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Protection of
Children's Rights
in
Areas of Civil Unrest

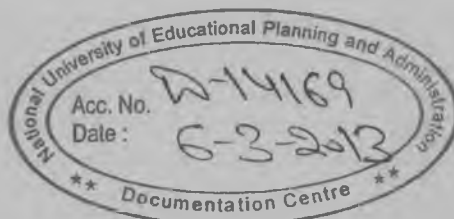
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National Commission for Protection
of Child Rights (NCPCR)

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Foreword

The National Commission for Protection of Child Rights ('NCPCR' or 'Commission') has been monitoring the situation of children affected by, and in many instances displaced by, political instability and violence. This policy document on "Protection of Children's Rights in Areas of Civil Unrest" lays down guidelines and recommendations that, if implemented, would serve to make children in these areas safer and less deprived. The guidelines and recommendations are addressed to different ministries and State Government departments that deal, directly or indirectly, with civil unrest or children's rights and welfare.

The Commission has examined the predicament of children in Naxal-affected parts of Chhattisgarh, in the North Cachar Hills, Chirang and New Bongaigaon districts in Assam, in Ashapara and Naisingpur camps at Kanchanpur in North Tripura District in Tripura, in Kandahmal, Orissa and in the Kashmir Valley.

During the NCPCR's visits to these areas, we were struck by the enormous tragedies of children, women and tribal communities. We saw inhuman living conditions in camps in Assam, Tripura and Manipur, and public testimonies revealed an alarming rate of child and maternal morbidity and mortality due to poor healthcare, sanitation and water facilities. Children also lacked secure access to education. These deprivations are layered upon the violence and insecurity that these children and their families live with.

The NCPCR feels the situation of children in areas of civil unrest is a national concern, and should be an intrinsic consideration in efforts to quell unrest. These children absorb the material and economic fallout of civil unrest, and are at the sharp end of insurgent violence and State efforts to control such violence. Central and State Governments have an obligation to address the poor access that children who have been displaced have to health, water, sanitation and education. The authorities are also obliged to strengthen children's access to basic rights in areas that have suffered civil unrest for many years, where public infrastructure and systems have suffered and children suffer as a result. Protection of children affected by civil unrest requires different ministries and departments to act in coordination, and to effectively harness contributions by civil society. Ensuring rights and protections for these children is essential for lasting peace and security.

We are grateful for help and support from various government departments, as well as non-governmental organisations.

We also thank Surabhi Chopra for her work on this policy document.

Shantha Sinha
Chairperson

This policy document aims to identify what Central and State Governments, district administrations and panchayats should do to protect children's rights in areas of civil unrest. This Chapter lists the NCPCR's recommendations on different issues. The subsequent Chapters discuss the NCPCR's observations, concerns and recommendations in more detail.

1. Governance Gaps

- 1.1 The following policy and programmatic inputs need to be developed and adopted:
 - (i) An overarching policy on children in areas of civil unrest
 - (ii) Protocols or guidance on provisioning in areas of civil unrest under major child-related programmes and schemes, including Integrated Child Development Scheme (ICDS) and Sarva Shiksha Abhiyan (SSA)
 - (iii) A child-specific component in State-level schemes or policies.
- 1.2 The Home Ministry should be the nodal ministry responsible for implementing this policy. The Ministries of Women and Child Development, Human Resource Development, Health and Education should develop civil unrest-specific protocols under the SSA and the ICDS. As a first step, the Joint Secretary, Human Rights Division within the Home Ministry should coordinate with other ministries for these protocols and other inputs recommended by the NCPCR in this document. Thereafter, the Joint Secretary for the relevant regional or thematic division within the Home Ministry dealing with any particular area of unrest would be responsible for implementing this policy and accompanying protocols.
- 1.3 At the State level, the Home Department should ensure that any relief measures, and longer term schemes, comply with the national policy on children in areas of civil unrest.
- 1.4 At the district level, the District Magistrate should designate district and block level nodal officers tasked with ensuring that district level service delivery complies with the national policy on children in areas of civil unrest, and can respond to child rights petitions and form the interface between the administration and the community in the unrest-affected areas.
- 1.5 State Governments dealing with civil unrest need to provide for training of functionaries in all institutions dealing with children (schools, hostels, Ashram Shalas, Anganwadi Centres etc.) in a systematic fashion to sensitize them on child rights issues. The National Institute of Public cooperation and Child Development (NIPCCD) should develop training modules, which should be implemented by the relevant State Government Departments.
- 1.6 In addition to training personnel working directly with children, the State Government should also provide child protection training to groups of police and Special Police Officers (SPOs) in areas of civil unrest.
- 1.7 The Ministry of Panchayati Raj should help to build the capacity of panchayati raj institutions to protect children in areas of civil unrest. The ministry should liaise with non-governmental and inter-governmental agencies experienced in relief and service delivery in difficult situations to train

panchayats on tracking children and monitoring their safety and access to entitlements.

- 1.8 State Governments should set up institutions mandated by the Juvenile Justice (Care & Protection) Act, 2000 (JJ Act) as a matter of urgent priority in areas of civil unrest. This is discussed in more detail in Sections 8 and 9 below.

2. Forced migrants - Children in neighbouring districts and States

- 2.1 District authorities should survey families who have migrated in the wake of the unrest and share this data with the relevant district authorities and State Governments to ensure that basic social services are provided to the forced migrants.
- 2.2 District authorities shall issue new identity documents or replace documents lost during displacement, without unreasonable conditions. District authorities should immediately issue cards/documents that entitle forced migrant families to civil supplies. This should not depend upon previous identity documents. Heads of households should be allowed to issue a declaration to the effect that the family, including children, has been forced to migrate, or has been internally displaced as a result of civil unrest, and identity for the purposes of ration and other basic entitlements should be issued based on this declaration.
- 2.3 State Governments should ensure that existing Relief Codes, protocols or administrative instructions applicable in areas of civil unrest incorporate guidance on provisioning for children.
- 2.4 Children in families forced to migrate must have safe access to:
- ❖ Essential food and potable water
 - ❖ Basic shelter and housing
 - ❖ Appropriate clothing
 - ❖ Essential medical services and sanitation
- 2.5 Forced migrant families should have access to employment schemes such as Mahatma Gandhi Rural Employment Guarantee Scheme (MGREGS).
- 2.6 Forced migrant families should be eligible immediately for Below Poverty Line (BPL) cards.
- 2.7 Access to basic entitlements should not be time bound, or cut off after an arbitrary number of months.

3. Forced migrants - Children in camps

- 3.1 The recommendations above on service provision to children in neighbouring districts or States apply to children in camps as well.
- 3.2 District authorities must ensure emergency service provision in camps, to cover:
- ❖ Health
 - ❖ Food and nutrition
 - ❖ Schooling

Specific recommendations on health, food and schooling are discussed in the sections that follow.

- 3.3 Ensure protection for camps where residents are threatened by insurgents.

3.4 Even within the constraints of camp living, residents must have a minimum level of privacy – this is essential for women and girls.

3.5 Camps should have a grievance mechanism, through which residents can air their concerns.

3.6 Long-term camps – those that are still in existence after a few months – must be incorporated into a district's development agenda.

3.7 Prevention:

The State's first responsibility should be to prevent children from being separated from their families.

- (i) Deliberate separations can be prevented by ensuring that all households have access to basic relief supplies and other services, including education.
- (ii) Awareness of ways to prevent separation should be raised among government personnel, such as teachers and health workers. Families should be made aware of measures that they can take in emergencies to minimize the risk of their children becoming separated. For example, if the authorities fear serious insecurity, parents and schoolteachers should teach children their name, address and details of where they come from, to facilitate tracing should they become separated. Panchayats should play the lead role in awareness raising.
- (iii) District authorities and panchayats should try to ensure special measures to protect children, particularly girls, from rape and other forms of sexual violence. If senior officials receive any indication that government personnel are complicit in any way in such violence, they should take strong preventive and disciplinary measures.
- (iv) District authorities should initiate a birth registration drive, and ensure that children have a form of legal identity. They should liaise with panchayats to ensure they have covered all the children in the district.

3.8 Setting up Child Welfare Committees:

- (i) The State Government must set up Child Welfare Committees (CWCs) to cover areas affected by civil unrest, areas to which children have migrated with their families, and camps.
- (ii) This might prove challenging in some areas of civil unrest. Where necessary, the closest CWC should be assigned to cover areas where children affected by civil unrest are living. Alternatively, where necessary, the State Government must constitute a mobile CWC, that will cover such areas.
- (iii) CWC members must be trained on the particular vulnerabilities of children in areas of civil unrest. As recommended earlier, NIPCCD should develop this training module.
- (iv) CWCs and district authorities must pay particular attention to children who are separated from their families. They should be guided by the recommendations below on identifying, tracing and reuniting children with their families.

3.9 Separated or unaccompanied children - Identification

- (i) As a part of mapping children displaced by unrest (see Chapter 4), the district authorities must assess how many children have been separated from their families at the earliest possible stage,

whether in an internally displaced persons (IDP) camp or outside camps. This information should be disaggregated by age, sex and situation. In particular, groups of children at special risk should be identified, such as those with disabilities, child participants in unrest, and those living in child-headed households. In mapping family separation, it is important to identify factors with potential to cause new separations or to aggravate the circumstances of children already separated. These may include a range of factors, from lack of food to possible recruitment of minors as participants in civil unrest.

- (ii) The Inter-agency Guiding Principles caution that the identification of unaccompanied and separated children must be approached very carefully to ensure that all genuine cases are identified, while not attracting false cases. Information should be verified through interviews with the child and members of the community.
- (iv) Identification forms should always be kept by or with the child, and a record made of any change of location. Whenever possible, photographs should be taken as part of the registration/documentation process. In the case of younger children in particular, these must be taken as soon as possible after separation.
- (v) The community, whether in a camp or non-camp environment, should be told why children are being identified.
- (vi) All staff must respect the confidential nature of the information collected. Precautions must be taken when sharing and publishing information on unaccompanied and separated children, including photographs of children for tracing.

3.10 Separated or unaccompanied children - Tracing families

- (i) For children separated from their families, the aim is to reunite families as quickly as possible, and the State machinery should begin tracing as soon as possible. Immediate efforts must be made to find family or care-givers who may still be in the area, in order to maximize the possibility of the child being quickly taken back into the care of someone he/she knows. That said, where the situation is so insecure that trying to trace families may endanger the child or family, it should be delayed.
- (ii) All those engaged in tracing should use the same approach, with standardized forms and mutually compatible systems. This will facilitate cooperation and information-sharing and prevent duplication of activities.
- (iii) The child should be kept informed of these efforts and of any progress made.
- (iv) When families are traced, the authorities must verify the validity of relationships claimed, through official records and/or by consulting the community.
- (v) Government personnel must ensure that separated or unaccompanied children have access to the same emergency care and services as other children.
- (vi) For separated children, community-based care is preferable to institutional care as it keeps the child within his/her community and provides continuity. However, such care must be monitored to ensure that children who are alone are not discriminated against or abused.

- (vii) Where necessary, arrangements for medium term and longer term care should be made within the framework of the JJ Act. The children must be involved in the process and kept informed of any plans made for them.
- (viii) Government agencies must pay special attention to the health, nutrition, education and psycho-social needs of separated or unaccompanied children. This is discussed in more detail below.

4. Children Who Are Not Displaced

- 4.1 Even where State machinery is under stress, maintain a basic level of education and health services; where services are suspended, restore them as soon as possible.
- 4.2 Once there is relative calm, strengthen service delivery, and aggressively disseminate information about child-related services.
- 4.3 Sensitise teachers, Anganwadi workers and health personnel to a context where children may have been targets of violence, or seen the effects of civil unrest at close quarters.
- 4.4 Promote community-based rehabilitation.
- 4.5 Implement non-discriminatory relief, rehabilitation and welfare measures for children. The Central Government, State Government or district authorities should not make eligibility for welfare schemes or scholarships dependent upon political considerations, for example, discriminating between children whose parents were victims of militant violence, and children whose parents were suspected militants. These sorts of distinctions punish children – often very young children – for the choices their parents or families made.

5. Numbers of Children Affected

- 5.1 Mapping of children should be done as soon as possible.
- 5.2 District authorities should issue birth certificates/official identification to children as soon as possible. District authorities should liaise with panchayats to do this.
- 5.3 District authorities must do a basic count of children affected by civil unrest, whether forced migrants or children in their original homes, which:
 - (i) Is disaggregated by age and gender
 - (ii) Counts disabled children and level of disability
 - (iii) Estimates the number of children out of school

6. Identifying age-specific vulnerabilities

- 6.1 Identifying children in different age groups and identifying their specific vulnerabilities is a crucial part of mapping children in areas of civil unrest. District authorities should liaise with panchayats to do this.
- 6.2 At a minimum, the basic count recommended in Chapter 4 must be used by the district administration as a basis for identifying children who fall within the ambit of ICDS, and children who fall within the ambit of the Right to Free & Compulsory Education Act (RTFCE), 2009.

7. Economic and Social Rights

7.1 Right to food

- (i) Maintain and strengthen ICDS services. Adhere to ICDS nutrition and supplementary nutrition norms for children below the age of 6, as well as for pregnant and lactating mothers.
- (ii) Anganwadis should be sanctioned on the same terms for relief camps, and settlements of forced migrants, as they are under normal circumstances. The Supreme Court has ordered that there should be one anganwadi per thousand population, and if there is a minimum settlement of 300, or at least 40 children under the age of 6 years, then the settlement is entitled to an *anganwadi*¹. Government authorities can not deviate from this norm just because children are in a camp or are displaced from their homes.
- (iii) There is detailed international guidance on care and feeding of young children in times of insecurity. The Ministry of Women & Child Development should adapt this to areas of civil unrest, and ensure that all State Governments incorporate the resulting steps to ICDS. Relevant guidance includes:
 - ❖ Inter-agency Working Group on Infant and Young Child Feeding in Emergencies: *Operational Guidance*
 - ❖ WHO: Guiding Principles for Feeding Infants and Young *Children in Emergencies*

7.2 Right to healthcare

- (i) The State Government must maintain basic health systems and services and water supply to the best of its ability.
- (ii) Where the health infrastructure is damaged, the State Government should provide mobile clinics to maintain basic services.
- (iii) Displaced people are likely to need urgent care in the immediate aftermath of displacement. District authorities must ensure that:
 - a. Excess mortality or morbidity amongst children is tracked
 - b. Steps are taken against the spread of communicable diseases. Clean water and decent sanitation is essential in camps.
 - c. Young children have access to immunisation and other basic health services under the ICDS.
- (iv) Public health centres should be set up within camps, particularly where the camps are, or are likely to be, long-term. In the interim, district authorities should organise mobile health camps to ensure that essential health services such as immunisation are not interrupted.
- (v) Priority should be given to adequate rehabilitative care, such as provision of artificial limbs for injured and permanently disabled children.
- (vi) The Ministry of Health and State Health Departments must ensure that they are releasing adequate medical supplies to cover the areas of civil unrest.

7.3 Mental health and psycho-social services

- (i) In the immediate aftermath of displacement:

- a. Restoring and maintaining basic services goes a long way towards re-establishing a sense of normalcy for children. Access to schooling is a particularly important anchor during civil unrest.
 - b. Giving the displaced community credible information and allowing space for normal cultural and religious events will help families to cope more effectively.
 - c. To the extent possible, district authorities should provide psychiatric help to children suffering from trauma
- (ii) In areas of long-running civil unrest, State Governments should provide a more comprehensive range of institutional and community-based interventions.
 - (iii) Current mental health services in government hospitals should be scaled up.
 - (iv) The State Government should partner with NGOs or international agencies that are running successful mental health programmes.
 - (v) The State Government should develop a community-based mental health programme based on an assessment of existing services and an understanding of the socio-cultural context. They should include the use of practical, cultural coping mechanisms. Community workers should be trained and supervised to assist health workers with heavy caseloads and to conduct outreach activities to facilitate mental health care.

7.4 Right to education

- (i) *Physical access*
 - (a) State governments should reconstruct damaged schools as a priority.
 - (b) The relevant State Government should try to ensure physical access, transporting children to school where necessary. In areas where schooling is seriously disrupted, panchayat and district authorities should consider outreach education programmes.
 - (c) If the usual education premises are not available or insecure, then alternative temporary sites should be selected which are safe and secure.
- (ii) *Access routes:*
 - (a) The State must try to ensure that access routes are safe and secure for all learners and education personnel (regardless of gender, age, nationality, race, ethnicity or physical ability). This entails sufficient and good-quality policing and the deployment of troops, where appropriate and necessary.
 - (b) Panchayat level education monitoring committees should implement proactive community measures to secure access to school, such as adult escorts to and from schools.
 - (c) Where access is difficult despite official measures and community participation, the State Government should set up ashram schools as an urgent priority
 - (d) Schools should never be used as temporary shelters by security forces. The NCPCR is of the view that use of schools by police or security forces violates the spirit and letter of the RTFCE Act, 2009 because

¹ Order of the Supreme Court dated 13 December 2006, WP 196/2001

it actively disrupts access to education and makes schools vulnerable to attacks. The Home Ministry should issue clear guidance against this practice. District magistrates must never offer schools to police and security personnel, and must enquire promptly into complaints that they are being used in this way. The army or police personnel in their turn must not use schools to set up camps or checkpoints. On the contrary, they should be directed to actively protect educational facilities.

(iii) *Formal barriers*

- (a) Documentation requirements for admission and enrolment should be flexible and should not require certificates of citizenship, birth or age certificates, identity papers, school reports, etc., since displaced groups may not have these documents. Sections 4, 5 and 14 of the RTFCE Act, 2009 together make absolutely clear that children cannot be denied admission or enrolment due to lack of proof of age, and that school, panchayat and district authorities must share and transfer documentation.
- (b) Where there are security concerns, documentation and enrolment information should be kept confidential.
- (c) Make special provisions for children who do not speak the local language of instruction, including through the expansion of bridge courses.
- (d) The relevant State Government – in whose territory children are living – needs to set up Residential Bridge Courses through the SSA to reintegrate children who have dropped out into formal schools.
- (e) Where families are forced to migrate across district boundaries or State borders, district and State authorities must coordinate across borders. For example, the original district authority should coordinate with the receiving district authority to identify children, send transfer documents where available, and send personnel where needed. Similarly, the original State Government should assist the receiving State Government by arranging to send teachers where children face a language barrier in the receiving State.
- (f) Make provision for emergency education programmes in camps during initial influx of forced migrants. As soon as district authorities establish camps, they must ensure that children are brought together for educational activities. There should not be a lag of several days or weeks before children have access to education. District authorities should provide stop-gap services immediately, and ensure access to regular schooling or bridge courses as soon as possible after that.

(iv) *Institutionalising effective education delivery:*

- (a) While we are aware that it is difficult to gather accurate information in the conflict-affected areas, a process needs to be set up in a decentralised manner so that gram panchayat members who are well-versed with the identity of all children from their village are encouraged to **monitor out-of-school children and the progress of those enrolled in formal education**. This initiative should be supported by nodal officers at the block, district and state level to monitor, supervise and collate

the data generated by the community.

- (b) The local authority under the RTFCE Act - be it the Municipal Corporation or Municipal Council or Zila Parishad or Nagar Panchayat or Panchayat - must keep a list of children up to 14 years and monitor their access to education.
- (c) To deliver education effectively, or even adequately, in areas of civil unrest, the administration will need to assess the capacities of affected people, local resources, needs, gaps and security risks. The State Department of Education should evaluate and adapt to these factors – it should liaise with local authorities who are monitoring education delivery on the ground.
- (d) In areas of long-running unrest, the State Government should build in training to equip teachers to deal with new requirements. These will include recognizing signs of stress in children as well as imparting vital survival information on issues such as landmines and health and promoting respect for human rights.
- (e) Teachers should receive training in appropriate ways of responding to children who are separated from their families, or have lost family members, and may have emotional and behavioural problems.
- (f) To protect children in remote areas, we would call for the initiation of talks through neutral thirdparty agencies to engage all stakeholders including the government, Naxals, Salwa Judum, the community, etc. to initiate a ceasefire and declare children as zones of peace. This would enable the commencement of a number of progressive initiatives including undertaking immunization drives for children in unreached areas, extension of basic health facilities including polio vaccinations and supporting the movement of children to safe areas to be enrolled in ashram schools and pursue a formal education.
- (g) The Ministry of Education should ensure that the National Policy on Education incorporates a section on ensuring delivery of education in areas of civil unrest.
- (h) Education needs to be coordinated within the larger response on shelter, health, water and sanitation, particularly where children are displaced.

8. Civil and political rights

- 8.1 Children suspected of or accused of unlawful activity in areas of civil unrest should be brought before a JJ Board rather than an adult court.
- 8.2 State Governments must create JJ Boards and the institutions mandated by the JJ Act as a matter of priority in areas of civil unrest. In the interim, the relevant area should be covered by the closest JJ Board. Alternatively, the State Government should create a mobile JJ Board that travels to the relevant area.
- 8.3 Where children under 18 are held in adult jails, they should be transferred to institutions under the JJ Act.
- 8.4 CWC members should visit, and must be allowed access to, adult jails to ensure that there are no children in adult facilities.

8.5 State Governments should give the NCPCR a list of children who are currently accused of unlawful activity or arrested under national security laws or anti-terror laws.

8.6 Police and military authorities should avoid blanket characterisation of adolescent boys as security threats. They should take any arbitrary detention, mistreatment or torture of children extremely seriously, investigate any reports of grave violations immediately, and take action against personnel involved.

9. Children associated with insurgent groups

9.1 Children as SPOs

(i) Take steps to ensure that all children under age 18 serving as SPOs are identified and removed, and provided with alternative education or vocational training opportunities.

(ii) Amend the Police Act, 1861, to introduce 18 as the minimum age for recruitment of SPOs to prevent future recruitment of children.

9.2 Prevention

(i) As a part of the larger exercise of mapping children discussed in Chapter 4, district authorities should do a "risk map" and identify children most at risk of induction. This is likely to focus attention on groups – like older boys – who are not otherwise perceived as vulnerable. Risk mapping can identify the principal recruiting agents and tactics. Strategies should be developed based on this information.

(ii) Panchayat members and teachers should be trained and alerted to this risk.

(iii) Where the risk of forcible recruitment is high, schools and camps should be protected by police and security forces.

9.3 Short-term measures

(i) State Governments should implement the JJ Act in areas of civil unrest as a matter of priority.

(ii) When police or security forces find children, they should attempt to trace their families and inform them about the children's activities and whereabouts as a first step.

(iii) As recommended earlier, such children should not be held in adult jails.

(iv) At the same time, recognising that some children may be trained and indirectly or directly involved in serious violence under the direction of insurgent groups, the Ministry of Women & Child Development should develop guidelines/rules under the JJ Act on how the Act should deal with children involved with insurgent groups. These guidelines should cover how children, particularly older children, should be detained and the circumstances in which they should be detained separately from other children.

(v) These guidelines should also recognise that children who have been a part of insurgent groups can face serious danger when they leave, and provide for limited situations in which such children may be temporarily relocated to another district or State.

9.4 Long-term rehabilitation

(i) Children who have been associated with insurgent groups should not be prosecuted, punished,

or threatened with prosecution or punishment solely because of their association with those groups.

- (ii) Prosecution for offences committed by children when they were members of armed groups should conform to national and international juvenile justice standards. Further, release and rehabilitation measures should be carried out without any conditions. The majority of children should be returned to their family and community or a family and community environment as soon as possible after their release.
- (iii) Reintegration programmes must re-establish contact with the family and the community as soon as possible. For some children, a transitional period of collective care may be necessary.
- (iv) The Human Rights Division of the Home Ministry, in coordination with the Ministry of Women & Child Development, should develop a national scheme for identification, release, and reintegration of children recruited by insurgent groups, in consultation with governmental, non-governmental, and inter-governmental organizations, and in accordance with international best practices. The Ministry, in turn, should ensure that guidance under the JJ Act for children coheres with the national scheme.
- (v) In any negotiations or interactions, the Home Ministry should urge insurgent groups to release participants under 18.
- (vi) Those who recruit children into insurgent groups, including State-supported or sponsored groups, should be prosecuted.

The National Commission for Protection of Child Rights ('NCPCR' or 'Commission') has visited several parts of India where children have been affected by, and often displaced by, political instability and violence. The Commission has examined the predicament of children in Naxal-affected parts of Chhattisgarh; in the North Cachar (NC) Hills, Chirang and New Bongaigaon districts in Assam; in Ashapara and Naisingpur camps at Kanchanpur in North Tripura District in Tripura; in Kandahmal, Orissa and in the Kashmir Valley.

Civil unrest exposes children to multiple deprivations. Children are killed, hurt and maimed as a direct result of violence. Access to food, water, sanitation, health care and schooling deteriorates. Children are pushed into situations that can circumscribe the remainder of their lives. Civil unrest disrupts families and social networks that support children's physical, emotional and social development. The NCPCR has encountered children who are displaced and forced to drop out of school as a result. Civil unrest renders children vulnerable to trafficking and sexual abuse. Some children are also pulled into violence against the State.

This policy document grows out of our experience so far, and the area-specific recommendations we developed for children in different areas affected by civil unrest. It documents some of the most serious impacts of civil unrest on children. It is not an exhaustive list, but we highlight our major concerns and recommend practical steps for addressing these concerns.

Our discussion focuses on:

- (i) The need for a comprehensive, inter-sectoral policy on children in areas of civil unrest;
- (ii) The urgent need to gather information on children in these areas;
- (iii) Displaced children and children who are not displaced;
- (iv) Protecting children's rights in areas of civil unrest - economic and social rights as well as civil and political rights.

Children's needs and aspirations cut across ethnic identities and political fissures. Children need – and are entitled to – quality education, food, shelter, healthcare, bodily integrity and security. The Indian Constitution protects these rights, as do national laws and the Convention on the Rights of Child. Article 39 of the Convention obliges India to promote the physical and psychological recovery and social reintegration of children affected by unrest or conflict.

Children do not forfeit these rights because they have the misfortune to live amidst insecurity. This policy document aims to identify what the Central and State Governments can do to protect children's rights in areas of civil unrest.

2.1 Governance Gaps

In the NCPCR's work on children affected by civil unrest, we have observed many dedicated public officials. At the same time, we have encountered gaps in governance at various levels of government.

2.1.1 Policy gaps

At the **national level**, India lacks a policy on children in areas of civil unrest. The NCPCR believes that the Ministry of Home Affairs would be best placed to adopt this policy, and ensure it is implemented. The Home

Ministry is directly responsible, in concert with State Governments, for responding to situations of civil unrest. Within the Central Government Protection of Children's Rights in Areas of Civil Unrest 11 ment, Home Ministry officials will have institutional knowledge as well as a good understanding of politically insecure areas. Therefore, the Commission feels that the Home Ministry should have primary responsibility for the policy on children in areas of civil unrest. Moreover, the Home Ministry already has a human rights division, which is well placed to adopt this policy document and coordinate contributions from other government ministries and departments.

Just as a coherent national policy is lacking, programmes and schemes such as the ICDS and the SSA do not have protocols on how to deliver services in insecure areas. Programmes and policies for children need to give direction on how to deliver during civil unrest. The relevant ministries should develop protocols or guidance, to flesh out the operational details of the macro-level recommendations the NCPCR has included in this policy document. The Ministry of Home Affairs and State Governments would benefit enormously from the expertise of the Ministries of Health, Education, and Women & Child Development in addressing the needs of children during civil unrest.

Likewise, at the **State level**, all relevant relief codes, protocols and administrative instructions need to incorporate national and international lessons on protecting children during civil unrest. The protection of children should be regarded as an important aspect of any comprehensive strategy to resolve civil unrest.

At the **district level**, the district administration should ensure that they implement the policy on children affected by civil unrest and specific protocols under national programmes and schemes.

Finally, **gram panchayats** need to play a much bigger role in protecting children's rights in areas of civil unrest. The NCPCR has come across many gram panchayats, including gram panchayats in Dantewada district, Chhattisgarh, who try to ensure that every child in the area has access to schooling, food and healthcare. Panchayats can make the difference between schemes working – or not – on the ground. Motivated panchayats can improve delivery for children because at that level, children are not statistics – they are individuals with needs and vulnerabilities. In insecure conditions, where children may be intensely vulnerable, it is important to track every single child, and panchayats are best placed to do this, and keep a complete list of children and habitations.

State and district administrations should route entitlement schemes through panchayats in areas of civil unrest, and panchayats in turn need to coordinate and monitor how schemes are implemented. To do so effectively, panchayats will need support and capacity building, which the Ministry of Panchayati Raj is best placed to facilitate.

2.1.2 Coordination gaps

Just as we feel that different ministries need to work more closely on a national policy for children facing civil unrest, we feel that Departments in State Governments need to do the same.

Even more importantly, State Governments need to coordinate across borders when families are forced to migrate to a neighbouring State. Similarly, district authorities and panchayats need to coordinate across district borders when displaced people flee to a neighbouring district. The NCPCR repeatedly heard from

district authorities that displaced people did not fall within their ambit. Displaced families could not access any basic entitlement e.g. displaced children were not admitted into local schools. It is unacceptable that a bureaucratic barrier keeps children out of school. Indian citizens cannot be denied welfare entitlements because they move to another part of the country. If families move under duress, as a result of insecurity and danger, official formalities should be relaxed until they are more settled.

2.1.3 Training gaps

Civil unrest poses difficult challenges for public servants – district administrators, teachers, health personnel, the police – delivering services on the ground. They are delivering services to populations who are under extreme stress. They also navigate danger, and may be potential targets, as they go about their work. The NCPCR feels there is a need to train State functionaries delivering grassroots services that affect children, so that they can work more effectively. Similarly, it is important to build the capacity of panchayats to protect children in the area and monitor their access to entitlements.

2.2 Recommendations

- (i) The following policy and programmatic inputs need to be developed and adopted:
 - (a) An overarching policy on children in areas of civil unrest
 - (b) Protocols or guidance on provisioning in areas of civil unrest under major child-related programmes and schemes, including ICDS and SSA
 - (c) A child-specific component in State-level schemes or policies
- (ii) The Home Ministry should be the nodal Ministry responsible for implementing this policy. The Ministries of Women and Child Development, Human Resource Development, Health and Education should develop civil unrest-specific protocols under the SSA and the ICDS. As a first step, the Joint Secretary, Human Rights Division within the Home Ministry should coordinate with other ministries for these protocols and other inputs recommended by the NCPCR in this document. Thereafter, the Joint Secretary for the relevant regional or thematic division within the Home Ministry dealing with any particular area of unrest would be responsible for implementing this policy and accompanying protocols.
- (iv) At the State level, the Home Department should ensure that any relief measures, and longer term schemes, comply with the national policy on children in areas of civil unrest.
- (v) At the district level, the District Magistrate should designate district and block level nodal officers tasked with ensuring that district level service delivery complies with the national policy on children in areas of civil unrest, and who can respond to child rights petitions and form the interface between the administration and the community in the unrest-affected areas.
- (vi) State Governments dealing with civil unrest need to provide for training of functionaries in all institutions dealing with children (schools, hostels, Ashram Shalas, Anganwadi Centres etc.) in a systematic fashion to sensitize them on child rights issues. NIPCCD should develop training modules, which should be implemented by the relevant State Government Departments.

- (vii) In addition to training personnel working directly with children, the State Government should also provide child protection training to police and SPOs in areas of civil unrest.
- (viii) The Ministry of Panchayati Raj should help to build the capacity of panchayati raj institutions to protect children in areas of civil unrest. The Ministry should liaise with non-governmental and inter-governmental agencies experienced in relief and service delivery in difficult situations to train panchayats on tracking children and monitoring their safety and access to entitlements.
- (ix) State Governments should set up institutions mandated by the JJ Act, 2000 as a matter of urgent priority in areas of civil unrest. This is discussed in more detail in Chapters 5 and 6.

3 Categories of children

Children affected by civil unrest can be grouped in two broad categories – those who are displaced from their homes as a result of unrest, and those who are not. Below, we highlight concerns specific to each category, while in the sections that follow, we discuss concerns that cut across both categories.

3.1 Forced Migrants

Civil unrest can cause families to flee their homes in large numbers. Such displacement renders children extremely vulnerable to a host of deprivations, and exposes them to danger and insecurity.

During the NCPCR's visits to areas of civil unrest, we observed two types of forced migration:

- (i) **Forced migrants in neighbouring districts or States:** The community flees to neighbouring districts either in the same State or in another State, to seek shelter and work as migrant labour.
- (ii) **Forced migrants in camps:** People flee from their villages, seeking shelter in safe zones, and live in relief camps set up by the Government.

Families or individual children may move between the two categories – e.g., they might seek shelter in a relief camp, but be unable to return to their homes even after the camps are shut down. We need to recognise two

Forced to flee from Chhattisgarh

The NCPCR participated in a public hearing in Charla, Chhattisgarh in December 2007. The hearing was attended by more than 200 IDPs: men, women and children. The team heard the testimonies of more than 35 people. Every testimony included a narrative of extreme violence committed against them, their families and property, by the Naxalites, Salwa Judum and the security forces. Many people told of family members being killed and women raped by the Salwa Judum. Having faced repeated acts of violence, harassment, arson and pillage the only option for these people was to flee their villages and seek refuge in another State. This often involved walking through the jungle to avoid detection by the Naxalites and Salwa Judum. The accounts described how the old and infirm often had to be left behind because they could not undertake this journey. There are many separated families where some family members are hiding in the forests of Chhattisgarh. Leaving behind their land and livestock they arrived in Andhra Pradesh in a state of penury and distress.

In a public hearing in the mining town of Kirandul in southern Chhattisgarh, the NCPCR interacted with 500 people, many of whom had been displaced from their villages. Many had fled for fear of Naxalites – villagers complained that the Naxalites allow no development works or road construction. They have blown up schools and they control all the land and livelihood activities. Moreover, the Naxalites do not allow teachers and doctors to visit the villages. The villagers said that they wished to return to their villages but couldn't do so without police protection because they would be persecuted by the Naxalites. Simultaneously, there were many accounts of violence by the Salwa Judum members and security forces. Salwa Judum has forced many villagers to move to the camps, and burnt houses, livestock and in some cases, standing crops. There were numerous accounts of family members being killed for resisting the Salwa Judum.

important features about forced migration:

- ❖ First, that it is forced, not voluntary. Families do not choose lightly to leave their homes. The vast majority migrate out of fear of death, injury, sexual violence, forcible recruitment, or intimidation by parties to unrest, or acute hunger and deprivation, or a combination of these fears. However, it is important to recognise that most internally displaced people are not politically motivated by or engaged in civil unrest. Displaced children in particular have to be recognised and dealt with as victims of circumstance, who should be protected rather than punished or neglected.
- ❖ Secondly, if unrest persists, people can be displaced for long periods of time. When the local district authorities and the relevant State government treat forced migrants as outsiders without entitlements, people can spend years in a “temporary” position, deprived of basic services.

Below, we highlight issues specific to children in neighbouring districts and children in camps. We then discuss concerns relating to all displaced children, regardless of whether they are in camps or in neighbouring districts.

3.2 Children in Neighbouring Districts or States

The NCPCR observed that displaced persons were treated as ‘outsiders’ in the places where they sought refuge, and found it difficult, if not impossible, to access their entitlements as they were not counted in for any development programmes and schemes. Forced migrants who flee to neighbouring districts face the following problems:

- (i) *Access to entitlements:* Since there are no reliable estimates of the numbers of forced migrants, there is no plan for ensuring their entitlements.
- (ii) *Eviction:* The arrival of forced migrants can put pressure on water, land and work opportunities. This can lead to tension with locals. The NCPCR also found that government authorities can be hostile to forced migrants. In Khammam, Andhra Pradesh, the NCPCR found that the Forest Department had been repeatedly evicting IDPs from their temporary hutments. One particular hamlet in Khammam had been burnt at least three times by the Forest Department. It is unacceptable that impoverished, displaced people are persecuted by government functionaries.
- (iii) *Access to livelihoods:* Adults are denied access to work under the NREGA, and denied access to PDS grain as well. Obviously, their children suffer as a result.
- (iv) *Access to education:* Children are denied admission to schools because they have no school certificates. In some situations, they also face a language barrier in the new location.
- (v) *Access to ICDS facilities:* Children in the age-group 0-6 years have no access to anganwadis and ICDS services.

3.2.1 Recommendations

- (i) District authorities should survey families who have migrated in the wake of the unrest and share this data with the relevant district authorities and State Governments to ensure that basic social services are provided to the forced migrants.
- (ii) District authorities shall issue new identity documents or replace documents lost during

Displaced from Chhattisgarh, destitute in Andhra Pradesh

The civil unrest in Dantewada and Bijapur district, resulting from the reported conflict between Naxals and Salwa Judum, has forced many families and individuals to flee to Andhra Pradesh. Independent sources claim that at least 30,000 people from South Bastar are staying in Khammam, Warangal and East Godavari districts. The increased pressure on infrastructure (such as water and housing) as well as on livelihood opportunities in villages in AP is a result of the increased population. At a public hearing in Charla, Khammam district, forced migrants spoke about neglect by the district administration, which is further contributing to their continuing poverty, ill health and despair.

The NCPCR visited a settlement of displaced tribals in Sirivella village. The settlement was on the outskirts of the village with about 30 families including 29 children. The NCPCR was told that this particular hamlet had been burnt 3 or 4 times by the Forest Department because it was illegal occupation of forest land. The families also described how they have faced opposition from the locals in a situation where increase in population will place a strain on the resources.

These families are surviving by doing coolie (porter's) work. The NCPCR team noted that all the people – adults and children – looked emaciated. The children had protruding bellies, a tell-tale sign of malnourishment. One 2 year old girl looked hardly older than a three-month baby. It was evident that this settlement was experiencing a situation of chronic food deprivation.

displacement, without unreasonable conditions. District authorities should immediately issue cards/documents that entitle forced migrant families to civil supplies. This should not depend upon previous identity documents. Heads of households should be allowed to issue a declaration to the effect that the family, including children, has been forced to migrate, or has been internally displaced as a result of civil unrest, and identity for the purposes of ration and other basic entitlements should be issued based on this declaration.

- (iii) State Governments should ensure that existing Relief Codes, protocols or administrative instructions applicable in areas of civil unrest incorporate guidance on provisioning for children
- (iv) Children in families forced to migrate must have safe access to:
 - ❖ Essential food and potable water
 - ❖ Basic shelter and housing
 - ❖ Appropriate clothing
 - ❖ Essential medical services and sanitation
- (v) Forced migrant families should have access to employment schemes such as MGREGS.
- (vi) Forced migrant families should be eligible immediately for BPL cards.
- (vii) Access to basic entitlements should not be time-bound, or cut off after an arbitrary number of months.

3.3 Children in Camps

The NCPCR has visited camps in different parts of India with tenuous access to basic services. Despite being in State-run camps, inhabitants live in constant hunger and want, with little or no security. In a number of relief camps, the NCPCR found that there was no anganwadi, no health care provision and no access to schools. Camp residents were too scared to leave the compound. Even if they do leave, they may not have access to basic services in the area. For example, in one camp, the children could not attend school in the closest town as admissions were over².

It is extremely important that children in the camps be given short-term relief. In a camp in the NC Hills, the NCPCR heard that even after district authorities got to know that 54 migrant families had taken shelter in a community centre, they provided no relief for 15 days³. The migrants in question had made a long journey from their homes to the camp. The 15 day delay in relief they faced was damaging, and could prove dangerous for young children, weakened by the strain of displacement.

It is extremely important that children in the camps have access to basic entitlements in the longer term. In some areas of civil unrest, camps have existed for several years. Poor families are consigned to a 'permanently temporary' status. Children in these camps face barriers to basic services for a significant part of their childhoods.

Relief camps seem to suffer from a governance gap. Relief operations are a State subject, and delivering short-term relief, as well as basic service delivery, falls to the district administration. However, when forced migrants are from a neighbouring State, or even a neighbouring district, existing welfare nets simply do not accommodate them. This violates their rights as Indian citizens. It is also a missed opportunity. Experience from around the world shows that IDP camps can serve as resource centres to stabilise people and promote harmony. By the same token, neglecting forced migrants in camps and denying children health and education is more likely to foster unrest.

3.3.1 Recommendations:

- (i) The recommendations above on service provision to children in neighbouring districts or States apply to children in camps as well. District authorities must ensure emergency service provision in camps, to cover:
 - (a) Health
 - (b) Food and nutrition
 - (c) Schooling

Specific recommendations on health, food and schooling are discussed in the sections that follow.

- (ii) Ensure protection for camps where residents are threatened by insurgents
- (iii) Even within the constraints of camp living, residents must have a minimum level of privacy – this is essential for women and girls.

² NCPCR visit to New Diyungkro Bathari Relief Camp, 7 August 2009

³ NCPCR Boro Haflong Camp, 6 August 2009

- (iv) Camps should have a grievance mechanism, through which residents can air their concerns
- (v) Long-term camps – those that are still in existence after a few months – must be incorporated into the district's development agenda

3.4 Vulnerability of Children in Flight

When families are fleeing their homes, children are exposed to acute physical dangers. They may be exposed to violence as a result of physical attacks, shelling, firing and landmines. Girls are more vulnerable than usual to sexual violence. Families are likely to have much less food and water than usual, while enduring much more physical exertion. Such deprivation takes a particular toll on young children, making them prone to illness and even death.

3.5 Unaccompanied Children

Children are much more likely to be separated from their parents and families in the turmoil of displacement. These unaccompanied children are amongst the most vulnerable, as they have lost family protection when they most need it⁴. They face abuse and exploitation, and their very survival may be threatened. These children may be forced to assume adult responsibilities, such as looking after younger siblings and earning a living.

Separation can be **involuntary and accidental** as when a child gets separated from family while fleeing to safety, for example. It can also be **deliberate** – when parents believe that giving children into the care of someone else, or even leaving children on their own, will offer them a better chance of survival, or access to services. For example, the NCPCR encountered people in relief camps in Assam who did not bring their teenage daughters to the camps because they felt the camps were unsafe.

The *Inter-agency Guiding Principles on Unaccompanied and Separated Children*⁵ emphasise that State should prioritise family unity, and focus, first and foremost, on re-uniting children with their parents or other primary care-givers.

3.5.1 Recommendations:

Prevention:

- (i) The State's first responsibility should be to prevent children being separated from their families.
- (ii) Deliberate separations can be prevented by ensuring that all households have access to basic relief supplies and other services, including education.
- (iii) Awareness of ways to prevent separation should be raised among government personnel, such as teachers and health workers. Families should be made aware of measures that they can take in emergencies to minimize the risk of their children becoming separated. For example, if the

⁴ The *Inter-agency Guiding Principles on Unaccompanied and Separated Children* distinguish between children separated from both parents, or from their previous primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members, and children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

⁵ Inter-Agency, *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, January 2004, available at: <http://www.unhcr.org/refworld/docid/4113abc14.html> [accessed 27 January 2010]

authorities fear serious insecurity, parents and school teachers should teach children their name, address and details of where they come from, to facilitate tracing should they become separated. Panchayats should play the lead role in awareness raising.

- (iv) District authorities and panchayats should try to ensure special measures to protect children, particularly girls, from rape and other forms of sexual violence. If senior officials receive any indication that government personnel are complicit in any way in such violence, they should take strong preventive and disciplinary measures.
- (v) District authorities should initiate a birth registration drive, and ensure that children have a form of legal identity. They should liaise with panchayats to ensure they have covered all the children in the district.

Setting up Child Welfare Committees:

- (i) The State Government must set up CWCs to cover areas affected by civil unrest, areas to which children have migrated with their families, and camps.
- (ii) This might prove challenging in some areas of civil unrest. Where necessary, the closest CWC should be assigned to cover areas where children affected by civil unrest are living. Alternatively, where necessary, the State Government must constitute a mobile CWC that will cover such areas.
- (iii) CWC members must be trained on the particular vulnerabilities of children in areas of civil unrest. As recommended earlier, NIPCCD should develop this training module.
- (iv) CWCs and district authorities must pay particular attention to children who are separated from their families. They should be guided by the recommendations below on identifying, tracing and reuniting children with their families.

Identification:

- (i) As a part of mapping children displaced by unrest (see Chapter 4), the district authorities must assess how many children have been separated from their families at the earliest possible stage, whether in an IDP camp or outside camps. This information should be disaggregated by age, sex and situation. In particular, groups of children at special risk should be identified, such as those with disabilities, child participants in unrest, and those living in child-headed households. In mapping family separation, it is important to identify factors with potential to cause new separations or to aggravate the circumstances of children already separated. These may include a range of factors, from lack of food to possible recruitment of minors as participants in civil unrest.
- (ii) The Inter-agency Guiding Principles caution that the identification of unaccompanied and separated children must be approached very carefully to ensure that all genuine cases are found, while not attracting false cases. Information should be verified through interviews with the child and members of the community.
- (iii) Identification forms should always be kept by or with the child, and a record made of any change of location. Whenever possible, photographs should be taken as part of the registration/documentation process. In the case of younger children in particular, these must be taken as soon as possible after separation.

- (iv) The community, whether in a camp or non-camp environment, should be told why children are being identified.
- (v) All staff must respect the confidential nature of the information collected. Precautions must be taken when sharing and publishing information on unaccompanied and separated children, including photographs of children for tracing.

Tracing families

- (i) For children separated from their families, the aim is to reunite families as quickly as possible, and the State machinery should begin this process as soon as possible. Immediate efforts must be made to find family or care-givers who may still be in the area, in order to maximize the possibility of the child being quickly taken back into the care of someone he/she knows. That said, where the situation is so insecure that trying to trace families may endanger the child or family, it should be delayed.
- (ii) All those engaged in tracing should use the same approach, with standardized forms and mutually compatible systems. This will facilitate cooperation and information-sharing and prevent duplication of activities.
- (iii) The child should be kept informed of these efforts and of any progress made.
- (iv) When families are traced, the authorities must verify the validity of relationships claimed, through official records and/or by consulting the community.
- (v) Government personnel must ensure that separated or unaccompanied children have access to the same emergency care and services as other children.
- (vi) For separated children, community-based care is preferable to institutional care as it keeps the child within his/her community and provides continuity. However, such care must be monitored to ensure that children who are alone are not discriminated against or abused.
- (vii) Where necessary, arrangements for medium term and longer term care should be made within the framework of the JJ Act. The children must be involved in the process and kept informed of any plans made for them.
- (viii) Government agencies must pay special attention to the health, nutrition, education and psycho-social needs of separated or unaccompanied children. These topics are discussed in more detail below.

3.6 Children who aren't displaced

As discussed earlier, people tend to flee their homes only as a last resort. In most areas of civil unrest, the community continues to stay in their homes for as long as possible. While children in this situation are not exposed to the dangers of flight and displacement, they are likely to face multiple deprivations. Public machinery for education, health, nutrition and employment can come to a halt because government functionaries are unable to reach very insecure areas. Parties to unrest often damage public infrastructure in a bid to weaken the State. In Dantewada, Chhattisgarh, for example, Naxal groups have destroyed schools and public health centres (PHCs). This hurts the poor the most – they can't access alternative education and health services. Even in areas that are not so insecure, public machinery can weaken under the challenges of ongoing civil unrest.

Weakening or erosion of services in areas facing chronic unrest accompanies an erosion of trust in the

Children's homes in Kashmir - not a long-term solution

In the Kashmir Valley, many children have lost one or both parents. A number of these children live in State-run and NGO-run homes. The NCPCR welcomes the State and community initiative in establishing these homes but is concerned that children being raised in these so called "orphanages" are isolated from their families, peers and communities, and are growing up in institutions, primarily with children who have endured a similar loss. Any semblance of a normal childhood is, therefore, not possible. It is important to strengthen links between these institutions and the surrounding communities, particularly since most children in these institutions have mothers and siblings with whom they do not interact. In the long term, rehabilitating children in their own context by supporting their families, and involving the surrounding community, is more sustainable than institutionalising them.

There was no system to monitor and supervise children's homes. In a very positive move, the J & K Government recently issued minimum standards for children's homes.

government. On every fact-finding visit, the NCPCR has heard repeatedly from people about abuse by insurgents on the one hand, and by police and security forces on the other. We discuss concerns about children's civil and political rights in Chapter 5.

When some degree of unrest persists, but there is enough political security for people to resume routines of work and school, the government has the chance to move from crisis management and shortterm relief to fuller, longer-term rehabilitation.

It is important that welfare assistance does not stigmatise children who have lost a family member, been disabled by, or affected in any other way by violence. It is also important that welfare measures for children are easy to access, and do not discriminate between children based on the political affiliations of their families. Discrimination between children is unfair to the individual children who suffer as a result. It also causes wider resentment, regardless of the actual numbers of children denied a welfare benefit as a result.

The Central and State Government need to contend with categories of children who are vulnerable, but do not fall neatly into existing categories of welfare recipients. For example, as per existing guidelines, children whose fathers are missing, but not confirmed dead, have to wait 7 years before they can qualify for assistance on the basis that the family has lost a breadwinner.

Over the medium to long term, the State Government needs to move beyond cash transfers, and offer training and livelihood opportunities that make affected families self-sufficient and better able to provide for their children.

3.6.1 Recommendations:

- (i) Even where State machinery is under stress, maintain a basic level of education and health services; where services are suspended, restore them as soon as possible.
- (ii) Once there is relative calm, strengthen service delivery, and aggressively disseminate information about child-related services.

- (iii) Sensitise teachers, anganwadi workers and health personnel to a context where children may have been targets of violence, or seen the effects of civil unrest at close quarters.
- (iv) Promote community-based rehabilitation, grounded through gram panchayats.
- (v) Implement non-discriminatory relief, rehabilitation and welfare measures for children. The Central Government, State Government or district authorities should not make eligibility for welfare schemes or scholarships dependent upon political considerations, for example, discriminating between children whose parents were victims of militant violence, and children whose parents were suspected militants. This sort of distinction punishes children, often very young children, for the choices their parents or families made.

4 Numbers of children affected and identifying age-specific vulnerabilities

4.1 Numbers of Children Affected

The NCPCR found a basic gap in every area of civil unrest – the administration and civil society groups did not have enough reliable data on how many children were affected by civil unrest. This was the case for children in IDP camps, children who have migrated to other States with their families, as well as children living in insecure areas, but not displaced from their homes. Thus, we have little or no information on what proportion of people affected by civil unrest are children and on how these children are affected. What are the physical, economic, mental and psycho-social impacts of civil unrest on children, and what is the scale of these impacts? Without this information, it is difficult to address the effects of violence on children. It is difficult to adapt existing schemes and policies, and it is practically impossible to monitor and evaluate service delivery.

Data needs to be collected, and it needs to be disaggregated by age and gender. District and local government authorities urgently need to issue official identification to children and count the number of children in the affected area. This basic count will allow the authorities to map more detailed information.

Mapping displaced children in camps is unlikely to pose a challenge. Gathering information on children who have migrated to other States (or districts) could take longer, but nevertheless, displaced communities can typically be easily identified as a result of linguistic and other cultural markers. In areas such as the Kashmir Valley, where most families have not been displaced, the district administration should already have basic data on children in the district. It is important to build upon this basic data.

4.2 Mapping of Children

- (i) District authorities should issue birth certificates/official identification to children as soon as possible.
- (ii) District authorities must, through panchayats, do a basic count of children affected by civil unrest, whether forced migrants or children in their original homes, which:
 - a. Is disaggregated by age and gender
 - b. Counts disabled children and level of disability
 - c. Estimates the number of children out of school

4.3 Identifying Age-specific Vulnerabilities

Civil unrest can last the length of a childhood. During the course of a childhood lived amidst insecurity, a child will be vulnerable in different ways at different ages. The NCPCR has observed vulnerabilities specific to different age groups. For example, where insecurity restricts the supply of health care services, newborn children and infants are acutely prone to life-threatening disease and illness. In some camps that the NCPCR visited, infants did not have birth certificates, and this lack of official identification hampers access to basic services as the child grows.

Teenage girls are vulnerable to trafficking and sexual violence. Teenage boys are disproportionately vulnerable to violence by different parties to unrest, and both boys and girls are in danger of being recruited as participants. In Dantewada district, Chhattisgarh, the NCPCR found large numbers of children over 10 years missing from

schools. We learned that families who came to the camps left teenage children with relatives, fearing for their safety in the camps. Similarly, in a relief camp in the NC Hills, parents also told us that they thought the camp was too unsafe for their teenage daughters, whom they had sent to relatives' homes⁶. Some camps in the NC Hills had no space for any partition between families – men, women and children lived together in large halls, without the most basic privacy⁷. These living conditions left adolescent girls very insecure.

4.4 Recommendations

- (i) Identifying children in different age groups, and identifying their specific vulnerabilities is a crucial part of mapping children in areas of civil unrest. District authorities should liaise with panchayats to do this.
- (ii) At a minimum, the basic count recommended in this Chapter must be used by the district administration as a basis for identifying children who fall within the ambit of ICDS, and children who fall within the ambit of the RFTCE Act, 2009.

⁶ NCPCR visit to SS Ranjit Veterinary Relief Camp, 6 August 2009

⁷ Report of Visit to Relief Camps in NC Hills, August 2009

5.1 Economic and Social Rights

Below, we discuss children's right to food, education and healthcare, including psychological support under the rubric of healthcare.

5.1.1 Right to food

Children in areas of civil unrest can fall victim to direct violence, getting killed or injured. Thousands more are hurt by malnutrition and disease, caused or deepened by civil unrest. Violent disturbances disrupt food supplies, displace people from their homes where they have access to agricultural land and markets, and can damage food stores and agricultural infrastructure, such as water sources, systems of irrigation and flood control.

As discussed earlier, forced migrants are often excluded from local food distribution networks, like the Antodaya Yojana or the PDS, because they lack official identification, such as proof of residence. Parents have lost their means of livelihood, and are likely to subsist on daily wage work, which also affects children's access to food. Even where people are not displaced, their ability to work and support their families is likely to suffer. Sharp reductions in food intake cause or worsen malnutrition in children. Weakened by malnutrition, children become less able to resist common childhood diseases and infections.

Early Childhood

The NCPCR is particularly worried about sharp decreases in access to food, as well as chronic hunger, in infants and young children. The UN Impact Report notes, "Malnutrition can affect all children, but it causes the greatest mortality and morbidity among young children, especially those under the age of three. In emergencies, very young children may be at high risk of "wasting" or acute malnutrition, a condition indicated by low weight for height...Malnutrition also has a negative impact on children's cognitive development.⁸" We need to understand this vulnerability in the Indian context, where poor children even in areas that are peaceful are seriously deprived of food. 45% of children under three in India are stunted; 40.4% are under-weight; 23% are wasted⁹. For children who are already malnourished, lack of food triggered by civil unrest could prove fatal.

The State Government needs to ensure that it delivers ICDS services in areas of civil unrest. The Central Government needs to support this as strongly as possible. In addition, emergency relief measures should routinely incorporate the specific nutritional requirements of very young children. In a relief camp in the NC Hills, the NCPCR found that almost all children, from newborns to 15 year olds, received the same relief material¹⁰. Blanket measures like this are inadequate.

International agencies such as the WHO have technical guidance on early childhood nutrition in emergencies. These guidelines emphasise that interrupted breastfeeding and inappropriate complementary

⁸ Ibid. paragraph 156

⁹ NFHS 3, 2005-06, available at http://www.nfhsindia.org/nutrition_report_for_website_18sep09.pdf, accessed on 4 February 2010

¹⁰ NCPCR visit, SS Ranjit Village Veterinary Relief camp, 6 August 2009

feeding heighten the risk of malnutrition, illness and mortality. They detail simple measures which should be put in place to ensure that the needs of mothers, infants and young children are addressed in the early stages of relief operations. Rather than reproducing this guidance in detail, we point to these resources in the recommendations below.

Recommendations

- (i) Maintain and strengthen ICDS services. Adhere to ICDS nutrition and supplementary nutrition norms for children below the age of 6, as well as for pregnant and lactating mothers.
- (ii) Anganwadis should be sanctioned on the same terms for relief camps and settlements of forced migrants, as they are under normal circumstances. The Supreme Court has ordered that there should be one anganwadi per thousand population, and if there is a minimum settlement of 300, or at least 40 children under the age of 6 years, then the settlement is entitled to an *anganwadi*¹¹. Government authorities cannot deviate from this norm because children are in a camp or are displaced from their homes.
- (iii) There is detailed international guidance on care and feeding of young children in times of insecurity. The Ministry of Women & Child Development should adapt this to areas of civil unrest, and ensure that all State Governments incorporate the resulting steps into ICDS. Relevant guidance includes:
 - (a) Inter-agency Working Group on Infant and Young Child Feeding in Emergencies: Operational Guidance
 - (b) WHO: Guiding Principles for Feeding Infants and Young Children in Emergencies

5.1.2 Right to healthcare

Civil unrest can lead to health services and programmes being seriously disrupted. Families displaced due to violence lack access to healthcare facilities while in flight, and have to contend with barebones healthcare in camps. Inadequate water and sanitation systems also take a heavy toll on health in camps. Experience across the world shows that the most commonly reported causes of death among IDPs during the early phase of running a camp have been diarrhoeal diseases, acute respiratory infections, measles and other infectious diseases.

Where people continue to live in the midst of long-running insecurity, clinics and hospitals can be damaged, and disturbed areas tend to lose skilled medical personnel. Children living with chronic, low-intensity violence are vulnerable to mental health problems, as discussed below. Children in such areas can also be cruelly exposed to unexploded ordnance, or violently injured and disabled as a result.

Recommendations

- (i) The State Government must maintain basic health systems and services and water supply to the best of its ability.
- (ii) Where the health infrastructure is damaged, the State Government should provide mobile clinics to maintain basic services.
- (iii) Displaced people are likely to need urgent care in the immediate aftermath of displacement. District

¹¹ Order of the Supreme Court dated 13 December 2006, WP 196/2001

authorities must ensure that:

- (a) Excess mortality or morbidity amongst children is tracked
- (b) Steps are taken to prevent the spread of communicable diseases. Clean water and decent sanitation is essential in camps.
- (c) Young children have access to immunisation and other basic health services under the ICDS
- (iv) Public health centres should be set up within camps, particularly where the camps are, or are likely to be, longterm. In the interim, district authorities should organise mobile health camps to ensure that essential health services such as immunisation are not interrupted.
- (v) Adequate rehabilitative care, such as provision of artificial limbs for injured and permanently disabled children, should be prioritised.
- (vi) The Ministry of Health and State Health Departments must ensure that they are releasing adequate medical supplies to cover areas of civil unrest.

5.1.3 Mental health and psycho-social services

In areas of civil unrest, many children have lost close family members. Many more have witnessed acts of violence. Aside from these direct experiences of violence, children are also affected by the strain on traditional social structures, the loss of safe spaces and restrictions on their movement and seeing adults around them suffer from mental illness. Adolescents face particular pressure, including pressure to join armed groups and the challenge of being care-givers for younger siblings in families disrupted by violence. In the Kashmir Valley, the NCPCR was told by medical professionals, government officials and NGO representatives about a significant increase in depression, post-traumatic stress disorder, and other mental illnesses. Mental health and psycho-social services are an important part of helping children cope with conflict.

Recommendations

- (i) In the immediate aftermath of displacement:
 - (a) Restoring and maintaining basic services goes a long way towards re-establishing a sense of normalcy for children.
 - (b) Access to schooling is a particularly important anchor during civil unrest.
 - (c) Giving the displaced community credible information and allowing space for normal cultural and religious events will help families to cope more effectively.
 - (d) To the extent possible, district authorities should provide psychiatric help to children suffering from trauma
- (ii) In areas of long-running civil unrest, State Governments should provide a more comprehensive range of institutional and community-based interventions.
- (iv) Current mental health services in government hospitals should be scaled up
 - (a) The State Government should partner with NGOs or international agencies which are running successful mental health programmes.
 - (b) The State Government should develop a community-based mental health programme. Community-based mental health interventions should be based on an assessment of existing services and an

understanding of the socio-cultural context. They should include the use of practical, cultural coping mechanisms. Community workers should be trained and supervised to assist health workers with heavy caseloads and to conduct outreach activities to facilitate mental health care.

5.1.4 Right to education

All Indian children aged 6 to 14 years have a fundamental right to education¹², which is fleshed out in the RTE Act 2009. This right cannot be curtailed or suspended in areas of civil unrest. On the contrary, education is vital in these areas, because “[it] sustains life by offering structure, stability and hope for the future during a time of crisis, particularly for children and adolescents. Education...also helps to heal the pain of bad experiences, build skills, and support conflict resolution and peace building.”¹³

Education needs to be an intrinsic part of the State's relief measures in areas of civil unrest. It should not be treated as an “extra”, factored in after other entitlements. However, the NCPCR has discovered that access to education is considerably attenuated, particularly where unrest has displaced people.

Schools can be a target of violence by insurgent groups. In Dantewada and Bijapur, Naxalites have destroyed many schools, ostensibly to prevent the police and Salwa Judum from using these buildings. Particularly in under-served areas, this is a huge blow for access to education. Education facilities are disrupted less in areas of low-intensity unrest, where people are not displaced. Nevertheless, insecurity hurts the quality of education over time - children have faced periods when the journey to school is dangerous, schools have been occupied by armed forces, teachers have to deal with children suffering from stress and trauma, and families are impoverished as a result of unrest.

Physical access

- (i) Students and teachers can face physical danger en route to and from school and within the school itself. This is particularly true for women and girls. In some areas, it is too dangerous for children in camps to

Board exams in Orissa: Ensuring access

In January 2009, the NCPCR found that children in relief camps in Kandhamal, Orissa faced potential problems in sitting for their Class X and XII Board exams. As their families had been forced to flee their homes, these children had been unable to meet all the preliminary requirements, such as filling in forms for the exams and taking pre-Board exams. The State Government of Orissa stepped in and exempted children in relief camps from onerous pre-exam requirements, and instructed schools to admit riot-affected children. The State Government also arranged extra classes and mock tests for children. This was a welcome step, and allowed children who would otherwise have lost a year of schooling to go forward to the next year. That said, ideally this sort of arrangement should be proactive, rather than reactive, so that as soon as families are displaced, school-age children can be reassured that they have the support they need to continue their education.

¹² Article 21A

¹³ Minimum Standards for Education in Emergencies, Inter-Agency Network for Education in Emergencies, 2004

Scholarships in Kashmir: Moving in the right direction

The Central and State Governments run a number of scholarship programmes in Jammu & Kashmir. One such programme is run by the National Foundation for Communal Harmony (NFCH), which offers scholarships under Project Assist to children from families below the poverty line that have lost breadwinners. A 2007-08 survey shows that there are 20,707 children who have lost one or both parents in J&K, and the NFCH has so far covered 5,725 children under Project Assist. Since 2008-09, the NFCH scholarships have been extended to children of militants/suspected militants, and the Council aimed to cover 1371 such children in 2009-10.

Extending NFCH scholarships is an important step, because it practically benefits many children, and because it symbolically affirms that every child's right to education is equally important. Demand for these scholarships is high. However, people often struggle with application requirements including income certificates and different affidavits. One requirement that proved particularly onerous was obtaining an FIR to prove the manner in which the child beneficiary's father died.

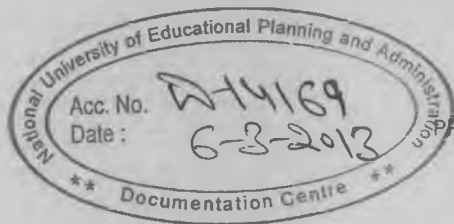
leave the camp to attend school. In many areas of civil unrest, the army or security forces have occupied schools, often for long stretches of time. The Home Ministry has issued directives against security or police forces using schools, but these do not seem to be followed as strictly as they should be.

- (ii) The NCPCR heard reports of security forces using schools in the Kashmir Valley, in the NC Hills, Assam and in Dantewada, Chhattisgarh. In Kandhamal, Orissa in late 2008, as many as 21 schools (as reported by the government) were taken over as relief camps and for accommodating CRPF battalions. This fundamentally undermines children's access to education. A school building occupied by the army becomes wholly or partially unusable as a school – in many rural areas, this might be the only accessible school. Moreover, occupying schools makes them a target for insurgent groups, exposing children to violent attacks.

Formal barriers

- (i) NCPCR found that children from Chhattisgarh who had sought safety in Andhra Pradesh with their families often dropped out of school because they do not speak Telugu. Many children did not have school leaving certificates, and found it difficult to enrol in schools in Andhra Pradesh. The State Government did not have a Hindi language bridge course. So, while in theory schools were open to children displaced from Chhattisgarh to Andhra Pradesh, in practice, they were difficult to access.
- (ii) If displaced children aged 6 to 14 years drop out of school because they are unable to meet formal requirements, it violates their right to education under the RTFCE Act, 2009. The Act provides for transfer to a new school, and says that a delay in producing transfer certificate shall not be a ground for either delaying or denying admission in school¹⁴. These practical barriers that prevent access to education can be dismantled fairly easily if Departments of Education and district authorities coordinate across State and district borders.

¹⁴ Section 5



Gram panchayats: Custodians of child rights

The sarpanch in village Nilavaram, Dantewada district, Chhattisgarh and his gram panchayat have mobilised every child to enrol in school. This is unusual, considering that it is a tribal pocket and in an area where there has been Naxal violence.

In Dantewada district, village level Child Rights Protection Committees (many of whose members are unlettered and poor, and are volunteering time and effort) were working to enrol out-of-school children. These committees have been created with the support of MV Foundation and UNICEF, and work closely with the gram panchayat. In Burdi village, the Child Protection Committee and gram panchayat have managed to build so much confidence in the community, that families have brought their children back from Hyderabad and enrolled them in local schools.

The administration should support these efforts and encourage other districts to replicate them.

- (iii) On a similar note, barriers to accessing scholarships or loans for education defeat their own purpose. Children affected by unrest should be able to access scholarships and other assistance for which they are eligible without a lot of bureaucratic hurdles. Eligibility criteria should not discriminate against a child who would otherwise qualify for assistance because of her parents' political affiliations.

Institutionalising effective education delivery

Panchayats have an important role to play in ensuring delivery of education on the ground. They can monitor the numbers of children in school and out of school, teacher attendance and the need for bridge courses. Panchayats can build the confidence of government personnel who are not at their posts due to fear. They can also encourage families to enrol their children in schools, and articulate the need for more schools, bridge courses or *ashram* schools.

Education is a basic entitlement for children in areas of civil unrest. Schools can also be used to strengthen access to other entitlements and make children more secure. Where possible, teachers can teach important lessons about safety. International guidelines¹⁵ suggest that schools in areas of civil unrest must try to inform children on the following issues in an age-appropriate way, where relevant to the local context:

- (i) Skills-based health education (appropriate to age and situation): first aid, reproductive health, sexually transmitted infections, HIV/AIDS
- (ii) Human rights; emphasis on non-violence; conflict prevention/management/resolution; security and safety
- (iii) Information necessary for survival in the new environment: landmine and unexploded ordnance awareness, whom to alert in situations of distress
- (iv) How to access entitlements

Civil unrest affects a child's access to study, but also affects a child's access to play where families become reluctant to let their children out after dark, or where displaced people are living in cramped conditions. As

¹⁵ Minimum Standards for Education in Emergencies, Inter-Agency Network for Education in Emergencies, 2004

far as possible, schools should incorporate extra-curricular activities such as music, dance, drama, sports and games.

On NCPCR's visits to schools and children's homes, teachers have identified children as orphans, as victims of militant violence or as scholarship recipients. In ashram schools in Dantewada, the NCPCR noted that Salwa Judum volunteers insisted on showcasing children as victims of Naxal violence. Teachers must have clear guidance that they should not discriminate against or stigmatise children based on their families or experiences during civil unrest.

Recommendations

(i) Physical Access

- (a) State governments should reconstruct damaged schools as a priority
- (b) The relevant State Government should try to ensure physical access, transporting children to school where necessary. In areas where schooling is seriously disrupted, panchayat and district authorities should consider outreach education programmes.
- (c) If the usual education premises are not available or insecure, then alternative temporary sites should be selected which are safe and secure.
- (d) The State must try to ensure that access routes are safe and secure for all learners and education personnel (regardless of gender, age, nationality, race, ethnicity or physical ability). This entails sufficient and good-quality policing and the deployment of troops, where appropriate and necessary.
- (e) Panchayat level education monitoring committees should implement proactive community measures to secure access to school, such as adult escorts to and from schools.
- (f) Where access is difficult despite official measures and community participation, the State Government should set up ashram schools as an urgent priority
- (g) Schools should never be used as temporary shelters by security forces. The NCPCR is of the view that use of schools by police or security forces violates the spirit and letter of the RTFCE Act 2009 because it actively disrupts access to education and makes schools vulnerable to attacks. The Home Ministry should ensure that its directives against this are implemented. District magistrates must never offer schools to police and security personnel, and must enquire promptly into complaints that they are being used in this way. The army or police personnel in their turn must not use schools to set up camps or checkpoints. On the contrary, they should be directed to actively protect educational facilities.

(ii) Formal barriers

- (a) Documentation requirements for admission and enrolment should be flexible and should not require certificates of citizenship, birth or age certificates, identity papers, school reports, etc., since displaced groups may not have these documents. Sections 4, 5 and 14 of the RTFCE Act, 2009 together make absolutely clear that children cannot be denied admission or enrolment due to lack of proof of age, and that school, panchayat and district authorities must share and transfer documentation.
- (b) Where there are security concerns, documentation and enrolment information should be kept

confidential.

- (c) Make special provisions for children who do not speak the local language of instruction, including through the expansion of bridge courses.
- (d) The relevant State Government – in whose territory children are living – needs to set up Residential Bridge Courses through the SSA to reintegrate children who have dropped out into formal schools.
- (e) Where families are forced to migrate across district boundaries or State borders, district and State authorities must coordinate across borders. For example, the original district authority should coordinate with the receiving district authority to identify children, send transfer documents where available, and send personnel where needed. Similarly, the original State Government should assist the receiving State Government by arranging to send teachers where children face a language barrier in the receiving State.
- (f) Emergency education programmes in camps during initial influx of forced migrants - as soon as district authorities establish camps, they must ensure that children are brought together for educational activities. There should not be a lag of several days or weeks before children have access to education. District authorities should provide stop-gap services immediately, and ensure access to regular schooling or bridge courses as soon as possible after that.

(iii) Institutionalising effective education delivery

- (a) While we are aware that it is difficult to gather accurate information in the conflict-affected areas, a process needs to be set up in a decentralised manner so that every gram panchayat member who is well-versed with the identity of all children from their village is encouraged to **monitor out-of-school children and the progress of those enrolled in formal education**. This initiative should be supported by nodal officers at the block, district and State level to monitor, supervise and collate the data generated by the community.
- (b) The local authority under the RTFCE Act - be it the Municipal Corporation, Municipal Council, Zila Parishad, Nagar Panchayat or Panchayat - must keep a list of children up to 14 years and monitor their access to education.
- (c) To deliver education effectively, or even adequately, in areas of civil unrest, the administration will need to assess the capacities of affected people, local resources, needs, gaps and security risks. The State Department of Education should evaluate and adapt to these factors – it should liaise with local authorities who are monitoring education delivery on the ground.
- (d) In areas of long-running unrest, the State Government should build in training to equip teachers to deal with new requirements. These will include recognizing signs of stress in children as well as imparting vital survival information on issues such as landmines and health and promoting respect for human rights.
- (e) Teachers should receive training in appropriate ways of responding to children who are separated from their families, or have lost family members, and may have emotional and behavioural problems.
- (f) To protect children in remote areas, we would call on the initiation of talks through neutral third-party

agencies to engage all stakeholders including the government, Naxals, Salwa Judum, the community, etc. to initiate a ceasefire and **declare children as zones of peace**. This can enable the commencement of a number of progressive initiatives including undertaking immunization drives for children in unreached areas, extension of basic health facilities including polio vaccinations and supporting the movement of children to safe areas to be enrolled in ashram schools and pursue a formal education.

- (g) The Ministry of Education should ensure that the National Policy on Education must incorporate a section on ensuring delivery of education in areas of civil unrest.
- (h) Education needs to be coordinated within the larger response on shelter, health, water and sanitation, particularly where children are displaced.

5.2. Civil and Political Rights

The Convention on the Rights of the Child recognizes a comprehensive list of rights that are non-derogable, regardless of political pressures and exigencies. As stressed by the Committee on the Rights on the Child¹⁶ these include protection of the family environment; essential care and assistance; access to health, food and education; the protection of the child's cultural environment; the right to a name and nationality; the prohibition of torture, abuse or neglect; the prohibition of the death penalty; and the need for protection in situations of deprivation of liberty.

As this list makes clear, a State cannot curtail children's core civil and political rights under any circumstances – these are absolute rights. However, in areas of civil unrest, the NCPCR has serious concerns that children's civil and political rights are violated. Some violations are sporadic aberrations, some are systemic.

The JJ Act, 2000 establishes a framework to deal with children in conflict with the law separately and on different terms from adults. However, the JJ regime is unevenly applied in different parts of the country, and in areas of civil conflict, it is particularly weak.

As the JJ Act is a special law, it prevails over the IPC, CrPC and relevant State laws when someone under eighteen is suspected of unlawful activity. Despite this, children in trouble with the law are dealt with as adults in some areas of civil unrest. Children cannot be diverted into the JJ system because State Governments have not established JJ Boards and created institutions for short and longer-term detention under the JJ Act.

National security laws pose a challenge for the JJ regime. While the JJ Act is a special law, so are current and past national security laws. Children continue to be detained under national security laws in adult facilities, and are subject to criminal legal provisions more stringent than general criminal law, as laid down in the IPC and the CrPC. Academic, media and civil society reports suggest that the police frequently detain very young children under national security laws on "suspicion" of associating with extremists but often only to get information or pressure families to cooperate¹⁷. This violates the provisions of the JJ Act, 2000 and

¹⁶ (A/49/41)

¹⁷ CHRI, Kalhan, the Week, Times of India article

¹⁸ Prabakaran, rep by his maternal aunt Nagammal vs. State of Tamilnadu, rep by its Secretary to Government, Home Department, the Deputy Superintendent of Police, 'Q' Branch C.I.D. and the Inspector of Police, W.P. No. 4511 of 2003, decided on 18 March 2003

India's obligation as a ratifying party to the International Convention on the Rights of the Child. It also violates United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

The NCPCR believes that the JJ Act should prevail in any conflict between the JJ Act and national security legislation, consistent with India's obligations under the Convention on the Rights of the Child. There is persuasive legal authority in support of this. In **Prabakaran vs. Tamil Nadu**, the Madras High Court held that the JJ Act prevailed over Prevention of Terrorism Act (POTA) if the accused is minor¹⁸. The High Court stated:

"JJ (C&PC) Act dealing as it does with 'Alpha to Omega' of the problems facing juveniles and juveniles in conflict with law providing as it does for specialised approach towards the prevention and treatment of juvenile delinquency in its full range is a special law and will prevail over POTA which is a mere special law compared to JJ (C&PC) Act. JJ (C&PC) Act is the monarch of all that it surveys, in its field. Both are special but JJ (C&PC) Act is more special (apologies to George Orwell)."

Insurgent groups commit grave violations of children's rights, causing death, injury and disability. As discussed in the next chapter, children are abducted or forcibly recruited by insurgent groups. Law enforcement authorities should take these violations extremely seriously.

The NCPCR has also heard repeated reports of grave violations by police and security forces. In areas of civil unrest, adolescent boys and girls are targets of abuse, arbitrary detention, and even torture. The Commission has seen live footage of boys involved in a demonstration being viciously beaten by police. It is extremely important that State authorities investigate any reports of grave violations, and take strong action against personnel involved.

Recommendations

- (i) Children suspected of, or accused of, unlawful activity in areas of civil unrest should be brought before a Juvenile Justice Board (JJB) rather than an adult court.
- (ii) State Governments must create JJBs and the institutions mandated by the JJ Act as a matter of priority in areas of civil unrest. In the interim, the relevant area should be covered by the closest JJB. Alternatively, the State Government should create a mobile JJB that travels to the relevant area.
- (iii) Where children under 18 are held in adult jails, they should be transferred to institutions under the JJ Act.
- (iv) CWC members should visit, and must be allowed access to, adult jails to ensure that there are no children in adult facilities.
- (v) State Governments should give the NCPCR a list of children who are currently accused of unlawful activity under or arrested under national security laws or anti-terror laws.
- (vi) Police and military authorities should avoid blanket characterisation of adolescent boys as security threats. They should take any arbitrary detention, mistreatment, or torture of children extremely seriously, investigate any reports of grave violations immediately, and take action against personnel involved.

¹⁸ Prabakaran, rep by his maternal aunt Nagammal vs. State of Tamilnadu, rep by its Secretary to Government, Home Department, the Deputy Superintendent of Police, 'Q' Branch C.I.D. and the Inspector of Police, W.P. No. 4511 of 2003, decided on 18 March 2003

Children Associated with Insurgent Groups

One of the most disturbing effects of civil unrest is children participating in violence. Children are recruited as participants by insurgent groups. Militant groups have recruited adolescent boys in the Kashmir Valley for many years, though anecdotal experience suggests that this has declined in recent years. In the NC Hills area, the NCPCR heard reports of militant groups using children to transport arms and other materials. In Chhattisgarh, the NCPCR heard testimonies about children being forced to join Naxal groups as well as Salwa Judum. There are no clear estimates of the number of children who have been used by non-State groups, or killed as a result of civil unrest.

Shockingly, police departments and government-supported groups have also recruited children as participants. The NCPCR learned that children had been recruited as Special Police Officers (SPOs) in Chhattisgarh in the past, though recent reports indicate that the State Government is no longer doing this. Becoming auxiliary police places children not only at risk of attack during anti-Naxal operations, but also at great risk of reprisals from Naxalites. It arguably breaches India's obligations under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. State Governments must take special care to ensure that SPO applicants are over eighteen. Where SPOs who are underage have been recruited in the past, the State Government must attempt to remove them, and be mindful of the continuing danger they may face from insurgent groups.

The NCPCR's visits to areas of civil unrest reveal that children are recruited by militant groups in different ways – some are kidnapped while others are intimidated into joining. Older children may join armed opposition groups after experiencing harassment from government forces. Faced with violence and chaos all around, they decide they are safer with guns in their hands. In some cases, children have "chosen" to join insurgent groups because it provides a livelihood. Children who are poor and marginalised are the ones most likely to be recruited or forced into militant groups or Statesupported groups. Adolescent boys are a particular target. Once involved, the fear of retaliation will prevent children from leaving.

Typically, children recruited by such groups would be used to perform supporting roles, as lookouts, messengers, porters, cooks and cleaners, which expose them to risk and hardship. A recent NGO report describes how Naxal groups recruit children:

*"The Naxalites recruit children between ages six and twelve into children's associations called bal sangams, where children are trained in Maoist ideology, used as informers, and taught to fight with non-lethal weapons (sticks). Naxalites typically promote children above age 12 to other wings...In sangams, jan militias, and dalams, Naxalites give children weapons training with rifles and teach them to use different types of explosives including landmines...Children in jan militias and dalams participate in armed exchanges with government security forces. ...Children recruited into dalams may not be permitted to leave, and may face severe reprisals, including the killing of family members, if they surrender to the police."*¹⁹

While children might start out in indirect support functions, they will be pushed into direct participation

¹⁹ Human Rights Watch, *Dangerous Duty: Children & the Chhattisgarh Conflict*, September 2008, p.6

and be exposed to violence. Here, their inexperience and lack of training leave them particularly exposed. The UN Impact Study notes that younger children “rarely appreciate the perils they face”²⁰.

Recommendations

- (i) Take steps to ensure that all children under age 18 serving as SPOs are identified and removed, and provided with alternative education or vocational training opportunities.
- (ii) Amend the Police Act, 1861, to introduce age 18 as the minimum age for recruitment of SPOs to prevent future recruitment of children.

6.1 Challenges in Preventing Child Recruitment

The recruitment of children into insurgent groups poses three main challenges for the Central and State Governments:

- (i) How should the Centre and State Governments prevent child recruitment?
- (ii) What short-term measures can the police, security forces or armed forces take when they encounter a child participant?
- (iii) How should children be removed and rehabilitated?

6.1.2 Prevention

The Paris Principles²¹, endorsed by 84 countries, emphasise that effective prevention of unlawful recruitment includes safe attendance at schools, prevention of family separation and early identification, protection and reunification programmes for children separated from their families.

A range of actors should advocate against children being pressured or pulled into civil unrest. Teachers, health workers, panchayat members, religious leaders, NGO workers and political representatives all have a role to play.

Access to education is a vital preventive measure. This includes securing access to education for older children. At public hearings in Chhattisgarh, parents recounted how Naxal groups and Salwa Judum would disrupt classes in local schools. School should be a refuge rather than a site for intimidation and recruitment. Securing schools in areas of civil unrest is important in its own right, but also important as a preventive measure.

The Paris Principles and other international standards²² reiterate that States have a duty to ensure that displaced children are not recruited by armed groups. The Paris Principles recommend individual registration and documentation for all displaced children as a preventive measure. We have discussed child mapping and the protection of separated children in Chapters 2, 4 and 5 above.

²⁰ Para 47, page 18

²¹ Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, February 2007. 84 UN Member States have endorsed the Paris Commitments and the Principles and Guidelines on Children Associated With Armed Forces or Armed Groups, which provide guidelines on the disarmament, demobilization and reintegration of all categories of children associated with armed groups.

²² Cape Town Principles; UN Special Representative of the Secretary General Protection of Children's Rights in Areas of Civil Unrest

6.1.3 Recommendations

- (i) As a part of the larger exercise of mapping children discussed in Chapter 4, district authorities should do a “risk map” and identify children most at risk of induction. This is likely to focus attention on groups – like older boys – who are not otherwise perceived as vulnerable. Risk mapping can identify the principal recruiting agents and tactics. Strategies should be developed based on this information.
- (ii) Panchayat members and teachers should be trained and alerted to this risk.
- (iii) Where the risk of forcible recruitment is high, schools and camps should be protected by police and security forces.

6.2 Short term measures

Police and security personnel face a genuine dilemma when they encounter children involved with insurgent groups: What action can and should they take against someone under eighteen? At present, they have little practical guidance on what steps to take. A recent NGO report recounts a case from an armed encounter in Chhattisgarh, where the police found two young girls, ages 13 and 15:

“The girls were frightened when the shooting started, and hid in a small ditch...According to the police, the two girls looked visibly frightened and started crying and pleaded for mercy. They explained to the police that Naxalites had forcibly inducted them into the dalam. Since they were children, the police decided to make them complainants and asked them to file a case against the Naxalite commander who recruited them. The police said, however, that they could not assist the girls because the government had no scheme to rehabilitate and protect such children. They traced the girls’ parents and sent the girls home even though the parents begged that their children should not be sent back — they would be re-recruited or killed.”²³

A case like this poses very real problems for the police. Such children are in conflict with the law, but they are also extremely vulnerable to reprisal, and are children in need of care and protection. The NCPCR has found that the JJ Act is patchily implemented, if at all, in areas of civil unrest. This means that State authorities have no mechanisms to accommodate children caught up in violence in a way that addresses the demands of law and order and protects the child.

6.2.1 Recommendations

- (i) State Governments should implement the JJ Act in areas of civil unrest as a matter of priority.
- (ii) When police or security forces find children, they should attempt to trace their families and inform them about the children’s activities and whereabouts as a first step.
- (iii) As recommended earlier, such children should not be held in adult jails.
- (iv) At the same time, recognising that some children may be trained and indirectly or directly involved in serious violence under the direction of insurgent groups, the Ministry of Women & Child should develop guidance/Rules under the JJ Act on how the Act should deal with children involved with insurgent groups. This guidance should cover how children, particularly older children, should be detained and the

²³ Human Rights Watch, *Dangerous Duty: Children & the Chhattisgarh Conflict*, September 2008, p.49

circumstances in which they should be detained separately from other children.

- (v) This guidance should also recognise that children who have been a part of insurgent groups can face serious danger when they leave, and provide for limited situations in which children may be temporarily relocated to another district or State.

6.3 Long-term rehabilitation

Children recruited into armed groups are commonly subject to abuse; most of them have witnessed death, killing, and sexual violence. Many have participated in violence. Progressive involvement of youth in acts of violence can desensitize them to suffering. Clearly one of the most urgent priorities is to remove everyone under the age of 18 from participation in armed civil unrest. Age appropriate education must be a high priority. As the UN Impact Study notes, education is “more than a route to employment. It also helps to normalize life” and to discard the identity of a participant in unrest. Effective social reintegration depends upon support from families and communities. However, as the UN Impact Study notes, civil unrest also takes a toll – physical, emotional, economic – on families.

Best practice from across the world emphasises the links between education and vocational opportunities for children formerly in insurgent groups and the economic security of their families. International standards provide guidance for release, protection, and reintegration of children²⁴. At present, Indian practice is some distance away from meeting international standards and best practice. While some State governments and district authorities are taking progressive steps for children associated with insurgent groups, these measures are ad hoc and reactive rather than strategic and long-term.

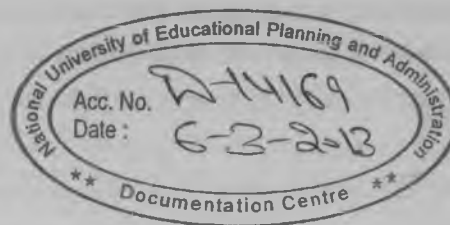
Many other countries have grappled with the problem of rehabilitating children involved with militant groups or armed factions. East Timor, the Phillippines, Nepal and Uganda are just some examples of countries that have implemented or are presently implementing programmes to reintegrate children involved in civil unrest. India could learn from the experience of these countries, and draw upon the knowledge of international agencies to develop a long-term rehabilitation programme suited to our needs and capacities. Rehabilitating children successfully is necessary not just for the individual children involved, but also to secure peace and stability.

6.3.1 Recommendations

- (i) Children who have been associated with insurgent groups should not be prosecuted, punished, or threatened with prosecution or punishment solely because of their membership of those groups.
- (ii) Prosecution for offences committed by children when they were members of armed groups should conform to national and international juvenile justice standards. Further, release and rehabilitation measures should be carried out without any conditions. The majority of children should be returned to their family and community or a family and community environment as soon as possible after their release.

²⁴ The Paris Principles and Cape Town Principles

- (iii) Reintegration programmes must re-establish contact with the family and the community as soon as possible. For some children, a transitional period of collective care may be necessary.
- (iv) The Human Rights Division of the Home Ministry, in coordination with the Ministry of Women & Child Development, should develop a national scheme for identification, release, and reintegration of children recruited by insurgent groups, in consultation with governmental, non-governmental, and intergovernmental organizations, and in accordance with international best practice. The Ministry, in turn, should ensure that its guidance under the JJ Act coheres with the national scheme.
- (v) In any negotiations or interactions, the Home Ministry should urge insurgent groups to release participants under 18.
- (vi) Those who recruit children into insurgent groups, including State-supported or sponsored groups, should be prosecuted.



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