not satisfied with the enquiry ordered by the state government, the High Court of Chhattisgarh has issued notice to the Chhattisgarh government on a writ petition filed by the relatives of the victims and a local NGO, Vanvasi Chetna Ashram, and ordered exhumation of the bodies. Despite the CG police denying that any bodies could be found, since the Naxalites were alleged to have taken them away after the encounter, at least 8 bodies were exhumed. Earlier the press from Andhra had photographed these bodies.

In all cases, the officers appointed to magisterial enquiries are junior and given state sponsorship and political support for Salwa Judum and SPOs at the highest level, will find it difficult to submit independent reports against their superior officers. Hence, an independent body is needed to conduct enquiries.

E. No enquiry into rape cases

The ATR is silent on the outcome of any enquiry into the rape of girls at Potenaar despite a recommendation to this effect by the NHRC (para 6.76 of NHRC report). Although the testimonies and cross examination of the girls by the NHRC team in Dantewada (NHRC Annexure B-3) has some discrepancies which is understandable given that the incident happened three years ago, they are similar in all essential respects. All five girls said that they were separated and each one was raped by one SPO. They also said they were scared of the SPOs and that is why they couldn't register FIRs.

In the meantime, a group of professional women (Law and Psychology Professors, Lawyers, and Women's rights activists) visited Dantewada between 7-10 October 2008 and have recorded numerous testimonies of rape. As testimonies 14-16 in their report show, at least four young girls between the ages of 15 and 20 were kept as sexual

slaves in Jagargunda camp and repeatedly raped by SPOs, some of whom they have named. The girls would like to register FIRs and get justice if they were certain that they would not be further harassed. The fact-finding report, titled *An Assessment of the Impact of the Salwa Judum on the Lives of Adivasi Women*, is enclosed hereto as **Annexure 9**. The National Commission for the Protection of Child Rights Report and the Human Rights Watch report (**NHRC annexures I-2 and I-4**) also mention specific rapes which must be investigated.

Another heinous rape which occurred in 2008 has recently come to light, concerning Madkam Hidme, formerly of Bhandarpadar village, now resident in Aliyagudem village. She was first taken by Salwa Judum leaders, Soyam Mooka, Bodu Raja and Dinesh and kept in Konta thana. There she was raped by several SPOs, one of whom she recognised. She is now in fear of her life. Complaint submitted by Madkam Hidme to SP Dantewada on 3.3.09, for favour of registration of FIR, is annexed hereto as **Annexure 10**.

These offences are so serious that they cannot be left to the Chhattisgarh police to investigate. An independent high level committee must devise mechanisms where women can freely come and depose about what has happened to them.

F. Enquiry into offences by SPOs (NHRC recommendation 4)

In its ATR-Annexure R/5 on cases registered against SPOs, the Chhattisgarh Government has only mentioned one case, in almost four years of repeated complaints against SPOs and several testimonies annexed as additional volumes in *Kartam Joga and ors*, which mention specific SPOs. The NHRC investigation revealed that SPOs have been involved in "certain incidents of atrocities against the tribals" (para 1.54 of the NHRC report), in some instances, the security forces and SPOs seemed to be prima-facie responsible for extra judicial killings (para 6.24 of the NHRC report). In para 5.04, the NHRC has squarely indicted

SPOs: "The enquiry team has come across instances where some of these villagers were even killed (no criminal cases were, however, either reported or registered). Though the State has taken action against SPOs in some cases for violations like murder and attempt to murder, but these cases do not pertain to the violence let loose on innocent villagers during operations against Naxalites." (para 5.04 of the NHRC report) The state government reported to the NHRC that 1579 SPOs had been dismissed on disciplinary grounds (see para 1.54 of the NHRC report), but there is clearly an effort to shield the SPOs when it comes to heinous crimes.

In NHRC Annexure E-2.6, the Chhattisgarh government has replied to a query from DIG NHRC, reporting that 2 cases have been registered against security forces/police in Bijapur and Dantewada districts respectively, from 2005 till date. In Dantewada 3 cases were registered against Salwa Judum activists and none in Bijapur. Out of 10 complaints received from the public against Salwa Judum activists in 2006-7 all were found to be false, and in 2008, in the 4 cases investigated out of 44 complaints, all were found to be false. The standard practice appears to be that every case against Salwa Judum activists or SPOs will be found false. In the few cases where there is a public outcry, cases will be registered, but the accused will be 'unknown'. The villagers who complain will then have cases filed against them, accusing them of being Naxalites or Naxalite supporters. This is hardly in keeping with the NHRC recommendation that there should be "free registration of FIRs on receipt of information of cognizable offences and that the state government ought to encourage the villagers to report any grievances" (NHRC report, pg 108, recommendation 2)

Apart from the case against 4 SPOs for the murder of Karam Joga (Case No. 02/08) listed in ATR R/3, which is sub-judice, the Chhattisgarh government furnished the NHRC with a list of the few cases registered against SPOs/police. (NHRC Annexure E-2.6, Annexure B to Letter No. police/Dantewada/VS/626/08

dated 27.06.08). On 16.6.08, a case was registered against 3 SPOs, Rakesh, Dashru and Ramesh, for the rape of two girls, following public outcry and demonstrations. 4 FIRs have also been registered against SPOs for knifing and shooting men in camps and leaving their bodies, and others for running off with weaponry/cartridges. Despite the registration of FIRs, no further prosecution appears to have taken place. It is clear that the potential for abuse by SPOs is great.

In every one of the cases where complaints have been made against SPOs, they must be identified forthwith, and FIRs should be filed. Where FIRs have been filed, it is incumbent on the state of Chhattisgarh to conduct further enquiry, and where indicated, arrest the SPOs, charge-sheet them and take action according to law. In addition, this Hon'ble Court may please note that several girls have complained to fact-finding teams of rapes by SPOs and many will also be able to name and identify the SPOs. However, they fear reprisals from the state government which is seen as protecting and partial to the SPOs and therefore in all these cases it is imperative that immediate steps be taken to bring the perpetrators to justice. This can only be done under the supervision of a responsible and independent committee which will enable the girls to speak out fearlessly and also ensure action against the guilty SPOs. The fact that the state has not taken action on its own shows the complicity of the state and the impunity enjoyed by the SPOs.

G. List of Missing persons (NHRC Recommendation 5)

The NHRC recommendations were that the administration should prepare a village wise list of persons who are missing and the circumstances in which they have disappeared. 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). 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, support this requirement. 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. However, Annexure R/4 does not fulfill these requirements at all, and is of no help to the families of the missing persons. This amounts to a refusal to disclose their whereabouts in addition to being the cause of their disappearance.

H. Schools and ashrams occupied by security forces must be vacated (NHRC recommendation 6)

In ATR -Annexure R/5, The CG government has given only a partial list of schools and ashrams where the security forces and students *co-exist*. There are many instances where there is no such coexistence, and the students and teachers are missing because security forces are residing in the schools and ashram buildings.

R/5 does not cover the list of 9 schools/ashrams occupied by the security forces which was provided to the NHRC and is reproduced as NHRC Annexure E-1.5. It is not clear why the CG government gives partial and differing information each time on this subject, and suggests a desire to conceal the facts and drag its feet on restoration of schools to children and teachers.

IV. Inadequacy of NHRC recommendations, Support for our petition in official documents in NHRC annexures

NHRC has not addressed some fundamental issues which are critical to reparative justice which this Hon'ble Court must order. The 'NHRC team' comprised entirely of serving police officials and constables on deputation, who went in armoured vehicles and, as was repeatedly brought to the NHRC's notice by the petitioners as well as independent press reports, many victims could not come forth and speak without fear. Even so, the testimonies that have come on record are sufficient to indicate that some of NHRC's conclusions do not square with the ground reality. The issues which NHRC has missed include the following:

A. Nature and extent of State sponsorship of Salwa Judum

There was sufficient material by way of official documentation before the NHRC to show state sponsorship of Salwa Judum, and its conclusion 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 NHRC report)" is inadequate, as the following paragraphs will show. In any case, providing security to a violent armed mob, and turning a blind eye when it engages in arson and looting, shows state responsibility for the violations of the Salwa Judum. This also has significant

implications for the inadequacy of the NHRC's recommendations.

NHRC Annexure D-3.22, Details of Jan Jagran Abhiyan 90-91, a document provided by the State Government to the NHRC, says that it was planned by the police (page 247 of NHRC Annexure D-3.22). The pattern of the 1990-91 Jan Jagran was very similar to the 2005 Jan Jagran Abhiyan, with meetings being held in several of the same villages which have been affected this time on an almost daily basis between September 1990 and January 1991. Surely it cannot be a co-incidence that Salwa Judum also originated as Jan Jagran Abhiyan. (It is only in October 2005 that the name was changed to Salwa Judum, a full four months after it is said to have begun).

State sponsorship of the Jan Jagran Abhiyan (Salwa Judum) can be shown in several ways, apart from providing security: 1.) attendance at rallies, and promises of all assurances, 2). funding of Salwa Judum activities, 3.) creating a blueprint for the functioning of the Jan Jagran Abhiyan (Salwa Judum).

There would be nothing wrong in state sponsorship of any movement, if it was legal and peaceful. It is our contention, however, which has been borne out by the NHRC report, that Salwa Judum is neither legal, peaceful or voluntary, and by arming civilians as Salwa Judum activists and later as SPOs, abdicates state responsibility for law and order.

Attendance at Rallies: Ministers of the Chhattisgarh government, as well as the then leader of the opposition, Mahendra Karma, took part and addressed several Jan Jagran/Salwa Judum rallies. Many of these rallies took place under the leadership of Mahendra Karma, as reported by the NHRC (para 1.38 of the NHRC report). Government participation is corroborated in NHRC Annexure G 1, (Monthly returns from the DC, Dantewada from 26.2.02 to 25.12.07). Sample entries are given below:

28.6.05: Mahendra Karma took part in the Jan Jagran Abhiyan at Basaguda

1.7.05: Jan Jagran Rally was inaugurated and led by Mahendra Karma in Kotrapal.....During this period, not a single resident of Kotrapal was to be seen. Everyone had locked their houses and left.

3.7.05: Nankiram Kanwar (Minister) toured Dantewada, Bhairamgarh and Naimed and met Jan Jagran Abhiyan villagers and assured them that government is with them and will fulfill all their needs.

5.7.05: Under the leadership of Mahendra Karma, a Jan Jagran rally was organized at village Keshkutul, block Bhairamgarh. 2500 people from 40-50 villages set off in procession for the 7 km from Bhairamgarh to Keshkutul. There they met 50 villagers trying to escape after locking their houses.

24.7.05: Kedar Kashyap, *Prabhari Mantri* (Minister in charge of the area), attended the Jan Jagran rally at Bhairamgarh. This was also attended by Lachu Ram Kashyap, Chitrakoot MLA, Rajaram Todem, member of the CG Scheduled Tribe Commission and the Army Welfare Board Member, Vijay Tiwari.

The Collector's Monthly returns for the period 26 May 2005 – 25 June 2005 (NHRC Annexure G-1) mentions that a "Jan Jagran Abhiyan meeting was held at Matwada on 18.6.05 and attended by 5000 people from 32 villages. No-one from Kotrapal came to this meeting. Next day on 19.6.06, villagers decided to assemble and go to Kotrapal and *make them understand.*" Kotrapal is one of the villages where a number of people have been killed by the Salwa Judum, SPOs and security forces.

It is clear from these entries that not only were the Salwa Judum rallies attended by senior ministers, politicians and officials, but that the villages in which meetings were held were unwilling to participate, and were scared of thousands of people descending on their village. These rallies were therefore coercive. Many villagers who went on these rallies have also said that they were told by

their sarpanches that they would be fined if they did not attend the rallies. The true nature of these rallies is clearly brought out by the film, *India's Hidden War*, produced by Channel IV, UK, which is included as NHRC annexure F-3.

Annexed hereto as **Annexure 11 (colly)** are photos of the Salwa Judum rally held at Konta on 24th February 2006. The presence of Mahendra Karma at this rally along with the Collector, KR Pisda and senior officials, is corroborated by the Collectors' monthly returns (NHRC Annexure G-1, report for 26.1.06 to 25.2.06, page 126). It is soon after this that the petitioner's village, Arlampalli and other villages in the Konta area were burnt. These also bring out the coercive and undisciplined nature of the Salwa Judum rallies, official/political participation in the rallies, and the arming of civilians.

Funding of Salwa Judum activities

Right from the beginning, the state government has financially supported the activities of the Salwa Judum, by distributing bows and arrows, publicity materials, providing transport for rallies and so on. The following extract from the Collector's Monthly returns, reproduced in NHRC Annexure G-1 also makes the funding clear:

19.11.2005: Chief Minister Raman Singh, Home Minister Ram Vichar Netam, MP Baliram Kashyap came by helicopter to participate in the anti-Naxali Jan Jagran Abhiyan. At this time, Hon'ble Chief Minister sanctioned Rs 85.83 crores for various activities in the Salwa Judum area. (NHRC Annexure G-1, DC Monthly returns)

Official Blueprint for Jan Jagran Abhiyan (Salwa Judum):

NHRC annexure E-2.2, contains among the documents provided by the state government, the Jan Jagran Abhiyan 2005, Government Plan against Naxalites,

prepared by the Collector of Dantewada, KR Pisda. This document which was annexed as Annexure P/3 in Nandini Sundar and ors, is a complete official blueprint for the Jan Jagran Abhiyan (Salwa Judum), including the need to arm villagers, the support of higher ups if excesses take place, temporary ban on funds to gram panchayats in areas of Naxalite influence and controls on the media. Relevant extracts from this report are reproduced below for the Court's convenience.

Appointing SPOs: it is proposed that youth from the villages that have joined the Jan Jagran Abhiyan, should be made Special Police Officers. Keeping in mind the population of the village, it is essential to appoint 5-10 Special Police Officers from every village. It would be appropriate to pay such Special Police Officers Rs. 1500 per month honorarium, because without an honorarium, nobody will want to put their life at risk. (Chapter 4, para 3)

Arming villagers: In addition to training the villagers, they should be given traditional weapons like bows and arrows, axes, hoes, sticks etc. Although most villagers already have such weapons, it would be good to encourage them by distributing ready made arrows or iron to make arrows. As such, villagers are asking for guns or gun licenses but it would not be appropriate to give them these. (Chapter 4, para 5)

Arming SPO squads: If we want to destroy the Naxalites totally, we will have to adopt their strategies, or else we will not be successful. However many police forces we get, we will find they are inadequate... For this we too will have to form village defence squads like the Naxalites. For this SPOs and trustworthy people from the village defence committees will have to be given licenses and guns. Such a squad of 15-20 armed villagers and 50-60 villagers with bows and arrows should patrol the villages in their areas for 3-4 months continuously. (Chapter 4, para 18)

Police targets: Police must now become aggressive. Sometime for unknown reasons, some excesses take place during the course of such operations and some innocent persons become victims of this action. By keeping silent on such

matters during big operations, the support of higher-ups is necessary..... When they see Naxalites being killed or running, they will at once come over to the side of the police. Therefore it is essential to link this activity to the others. For this Superintendents of Police must be given targets. (For action, Home Department, SP Bijapur and all Thana Prabharis) (Chapter 4, para 10)

Controls on the media: It is essential to curb the enthusiasm of the media. This is not a proposal for a ban on the media simply for restrictions on it. At the state level, a meeting should be called of all editors and news channels and they must be reminded of their responsibility to the people. (Chapter 4, para 28)

The Collector's Work Proposal also provides for clustering villagers into camps, along the lines of the village regrouping program practiced in Malaya between 1948-60 and that carried out in Mizoram in the 1960s, to prevent Naxalites gaining access to them:

Dividing the area affected by the Jan Jagran into clusters: the cluster security concept is necessary because what guarantee do we have that once the police go back in the evening, the Naxalites will not come to the villages at night. And the villagers will follow whoever seems to them to be the more powerful. Without the cluster security system, our success will be temporary. The sooner the government reflects on this, the better. (For action, Home Department and SP Bijapur) Chapter 4, para 16 and 17

This proposal, together with the NHRC team's findings show that people did not come to the Salwa Judum camps voluntarily: "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 NHRC report)." Far from Salwa Judum or clustering being efficacious in curbing Naxalite violence, research from across the world

suggests that police excesses and village regrouping only increases support for insurgents. An article by Dr. Kelly Greenhill, Harvard University, titled 'Draining the Sea, or Feeding the Fire?: Evaluating the Role of Population Relocation in Counterinsurgency Operations', based on a comparison of several cases of grouping across the world notes that "examination of counterinsurgency operations over the last century suggests that not only does resettlement frequently fail to sever ties between insurgents and the population, but also quite often it actually catalyzes greater support for—and connections with—rebel groups. This tends to enhance their prospects for success". Intelligence reports on Chhattisgarh also suggest that support for Naxalites has gone up hugely after Salwa Judum started.

The Collector's work proposal also makes it clear that sangham members are ordinary civilians, and the government is bound by the principles of the Geneva convention to treat them as non-combatants. The NHRC report (para 5.04) notes that these sangham members were specifically targeted when Salwa Judum was on the rise, and many of them were killed. Others were made to 'surrender' to Salwa Judum, without attribution of a specific crime.

"A Naxalite is one who wears a uniform, carries weapons, moves with a squad, but their role is at one level that of a director. Their real strength lies in the sangham members in each village and in the villagers themselves....To finish off the Naxalite problem, it is not enough to kill Naxalites, but the system they have created in every village must be smashed and destroyed..... From one perspective, the sangham member is just an ordinary villager who like others, does daily labour to feed himself and his family. They have neither a uniform like the Naxalites nor any arms." (Chapter 4, para 13)

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

control by the state, effective control by the state and public endorsement of the acts. In the present situation, the responsibility on every one of these counts, can be attributed to the State of Chhattisgarh. The participation of government ministers, the Collector, police and paramilitary forces in the rallies of the Salwa Judum (Jan Jagran Abhiyan), funding of Salwa Judum activities, planning for them, and the public statements of the Chief Minister, the Home Minister and public officials justifying the Salwa Judum, as well as their submissions to this Hon'ble Court are sufficient to hold the state liable for all the violations committed by the Salwa Judum and SPOs.

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.

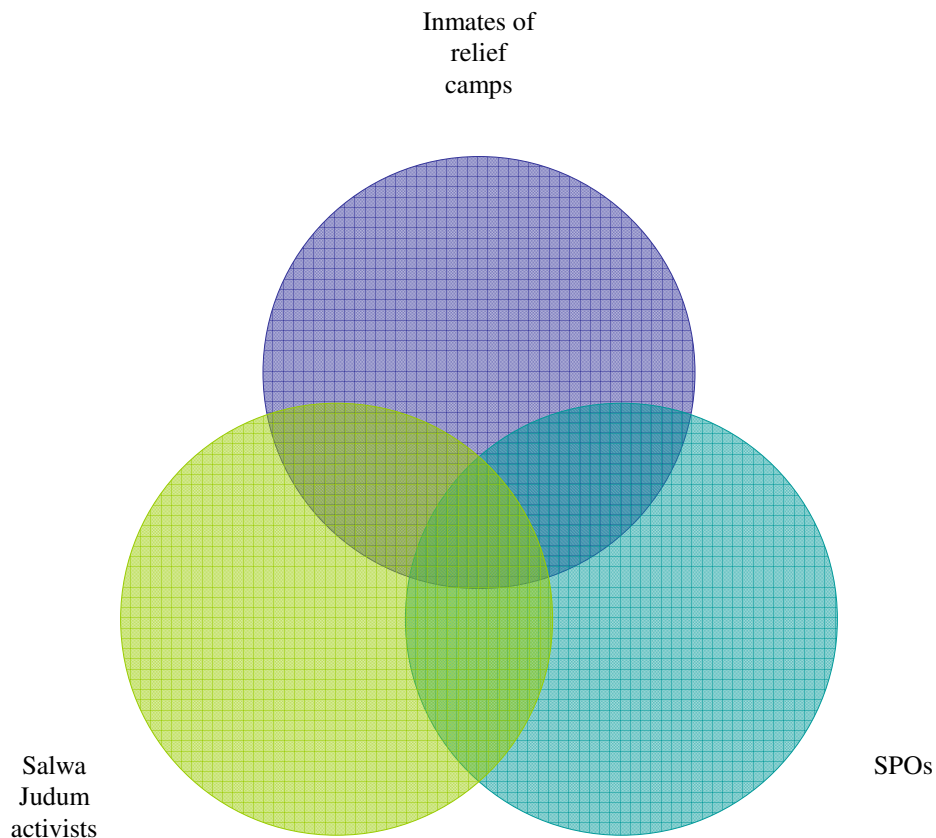
The State cannot take refuge behind the argument that there is a serious conflict in the region. Naxalism has to be fought through legal means, and as the NHRC report recommends, a security-centric approach is not enough. Even in a situation of armed conflict, non-combatants have the recognized right 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.

NOTE: It is therefore necessary, given the nature and extent of state sponsorship, that there be a reliable body, not subordinate to the state government, and not comprised solely of police personnel, to monitor rehabilitation, payment of compensation, and registration of cases, and bringing the guilty to justice, and do all things necessary to restore the rule of law and bring peace back to the region.

II. Overlap between Salwa Judum and SPOs

The State Government has attempted to argue that arming SPOs does not amount to arming civilians, since the SPOs are appointed under the Police Act. However, 1.) there is a close overlap between some of the SPOs and the Salwa Judum, and they were always present together at the burning of villages. NHRC Annexure C, which is a detailed description of the camps that the NHRC team visited, noted that in Matwada camp, 5 persons said they were both Salwa Judum and SPOs. NHRC Annexure E-2.3 which is a paper on Salwa Judum, by DM Mitra, IPS, Director NICFS, and formerly in the Naxalite cell of the Home Ministry, has graphically illustrated the situation. He notes "There are 3 categories commonly referred to as Salwa Judum: a) people living in relief camps, b.) members of a voluntary organization initially called Jan Jagran Abhayan which later became Salwa Judum, c.) SPOs appointed under Section 17 of the Police Act. The three circles have common areas also.



Even if there were no overlap, the SPOs have become a law unto themselves, and are an undisciplined force, as shown by a.) the incidents of rape by SPOs mentioned here in this affidavit, b.) the numerous testimonies which have been affixed as additional volumes to Kartam Joga and ors (WP 119 of 2007), which mention that SPOs took part in the burning and killing in villages.

Unfortunately, the Union Home Ministry is replicating the policy of appointing SPOs in other conflict areas, like Orissa and Manipur, where it has already begun to lead to the division of the village community. The SPOs get placed in a vulnerable situation from insurgents as well, and are not paid the same or trained to the same extent as the regular police.

Despite the evidence before it of overlap between SPOs and Salwa Judum, from

police documents and their own investigation, and the criminality of the SPOs, NHRC recommendations on the SPOs do not go to the required extent. An independent body is necessary which will investigate charges against SPOs, and bring them to justice, and oversee the disbanding of the SPOs in favour of well-trained police, who are sensitive to human rights.

III. Testimonies and FIRs in NHRC annexure as well as NHRC findings need further investigation

The NHRC investigation has failed to appreciate the scale of murders and rapes committed by the Salwa Judum, SPOs and security forces. There are several deaths mentioned in testimonies placed on record in the NHRC annexures (NHRC Annexure B1-B4), which need further investigation, and which are not accounted for in the report. Similarly the allegations regarding specific killings and rapes in the report of the National Commission for Protection of Child Rights which is included as NHRC annexure I-2, also need to be investigated. The NCPCR had specifically asked the NHRC to investigate these instances. There are also discrepancies in the FIRs filed by the police, and NHRC conclusions based on these FIRs or government records, as was noted earlier in the case of village Kotrapal and Hariyal Cherli, which suggest not only that the cases indicated by NHRC for further enquiry should be investigated, but all the cases listed, whether allegedly killed by Salwa Judum/SPOs/security forces or allegedly by Naxalites.

IV. Prayer for Reliefs

In view of the above, petitioners herein seeks following directions from this Hon' ble Court:

1. The NHRC report leads to the undeniable conclusion that the normal political and legal processes have been completely disrupted in the

state of Chhattisgarh. Even registration of FIRs has required this court's orders. The Chhattisgarh government cannot be relied on to provide justice, given its denials in the past that any violation whatsoever has taken place, the nature and extent of its sponsorship of the Salwa Judum , and its continued defence of illegal activities.

2. The ATR of the state government indicates that it is a very inadequate and half-hearted response to the NHRC recommendations and one which is unlikely to lead to any peace in the region. The continued protection of perpetrators by euphemistically and irrelevantly calling them SPOs and the real fear of the victims to complain to the state government are all factors which must be kept in mind by the Court while moulding reliefs. The petitioners would submit that the NHRC's findings reveal only the tip of the iceberg and not the whole truth, and even in that there are several inconsistencies as we have shown here from the example of two villages, Kotrapal and Hariyal Cherli.
3. It would be in the interest of justice to have a high level committee oversee the registration of cases, proper investigation, payment of compensation, as well as the other measures required to restore the rule of law. This would be the appropriate follow up to the findings and their ramifications.
4. It is respectfully submitted that the task of such an independent Committee, will be to:
 - a. Oversee the registration of cases and prosecution of offenders with respect to cases of murder and rape contained in 1). The testimonies given directly by victims to NHRC included in **NHRC Annexure B1–B4** alleging offences of murder, rape, enforced migration. 2.) The offences of murder, rape and involuntary displacement listed in annexures 3-5 of the National Commission for Protection of Child Rights (NCPCR) report based on testimonies given directly by the victims to the NCPR,

included as **NHRC Annexure I-2**. 3.) The offences of rape and murder listed in the Human Rights Watch report included as **NHRC Annexure I-4**. 4.) The offences of rape and murder listed in the Fact-finding report of Women Professionals annexed here as **Annexure 9**; 5.) Offences of murder with respect to the names which had been given to this Court in WP 119/2007, some of which had been investigated by the NHRC investigation team. A slightly revised list is annexed here as **Annexure 12**. 6.) Offences of rape with respect to the women listed here as **Annexure 13**, a copy of which had been submitted to the Hon'ble Court in WP 119/2007.

- b. Oversee the registration of cases and prosecution of offenders with respect to property damage, looting and arson listed in 1.) The offences listed in the **NHRC report**, 2.) The offences listed in **NHRC Annexures B1-B4**, 3.) The offences listed in **Annexure 14** hereto, a copy of which had been submitted to this Honble Court in WP 119/2007. 3.) The offences with respect to all the villagers who have submitted claim forms, as listed in **Annexure 6** hereto.
- c. Ensure meaningful compensation and rehabilitation by providing with seeds, agricultural implements, livestock, houses etc. all persons and villages mentioned in the above paragraph, who have suffered from damages to house and property. This would be in accordance with NHRC recommendation 3.
- d. Ensure that the Government of Chhattisgarh publishes a full list of villages which have been affected by Salwa Judum in both Dantewada and Bijapur, and provides details of basic services being provided to these villages, such as PDS, handpumps, schools, anganwadi, health workers etc. Where such services do not exist, the state government should take immediate steps to

restore them. This would be in keeping with NHRC recommendation 1 on safe return and rehabilitation of all displaced persons.

- e. Oversee specifically the restoration of normal civilian life, such as markets, PDS, schools, health centers and anganwadi in the villages listed in Annexure 6 and Annexure 14, annexed hereto. This would be in keeping with NHRC recommendation 1 on safe return and rehabilitation of all displaced persons.
- f. Monitor the return and rehabilitation of displaced persons/refugees in Andhra Pradesh and other neighbouring states, back to their villages in Chhattisgarh. A list of such refugee settlements in AP is available with the AP government and NGOs based there. This would be in keeping with NHRC recommendation 1.
- g. Monitor the return and rehabilitation of camp residents who wish to return to their villages. This would be in keeping with NHRC recommendation 1.
- h. Oversee the preparation and publication of a full list of missing persons within a month and submit it to this Court; as well as investigate these cases, so that their relatives can have some idea of their whereabouts. The family members of these missing persons should be rehabilitated with immediate effect. This is in keeping with NHRC recommendation 5.
- i. Ensure that a full list of the number of schools taken over by the state of Chhattisgarh for being converted into security camps be published, be submitted to this court and be given back to start functioning as schools within a period of one month. In order to restart schools, the teachers who the state of Chhattisgarh had transferred, should be sent back. This would be in accordance with NHRC recommendation 6.

- j. In addition to the above, process all other complaints of a like nature which may be brought to their notice.
 - k. Report periodically to the Court on progress.
 - l. It is because the state government is not doing any of the above, that the task will have to be entrusted to a committee.
5. The funds for this will have to come from the Central Government, since the Chhattisgarh Government is unlikely to assist in this, and the Hon'ble Court must ensure facilities for the Committee to operate in Dantewada district. The Central Government should announce a package for the victims similar those announced for the victims of Gujarat 2002 and Delhi 1984.
6. In addition, it is respectfully prayed that the Hon'ble Supreme Court will:
- a. Direct the state to ban the Salwa Judum as an illegal armed organisation, withdraw all support, either direct or indirect, to Salwa Judum, publicly dissociate itself from the Salwa Judum campaign, and denounce human rights abuses linked to Salwa Judum.
 - b. Direct the state to disband SPOs to prevent further acts of extra-judicial violence and violation of human rights.
 - c. Direct the Union Home Government to refrain from pursuing the disastrous policy of encouraging 'local resistance groups' by arming civilians. Such a policy only puts civilians in harm's way from insurgents and creates a class of vigilantes supported by the state who are pitted against vigilante insurgents. As this Hon'ble Court has pointed out, policing is best left to properly recruited and trained police and paramilitary forces.
 - d. Initiate serious and independent investigations of individuals responsible for carrying out or ordering human rights abuses,

regardless of the rank, and prosecute them as appropriate. Leaders of the Salwa Judum, such as Mahendra Karma, who has publicly admitted that it was a violent movement, but continued to justify it, should be prosecuted.

- e. Investigate the role of senior police and administrative officials in Dantewada, Bijapur and in Raipur, in the commission of, or failure to prevent abuses of human rights, and take appropriate action, including removal from office and/or criminal prosecution.
- f. End the practice of arbitrary detention and strictly implement the DK Basu guidelines on arrest and detention issued by the Supreme Court; initiate disciplinary action against police officials who have violated them. Create awareness campaigns to disseminate information regarding people's rights during arrest and detention.
- g. Enforce cent percent compliance of NHRC guidelines on instances of extra-judicial violence throughout the State
- h. Direct the State to implement all provisions of the Constitution regarding the 5th Schedule in the districts of undivided Bastar