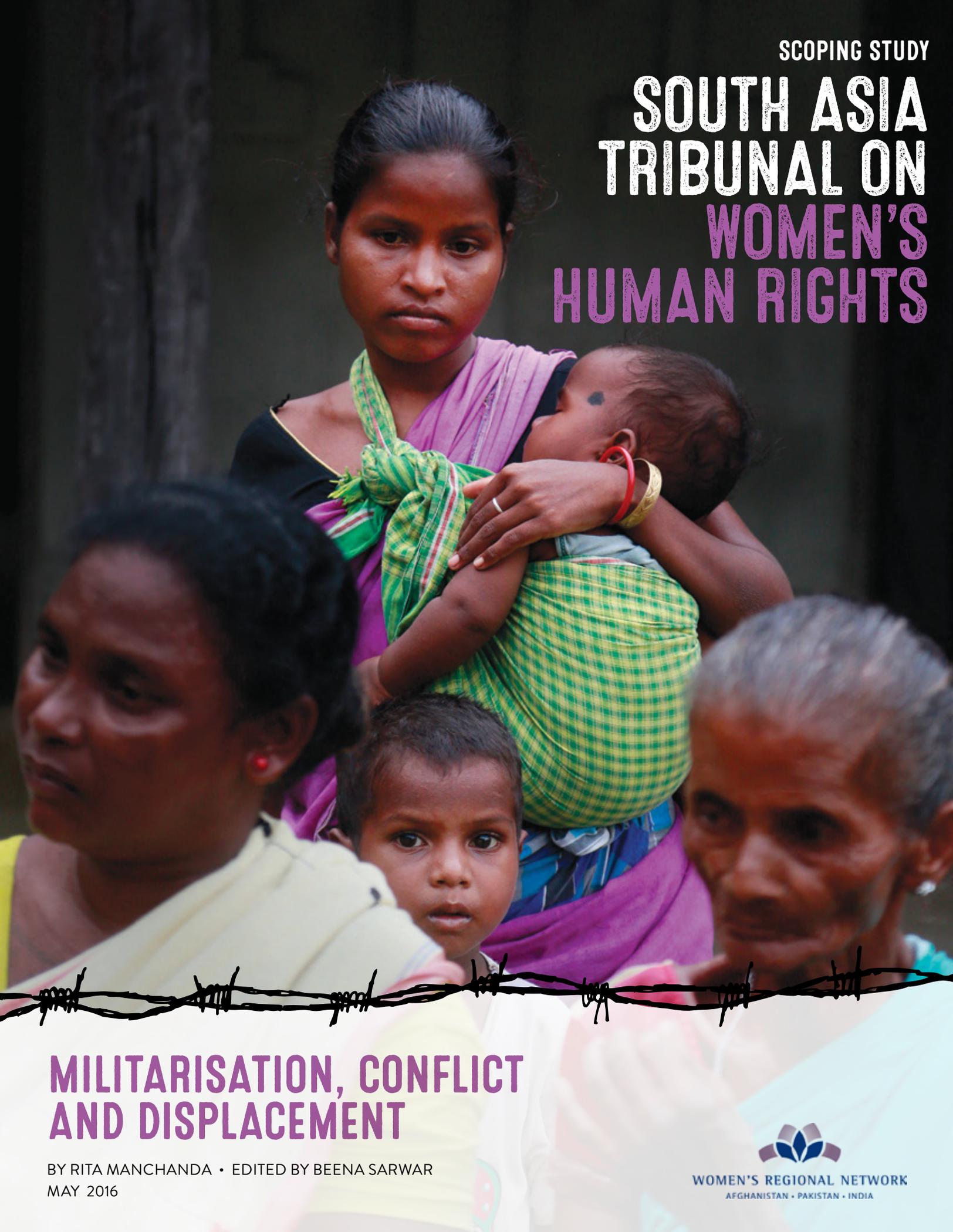


SCOPING STUDY

SOUTH ASIA TRIBUNAL ON WOMEN'S HUMAN RIGHTS



MILITARISATION, CONFLICT AND DISPLACEMENT

BY RITA MANCHANDA • EDITED BY BEENA SARWAR
MAY 2016



WOMEN'S REGIONAL NETWORK
AFGHANISTAN • PAKISTAN • INDIA

WHO IS AN IDP?

For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

— *UN Guiding Principles 1998*

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NOTE ON LANGUAGE: British English spellings are used throughout the text except where quoted from text using other spellings

*The Scoping Study*¹ is structured as responses to crucial questions organised around three sections. The **first section** contextualises the rationale for focusing on the human rights of women IDPs and foregrounds the powerful, personal experiences of women which drive the passion for convening a People's Regional Tribunal. The **second section** lays out the multiple aspects of the experiences of multiple Tribunals and distils from that rich tapestry, important lessons. The **third section** explores the scope and structure of actualising a South Asia Tribunal on Women's Human Rights.

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— **Rita Manchanda**

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ABBREVIATIONS

ACHR	Asian Centre for Human Rights
AFSPA	Armed Forces Special Powers Act
AIHRC	Afghanistan Independent Human Rights Commission
ANT	Action North East Trust
BTAD	Bodoland Territorial Autonomous Districts
CC	Community Conversation (ongoing initiative by the Women's Regional Network)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
DFID	Department for International Development (United Kingdom)
DRR	Disaster Risk Reduction
HL	Humanitarian Law
HR	Human Rights
HRCP	Human Rights Commission of Pakistan
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced Person
INGO	International Non-Government Organisation
IPT	International People's Tribunal
ITCW	International Tribunal on Crimes Against Women
MORR	Ministry of Refugees and Repatriations (Afghanistan)
NDFB (S)	National Democratic Front of Bodoland (Songbijit)
NHRC	National Human Rights Commission
NRC	Norwegian Refugee Council
OHCHR	Office of the High Commissioner for Human Rights
PPT	Permanent People's Tribunal
SAARC	South Asian Association for Regional Cooperation
SAFHR	South Asia Forum for Human Rights
SAHR	South Asians for Human Rights
UDHR	Universal Declaration of Human Rights
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNSC	United Nations Security Council
WPS	Women, Peace and Security
WRN	Women's Regional Network



PART 1: CRUCIAL QUESTIONS?

1. WHY IS WRN FOCUSING ON HUMAN RIGHTS VIOLATIONS OF WOMEN IDPS IN CONFLICTS?

The core purpose of WRN is “to amplify the voices of unheard, marginalized women, and with them address the interlinked issues of peace, militarization, security, justice and governance in South Asia.”²

Forcibly displaced persons are the most visible face of civilians in armed conflicts, not only as one of its consequences but often the major strategy of the parties to the conflict.³ While environmental disasters and development projects also forcibly displace masses of people, our focus is on armed conflict induced IDPs, although in this sub-region what we encounter is a multiple layering of conflict induced IDPs rendered vulnerable to environmental disasters and impacted upon by development induced displacement. Questions of control over resources lie at the heart of the political economy of violence, which in turn lead to the forcible displacement of groups of population.

The profile of IDPs in the sub-region of Afghanistan-Pakistan-India is characterised by recurring cycles of

conflicts producing masses in flight, vulnerable to secondary displacement, and subject to protracted displacement. While a significant number — the most vulnerable, seek protection in state- or INGO- and NGO-organised camps, the majority — driven by cultural requirements of women’s sequestration from the gaze of strange men — are more likely to seek shelter in co-ethnic host communities as in Afghanistan and Pakistan.⁴ Many more flee their rural settlements to self-propelled informal settlements on the periphery of urban areas.⁵

Unlike refugees, IDPs do not lose the protection of their state. It is therefore the state which has the primary responsibility to its own citizens, as a measure of its sovereignty,⁶ to provide protection through all stages of the displacement cycle i.e. prevention of displacement and security in flight, humanitarian assistance and a stable solution that encompasses — *return, local integration or resettlement*. If the state is unable to provide protection, it is expected to request and accept outside offers of aid. However, if states refuse or deliberately obstruct access and put large numbers at risk, the international community has a right and even a responsibility to assert its concern.⁷

UN GUIDING PRINCIPLE NO. 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State’s internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Source: <http://www.unhcr.org/43ce1cff2.html>

India and Pakistan⁸ have blocked or restricted the access of international agencies and INGOs to their IDP populations, citing sovereignty issues in resisting the recognition and adoption of *UN Guiding Principles* on IDPs.⁹ It should be pointed out that the International Committee of the Red Cross (ICRC) is mandated by the Geneva Conventions of 1949 to assist victims of armed conflicts, including internally displaced populations, and has a right of initiative under its statutes to offer its services to governments in situations falling short of armed conflict.¹⁰

Afghanistan has welcomed internationalisation of the IDP issue and embraced the UN Guiding Principles,¹¹ the Sphere Standards¹² and the Pinheiro Principles.¹³ Accordingly, it has adopted a National Policy on IDPs (2013).¹⁴ However, the Policy has been a donor-driven top down process and questions of implementation shadow the new Policy, especially with donor fatigue setting in and the distraction of other compelling emergency situations. Officials of the Afghanistan Independent Human Rights Commission (AIHRC) emphasise the government's lack of political will to translate commitments into practice. India and Pakistan have no dedicated national policy on IDPs. Importantly, they have not incorporated into domestic policy and law the UN Guiding Principles that, as India has said, were not negotiated by governments or adopted by the UN General Assembly (UNHCR *The State of World's Refugees* 2006:166). Pakistan and India are wary of the role of UNHCR and ICRC, and circumscribe and limit their protective responsibilities vis à vis refugees and IDPs, especially in areas deemed sensitive from national security perspectives.¹⁵

"The representative of India said that his delegation fully supported the work of the UNHCR. His delegation was aware of the body of opinion that believed the solution to certain refugee situations lay in acceding to refugee conventions. India did not share that view, and had successfully managed such situations of its own accord and with its own resources. As regards paragraph 20, [i.e. abiding by UN Guiding Principles] international action should remain within the bounds of national sovereignty." — UNHCR 2006 [India abstained]

India has expressed fears that international humanitarian action could be a pretext for interference by powerful states in the affairs of weaker ones (UNHCR 2006:161). Sovereignty sensitivities and security pathologies invariably

prevail over humanitarian demands and effectively displace citizen's rights entitlements. Indeed the Pakistan government in the management of the tidal waves of IDP flows from the restricted FATA area peremptorily told UNOCHA (*Office for the Coordination of Humanitarian Affairs*), "We have enough resources".¹⁶ In May 2015, Pakistan revoked the licenses of 16 INGOs (including NRC, DFID and OXFAM).¹⁷ The government of the Indian state of Gujarat accepted international assistance in the context of the Bhuj earthquake; however, it was hostile to assistance for those displaced in the Gujarat communal violence, and arbitrarily closed down camps that had been set up after oversight institutions such as National Human Rights Commission (NHRC) and the Supreme Court intervened. Moreover, India lays claim to being a middle-income status country and has made it explicitly clear that it has no need for aid.

Although IDPs are theoretically entitled to enjoy the same human rights as the rest of the country's citizenry, experience amply indicates that they are rarely able to do so. Indeed, **forced displacement frequently entails multiple human rights violations** since it "breaks up the immediate family... cuts off important social and community ties; terminates stable employment relationships; precludes or forecloses formal educational opportunities; deprives infants, expectant mothers, and the sick of access to food, adequate shelter, or vital health services; and makes the displaced population especially vulnerable to acts of violence, such as attacks on camps, disappearances, or rape."¹⁷

International humanitarian agencies view the IDP who has been deprived of shelter and their habitual sources of food, water, medicine and money' as a consequence of forcible displacement as frequently suffering the highest mortality rates in humanitarian emergencies [ICRC official in UNHCR: *State of the World's Refugees* 2006].

Compounding the IDPs' deprivation, state response tends to be ad hoc, arbitrary and even discriminatory and framed within a welfare mode. "IDPs are dealt with as a humanitarian task and not also addressed as constitutional obligation" [Mirak Raheem, Introduction, in *Reassessing Internal Displacement in South Asia*, SAHR, 2013, p. 5]. Life supporting assistance is extended as a favour to the affected peoples, not as a right and entitlement; governments squeeze and withdraw it at will, with little or no accountability. As a senior official of India's Assam State Disaster Management Authority said in defence of the government's policy of summarily closing down IDP camps after three months

regardless of the contingent situation of humanitarian distress, “They [IDPs] can’t live off the government. We need to make them self-sufficient”.¹⁸

Moreover, the context of militarisation trails in its wake national security laws which suspend fundamental freedoms such as the Armed Forces Special Powers Act (AFSPA)¹⁹ in India’s Jammu & Kashmir and Northeast, and undermines the equal rights of IDPs as citizens in these zones of exception. In Pakistan, the Federally Administered Tribal Area (FATA) is constitutionally governed by a separate legal regime,²⁰ and FATA IDPs are deprived of equal citizenship rights.

India and Pakistan are not signatories to the Refugee Convention (1951) and Protocol (1967) or the Geneva Convention Additional Protocol (1977). However, along with Afghanistan, they are bound by international humanitarian laws: Geneva Convention 1949, and international human rights treaties commitments under ICCPR (1966), ICESCR (1966), CEDAW (1979) and the CRC (1989) and additional protocols — which provide the basis for protection of the rights of the displaced as well. Also, customary law obligations flow from international normative frameworks: UDHR 1949, Beijing Declaration and Framework of Action 1995, UN Guiding Principles 1998, UNSC 1325 (2000) and universal principles and standards on rights based disaster management standards such as: Pinheiro Principles, Sphere Standards and the Hyogo and Sendai Frameworks. Most importantly, there are far reaching rights guaranteed in the Constitutions of Pakistan, India and Afghanistan, which acquire key significance for the protection of IDPs given the absence of domestic legislation on the rights of forcibly displaced.

In the South Asian sub-region the challenge is to locate the demand and resources imperative for **protection** — of a security-assistance-stable solution — in a context of overall chronic poverty and deprivation. Therefore, governments need reminding that IDPs are not only equal citizens but that their struggle for livelihood is made hugely harder by the shock of displacement and years of disappointment of being stuck in protracted displacement, unable to escape chronic poverty and deprivation. In brief, attention to their needs and concerns need to be prioritised.

Studies of Afghan IDPs in informal urban settlements have robustly demonstrated the prevalence of much higher levels of poverty and deprivation than those experienced by urban poor migrants, regardless of the duration of displacement. Data shows that owing to post-displacement

difficulties in securing employment, households have seen their monthly income decline by 21 per cent. The level of poverty among IDPs is more than 33 per cent below the national average poverty, an increase of 15 per cent from pre-displacement figures.²¹

Magnitude of the Problem of IDPs in the South Asian sub-region:

Globally, at the end of 2014, internally displaced persons (IDPs) who had not crossed international border but required protection were assessed to be 38 million [(Internal Displacement Monitoring Centre (IDMC)]. The UNHCR in its mid-year assessment for June 2015 calculated 58 million ‘Persons of Concern’ of which IDPs constituted 34 million. A little more than three decades ago, in 1982, there were estimated to be barely two million IDPs in eleven countries. That figure has since multiplied hugely with refugee regimes internationally becoming more restrictive. In the South Asian sub-region, Pakistan has held first place for decades as the highest refugee receiving country. In 2015, it hosted almost 1.5 million registered Afghan refugees, still the largest protracted refugee population globally, according to UNHCR. Since 2002, UNHCR has facilitated the return of 3.8 million registered Afghans from Pakistan.²²

Presently, with the likelihood of conflict dynamics producing new waves of forcibly displaced persons, the surge in these IDPs will be confined within their own countries’ borders given the increasingly restrictive refugee regimes today preventing displaced persons from crossing international borders, from Pakistan and Iran, and elsewhere. UNHCR estimates for Afghanistan in August 2015 show IDP levels pushing upwards of one million with 36,600 people newly displaced from Kunduz province.²³ Earlier, a 2009 ICRC survey assessed that 76 per cent of the Afghan population had experienced forcible displacement. That trend is likely to continue. Pakistan, with its IDPs pushing upwards of 1.9 million, has the dubious distinction of being among the world’s top five countries with the largest population of IDPs. India’s conflict-related IDPs are estimated at over 853,900 (IDMC, 2015).

In the state system of South Asia with state borders dividing co-ethnicities, histories and markets, there is a blurring of distinction between migrants, refugees and IDPs. Yesterday’s refugee is today’s IDP (refugee returnee); today’s IDP is tomorrow’s refugee. For instance, in 2014 some 6,452 people from Pakistan fled North Waziristan and crossed

the border into the proximate eastern parts of Afghanistan, while the overwhelming majority of the nearly one million displaced persons from FATA and Khyber Agency became IDPs in Pakistan.²⁴

IDP estimates are likely to be substantively understated in view of the politics surrounding who is recognised as an IDP, and the arbitrary nature of the determination of when an IDP becomes an economic migrant. In Afghanistan, returnee refugees are not recognised as IDPs though for all practical purposes they persist in IDP situations in informal urban settlements in Kabul, Herat and Kandahar. They are collapsed in the category of economic migrants. India and Pakistan do not recognise the existence of armed conflict in their territories and shy away from according any recognition to conflict-induced IDPs as a category entitled to rights and entitlements under customary international law and normative frameworks.

In India, IDPs from Kashmir are categorised as ‘migrants’ and are, relatively speaking, better entitled than those belonging to other communities. Discrimination is writ large in the official response to the protection needs of IDPs. This is particularly evident in context of communal or religious violence. For instance, in the highly politicised context of the targeting of Muslims in the state of Gujarat in 2002,

“[[IDPs are] persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”. This definition includes, amongst other groups: (a) Returnees (returning refugees and migrants deported back to Afghanistan) who are unable to settle in their homes and/or places of origin because of insecurity resulting from armed conflict, generalized violence or violations of human rights, landmines or explosive remnants of war (ERW) contamination on their land, land disputes or tribal disputes.”

—*Afghanistan National Policy on IDPs 2013*

India’s federal institutions — the National Human Rights Commission and the Supreme Court — had to push the state government to recognise its responsibility to provide humanitarian assistance to the forcibly displaced. Provision of relief and rehabilitation for households forcibly uprooted in the wake of disasters or ‘any other reason’ is the responsibility of the state governments of the Indian Union. However, the effectiveness of response varies widely and arbitrarily.²⁵ As for Pakistan, the government uses the appellation ‘temporarily displaced persons’ to sidestep international frameworks and standards which are relevant in the context of the internationally recognised category of IDPs. Pakistan’s protection policies are marked by discrimination and politically determined. In 2009, IDP flows from Waziristan were not recognised while the Swat IDPs were.²⁶ There is no institutional protection response for the conflict-affected Balochistan IDPs and no access accorded to international humanitarian agencies there.

Also, in the case of Afghanistan and Pakistan, as the majority of the forcibly displaced live with host communities, they do not figure statistically unless they register as IDPs. Non-inclusion of affected populations in the statistics means that they are not recognised as ‘IDPs’ and are therefore not eligible for entitlements. On a more positive note, Afghanistan’s recent National IDP policy adopts a comprehensive definition of IDPs, but at issue remains political will to implement.

The Faces behind the Statistics

Behind the crisp statistics and obscured by the legal categories lie the horror of homes destroyed, lives uprooted, families ripped apart, the nightmare of forcible flight, livelihoods wasted and the desperate struggle for survival and resilience. In Afghanistan, it is the story of women, children and men trapped between the government forces who came into homes where women were alone, the men away (lest the Taliban forcibly recruit them), soldiers who searched for the Taliban, and the Taliban who then came in search of the men suspected of collaborating with the government. It is the story of Anargula, 50, from Helmand, now in a displaced settlement. “Suddenly the Taliban would appear and burn the village and kill people. Then the planes would come and bomb us.” She was baking bread for the Khan’s family when the bombs fell. She ran home to find her house gone, her family nowhere and the village disappeared.

Ayat Bibi from Sangin village, Helmand, was pregnant

when the bomb fell on her home. When she regained consciousness, she had lost her baby. Her eight-year old son was missing, crushed under the roof. Beneath the collapsed wall lay dead her grandparents. The cows, their source of livelihood, lay dead. Now in Sheena camp, Kabul, Ayat Bibi still has shrapnel from the bomb in her thigh and arms.

“There is no end to this war. We are suffering at the hands of Pakistan,” Jamila, 50, a neighbour interjected, pointing an accusatory finger at the regional and geo-strategic power plays which had devastated their lives. —WRN Community Conversations with IDPs: Palwasha Hassan, “Afghan Internally Displaced Women: Complex Realities”, Kabul, WRN 2016

In Pakistan, army operations such as *Zarb-e-Azb*²⁷ take weeks to launch but the people of Waziristan were given three hours to evacuate before the military assault began. No transport was provided. An elderly woman walked 40 km to a camp only to be told it was not the right camp for her. [WRN Community Conversation with IDPs; Rukhshanda Naz, *“Women in Conflict: Voices for Equality Internally Displaced Women from North and South Waziristan, Pakistan”* by Rukhshanda Naz, Islamabad, WRN, 2016]

In Assam, Chirang district, Bodoland Territorial Administrative District (BTAD; hereafter Bodoland), Jyotsna Mardi, a Santhal tribal, once again sought refuge in the Deosiri camp fleeing the violence that ruptured her fragile but stable existence in a nearby settlement of Shantipur on December 24, 2014. In this latest cycle of violence in India’s turbulent and highly militarised Northeast, indigenous Bodo plains tribals belonging to the militant faction of the National Democratic Front Bodoland-Songbijit, NDFB(S), attacked Santhal tribals who had been settled in Assam to work the tea gardens. Jyotsna’s home in Shantipur burnt to ashes, she fled with just the clothes on her back to Deosari camp.

Nearly two decades earlier, in 1996, as a child of 13 she had fled a fury of ethnic cleansing along with others from their village in the forest. “People were felled like banana trees.” In 1998 the camp was again attacked, and she barely escaped being shot. In 2004 she married and moved to Shantipur. Ten years later she was back in Deosiri with nothing again.



A Koch Rajbongshi tribal woman in Vidyapur Camp, Assam, India

“For three months we (3,000 people) were too scared to leave the camp. There was no assistance and people were in complete distress with not even a proper cloth to cover our heads. Even animals have better life than we have here.” Six months later, Jyotsna, now a widow, has opened a makeshift shop in the camp, selling bare essentials. —WRN Community Conversation with IDPs Rita Manchanda and Aparajita Sharma “Homeless at Home: Internally Displaced in India’s Northeast”, Delhi, WRN, 2016

What would it mean to Ayat Bibi and Jamila, or to Jyotsna Mardi to know that the state has an obligation to protect against and prevent forcible displacement? Do our states act with due diligence to engage with the root causes of displacement? What does one say to Anjali (an alias), seven months pregnant, who during an army cordon-and-search operation in Thaisaguri village, Bodoland, last August, was pulled out of her house, her in-laws locked in, and raped by two of a party of soldiers. Supposedly, they were looking for her husband accused of being a ‘link man’ of the NDFB-S militants. The army flatly denies the charge.²⁸ The socio-legal culture of impunity that prevails makes access to justice a distant dream. What does one say to the parents of 16-year old Priya Basumarty, publicly executed by Bodo militants of the NDFB(S) in Dwaimuguri village in August 2014, on suspicion of being a police informer?²⁹ The state has the responsibility to exercise due diligence in protecting against ‘non-state’ armed actors.

2. WHY THE IDP EXPERIENCE IS NOT GENDER NEUTRAL

“Expressing concern that civilians particularly women and children account for the vast majority of those adversely affected by conflict, including as refugees and IDPs, and increasingly are targeted by combatants and armed elements, and recognizing the consequent impact this has on durable peace and reconciliation.” —UNSC 1325:2000.

“They[women]flee to escape arbitrary killings, rape, torture, inhuman or degrading treatment, forced recruitment or starvation, ... what do they encounter at their destination, including in camps for the IDPs – too often they encounter the same level of insecurity, violence, threats of violence, reinforced by impunity, at their destination” — Chaloka Beyani, UN Special Rapporteur IDPs 2014

The dominant image of the civilian in conflict is that of a woman victim with small children clinging to her, fleeing across borders or huddled in a tent in a camp city within the country’s borders. The recognition that women, adolescent girls and children make up the majority of the world’s refugees and IDPs, has resulted in lofty rhetoric about women IDPs, reiteration of their gendered needs, and concern for the violation of their human rights articulated in

international treaties and successive normative frameworks. Decades of feminist scholarship underpinned by on-going empirical research demonstrate that the experience of conflict, transition and ‘post conflict’ is gendered. The magisterial UN Security Council acknowledged in *UNSC Resolution 1325 (2000)* the relevance and inter-linkages between women, peace and security (WPS). A series of cluster resolutions have articulated a protection, prevention, participation and rehabilitation-reconstruction agenda. It foregrounds the gender differentiated experience of women and girls in conflict- and post-conflict situations, and challenges gender-neutral policies including for IDPs.³⁰

The *Beijing Declaration and the Platform for Action* (1995) identified ‘women and armed conflict’ as one of the issue areas, and singled out as *Strategic objective E.5*: ‘Provide protection, assistance and training to refugee women, other displaced women in need of international protection and internally displaced women’.³¹ The *UN Guiding Principles* (1998), offer exceptional protection for women taking into account their special needs including recognition of vulnerable categories — expectant mothers, female headed households, unaccompanied minors. The Guiding Principles emphasise protection of women from gender specific violence, upholding their rights to equal access and participation in assistance programmes.³²

UNSC 1325 WOMEN PEACE SECURITY

Displacement, Refugees & Asylum seekers

The resolutions address the situation of women and girls displaced by the conflict as follows:

- All actors involved in peace negotiation to ensure a gender perspective is applied in all repatriation, resettlement, reintegration initiatives; ensure the protection of civilians in camps; women’s needs to be addressed in the design of humanitarian assistance (UNSCR 1325 OP 8 (a), 12; UNSCR 1889 OP 12)
- UN Secretary-General and UN agencies to develop mechanisms to protect women and girls from violence in UN managed camps for refugees and internally displaced persons (UNSCR 1820 OP 10)

CEDAW: GR 30 WOMEN & CONFLICT

Paras 53 – 57: Displacement, Refugees & Asylum seekers

Draws on applicability of Convention to all stages of the displacement cycle, including forced displacement, refugees, asylum seeking and statelessness (Arts. 1, 2, 3, 15)

Recommendations:

- Take preventive measures to protect against forced displacement and violence against women and girls
- Address multiple and intersecting forms of discrimination and investigation of the same, address the risks and needs affecting displaced women and girls
- Promote participation and inclusion of women in all decision-making processes relating to humanitarian assistance and management of displacement

The *CEDAW* treaty body committee notes that the convention applies at every stage of the displacement cycle, and that situations of forced displacement and statelessness often affect women differently from men and include gender-based discrimination and violence. Recognising that gender inequality increases the vulnerability of displaced women living in highly precarious conditions, the CEDAW Committee called upon states to not only protect the human rights of forcibly displaced women, but also to “Investigate and prosecute all instances of gender-based discrimination and violence that occur in all phases of the conflict-related displacement cycle” [CEDAW/C/GC/30].

In *CEDAW: General Recommendation (GR) 30* (2013), the focus on ‘Displacement, Refugees and Asylum Seekers’ (para. 53) provides authoritative guidance to states on the Convention’s applicability “to every stage of the displacement cycle”.³³ It outlines the ways that gender inequalities impact and determine women’s differentiated experience of displacement compared to men. Both GR30 and the WPS resolutions require that steps are taken to address the specific

needs of women and girls who are internally displaced or are refugees, including protection from violence, promotion of women’s participation in decision-making in displacement sites and response to their specific needs.

Guidebook on CEDAW General Rec. No. 30 & UNSC Resolutions WPS³⁴

GR30 broadens the reach of the WPS resolutions by requiring that “all instances of gender-based discrimination” are investigated and prosecuted and that the specific risks facing women “subject to multiple discrimination...” are addressed. WPS Resolutions are usefully supplemented by GR30 because it draws attention to the multiple barriers that women and girls may face in situations affected by conflict. Importantly, also the much broader definition of ‘conflict’ articulated in GR 30 circumvents India and Pakistan’s assertion that the ‘disturbed situations’ in the country are **not** ‘armed conflicts’ under international law.³⁵

The Pinheiro Principles on Housing and Property Restitution of Refugees and Displaced Persons reiterate the equal rights of women and girls, and men and boys to housing and land, property restitution. The Principles exhort governments to frame policies and practices that recognise joint ownership as an explicit component of the restitution process and provide for gender sensitive restitution programmes (*Principle 4*). The global *Hyogo* and *Sendai Frameworks* for disaster risk reduction efforts single out women and their participation, and the need to build their capacity for alternate livelihood means in post-disaster situations.”³⁶

Infantilisation of Refugee/ IDP Women

“(The global audit of 1325 urged that stakeholders) ... must address the full range of violations of the rights of women and girls protected by international humanitarian, refugee and human rights law, including but not limited to their right to life and physical integrity. We are still far from genuinely embracing gender equality as an organizing principle in our humanitarian work and this undermines the effectiveness of our humanitarian assistance.” —*UN Women Global Study on UNSC 1325, UN Women Global Study 2015*



Spina hardly 24 from Helmand province is the mother of 4 girls and 3 boys two of her daughters aged 4 and 7 are promised in marriage to in order to get a loan to pay her father's medical bills. After the surgery, a wall fell on her father and he died.

The importance of women's inclusion and participation in decisions that directly affect them and their families across the displacement cycle is routinely reiterated in normative frameworks, international and national. Feminist literature of women and war has subtly teased out the scope for flight to subject-hood for women as an unintended corollary of the social upheaval of conflict; it has explored the potential for the emergence of women's resilience even agency amidst the adversity and desperation of the dislocation and the disruptions of conflict, and posited the possibility of shifts in gender power relations.

Notwithstanding the lofty gendered rhetoric, students of forcible displacement draw attention to the extent to which the international refugee regime is itself based on a fundamental patriarchal notion, that is the denial of subject-hood to refugees as epitomised by *officials representing the refugees*.³⁷ Refugees are infantilised in a process where decision-making power is transferred from refugees to officials.³⁸ This infantilisation is reinforced in the context of forcibly displaced women, who have the least opportunity to represent themselves but instead, "the practices of international organizations such as the UNHCR tend to delegate woman to the status of victim, which is a disenfranchising phenomenon."³⁹

Guidelines on refugee/IDP protection emphasise that "participation itself promotes protection. Internal protection

problems are often due as much to people's feelings of... lack of belonging to a structured society and lack of control over their own future. This may be particularly evident in overcrowded camp conditions. Refugee participation helps build the values and sense of community that contribute to reducing protection problems."⁴⁰

Gender inequality, in particular, shapes the experiences of women IDPs in South Asia. National and internationalised responses to forcible displacement continue to reproduce patriarchal norms. However, for analytical purposes taking the IDP woman as a category, evidence from the CC-based field studies consolidates the assertion that women's experiences are missing in shaping international, national and community discourses on gendering humanitarian responses.

"Whether in detention, refugee or IDP camps women and girls suffer from inadequate sanitary conditions and supplies, especially during menstruation and lactation as well as from a lack of sexual reproductive and maternal health care services which can mean a death sentence for many women during childbirth and when seeking to terminate pregnancy." —UN Women Global Study 2015

Yet, the gendered experience is always contextual. There is no single bloc of a female refugee.

We were in Khagrabari IDP camp in Baksa district, Assam, more than a year after May 2014, when 41 people were killed. The majority of those fleeing the violence were women and children who had plunged into the swirling waters of the River Beki to escape massacre by state forest guards in league with Bodo militants. Was there any difference in women's experiences of forcible flight and displacement?

Pushing aside the women, a self-styled spokesperson intervened, "No, there is no gender difference in the impact of displacement."

A feisty woman interjected, "You've never given birth in a camp have you."

In camp after camp and in informal settlements, we heard the distress story of pregnant women fleeing violence, giving birth prematurely under a tree or unaided in a camp; and of the large number of infant deaths usually not recorded in camps (WRN India IDP CC).

Across the border in Pakistan, Zainaba from Miramshah, North Waziristan was four months pregnant when she fled down the mountain with her family. No transport was available. It took a long time to walk down.

“Everything turned dark, I fainted on the road. When I came to my mouth was full of blood and I was vomiting. There was no government hospital nearby. I was rushed to a private hospital.” The family paid Rs 200,000 and now is selling food rations to pay off the debt. —WRN Pakistan IDP CC 2016

Policy frameworks routinely exhort prioritising gender-specific needs of vulnerable IDPs (expectant mothers, adolescent girls). UNSC Resolution 1960 (2010) emphasises the importance of collecting gender disaggregated baseline data on the impact of conflict. But governments and humanitarian actors continue to treat the displaced as a homogeneous group. In Pakistan, the official data on IDPs is mainly confined to citing the number of displaced individuals and that of families/households. In June 2009, the UNFPA said that 69,000 pregnant women were also among those displaced as a result of the massive offensive against the militants in Swat and other areas of Khyber Pakhtunkhwa, and were living in camps at increased risk. The UNFPA estimated that nearly 6,000 of the pregnant women were expected to give birth during the following month, and over 900 were likely to need surgery to handle pregnancy-related complications.⁴¹

The absence of disaggregated data results in the particular needs of vulnerable groups not being prioritised. For instance, humanitarian agency assessments of female-headed households remain a guestimate. According to the UNOCHA database, of the FATA IDP returnees in Nov 2015 (comprising a third of the FATA displaced) about 21 per cent are women-headed households.⁴² Left out of the database are a large number of women who slip through the recognised categories, like the wives of migrants, widows, single women, or elderly women, who are not registered but dependent upon their own resources (livestock and agriculture) or those who are registered as part of the family of a male relative.

Babakhel camp: Samina’s husband works in Qatar and sends money to her brother-in-law for Samina and their five daughters’ monthly expenses. She is registered as part of her brother-in-law’s family and they live in the same tent. Culturally it is not acceptable for women to live without men. —WRN Pakistan CC: Women IDPs North and South Waziristan, 2015

It needs to be mentioned that cultural prejudices raise formidable obstacles, and sensitivity is required in foregrounding gender perspectives. Highly conservative patriarchal ideologies among the tribes have been reinforced by the misogyny of extremist ideologies of the Taliban and other militant groups in both Pakistan and Afghanistan. It has prompted humanitarian agencies such as World Food Programme, UNHCR to ‘go through the men’⁴³ further infantilising displaced Afghan women in camps in KP.

Conflict and displacement present huge humanitarian challenges but on occasion can provide opportunities for reaching out to the women of excluded communities. For instance, as the FATA IDPs fled towards KP, there was the opportunity at the registration check-posts for health workers to access for the first time women, children and men from the region and administer the polio vaccine. Even here in many instances women were kept away and the men preferred to get their livestock (apparently considered more valuable) inoculated.⁴⁴ Too often humanitarian agencies, national and international surrender to ‘going through the men’ and miss crucial openings (Saigol 2002; Manchanda 2006).⁴⁵

High Risk Coping Strategies

In India, as in IDP-like situations in Afghanistan and Pakistan, there is documented evidence of the vulnerability of girl-women refugees⁴⁶ and IDPs falling prey to survival strategies that lay them open to greater risk of sexual exploitation and trafficking, child labour and begging.⁴⁷

It is well documented that female-headed families are likely to be amongst the most deprived whether displaced or among the chronic poor. But there is little evidence of a gender sensitive prioritisation of response in dealing with the livelihood challenges of desperately poor female-headed families rendered all the more vulnerable within a context of the breakdown of social structures of protection.

In IDP households in the informal settlements in Kabul it is not uncommon to find young women like Spina, from Helmand, the mother of four girls and three boys, promising her seven- and four-year old daughters in marriage in lieu of money for the treatment of their ailing father — who soon died. Spina works as a housemaid, and her eldest son is a rag picker on the streets.



Militarization in everyday lives of women Assam, India

“If there was no war in our home, and we were living in our houses, our daughters would be going to school and we would not have married them so young. Life is tough here; we cannot feed ourselves, how can we feed and clothe our children?” asked a Tajik woman from Kapisa, north Afghanistan. —WRN Afghanistan CC, 2016

Her words were echoed by Majeeda Bewa in Serfanguri IDP settlement at the edge of an urban area in Chirang district, Bodoland, Assam. The widow was defensively explaining why she had ‘married’ off her adopted daughter and niece to men in distant Haryana. ‘Maasi’ as her three orphaned nephews call her, has in all likelihood been complicit in the trafficking of their minor sister Nazma and her adopted daughter Arohan. What was she to do saddled with the responsibility of her brother’s 4 children after he died in a brick kiln accident and his wife who went to claim compensation died under mysterious circumstances. Lal Bano, a woman in town arranged to send Nazma and Arohan to marry Hindu men in Haryana, who paid 17,000 rupees

for each girl. Majeeda introduced us to her nephews, 12, 9, and 6 years old, just returned from Friday prayers; the eldest works in a teashop on the edge of the camp. He does not go to school and is illiterate. “How do we eat if the boy does not work?” she asked.

Her Afghan sisters said much the same. Malala’s 10-year-old son is the sole bread-earner; he washes cars and is a rag picker. Her husband and four older sons died in the fight between the Taliban and the state. “If I send my son to school, who is going to feed us?”

In some cases, gender prejudices are likely to foreclose even the minimal options that exist for girls’ livelihood opportunities. An Asian Development Bank economic livelihood project for women IDPs in Bodoland, Assam, held out the possibility of a lifeline for young women, but officials dropped the young ‘educated’ girls included by a women’s network in the proposed list of beneficiaries. Their logic was that these girls would marry and re-locate, so the investment would be a waste for the community.⁴⁸

National Gender Frameworks

India and Pakistan's institutional response to forcible displacement is structured within its response to natural disasters, development projects. The euphemistic phrase 'other calamities' encompasses 'conflict' induced displacement.⁴⁹ Pakistan's structure of institutional response comprises National Disaster management Authority (NDMA) and its local offshoots, PDMA (Provincial Disaster Management Authority) and FDMA (FATA - Federally Administered Tribal Areas - Disaster Management Authority). NDMA has incorporated a Gender and Child Cell, including at the provincial level and formulated National Policy Guidelines on Vulnerable Groups in Disasters (2014).⁵⁰ However, it should be mentioned that the gender focal point is not a government-funded position, but dependent on donor funding from UN Women and the former CIDA or its new avatar, DFATD, now named Global Affairs Canada. There is therefore not only a lack of government ownership of the structure, but it is vulnerable to lack of continuity and erratic commitment on the part of humanitarian agencies.⁵¹ Additionally, Pakistan's institutional response to IDPs remains highly militarised. India has a National Rehabilitation and Resettlement Policy (NRRP, 2007) primarily focused on project-affected displacement (PAF). The NRRP bill from which the policy is derived states,

"However, involuntary displacement of people may be caused by other factors also, and the provisions of the Bill may apply to the rehabilitation and resettlement of persons involuntarily displaced permanently due to any reasons."⁵²

The Policy establishes standards that can be invoked as a measure of accountability, and it recognises the special vulnerability of women, unmarried girls, abandoned women and the elderly. However, it provides for no specific entitlements. Moreover the category of 'affected families' does not recognise classifications such as 'female-headed households'. There is no reference to gender violence concerns. Importantly, there is no representation from

Ministry of Women and Children in the National Monitoring Committee for relief and rehabilitation.

Afghanistan's National IDP policy emphasises the special protection needs of women and vulnerable groups. While recognising the importance of IDP communities participating as major stakeholders in determining all major decisions through their *shuras* (conclave of elders), women's participation is qualified by cultural considerations — *"IDP communities should make every effort to solicit the views of women as well as men, of the elderly, of adolescents and children, and of persons with disabilities."* Women and children comprise 60 per cent of the country's IDPs and despite the gender sensitive language of the Policy, in practice there is a conflating of women and children. Significantly, there is no link indicated between Afghanistan's IDP Policy and Afghanistan's National Action Plan UNCS 1325.⁵³

South Asia, particularly the sub-region Afghanistan, Pakistan and India, is marked by extreme gender inequality. The countries of this region persistently crowd the bottom of the Gender Equality Index. Violence against women arises from gender inequality and the Index singles out Pakistan, Afghanistan and India as countries that are particularly dangerous places to be a woman in, due to structural discrimination in indicators such as education, health and nutrition, violence against women, labour participation, etc. Conflict and its consequences of forcible displacement render the women of the region particularly vulnerable as a result of extreme gender inequality.

"Women's vulnerability increases manifold when they do not have adequate and safe housing, cannot access water, lose their privacy, live in close proximity to unrelated men, are exhausted, at risk of sexual violence, and, to make matters even worse, are excluded from decision-making. When the conflict is over, women still have little say in the rehabilitation and reconstruction of their communities even though they form the backbone of rebuilding their society." — Yakin Ertuk, UN Special Rapporteur VAW 2009



Women IDPs from Waziristan in Bakahel Camp, Khyber Pakhtunhwa, Pakistan.

PART II: SOUTH ASIA TRIBUNAL ON WOMEN'S HUMAN RIGHTS

3. WHY CHOOSE A TRIBUNAL AS A HUMAN RIGHTS ADVOCACY TOOL?

People's Tribunals, Citizens' Tribunals, Women's Tribunals – such unofficial tribunals have no enforcement capability, no judicial authority and no public mandate of legitimacy. So, why do they capture the imagination? Since the 'official' post war International Tribunals at Tokyo and Nuremberg, why have there been so many so many unofficial, non-governmental tribunals spanning adjudicatory court processes to public hearings?⁵⁵ Why have so many eminent judges, Nobel Laureates, statesmen, well known artists, academics and professionals been willing to serve on the panels of jury, prosecutors and experts? Why are so many survivor-witnesses investing so much energy and faith in processes, which they know, have only moral authority? Why are individuals, networks and trans-national alliances inspired to organise such an ambitious exercise?

"A People's Tribunal is a performance of democracy; an assertion of the peoples' right to know; an exercise in recovering people's sovereign authority; an affirmation of their right to pass judgment on humanitarian/ human rights crimes. It is a political act to create an alternative discourse of war, of peace and of justice." —WRN, Colombo 2016

Rarely can impact be palpably demonstrated as in the case of justice for the 'comfort women' — survivors of sexual slavery for Japan's Imperial Army. Indeed it is exceptional. In 2015 — seventy years after the end of World War II, and

23 years after the first Public Hearing in Tokyo organised by historians and lawyers to focus attention on Japan's war crimes — Japan made a formal apology and promised an \$8.3 million payment in reparations. In the intervening years, pressure was sustained in follow up Tribunals: *Vienna Tribunal on Human Rights* 1993, *Asia Tribunal on Women's Human Rights* 1994 and *Women's International Tribunal on Japan's Military Sexual Slavery* 2000. These unfolded within the wider context of feminist mobilisation against rape and sexual slavery in war, which found reflection in the International Criminal Court (1998) Rome Statute recognising rape as a war crime and crime against humanity. Importantly, South Korea has made it an issue in its bilateral relations with Japan.

The Tokyo Tribunal (2000) organisers in addressing the question of redress admitted,

"The Tribunal has no real power to enforce its judgment but as a peoples' and women's initiative, it nonetheless carries moral authority to demand their wide acceptance and enforcement of the judgment by the international community and civil society and pave the way for law reforms in national governments."⁵⁶

Tribunals are political processes

Importantly, they provide scope for explication of the context of violation, the acts of omission and commission — vitally necessary to ensure 'never again'. A criminal court is seized with the immediate issue of a crime and its focus is redress of grievance. It does not have the luxury of historicising the context. A people's tribunal pushes the boundaries of law

by invoking international laws and jurisprudence, which domestic courts rarely have the occasion to do. Moreover, a people's court goes beyond retributive justice, and aims at restorative justice. For instance, reparations are not a part of conventional jurisprudence as they address long-term material and psychological relief and rehabilitation. As with other transitional justice mechanisms, people's tribunals confront mass violence, a magnitude of crimes that a normal court of law is not equipped to deal with.

Of course, the judgment of the panel of judges in a people's court carries no legally binding authority, nor can there be redress or compensation even when a case of violation is robustly articulated in a legal framework. At best, the tribunal is to **“prevent the crime of silence”**⁵⁷ as Bertrand Russell said, initiating the first of such people's trials, the International War Crimes Tribunal, 1967. His co-convenor Jean Paul Sartre, emphasising that the Tribunal was formed by ordinary citizens co-opting themselves to fill a real need for international jurisdiction, said:

“The tribunal is not an institution. But it is not a substitute for an institution already in existence, it is on the contrary, formed out of a void and for a real need. We were not recruited or invested with real powers by governments, but as we have seen the investiture at Nuremberg was not enough to give the jurists unquestioned legality... The Russell Tribunal believes, on the contrary, that its legality comes from both its absolute powerlessness and its universality.”⁵⁸

In the *Citizens' Tribunal Ayodhya* (1993), the Judges recognised the imperatives that led to the formation of the Tribunal — that is, “the futility of unearthing the truth and identifying the guilty from the proceedings of the official inquiry body” into the demolition of the Babri mosque and its aftermath. At the same time, they acknowledged

“Though we have no legal authority... we do have moral authority. We do not derive our authority from the State, but we derive our authority from all those people who have abiding faith in democracy, human rights and secularism.”—Justices O. Chinnappa Reddy, D.A. Desai and D.S. Tewatia⁵⁹

More than 40 Permanent People's Tribunals (PPT) have been enthusiastically organised on the demand of concerned groups, and as the organisers of the PPT on Sri Lanka reiterated,

“The importance and strength of decisions by the PPT rest on the moral weight of the causes and arguments to which they give credibility, as well as the integrity and capability to judge of the Tribunal members. The aim of the Permanent People's Tribunal is recovering the authority of the Peoples when the States and the International Bodies failed to protect the right of the Peoples, due to geopolitical reasons or other motivations.”⁶⁰

Similarly the IPT on Afghanistan (Tokyo 2004) convened by Japanese peace activists and the Revolutionary Afghan Women's Association (RAWA) indicted President George W. Bush for war crimes against the peoples of Afghanistan in 2001 within the framework of international law on war crimes. However, the judgment written by Prof. Niloufer Bhagwat states,

“In the final analysis the acceptance of a decision in any legal system, is dependent on the confidence of vast numbers of people in the independence, integrity and juridical wisdom of a Court or Tribunal, and its capacity to reflect the collective conscience of humanity in trials as serious as this one; all higher forms of social organization have evolved directly out of mankind's yearning for a “just and harmonious society “ and for the realization of the worth of every human being.”⁶¹

The women who constituted a feminist transnational alliance and participated in the International Initiative on Gujarat (IIG), (2002) were conscious of their limits but committed to international solidarity in supporting the right to justice and citizenship.

“That they [survivors] spoke to us knowing that we may not be able to contribute anything tangible to their lives, reaffirmed our knowledge that justice is perhaps the most tangible of all things. And it is towards achieving the justice that they desire, the basic rights of citizenship in their homeland, and a democracy that will provide security to all, is what this initiative is aimed at.”⁶²

Despite the obvious limitations of People's Tribunals, the organisers and participants are often willing to take huge political risks at cost to life and liberty as evident in the recent International People's Tribunal: 1965 Indonesia (The Hague 2015). The Chief Prosecutor Todung Mulya Lubis acknowledging these risks and the limits of the process admitted,

"This is not a tribunal in the legal sense, and you are not the judges vested with all the power. We, the prosecutorial team, are not really prosecutors. But we are functioning and striving together to find the truth and justice. It is our hope that your courage and wisdom will take us to the harbour where we can sail back home with truth and justice in our hand."⁶³

Every Tribunal has faced that moment of truth about competence and its utility, and organisers, judges, prosecutors have confronted the question, *'Why are we here?'* A People's Tribunal is an affirmation of people's sovereignty and people's rights to justice. It is a leap of faith despite limitations, as succinctly summed in the title of the Report of the Commission set up by the UN on the Truth for El Salvador (Mexico city 1992), *'Madness to Hope: the 12 year war in El Salvador'*.⁶⁴

Finally, the political imaginary drives what has become a veritable movement across 40 such 'public hearings' in a symbolic space. In this space, women victims, survivors and resisters are heard in a structure that embeds court-like public testimonies in a mosaic of advocacy activities, especially through artistic expression. As Corrine Kumar, the founder of the *Courts of Women*, says of this vision:

"It is an attempt to define a new space for women, and to infuse this space with a new vision, a new politics. It is a gathering of voices and visions of the global south, locating itself in a discourse of dissent: in itself it is a dislocating practice, challenging the new world order of globalisation.... the universality of the human rights discourse, hegemonic knowledge paradigms that have excluded the visions, wisdoms and experiences of women. The Courts of Women hear of the need to extend the discourse to include the meanings and symbols and perspectives of women."⁶⁵

4. WHAT ARE THE OBJECTIVES OF TRIBUNALS?

Tribunal Objectives span a continuum along two inter-related and overlapping goals. **Documentation** and **Access to Justice**. Objectives range from exercising **right to truth, right to justice** and **right to reparation**.

"In this Tribunal the victims will speak out. They have been silenced and abject till now. The material brought before the Tribunal will provide a public record of the mass killings and other crimes against humanity committed after October 1 1965. The Tribunal will help open up a space for public debate on the history of Indonesia, on its postcolonial ambitions, on its efforts to build social justice, on its attempts to establish the rule of law." —*Nursyahbani Katjasungkana, coordinator IPT 1965 Indonesia*⁶⁷

Tribunals in the form of a Public Hearing and Citizens' Commissions of Inquiry provide platforms for sharing structured public testimony around an incident of violence or situational experience of armed conflict or even a phenomenon i.e. climate change. *International Tribunal on Crimes against Women* (ITCW),⁶⁸ Brussels, 1976 was the quintessential public hearing organised thematically around personal testimonies of women across several countries on various types of violence with expert/jury panel providing context and conceptualisation. *Vienna Tribunal on Human*

PUBLIC HEARINGS, TRUTH TELLING, FACT FINDING COMMISSIONS

- Giving women a voice, amplifying that voice and raising public visibility
- Enabling an empowering process for women to emerge as 'survivors' not victims and towards building solidarities
- Pinpointing responsibility
- Fact finding and documentation [publication of report] as tools for advocacy



WRN Community Conversation in Khagrebari a marginalized remote camp in Assam, India

Rights (1993) came out of the Global Campaign for Women's Human Rights⁶⁹ and through testimonies organised around five thematic sessions aimed at establishing recognition for women's rights as human rights and paving the way for integrating gender perspectives into human rights theory and practice. Beijing 1995 was a culmination of that process.

The *Courts of Women* since their inception in 1992 have emerged as powerful experiments in speaking *truth to power* as well as *truth to the powerless*, that is, stirring the conscience of the world, seek to create other reference points than that of the rule of law and strive to return ethics to politics. The courts are designed as sacred spaces for "subjugated peoples and silenced women to reclaim their political voice."⁷⁰

Solidarity was an important objective of *ITCW (1976)* as too of the *International Public Hearings* concerning Japan's post war compensation (1992), and the *Asia Pacific Regional Women's Hearing* on GBV in conflict (1994). These Hearings brought together geographically dispersed women to underscore the universality of their experience and to concertedly target Japan for accountability. Japan continued to evade responsibility for the 'comfort women' but created an Asian Women Fund 1994. Similarly the *International Initiative for Justice in Gujarat (2002)* was an expression of feminist transnational ideology in action and the forging of a common feminist understanding on the use of sexual violence

in conflict and the inadequacy of justice systems.

The *Courts of Women* in engaging with the violation of women's human rights especially at regional and international levels in diverse contexts such as war and militarisation, mono-culturalisation and the feminisation of poverty, create possibilities for exchange among women's and human rights groups and social movements in the regions. The Courts of Women have become spaces for deepening the process of networking at global fora like the World Social Forum gatherings in Latin America, Africa and Asia where Courts have been held in cooperation with several organisations on issues related to wars; the wars of poverty and the wars against women.

Raising international visibility for crimes against women in Burma motivated the women Nobel Laureates to convene the *International Tribunal for the Women of Burma*⁷¹ (2013) in which 12 women testified across a range of human rights violations. It was aimed at stirring the international community to fulfil its global responsibility to protect citizens whose governments are unable or unwilling to do so.

Concerned Citizen's Tribunal: Gujarat (2002), *National People's Tribunal Kandhamal (2010)*, *International People's Tribunal on Human Rights and Justice in Kashmir* and the *Afghanistan Justice Project (2005)* are **Fact Finding Tribunals**. Tribunals such as *National Tribunal on Violence against Dalit*

Women (2013) brought together 43 testimonies to demonstrate the systemic failure of justice and legal mechanisms, and the prevalence of entrenched discrimination and impunity. These Tribunals were aimed at **pinpointing accountability**. Several of these Tribunals took their quest to the sites of violence they were investigating and were structured as travelling tribunals. For instance the *International Initiative for Justice in Gujarat*,⁷² travelled to three affected sites in Gujarat and people from seven districts deposed before the panel (320 people were spoken to). Such processes tend to be much longer than the usual two- or three-day tribunal. Courts such as the *People's Tribunal on Communalism in Orissa*⁷³ (2005) are **awareness raising tribunals** aimed at mobilising for secularism and democratic rights. Three subgroups of the Orissa People's Tribunal travelled to various districts in the state, attending hearings organised by local people and independent organisations. Such Tribunals **create an alternative discourse**, as evinced in the *Citizen's Tribunal on Ayodhya*.

At best, People's Tribunals are significant interventions in campaigns and enjoy significant moral prestige derived from the eminence of the panel of 'judges' as for instance in the sessions in which a number of judges are Nobel Laureates. The findings of the PPT Tribunals are submitted to UN Secretary General and other appropriate national and international bodies and carry moral and political weight. The series of PPT Public hearings on Industrial Hazards and Human Rights in New Haven, USA (1991), Bangkok, Thailand (1991), Bhopal, India (1992), and London, UK (1994), led to the development of the influential benchmark 'Charter on Industrial Hazards and Human Rights'.⁷⁵

Access to Justice:

The Tribunal is a moral instrument to help break through the cycle of violence in Indonesia. We, the people who establish this Tribunal say clearly: Never Again!
—Nursyahbani Katjasungkana, IPT 1965 Indonesia

Objectives of a Criminal Tribunal

- To use the language, structure of the Criminal Court and the established body of law to **demand accountability for human rights violations**
- To adopt a quasi-judicial frame to drive home the message that established **human rights laws and for having failed**

to include women's human rights concerns and the need for exploring and incorporating feminist justice norms

- To enable women to **access 'informal' justice** for human rights violations and build evidence from survivor-witness testimonies and expert depositions that meet rigorous standards of legal norms
- To present and rehearse testimony, arguments and law that can later be used in national and international courts; to incorporate the possibility of two or three of the **witnesses deposing and securing redress** and compensation (as a follow up).
- To develop a resource base of peoples' law to impact the formal legal system, including **a feminist approach to justice**.

A People's Tribunal operates on the premise of the state's inability to provide justice to its citizens. People's Tribunals have proved powerful in challenging state denial and impunity. However, while people's tribunals may adopt an adjudicatory process governed by established body of law but without the backing of the state or international community, they can have no power to impose sanctions, no means of providing for remedial action. As Sartre in the forerunner to People's Tribunals said:

"What can even the lightest sentence mean if we do not have the means to put it into effect? We will therefore limit ourselves, should this arise, to declaring that this or that act does in fact fall under the jurisdiction of Nuremberg and that it is therefore a war crime and that if the law were applied, it would be appropriate for this or that sentence to be carried out." —Jean Paul Sartre, *Russell Tribunal 1976*

Some tribunals have taken fact-finding to the next step of securing redress and maybe compensation at least for some who depose. The *National People's Tribunal, Kandhamal* took down depositions in detail, only a few of which were formally presented at the Tribunal, with the intention of following up on all these cases.⁷⁶ The *Women's Tribunal on Sexual Violence on Women During Conflict* (Kathmandu 2014)⁷⁷ demanded accountability using witness testimony and expert depositions to frame violations within the legal framework of war crimes, crimes against humanity, violation of human rights treaties, Nepali law and its international treaty obligations. [It is believed that the cases of two or three of the witnesses who deposed now are being enabled to pursue their cases in the



Children overlooking the Community Conversation, Bannu, Khyber Pakhtunhwa, Pakistan

courts on the basis of evidence accumulated in the Tribunal process].

The *International Tribunal on Afghanistan* using an adjudicatory framework of a criminal court indicted the President George W. Bush and the Judge, Professor Niloufer Bhagwat, addressed recommendations to the U.S. government as well as the UN.⁷⁸ The *IPT: 1965 Indonesia* using the format of a human rights court sought to establish accountability for mass human rights violations under 14 counts of crimes against humanity.

Still others such as the *Women's Court: A Feminist Approach to Justice* (Sarajevo 2015) have as an objective the development of a feminist approach to justice and are driven by their frustration at the inadequacy of the international criminal court (ICTY) to secure justice.⁷⁹ Indeed as Corrine Kumar, the founder of the *Courts of Women* explains, the Courts are a step towards re-imagining this jurisprudence from within civil society and social movements. Driving the process is the recognition that the concepts and categories enshrined in the ideas and institutions of our times, especially in the rule of law, are unable to grasp the violence; violence that is not only escalating, but is also intensifying, the forms becoming more brutal.

“[It] is jurisprudence that is able to contextualize and historicise the crimes; moving away from a justice of revenge, a retributive justice, to a justice seeking redress, even reparation; a justice with truth and reconciliation; a restorative justice, healing individuals and communities.”⁸⁰

—Corrine Kumar

The PPT sessions attempt to fill gaps in international law, which it seeks to influence by elaborating on such documents as the Universal Declaration of Human Rights (United Nations), the Nuremberg principles, United Nations General Assembly resolutions on de-colonisation and the new international economic order.

5. WHAT DIFFERENCE DO TRIBUNALS MAKE?

Impact is extremely difficult to assess and as discussed earlier the Tribunals around Japan's military sexual slavery were exceptional in producing official recognition of human rights violation and reparation. In some instances, such as the Russell Tribunal, it was followed by the Russell Peace Foundation organising a series of Citizen's Commission of Inquiry into war crimes in Indo-china. Eventually, it led to the setting up two National Commissions of Inquiry.

- *The Concerned Citizen's Tribunal on Gujarat* was a fact-finding exercise collecting testimony and documenting evidence. It spearheaded a civil society campaign to establish an alternative 'victims' discourse that challenged the official narrative of the post-Godhra violence, and exposed the failure of state institutions to protect citizens. The Tribunal was hugely influential nationally and internationally in pinpointing state complicity and alluding to the complicity of the then Chief Minister Narendra Modi and political leaders of the BJP. Whether the monumental evidence resources of the Tribunal carried much weight with the official Nanavati Commission is unlikely, given the politically charged context. However, the evidence of the Tribunal subsequently proved invaluable in pursuing particular legal cases. Specifically, from a gender lens, the *International Women's Tribunal Gujarat*, a complementary initiative, contributed to the development of a feminist understanding of the significance of the systemic role of sexual violence in communal pogroms,

and importantly the insufficiency of socio-legal systems to address its widespread occurrence.

- ***The National People's Tribunal, Kandhamal***, took further the work of the Gujarat Tribunals, raising awareness, documenting evidence, challenging impunity and pinpointing accountability for mass communal violence. The Tribunal engaged further with the feminist discourse of sexual violence in situations of mass communal violence. It contributed significantly to discussions shaping the later versions of the Anti-Communal Violence Bill (2005-10) and the threshold of evidence for mass violence. In particular, the Tribunal promoted a rights' based approach and its corollary, attention to state responsibility, restitution and the need for reparation. Moreover evidence collected as a part of the Tribunal process served as the basis for pursuing specific cases in court.
- The official Liberhan Commission set up to inquire into the demolition of the Babri mosque and the aftermath of violence certainly asked for the ***Citizens' Tribunal Ayodhya*** Report. But did it make an impact? Together, the Tribunal process and Report did break through the sense of paralysis of fear and despair at the destruction of the Babri Mosque and the overwhelming sense of fatalism at the 'death of India's secularism'. Importantly, the Report held the government guilty and indicted particular individuals for responsibility, including Congress leaders. Furthermore, the Tribunal contributed to the government being put on the defensive, BJP political leaders apologising, and prevented a Ram temple being built on the site.
- ***The Permanent People's Tribunal (PPT) on the Bhopal Gas tragedy*** contributed to the overall international campaign that resulted in the Indian Supreme Court reviewing its controversial order that provided for a compromise settlement with Union Carbide paying US\$ 500,000 million in compensation and the dropping of all civil and criminal suits against the multinational corporation. The order was found to be bad in law, and in violation of moral principles of justice. The criminal suits were reinstated. Also, the PPT contributed to far reaching policy changes in the regulations for use and storage of hazardous substances.

6. WHAT IS THE APPROPRIATE MODEL?

The choice of a model is driven by the specific objectives of the Tribunal and ranges along the two poles of Documentation and Access to Justice elaborated above. Many have been attracted to a hybrid model — public hearing combined with a quasi-judicial process like the *Women's Court: A Feminist Approach to Justice*.⁸¹ In a criminal tribunal, testimony and other evidence is diligently gathered, documented, and then submitted to establish a breach of the established body of law. This model relies heavily on judges, barristers and other investigative experts. A public hearing model is grounded in social justice frameworks to expose the **truth of what happened**.

It is noticeable that in Tribunals weighted towards Public Hearings such as the *Vienna Tribunal on Women's Human Rights* (1993), the remarks of the illustrious 'judges' at the close of the thematic session are succinct and general. In contrast, PPTs on Sri Lanka (2009, 2013), and *International Tribunal on Afghanistan* (2004) and IPT 1965 Indonesia (2015) are weighted towards an adjudicatory process and have legally articulated detailed judgments and recommendations.

Some are country-specific national processes, like the *Citizen's Tribunal, Ayodhya*. Others are country-centred but internationally convened, like the *International Tribunal for the Women of Burma*. Several are regional — *Women's Court (Sarajevo 2015)*, *International Tribunal on Women's Rights Vienna +20, Basque Country* (Bilbao 2013), *Asia-Tribunal on Women's Rights and International – Vienna Tribunal Women's Human Rights*, *World Court of Women on Poverty* (Nairobi 2007).

Tribunals oriented towards fact-finding are more likely to be structured as travelling tribunals, such as the *Concerned Citizen's Tribunal, Gujarat and the International Women's Initiative*.

There are ad hoc Tribunals and standing Tribunals like the *Permanent People's Tribunal*, the *World Courts of Women* and the *Indian People's Tribunals*. They have a recognisable format and a core organiser. In the case of the *Permanent People's Tribunal (PPT)*, an international opinion tribunal founded in Italy (1979), there is a PPT headquarters in Rome and the Secretary General (Gianni Tognoni) selects the panel of judges, conducts the Tribunal, hears the cases presented by prosecuting and defence attorneys and issues the Tribunal's findings after all hearings have been completed. In the case of



Community Conversation with women from Mir Ali North Waziristan, Pakistan

the *PPT on War Crimes in Sri Lanka*, the Irish Forum for Peace in Sri Lanka and the Internationaler Menschenrechtsverein (International Human Rights Association), Bremen requested a second session of the PPT on Sri Lanka (after PPT-I Dublin, 2009), to deal with the accusations of genocide and the complicity of other states in the commission of genocide in Sri Lanka, held in Bremen, 2013.⁸²

The *World Courts of Women* have been inspired and promoted by women rights activist Corinne Kumar, Asian Women's Human Rights Council (AWHRC) and the Tunis-based human rights advocacy group, El Taller International. More than 40 Women's Courts have been held, largely in Asia and Africa since the first one in 1992, Lahore. Considerable flexibility is possible and necessary as the Courts are rooted in the knowledge and ways of being of the women on the region. Every Court therefore has a different ethos and emphasis; sometimes determined by the local and partner organisations, sometimes by the themes of the World and Regional Social Forums and sometimes by the coordinating team. These elements then take forward the analyses and perspectives of the Court. What connects these diverse Courts of Women is the methodology that challenges the dominant ways to

know and to knowledge; a methodology being woven into the priorities and perspectives of diverse partner organisations.

Also there is a recognisable praxis characteristic of the Women's Courts. It weaves together the objective reality (through analyses of the issues) with the subjective testimonies of the women; the personal with the political; the logical with the lyrical (through video testimonies, artistic images and poetry); the rational with the intuitive - inviting participants towards creating a new knowledge paradigm. This was evidenced in the diversity of the *Women's Court (Sarajevo)* and *World Court of Women against War, for Peace (Bangalore)*.⁸³ The Sarajevo Court was the culmination of seven years of national mobilisation around public hearings, campaigns, and development of theoretical feminist discourse across the former territories of Yugoslavia. In Bangalore the court component of the Public Hearings was for a day and the week's activities included structured workshops and artistic expression.

People's Watch, an NGO with local state partners has been convening People's Tribunals on Torture (PTT) in nine states of the Indian Union culminating in a *National Tribunal on Torture*⁸⁴ (Delhi 2008) that conclusively demonstrated

widespread and systemic use of torture. The *Indian People's Tribunals* span a series of tribunals and fact-finding missions organised by the NGO Human Rights Law Network (HRLN) since 1993. [Interestingly, a two-day Indo-Pak seminar on 'Judicial Activism, Public Interest Litigation and Human Rights' in Karachi in 2013, mooted the idea of a *South Asia Tribunal of Justice* through a people's network. Human Rights Law Network was the India convener.]

There is also the model of hybrid or quasi-official courts. For instance, Nepal's National Human Rights Commission, a statutory body, facilitated the Women's Tribunal on Sexual Violence on Women During Conflict (Kathmandu 2014).⁸⁵ The Gender and Child Cell, Provincial Disaster Management Authority (PDMA), Balochistan facilitated the UN Community Hearings on Impact of Natural Disaster and Complex Emergencies on Women Girls and Vulnerable Communities of Balochistan (Quetta 2015). In India, such quasi-official public hearings are more common on issues such as public health. Recently India's National Human Rights Commission collaborated with the NGO, Jan Swasthya Abhiyan, to hold the Western Regional Public Hearing on the denial of health care in the public and private sector.⁸⁶

7. WHAT DOES ACTUALISING A TRIBUNAL MEAN IN TERMS OF PROCESS?

7.1. Selecting a Thematic focal concern

The identification of a specific problem, incident or primary issue provides a thematic focal point especially necessary for a Regional Tribunal e.g. a focus on 'militarisation, extremism and crimes against women' or more specifically 'human rights violations of women IDPs in conflict affected situations' in South Asia. The multiple socio-cultural layering of women's oppression in the region is heightened in the context of militarisation and rampant extremism and its corollary of misogynist ideologies — thus widening gender inequality and vulnerabilities. The incorporation of interlinked sub themes identified across the region will demonstrate commonalities and cross border linkages. In case of a **two-tier process** — national campaigns and the culmination in a 'spectacular' regional event — sub themes can attract wider range of testimonies, campaign mobilisation and media coverage of both Tribunal and Public Hearings.

The experience of tribunals is very varied. For instance, the Asia Tribunal on Women's Rights (Tokyo 1994)⁸⁸

comprised public hearing sessions structured around three themes: i) trafficking of women in contemporary Asia; ii) prostitution/sexual violence around US military bases and iii) the military 'comfort' women. For each thematic session the structure was different, i) eight witnesses testified, ii) activists presented from five contexts and iii) survivors testified — all were followed by succinct jury responses.

7.2 Who is to be held accountable?

The international human rights system has generally focused its attention on state sponsored violations, that is, state action and policies, largely in the public sphere. Women's experiences demonstrate that violations of women's human rights also occur in the private context of family and community and in the name of religio-cultural practices. A feminist approach to justice requires an expansion of accountability to encompass the private sphere as well as non-state private actors. Presently, the human rights machinery has primarily focused on states whose officials engage in human rights abuses. An expanded definition of accountability⁸⁹ focuses on the responsibility of the state as a measure of sovereignty to *exercise due diligence* to prevent, control or punish acts by private actors through its executive, legislative or judicial offices.

Expanding Accountability for Violations:

- Violations resulting from state action or policies within territory and abroad
- Violations perpetrated by non-state actors, living or working within territory
- Violations by non-state actors of one state — including multinational corporations, private institutions — within the territory of another state
- Violations resulting from action of international institutions — World Bank, World Trade organisation — of which the state is a decision-making member [Centre for Global Leadership 'Women Testify: A Planning Guide for Popular Tribunals and Hearings', Rutgers, 2005]

The circle of relevant respondents can reach beyond a bilateral framework to net in 'third country' responsibility (Pakistan, USA), the role of the international community, UN bodies and multilateral agencies, corporate bodies, humanitarian organisations, civil society groups and the media.

When state respondents and others fail to appear, the

judges will draw adverse inference. More practically, proxies ‘robustly’ articulating the state’s defence are used as in the PPT on Afghanistan that indicted President George Bush. A tribunal appeals to agents of change — the legislatures, the political parties, the media and society at large.

7.3 What Body of Law will govern the process?

The body of law governing the Tribunal process is dependent upon the model chosen. Public hearings are typically governed by conventional human rights’ and justice frameworks. If a criminal tribunal is pursued, the process will be grounded in an established legal framework and the applicable body of law must be determined.

- **International Human Rights laws:** ICCPR, ICESCR, UN Convention on Refugees, CEDAW, CRC, Convention on Rights of Persons with Disabilities
- **Humanitarian Laws: Geneva Conventions**
- **International Criminal Court:** [Relevant only if war crimes are highlighted for redress]
- **Regional Conventions and bodies:** European Human Rights Convention and European Human Rights Court, Inter American System for the Protection of Human Rights, African Human and People’s Rights Courts, SAARC, etc.
- **National laws:** National Constitutions: Fundamental Rights and Directive Principles of Policy
- **National and International Jurisprudence**

What Normative Frameworks are relevant for IDPs and Refugees

- UDHR, UN Guiding Principles on IDPs, Pinheiro Principles, Sphere Standards, Hyogo & Sendai Principles
- Gendered Frameworks: Beijing Platform for Action, UN SC 1325 +, CEDAW GR 30

[See above Part I Q2.
see below Part III: Q12.2]

National Policies

[See below Part III Q13.2

7.3.1 Threshold of Evidence in a People’s Tribunal is ‘balance of probability’ and not ‘beyond reasonable doubt’ as

required in a criminal court. What is required is to show direction of clear and convincing probability.

‘Balance of Probability’: Is the burden of proof in civil trials. The common distinction is made with the burden of truth in a criminal trial, which is beyond a reasonable doubt. In a civil trial, one party’s case need only be more probable than the other.

7.4 Tribunal as Spectacular Event

Women Testify

Testimony can take many forms: personalised or joint and collective. Also, testimony can be articulated through multiple media including *performing testimony*. A ‘first person testimony’ is usually one that is delivered by the person who has experienced the violation or is witness to it. However, it is possible for an appropriate person to introduce and dramatically represent such an account as a first person narrative. An ‘advocate testimony’ can also be on behalf of one or more individuals who have directly experienced the violation. A ‘joint testimony’ can be presented by more than one individual and involve a mix advocate and first person accounts. Locating the context is crucial and identifying the parameters within which accountability is being demanded for violations.

Witnesses can be limited to a dozen, as in the Burma Tribunal, or over 40, as in the NPT Kandhamal, or even more, as in decentralised or travelling tribunals. Testimony can take the form of an audio-visual presentation especially in an overall context of insecurity and constraints on travel. Poetry, music, song, dance, theatre and film –could be used to heighten dramatic effect. Clear guidelines on the criteria of selection of testimony are necessary. It cannot be emphasised enough that the Tribunal is a political act and presenting testimony is a politically conscious act. It is vital to be sensitive to the well being and security of testifiers.

Testimony lies at the heart of the Tribunal process. There is considerable experience on determining general guidelines on selecting strong compelling testimonies; compiling documentation and rigorous evidence; training and rehearsing dramatic presentation; attention to witness protection, dealing with trauma and most importantly managing expectations.

Issues of Concern

- Ethics of Care: Sensitivity to Trauma.
- Managing Expectations
- Providing for Insecurities
- Ensuring Non Partisan and Diversity of Representation
- Training and Simulation: Support Structure

Support persons need to be in place to provide political, technical, moral and emotional support.

Performing Tribunal

An integral part of the Tribunal process is the efflorescence of artistic expression as a mode of performing tribunal. The Court of Women in particular, emphasise the artistic dimension of the Tribunal process with a moveable feast of songs, poems, films, posters and dance.

The objectives of the Tribunal shape the testimony to be presented before the jury of wise women and men and should be structured within a human rights framework. The Foundation of a testimony should be based on answers to core questions below:

What is the Violation?

Who is the Violator?

What is the Remedy sought?

The violation should be rigorously documented and state specifically which HR agreements have been violated. Where testifier's safety is not endangered, the testimony should name individuals or entities that have perpetrated the violations. Violations can be the result of direct state action or failure to take necessary action as laid out under HR and HL instruments.

Remedy sought ranges from

- Policy remedies: repeal of law or its amendment; adoption of national legislation and policies; more effective implementation of law or policy
- Retributive: bringing in specific charges civil and criminal
- Financial remedy: compensation
- Restorative: Political remedies – public apology from state /non state

7.5 Judges and Respondents

The context of a Tribunal determines the 'panel of judges'. Selecting high profile judges⁹¹ and respondents can be a very effective way of drawing government and media attention to the event. The choice of 'judges' conveys an air of gravity and authority that is useful when targeting specific policy-making. Also judges tend to have strong legal human rights backgrounds and their statements at the tribunal pay particular attention to ways in which specific human rights instruments have been breached and identify individuals or bodies that are accountable. **Judges are able to validate the Tribunal/ hearing process**

Respondents are drawn from a wider variety of backgrounds, social activists, academics, writers, artists and media figures. Reflecting this diversity, respondent statements include specific recommendations that link the local with the global. They are able to situate the struggle for human rights of the individual testifier within the global movement for women's rights and accountability. They can include more general indictment regarding the causes of HR violations.

A panel of one to four judges/respondents is desirable. Internationalised tribunals tend to not include country origin judges/ respondents. The Advisory Group plays a crucial role in the identification and selection of judges and respondents. The Statement(s) of judges and respondents includes the Tribunal's Recommendations,

7.6 Body of Evidence

Preceding Mechanisms

Official and unofficial courts and tribunals proceed on the basis of a body of evidence. Official Tribunals such as Nuremberg (1945) were preceded by a United Nations (Allied Powers) War Commission 1943-48 which was concerned with assembling dossiers of evidence for both international and national processes. Trial of the Juntas: The National Criminal Court of Appeals, Argentina (1985) was preceded by the National Commission on the Disappearances of Person set up by President Alfonsin. International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) was preceded by UNSC Resolutions setting up a Commission of Experts with full investigative powers. Extraordinary Chambers in the Courts of Cambodia (ECCC) relied extensively on the

Documentation Center of Cambodia (DC-CAM) set up by the Yale Genocide Programme. The Special Panels of the Dili District Court (aka East Timor Tribunal) relied on The Int'l Commission of Inquiry on East Timor and was empowered by the United Nations Transitional Administration in East Timor (UNTAET) to gather information on HR and HL violations. In the case of the Bangladesh International Crimes Tribunal (BICT) there were several preceding commissions, including Hamoodur Rahman Commission, an inquiry into Pakistan's involvement in East Pakistan from 1947 to 1971.

People's tribunals are driven by the sense of their being a 'void' in the existing system to address human rights violations i.e. citizen's disappointment at the failure of official processes, institutions and legal frameworks, and people empowering themselves to challenge denial and impunity. Therefore, often some fact-finding mechanism official or unofficial precedes the Tribunal process. The *IPT 1965: Indonesia (2015)* was propelled by the failure of the government to acknowledge and recognise the report of the Indonesian National Human Rights Commission (Komisi Nasional Hak Asasi Manusia, usually abbreviated to Komnas HAM) of 2012, and to initiate as recommended, proper investigations into the large-scale crimes that were committed in 1965 and its aftermath.

In the case of the *Citizen's Tribunal in Ayodhya (1993)*, it was "the futility of unearthing the truth and identifying the guilty from the proceedings of the official inquiry body" that prompted a group of concerned civil society actors — academics, film makers, social activists, journalists, lawyers — to co-opt themselves and convene a tribunal. Indeed it was the panel of three eminent retired judges that mandated the setting up of a Commission of Inquiry that visited Ayodhya and Faizabad and submitted its report. Following this there was a week-long hearing at which 74 witnesses deposed.

For the *People's Tribunal on Torture (2008)*, in the two and half years leading up to the People's Tribunal on Torture (PTT), 'district human rights monitors' conducted 800 fact findings in cases of police torture of which 182 of these cases were pursued in nearly 750 legal interventions, which targeted governmental authorities. In the *People's Tribunal on Communalism in Orissa, (2005)* three subgroups of the People's Tribunal dispersed to various districts in the state, attending hearings organised by local people, independent organisations, and right wing groups.

7.7 Organisational Issues

Tribunals are demanding and expensive processes and require commitment, formidable organisational capacity and substantive funding. The process of conceptualising, adopting and organising a tribunal, especially a regional tribunal can take even seven years as the Women's Court Organising Committee of the former Yugoslavia found.

Tribunals that choose a Criminal Court model require more intensive planning, as testimony and evidence has to be diligently gathered and documented to establish a breach of law and requires two to three years. A public hearing model is less formal and shorter. It can range from personalised spontaneous testimony to structured testimony aligned to the objectives of the Tribunal. The planning process can range from several months to a year depending upon objective and methodology.⁹⁴ For instance, a Tribunal that emphasises as an objective –'[to] create a legitimate public platform endorsed by civil society stakeholders...' entails a more consultative, longer process.

Regional and International Tribunals:

Regional and international tribunals bring their own challenges to the process. The unity of the experience of HR and HL violations and the coherence of the sub themes bring the dispersed country groups together on a common regional and international platform. Various tribunals have experimented with different processes. In the *Women's International War Crimes Tribunal on Japan's Military's Sexual Slavery* prosecution teams were formed country-wise, framing country specific charge sheets. The focus was on building evidence rather than on sharing survivor testimonies. The stories were used to reconstruct war rape and slavery as a breach of international law.

Courts of Women for former Yugoslavia or the *Women's Court: A Feminist Approach to Justice* (Sarajevo 2015) built upon preceding women's public hearing processes in respective countries to convene a regional court that brought face to face women from countries which had suffered the worst war hardships and others which came from countries that had organised the war machinery. The initiative at a feminist approach to justice involved creating an awareness of **the common experience of women as paying the highest price of war militarism, nationalism and criminal privatisation**. Despite the appreciation of difference amongst the women, the Women's Court process involved the search

ORGANISING A WOMEN'S COURT: A FEMINIST APPROACH TO JUSTICE (2015)

In 2006, frustrated by the failure of the ITCY to deliver justice — especially when Slobodan Milosevic died without ever being punished — Women in Black, Belgrade, re-launched the idea of an initiative for a women's tribunal on crimes against peace. They mobilised women from the former territories of Yugoslavia to organise the *Women's Court for former Yugoslavia*, in 2015 renamed *Women's Court: A Feminist Approach to Justice*. Almost all the women on **the Initiative Board** of the Women's Court were also members of the Coalition for Establishment of a Regional Commission Tasked with Establishing War Crimes (*REKOM*). However, given REKOM's broad focus, many feared it would not do justice to feminist perspectives on justice.

At the end of 2010, the activists in Kosovo adopted the initiative for the Women's court for the region of former Yugoslavia. The Initiative Board of the Women's Court comprised eight organisations across the countries of the region. The Organising Committee of the Women's Court comprised ten member organisations including Women in Black, Belgrade, the coordinator and organiser of the programme activities.

Governed by feminist ways of working, the Court valued and respected autonomy and therefore expected national and international institutions to get involved in opening up topics and activities to awaken the interest of women and that the particularities of the countries would make for different partnerships and different degrees of involvement [e.g. UNDP in Kosovo].

Female and male activists from around 200 civil society organisations participated in the process of organising the Women's Court (mostly public presentations). Eventually, Women in Black and 18 feminist discussion circles held some ten consultations/ trainings and organised 16 regional educational seminars. The Women's Court and local civil society groups organised some 136 public presentations in a hundred towns between 2011-2014 to gather information concerning the concept and vision. Integral to the process was the production of engaged art and documentary films.

They did not follow any model mechanically, notwithstanding certain preconceptions of Women in Black. Eventually it was a mix of a Women's Court and Women's Tribunal — *"The Women's Court allows more space for testifying healing of trauma and regeneration of relationship, but it is necessary to put pressure on the legal system through the WC."*

The ethics of care were emphasised in the work with potential witnesses in the simulation activities of the Women's Court over 2011-12, which saw them emerge as agents of the entire process of organising the WC, and not as objects. Potential witnesses have shown clear awareness that they are not representing only personal experience, but the experience of many women. The Women's Court developed a small guide to testifying for use of mentors and witnesses.

[Summarised from Stasa Jajovic "Women's Court - A feminist approach to Justice" in Women's Court About the Process, Belgrade, Women in Black 2015]⁹³

for common denominators of position of women on gender and nationalism, political, economic and social concerns. Organisationally speaking, it also confronted the problem of disparities in involvement and commitment of partners and emphasised the need for clarity on roles and responsibilities of partners so as to manage mutual expectations.

“Every Court therefore has a different ethos, each a different emphasis, sometimes determined by the local and partner organisations, sometimes by the themes of the World and Regional Social Forums, sometimes by the coordinating team... What connects these diverse Courts of women is the methodology that challenges dominant ways to know, to knowledge...” —Corinne Kumar

People’s tribunals greatly vary in scale and expense. At one end concerned citizens can co-opt themselves and convene Tribunals e.g. *Citizen’s Tribunal Ayodhya* or *Concerned Citizens Tribunal Ayodhya*. Altogether at another level is the PPT process. Aggrieved groups initiate the hearings, that are normally conducted in an international venue by a bench of three to 11 sitting tribunal judges many of whom are Nobel Laureates and other distinguished jurists, statesmen, scientists, scholars and writers. Accused parties are invited to present their case at the hearings. If they do not attend, the PPT appoints a legal counsel to represent their case in a rigorous manner. The PPT applies principles of international law, and is bound by the Algiers Declaration of the Rights of Peoples as well as its own statutes.⁹⁵

- *Women Court (Sarajevo)*: An Organising Committee of ten member organisations from across the region was constituted to actualise the Tribunal; the NGO Women in Black Belgrade was the coordinator for the programme activities.
- *International Tribunal on Women Human Rights (Vienna)*: The Secretariat was housed at Douglass College (Rutgers University, N.J., USA), and backed by the Dean and the University community, further supported by women’s rights and human rights groups including Human Rights Watch. UNIFEM facilitated the international coordinating committee, and a consortium of national, regional and global donors funded the one-day Tribunal.

- *International Tribunal for Crimes against Women of Burma (New York)*: The Secretariat had 13 staff, eight from Nobel Women’s Initiative and five from Women’s League of Burma. The Executive Director from Nobel Women’s Initiative was General Secretary. The Dutch Ministry of Development Cooperation MDG3 Fund, women philanthropists, and Arsenault Family Foundation funded the one-day Tribunal. A ‘panel of four judges’ that heard the testimony of 12 women from Burma included Jodi Williams (USA), Shirin Ebadi (Iran), Prof. Vitti Mutarbhorn (Thailand), and Dr. Hei Soo Shin (South Korea).
- *National People’s Tribunal Kandhamal (Delhi)*: a three-day Tribunal organised by the National Solidarity Forum, a country-wide solidarity platform of 55 concerned social activists, media persons, researchers, legal experts, film makers, artists, writers, scientists and civil society groups. The Tribunal heard 45 victims’ and survivors’ representatives. Victim-survivors of the violence narrated their experiences to the Tribunal through duly notarised affidavits, which were taken on record officially by the panel of jury members (not all could be heard). They also heard expert testimonies of reports of field surveys, research and fact-finding. The NPT jury was headed by Justice A.P. Shah, former Chief Justice of the Delhi High Court and included Harsh Mander (National Advisory Council), Mahesh Bhatt (film maker), Miloon Kothari (ex-UN Special Rapporteur on Right to Housing), P.S. Krishnan (retired Secretary, government of India), Rabi Das (senior journalist), Ruth Manorama (women’s and Dalit rights activist), Sukumar Muralidharan (journalist), Syeda Hameed (member of Planning Commission, government of India), Vahida Nainar (international law expert), Vinod Raina (scientist and social activist), Admiral Vishnu Bhagwat (ex-Chief of Naval Staff) and Vrinda Grover (advocate and human rights activist). The event culminated in a press conference at the venue of the Tribunal on its last day.
- *International People’s Tribunal, 1965 Indonesia, and The Hague*: The organising committee consisted of 15 members including Saskia Wieringa, chair Foundation IPT and the coordinator of the research report, and Nursyahbani Katjasungkana, general coordinator IPT 1965. An international seven-member jury included

Dr Helen Jarvis the former Chief of the Public Affairs Section of the Cambodia Court. The three expert scholar witnesses included Wijaya Herlambang, member of the International Steering Committee of the International People's Tribunal on Crime Against Humanity in Indonesia 1965, and seven prosecutors who travelled from Indonesia.

Tribunal Organising Committees decide on **Jury panel, Prosecutors, Experts and Witnesses**, in accordance with the model favoured. A tribunal weighted more towards a public hearing or Truth telling and sharing is likely to choose a more mixed panel than one that conforms more closely to an adjudicatory model. An alternative is to invite a panel of 'expert commentators' who can offer impromptu responses and suggestions for change.

7.8 Coordination and Secretariat

At the core of the Tribunal organising process is assigning a coordinator and a competent secretariat. The Coordinator has the overall responsibility in collaboration with the Advisory Group to track and shape developments during the organising process, delegating tasks as appropriate and to communicate necessary information and briefings to those involved, coordinate the development of testimonies in line with themes and objectives, coordinate moderators, besides being responsible for the judges, and determining the overall format and structure and liaising with the communications expert. During the Tribunal event, the Coordination team will have overall responsibility for coordination of event and its multi-media documentation, the procedure, management of venue and logistics. Finally, the Coordinator will work with the Advisory Group to plan follow up strategies.

Coordinators are generally individuals or organisations 'obsessively' committed to realising the Tribunal, e.g. Teesta Setalvad, Concerned Citizens' Tribunal, Gujarat; Nursyahbani Katjasungkana, IPT 1965: Indonesia; Tapan Bose, Citizen's Tribunal Ayodhya. In the context of a regional tribunal, there are identifiable country coordinators or organisations. They work through several sub-groups, including **communication strategy, documentation resources, witness and testimony preparation, partnership building and Tribunal Report and allied publications, films and artistic productions.**

Volunteers need to be recognised as an important resource and mentored. Most crucially, **partnerships** need to be built

and carried with sensitivity. Multiple **stakeholders** need to be identified and reached out to. Responsibility for fund raising and liaising with **donors** needs to be professionally managed. Importantly, while it is necessary to develop terms of reference for all these categories of actors, the lessons gleaned from several Tribunals, especially the Women's Court, has been the importance of flexibility, especially in carrying partnerships.

7.9 Venue and Timing

The choice of venue can be symbolic as in the case of Sarajevo for the Women's Court for pre-Yugoslavia. Sarajevo was Yugoslavia's most multi-ethnic city and the one where people suffered the most. When a Tribunal has to be held outside the country of focus — like IPT Indonesia (The Hague), PPT Sri Lanka (Dublin and Bremen), or IPT Afghanistan — the determining factor can often be the existence of a strong supportive partner in a third country or the symbolic significance of the venue as a site for international justice. In instances where the Tribunal is located at a distance from the site of its relevance, clearly its audience lies beyond the Tribunal. In that case there is great pressure to develop an effective communication strategy, robust documentation and creative ways of disseminating through live stream aimed at relevant and interested stakeholders. (Note: In the case of IPT Indonesia, the authorities in Indonesia blocked the live streaming to law schools and other constituencies).

Another strategy is to hold press conferences at a third venue. The PPT Sri Lanka was convened in Bremen, but the press conference was held in Geneva. The Tribunal submitted its findings on Sri Lanka's war crimes to the Secretary General of the United Nations, to other United Nations organisations and to other national and international bodies.

Timing can be driven the symbolic significance of a date but can equally be influenced by the practical and strategic convergence of events such as the World Social Forum.

7.10 Audience and Media Outreach

The actual audience at the Tribunal event is likely to be limited especially in the case of the event being held outside the country /region of immediate relevance because of the adversarial nature of a Court Hearing. Live streaming to important hubs can function as an audience multiplier, though this is dependent upon open access. The use of social



TOP: First meeting of the Tribunal Preparatory Committee in Kathmandu, Nepal, December 2014
 BOTTOM LEFT: Tribunal Meeting on the National Process Afghanistan Independent Human Rights Commission (AIHRC), Kabul
 BOTTOM RIGHT: FGD Civil Society Organisations, Islamabad

media as well as citizen journalism can be game changers.

Tribunals held back-to-back with events like the World Social Forum can garner wider participation. Importantly Tribunals enacted as part of wider mobilisation campaigns are likely to enjoy much wider outreach and media coverage. A media management kit needs to be developed with professional expertise.

Media coverage is hugely important and in that context, the post-Tribunal press conference is critical. Several PPTs have organised post-Tribunal conferences in Geneva in order to leverage the international community and put pressure through naming and shaming. A professional media strategy

and an experienced media sub group are required for liaising with the multi-media outlets, including social media. Survivor /witnesses need to be given some media training for effective communication.

7.11 Tribunal Recommendations and Report

Recommendations are distilled from the comments of the panel of judges and respondents and addressed to the government, the international community and agencies and to civil society. They should be aligned with the objectives of the Tribunal or the public campaigns preceding the Tribunal. They are likely

to be largely general especially in the context of a regional tribunal. [See Part III, Q. 12.3]

Tribunal Report should be a lively, well-written post-Tribunal Report providing an overview, with core recommendations made ready in a timely manner. A professional editor needs to be entrusted with this task. Documentation of the organisational process is an important resource and should constitute a part of the documented Tribunal Proceedings. Wide ranging dissemination of the report to multi-stakeholders is a crucial for an effective tribunal.

An important advocacy tool would be the development of a *Communication and Dissemination Strategy* for the Recommendations and the Report. This requires professional expertise, for which a competent guide and mentor within the Advisory Group is necessary.

7.12 Life after the Tribunal:

Too often follow up strategies are undermined by the exhaustion that sets in after the culmination of a process and this fatigue is reinforced by exhaustion of existing funds. Consequently, it is critical to plan a follow up strategy early on and provide for some basic funding for post tribunal activities such as:

- Follow up with testifiers: including pursuit of litigation
- Advocacy on policy change
- Documentation: creating a historical record
- Publication and archiving; multi-media outputs

8. WHAT IS THE RISK ASSESSMENT?

The Tribunal is a political process and especially in view of the adversarial court structure of the Tribunal, there is overall official sensitivity to naming and shaming, and also likely risk from non-state groups and individuals. This entails sensitivity in the management of the Tribunal process, plus particular care and protection of witnesses. This also makes it an imperative that the Advisory Group comprises members with sagacity and considerable political outreach and capacity.

9. FUNDING AND BUDGET COMMITTEE

Tribunals are ambitious and expensive processes and require substantive funds. Consequently a separate committee needs to be set up and assisted by a professional fundraiser. However, care should be taken to not compromise the independent functioning of the Tribunal. Budgets need to be professionally managed, transparent and accountable.

In the case of the Sarajevo Women's Court of the Balkans, the organisers maintained that their concern to be independent of donor agendas led them to favour a coalition of smaller and more diverse funding partners. This also resulted in a longer preparatory time frame, seven years. Moreover the two-tier process of the Balkans Tribunal, country mobilisations and the regional event, encouraged decentralised initiatives for fundraising for activities in the country.



Nazma Bewa wife of Asuruddin Master, who initiated a peace dialogue between villages from different communities and was murdered, Assam, India

PART 3: III SOUTH ASIA TRIBUNAL ON WOMEN'S HUMAN RIGHTS

10. WHY PROPOSE A 'REGIONAL WRN TRIBUNAL'?

A Regional Tribunal is premised on WRN's fundamental conceptual understanding of the inter-linkages in the conflict dynamics of the sub-region which has created a context in which women confront militarisation, extremism and exclusion with serious consequences for their human rights, already at huge risk in a region of structurally entrenched gender inequality. Notwithstanding the differences among women within and between countries, the common experience has been that women suffer disproportionately from militarism, extremist ideologies, ethnic wars, criminalisation of armed struggles and governance deficits.

Women and their dependent children make up the majority of the forcibly displaced as a consequence and indeed major strategy of armed conflict. The "invisibilisation" of IDPs is the common experience of South Asia. Our states do not recognise that there is an IDP problem or the need for an alternative discourse on war and militarism to prevent the relentless reproduction of hundreds of thousands of forcibly displaced persons. Moreover, the shock of forced displacement pushes the refugee/IDP into chronic poverty and prevents inter-generational escape from impoverishment, deprivation and marginalisation. IDPs find themselves denied a life with dignity.

"I don't know much; I am illiterate. But we are also human, we have a right to live. What life? We have no money to educate our children, give them good food, get them married, no work, nothing. This is violence! Not my husband beating me. — Sunita Murmu, BTAD, Assam, India

Ending violence and militarisation requires transforming structures and strategies that have reinforced confrontation and conflict in the region. WRN is founded on the belief of our shared common experiences and our inter-dependent futures. To this end, WRN connects women's peace and gender equality advocates, committed to working collectively within and across national borders and cultures.

The WRN initiative for a Regional Tribunal focuses on the forcibly displaced as the visible and vulnerable face of the civilian in war, with particular attention to the common experiences of human rights violations of women in IDP situations, in a context in which extreme gender inequality marks Afghanistan, Pakistan and India and renders the IDP situation of vulnerability all the more desperate for women and girls.

10.1 What is that Situation of Vulnerability?

- The IDPs' situation of vulnerability is epitomised in the fortitude women perforce show when pregnant and fleeing for their lives, when they give birth under a tree or in a camp unaided, and when they confront the callousness of a system that registers no births, lest it be obliged to record infant deaths caused by lack of clean water, food, shelter and basic healthcare.
- It is reflected in the entrapment or compulsion of IDP women and girls who fall into survival sex, 'trafficking', and exploitative early marriage practices such as walwar (bride price). The camps of the forcibly displaced act as magnets to traffickers.
- It drives female-headed households to send out minor sons and daughters or orphans to work as rag pickers depriving them of education, exchanging the security of the home

for the streets, and denying them a future.

[Derived from WRN Community Conversations Afghanistan, Pakistan, India, IDPs 2016]

The lofty rhetoric of UN Guiding Principles underpinned by international human rights and humanitarian law exhorts states to prevent forcible displacement and not produce IDPs. However, as we follow the narratives of women across the displacement cycle of flight, assistance and durable solution, it is clear Afghanistan, Pakistan and India have pursued policies, of commission and omission, which have cross border implications for violence escalation and insecurity. These policies produce new waves of IDPs and violate the protection mandate, which is the measure of a sovereign state.

10.2 Value of Regional Framing

- A South Asia sub-regional approach helps us to explore the relevance of **developing regional standards for IDP protection** in a context of widespread chronic poverty and deprivation. It promotes a positive regional contagion of credible policy and standards without prematurely advocating a **Regional IDP policy**⁹⁷ in a region more bound together by confrontation than cooperation.
- Regional action is also justified by the **dynamics of forcible displacement** in a region where **today's IDP becomes tomorrow's refugee** and today's refugee becomes tomorrow's IDP, therefore demanding a regional engagement with the issue.
- The Regional Tribunal Process is a means of **fostering trans-regional solidarities** and a **joint exploration of a feminist understanding of justice** through our focus on the human rights violations of women in IDP like situations. It is expected that as women are not a homogenous category but are differently placed, bringing face to face women from a state which has suffered most (e.g. Afghanistan) and another which is held co-responsible for producing and sustaining the armed groups (Pakistan), could be a challenge but also an opportunity in the search for common denominators.
- Regional framing of the Tribunal on IDP women's rights also enables us to comparatively assess the **differences in IDP protection effectiveness when there is internationalised humanitarian access** as in Afghanistan, in contrast to India and Pakistan's policies of restricted or no international humanitarian access.

11. WHAT ARE THE OBJECTIVES OF WRN REGIONAL TRIBUNAL?

Overall Mission

“Women from Afghanistan, Pakistan and India confronting multiple dimensions of insecurity, publicly testify and demand accountability from state and non-state actors and initiate regional processes towards addressing violations of human rights.”

Objectives

The WRN Regional Tribunal should:

- Create a legitimate **public platform**, endorsed by civil society stakeholders, for amplifying women's voices on the impact of conflict and militarisation on the human rights of women in forcibly displaced situations.
- **Make visible the IDP problem:** women's testimony across caste, class, religion, ethnicity and national borders should make visible the common experiences of violation of IDP women's right to — security and protection including against sexual violence and exploitation; non-fulfilment of socio-economic and cultural rights and citizenship rights. It should **highlight women's resilience, innovative organising and coping strategies**.
- Foster an **alternative discourse** that critiques militarism and war, **challenges the impunity** that cloaks the excessive use and abuse of force, and instead promote a politics of inclusion and a just peace.
- **Pinpoint accountability** and in particular **failure of the state (s)** which has primary responsibility, as a measure of its sovereignty, to provide protection to its own citizens, including preventing 'arbitrary displacement', and through all stages of the displacement cycle, i.e. security in flight, humanitarian assistance and durable stable solution.
- **Build a case of human rights violations** of women IDPs in the context of conflict, militarization, extremism and insecurity, based on gross and systematic breach of rights guaranteed by national laws, international humanitarian and human rights laws and recognised normative frameworks.
- **Demand Redress.**

12. WHAT DOES THE 'PROCESS' OF ACTUALISING WOMEN'S HUMAN RIGHTS TRIBUNAL INVOLVE?

12.1 Selection of an Appropriate Model: Hybrid Model

The objectives proposed require a hybrid model: a mix between a woman's court of public testimony and human rights court, but weighted more towards 'Women Testify' and advocacy. Parallel efforts will be made to use testimony to build evidence to construct a rigorous case of human rights violations, to pinpoint culpability and demand accountability. To some extent the model will also be experientially driven.

Case I: The possibility of building an ambitious case around the state failure to 'protect' against, and prevent forcible displacement, centring on drone attacks, the failure to exercise due diligence in preventing the takeover of public space by extremist militarised groups, the co-optation of warlords and ex-militants and the vested political interests that drive the nexus between politicians and criminalised militants. Alongside all this is the callousness of the state to not bother with early warnings (e.g. prior to launch of a military cleansing operation) to enable preparation for evacuation, or to consult with or inform people who are to be forcibly displaced — in contravention of the UN Guiding Principles. At the other end is the state's gross neglect in terms of achieving a stable solution that could include options other than safe return, for instance local integration or third place resettlement. Camps are often arbitrarily closed, and people uprooted from homes, abandoned to fend for themselves.

- **Afghanistan:** a focus on the Kunduz displacement will bring under the radar the role of the international community in violent bombardment attacks (despite the stated policy of a non-combative role) and the targeting of civilians and humanitarian facilities e.g. the bombing of Kunduz hospital, impunity, and redress issues for human rights violations.⁹⁸
- **Pakistan:** Drone attacks: a situation produced by acts of omission, the failure to exercise due diligence, entrenched impunity, and the co-responsibility state and international community.⁹⁹
- **India:** Khagrabari massacre (2014): Issues involved include impunity, the nexus of politicians with ex-militants, ethnic

cleansing, minority discrimination, failure to disarm ex-militants and normalisation of militarisation.¹⁰⁰

12.2 Tribunal Process Structure

Two-Tier structure: Country Campaign activities and Regional Tribunal event.

The Regional Tribunal is envisaged as a spectacular event that marks the culmination of a year-long campaign of country-level activities. The emphasis on a *'legitimate public platform, endorsed by civil society stakeholders'* brings with it the obligation to build a degree of community or country ownership of the process. Indeed the preliminary field investigation into IDP situations in the three countries (WRN Community Conversations), and the discussions with women's groups who would be potential partners clearly emphasised that 'legitimacy' needs some kind of country group-initiated activities. These activities should have coherence with the themes of the Regional Tribunal and serve as crucial building blocks towards the convening of the Regional event.

Several Regional Tribunals have pursued this route — the Women's Court (Sarajevo 2015) was preceded by a series of national level activities including public hearings — for example, the National Tribunal on Torture (2008) was preceded by state level hearings and allied litigation processes. This involves a two-tier structure: a somewhat autonomous process at the national/local level in collaboration with the Coordinator of the Regional Tribunal Organising Committee. For instance, the Sarajevo Balkans Court was preceded by a series of activities at the country levels ranging from seminars on history and feminist justice to fact-finding missions and documentation, the promotion of various forms of artistic articulation and the collection of testimony and training workshops. Its effect was to mobilise women's engagement with a host of activities, building up to the Sarajevo Tribunal event.

The two-tier structure is vital to offset the limitations of a Regional Tribunal being held in a distant venue outside the region, as is likely the case of the South Asia Tribunal on Women's Human Rights. The country level activities will not only pave the way for the regional event, but also be an integral part of mobilising a campaign of engagement with the Tribunal's concerns and issues. Thematic coherence will knit together the diverse country level activities.

Country level activities leading up to the Regional Tribunal should include some form of a people's fact-finding

commission and/or deepening the WRN Community Conversations model to amplify the voices of women IDPs and collect information and testimony. Importantly, public hearings in multiple sites could be held depending upon the security context. Such ‘Women Testify’ exercises would a) raise visibility and awareness, b) empower women victim/survivors to become subjects, c) pave the way for selecting and rehearsing testimonies and evidence for the Regional Tribunal, and d) to provide allied opportunities for pursuing in some particular cases the formal legal process for redress and compensation. The Women’s Court model provides important learning on the significance of integrating artistic articulation as an integral part of the Tribunal process. Also, there is a need to reach out to decision makers known to be more open and sensitive, who can turn out to be valuable allies.

Activities will need to be initiated by country level Tribunal teams in dialogue with the Tribunal coordinator and the Advisory Body Group. A two-tier structure lengthens the preparatory timeline for convening a Tribunal — **possibly 18 months** — but is a vital investment for building engagement, legitimacy and effectiveness.

12.3 Preceding Mechanism and Fact-Finding

As discussed earlier, Tribunals need to be preceded by the report of a Commission of Inquiry or accompanied by an allied process of assembling a body of evidence, although some Tribunals are themselves fact-finding bodies. As regards the South Asia Tribunal, WRN has already undertaken preliminary field visits and made quick field assessments of the situation of IDPs, identifying gendered concerns, gaps in institutional structures and policy responses and the resultant human rights violations. [WRN Community Conversations derived from field visits].

Although there is a considerable body of published studies and especially valuable ‘grey’ reports (Afghanistan has most available), it is evident that there needs to be much more investment into research and field inquiry in order to pave the way for the Tribunal. In particular, the aspect of the Tribunal which approximates a human rights court will need a substantive body of evidence and require a dedicated research and legal team.

The proposed two-tier structure of a preceding ‘country activity’ involving a fact-finding commission and public hearing processes should provide the basis for collecting information and documentation. These activities will be

coordinated by the Country Coordinator of the group responsible, in consultation with the overall Regional Coordinator. Country level activities will be steered by local country partner(s) and the country organising committee. Allied activity funds tangentially related to the Tribunal should be autonomously raised as far as possible.

Connecting with other countries’ regional processes:

It should be noted that some organisations are already pursuing related cases in court. For example, the Centre for Social Justice and Jhai Foundation are engaged in legal work in BTAD, Assam, Northeast India.¹⁰¹ In the context of the Muzaffarnagar communal violence aftermath, another NGO, Majma, is engaged in a rights-based grassroots collective action pursuing justice for victim-survivor communities whose rights have been violated.¹⁰² Demand for accountability is premised on equal citizenship rights and non-discriminatory entitlements, including protection from violence, right to justice, reparations and resettlement.

In the development of testimonies presented at the Tribunal, allied action strategies that have been utilised or are in process should be highlighted, including lawsuits, complaints procedures, lobbying efforts and grassroots mobilisation around the case.

INVISIBILITY OF WOMEN:

Pakistan: (UNIC 2009) assessment of the mass waves of IDPs from Swat; female-headed households, estimated at 31,740, need both economic and psychological support. Due to heightened restrictions on women’s mobility when they are outside their communities; women are less visible and accessible to relief efforts and more vulnerable to exploitation and abuse.

The Lower Dir survey showed that women were sweltering in the heat, wearing clothes suitable for their erstwhile mountain habitat, unable to relieve themselves outdoors, or ask for medical help or fetch food or water; there was a pregnant woman in 17 per cent of the 150 IDP households surveyed. Among displaced families 1.6 children died within a year of birth, double the national infant mortality rate.¹⁰³

12.4 Thematic Focus

The Tribunal focus is on the human rights violations of women in IDP-like situations in the context of conflict, militarisation and extremism. Protracted conflicts in the region have displaced communities for decades, while new conflicts threaten to displace hundreds of thousands more people. Within this overall thematic focus, the Tribunal will engage with all stages of the displacement cycle and the failure of protection of women's human rights.

The process will involve at the country level collecting documentation and testimony structured around 'three envelopes' as it were i.e. **a) the production of forcible displacement and the context of flight; b) IDP protection and humanitarian assistance, c) stable solution: return, integration or resettlement.** The country level situation should drive the process and the choice of sub-themes and emphasis, and the remedies and redress proposed. However, the Coordinator(s) and the Advisory Group need to be attentive in maintaining an overall coherence.

12.4.1 Collecting Documentation and Selecting Testimony

Stuffing 'Three Envelopes':

i) Women confronting militarisation, insecurity and conflict — induced forcible displacement.

Pinpointing Accountability in

- Failure to protect against preventing arbitrary 'forcible displacement', i.e. disproportionate use of force, targeting of civilians with impunity and absence of the exercise of due diligence
- The role and responsibility of international community for violation as a consequence of military action (collateral damage); their support of non-state actors guilty of crimes of war, including sexual violence and suppression of women's rights; failure to protect human rights defenders and humanitarian workers
- Absence of early warning
- Negligence of protection issues in flight, with attention to women's vulnerability, especially reproductive rights.

ii) Emergency Humanitarian Assistance in displaced situations

Violation of Life with Dignity

- Ad hoc, arbitrary and discriminatory state responses
- Gaps in protection and assistance:

- Government denial of access to international humanitarian assistance
- Gender neutral policies
- Non-fulfilment of social, economic and cultural rights: entitlements doled as charity
- Infantilisation of women IDPs: Going through the men — missing women in consultative mechanisms of assistance and peace building and reconciliation, missing women in livelihood options
- Women as unequal citizens
- Absence of disaggregate data: no prioritisation of special categories: female-headed households, pregnant or lactating women, adolescent girls
- Protection, negligence and social protection vacuum: High risk coping strategies:
- Survival sex/ trafficking, early marriage, walwar (bride price)
- Breakdown of social community and right to family
- Access to justice: socio-legal impunity; trivialisation of VAW, silence on sexual violence

iii) Stable and Durable Solution

Right to be Consulted: Right to be Informed: Right to Return or Re-settlement

- Right to return in conditions of safety and restored infrastructure: No forcible return
- Protracted displacement: When does an IDP cease to be an IDP?
- When return is not possible or desirable: Accountability for neglect of obligation to provide for other options of local integration and resettlement
- Women not deemed worthy of consultation
- Gender neutral policies of 'stable solution': special vulnerable categories neglected, No prioritisation of gender equality policies in land and housing entitlements.

12.4.2 Shaping Witness Testimony

The objectives of a Hybrid Tribunal – Public Hearing and Human Rights Court – will shape the selection and nature of witness testimony. The thematic focus on the human rights of women IDPs requires that all three moments



WRN Community Conversation with women IDPs from North Waziristan, Pakistan, in Sukari, Bannu a hyper conservative area with Taliban and Daesh (ISIS) supporters.

of the displacement cycle be addressed — production of forcible displacement and flight, humanitarian assistance in displacement, and stable solution. While there are common experiences across the sub-region of Afghanistan, Pakistan, and India, differences in emphasis are to be expected — in the case of Afghanistan and Pakistan, the construction of a human rights case against drone attacks or ‘collateral damage’ to civilians in military operations. Testimony will be structured around the questions — what is the violation, who is the violator and what is the remedy? These are issues that will drive the process.

In view of the volatile security situation, the lack of security for witnesses, and the cultural constraints that inhibit women of some of the affected communities from testifying, creative and proxy forms will have to be explored at the country levels and particularly at the Regional Tribunal event. The country level public hearings will provide the opportunity for selection and training as well as documentation. Issues such as managing expectations, sensitivity to trauma, attention to security and the ethics of care and non-instrumentalisation of women apply at both local and regional levels.

Ensure Diversity and Non-partisan Testimony:

Within a country and across borders, women are differently placed and divided by complex ethnic, religious, spatial, national and class fault-lines. It is important while selecting and organising testimony to be sensitive to the challenges and opportunities. For instance, bringing face-to-face women from the state which has suffered most (Afghanistan) and another that is held co-responsible for producing and sustaining armed groups (Pakistan), could be a challenge in the search for common feminist denominators. Similarly, in the context of inter-ethnic and inter-religious violence in India’s Northeast, complex negotiations are involved when bringing face-to-face Assamese and Bodo tribals, Bengali Muslims and Bodos, or *Adivasi* (Indigenous people /original inhabitants) tribals and Bodos.

When making visible the common experiences of violation of women’s human rights, it is important to demonstrate that there are no fixed victims or perpetrators, but all feel vulnerable, all fear the other.

Introducing testimony will require an appropriate member of the Advisory Group or expert to provide context and locate it within the international human rights dimension and the country context. Care needs to be taken to not eclipse the dramatic charge of the personalised testimony by UN-ese and technical details. Testimony needs also to be grouped perhaps in the three envelopes identified above.

Following all the hearings, the Tribunal should conclude with a strong call to action.

[See Part II Q. 7.4 ‘Women Testify’ above; also Centre for Global Leadership ‘Women Testify: A Planning Guide for Popular Tribunals and Hearings, Rutgers, 2005]

12.4.3 Notes on Constructing a SAMPLE HUMAN RIGHTS CASE: PAKISTAN IDPS

FAILURE TO PREVENT AND PRODUCE IDPS:

North Waziristan: Pakistan state's deliberate policy as well as failure to exercise due diligence

Perception of the IDPs: Victims of state policies, i.e. the constitutionally sanctioned policy of abandonment and neglect of the exceptional governance structures of the Federally Administered Tribal Areas (FATA), and Provincially Administered Tribal Areas (PATA).¹⁰⁶

- In return for special autonomy, the state made no investment for decades in the development of FATA and PATA. In hindsight a grave mistake, vacuum filled by extremist elements
- State agencies failed to prevent the takeover by extremist groups and the abuse of civilian population
- Pakistan state presence in FATA is the Army: viewed as oppressive, with civilians caught in the middle.¹⁰⁷ Families of targeted killed victims or survivors of terrorist attacks got negligent state support including for the injured.

A "mistrust of the state (army) promise about building peace in their areas — most of the IDPs believed that the government is least interested to solve their problems and therefore are reluctant to return and face (the situation)..."¹⁰⁸

Impunity: Drone attacks

FATA zone of exception... Collateral Damage

Edick IDP group: Five families in their neighbourhood were killed in drone strikes. According to Dilaza, a woman IDP, "25 people were killed and only three family members were left because they were out of town - one male was abroad, two girls were in the madrassah" [Pakistan WRN CC 2016].

Discrimination in state response

Particular vulnerabilities faced by minority communities elicited no response from government – e.g. Taliban imposed a religious tax on resident Sikhs: the matter was raised in the National Assembly Standing Committee on Minorities but the government took no preventive action.¹⁰⁹

LACK OF PREPAREDNESS, PLANNING and ASSISTANCE in FLIGHT:

IDPs displaced by Pakistan for anticipated military operations

Bajaur and Malakand Agency: Aurat Foundation Survey (2009)¹¹⁰

- The failure of Khyber Pakhtunkhwa (formerly North West Frontier Province) authorities to provide protection to IDPs in flight highlights the collapse of democratic and administrative institutions in Pakistan.
- Swat, 2009: 2.7 million displaced by military operations against militants.
- Ultimately the failure in the state's timely response to displacement is about a state's dereliction of its duty towards citizens and the state committing violations against its civilians.

State Dereliction of Duty

- Waziristan residents forcibly displaced were given 45 hours notice about an imminent military operation although it had been weeks in planning: masses fled to Khyber Pakhtunkhwa.
- Obligated to arrange own transport or walk even when it is the military that asks people to leave (a few IDP families were provided transport).
- Panic departures (children left behind); no emergency assistance — food, water, medical aid for en route health complications (fatal asthma attack)...
- Miscarriages en route; a death sentence on pregnant women and infants [WRN Pakistan, 2016]

Members of the Edick tribe opted to flee across the open border to Afghanistan, drawn by support available with co-ethnic kin. It took them three hours to reach Afghanistan where they were well received by the Afghan administration. They spent three days in Afghanistan before hurrying back to Pakistan on hearing rumours about the border being closed. "We rushed back to Pakistan to counter propaganda about being disloyal to Pakistan and engaged in anti-Pakistan activities."¹¹¹ On an average the IDPs paid Rs. 80,000 for a single vehicle, first to go to Afghanistan, and then back across the border to Bannu in KP, a woman IDP said [Pakistan WRN CC, 2016].

FAILURE to PROTECT in DISPLACEMENT

Emergency Assistance: Profile of Deprivation

- Assistance given not as a right but a favour, subject to ad hocism and vulnerable to discrimination
- 'Who is an IDP?' - No recognition of IDP as a legal category; political and statistical jugglery
- Government denied humanitarian access to the affected: Balochistan military operation
- Violation of the 'Sphere Standard' benchmark of 'life with dignity'

Discrimination and arbitrariness in entitlements

- IDPs in host communities left out¹¹²: gendered customary practices meant only 15 per cent of the Swat displaced were in camps, which were extremely oppressive spaces for women
- Social conflicts: Host community not prepared...
- Compensation erratic and arbitrary

Gender Neutral and Gender Discriminatory Practices

- No gendered attention to issues of livelihood, health, shelter, special needs.
- No recognition of vulnerability of special categories: female headed households, disabled persons, elderly women, orphans:

Jalozai IDP camp: In an ill-thought out, supposedly gender sensitive response, the camp administration indicated with a prominently marked boulder a cluster of female-headed or women without men IDPs – to enable the distribution of humanitarian assistance on a priority basis. However, it became a magnet for idle men to wander past, rendering the women even more vulnerable and trapped within.

High Risk Coping strategies: Neglect of sustainable livelihood options for female-headed households

- Trafficking, Child Marriages, Child labour, Sexual 'favours', Begging
- Women's lack of participation in the management of IDP affairs,
- Women's exclusion from consultations on Flight, Assistance and Return/Integration/Resettlement.

Security

- Failure to protect IDPs in camps from attack [Common in context of India: WRN India Community Conversation: 'Homeless at Home: IDPs in India's Northeast']
- Failure to protect girls and women

STABLE SOLUTION RETURN, INTEGRATION, RESETTLEMENT

Flexibility in imaging stable solution: people's right to choose

- Return and Resettlement should be a right: Options should be made available as many IDPs do not see 'return' as possible or any longer desirable.
- Women left out of consultative decision-making process.

Protracted Displacement: 'When does displacement end? IDP > Economic Migrants

- Arbitrary closure of camps and assistance: abandonment of IDPs
- Return in safety and to what: state accountability for destruction of home, livelihood and habitat
- State abdication of responsibility: FATA IDPs: July 2013: chief of Lashkar-i-Islam Mangal Bagh asked IDPs from Bara to return to their homes, promising to ensure their security. In doing so, he was taking on a responsibility that belonged first and foremost to the state; the Federally Administered Tribal Areas are an integral part of the Pakistani state and its citizens should be entitled to the same protection mechanisms as any other Pakistani citizen, not only to those provided by militant armed groups.
- Conditional return: undertake collective responsibility for peace? FATA returnees asked to sign such an undertaking: DG Disaster Management Authority FATA 23 June 2010

Local Integration

- Differential entitlements of equal citizens in Kabul: poor economic migrants and IDPs in informal settlements discriminatory entitlements to water, schools, etc.
- Absence of sensitive policies to manage local host community and IDP relationships

Resettlement

- Violation of constitutional right of citizens: Provincial governments in Punjab and Sind denied entry to Waziristan IDPs.
- Government made no effort to foster empathy for the IDPs. Municipal law should recognise the right of IDPs to resettlement.

13. BODY OF LAW

What laws apply? What laws do not apply? What is relevant in the context of IDP protection? The Geneva Conventions do not deal with IDPs, but the state has a duty to protect its citizens. There are black holes in the application of the law when there is no official categorisation of the situation as a 'conflict'; there is then no burden on the state to fulfil legal obligations. However, there are moral obligations inherent in good governance, not specifically stated as duty to protect. International humanitarian law is more focused on the protection of civilians in the conduct of hostilities. International human rights law, national constitutional law and policies are more relevant when advocating for IDPs.

The threshold of evidence is '**balance of probability**' to demonstrate probable cause that this has likely happened; to show direction of clear and convincing probability [see Part II Q7.2]. A criminal court requires a higher threshold of evidence beyond reasonable doubt.

13.1 International Regime

The three countries are bound by international humanitarian law, human rights laws and refugee laws, UN Resolutions and various internationally adopted normative frameworks and

principles. Although India and Pakistan are not signatories or have abstained from ratifying several international treaties, they are under pressure to conform to obligations and norms of what encompasses customary international law.

Also providing the basis for a global, relatively gender sensitive IDP protection regime are UN Resolutions (UNSC 1325+ 6) Treaty body processes (CEDAW: GR 30), World Conference Declarations and normative frameworks, (Beijing Declaration and Platform for Action 1995), internationally promoted norms (Sphere Standards 1997) and global principles (Guiding Principles on IDPs 1998; Pinheiro Principles: Housing and Restitution of Property 2005).

Following a review of state practice, ICRC distilled a compendium of Rules of Customary Humanitarian Law (2005). Rules 129-133 are of particular relevance for the protection of forcibly displaced.

- **Rule 129** a) holds that parties to an international armed conflict may not deport or forcibly transfer civilians in an occupied territory unless their (the civilians') security is involved or there are military imperatives. b) applies the same principle to internal conflict.
- **Rule 130** is the prohibition against relocating civilians from your side into territories you occupy.
- **Rule 131** is the norm that civilians should be provided with satisfactory shelter, hygiene, health, safety and nutrition in times of conflict, and that members of the same family should not be separated.
- **Rule 132** establishes the right of displaced people to return voluntarily to their homes if they feel the reasons for their displacement do not exist.
- **Rule 133** protects the property rights of the displaced.¹¹⁶

According to the ICRC, 'Customary international law is made up of rules that come from "a general practice accepted as law" and that exist independent of treaty law. Customary international humanitarian law (IHL) is of crucial importance in today's armed conflicts because it fills gaps left by treaty law in both international and non-international conflicts and so strengthens the protection offered to victims.' Customary international humanitarian law is applicable even where states have not ratified existing conventions and it is also more useful than regular international law for addressing internal conflict.

[Heckarets and Doswald-Beck, 'Customary Humanitarian Law, 2005]

<https://www.icrc.org/eng/war-and-law/treaties-customarylaw/customary-law/overview-customary-law.htm>

International Legal Humanitarian Law Human Rights and Refugee law; Resolutions, Guiding Principles, Norms and Standards on Protection

Regime	Afghanistan	Pakistan	India	Comments
Universal Declaration of Human Rights 1948				
Geneva Conventions I-IV 1949				
Protocol I and II, Additional to Geneva Convention (1977) Protocol III 2005	2009: Signed	2013: Signed, not ratified		Protocol I speaks of protection of civilians, and needs of non-combatants; Protocol II defines 'internal conflicts'
Convention Relating to Status of Refugee, United Nations High Commissioner for Refugees, 1951	2005			Single definition of refugee: without discrimination, rights of Refugees: 'non-refoulement'
Convention and Protocol Relating to Refugee status, 1967	2005			
International Covenant on Civil and Political Rights	1983 Signed/Ratified	2004, 2008 Signed, Ratified		
International Covenant on Economic social and Cultural Rights	1983: Signed/Ratified			Treaty body committee has indicted India on non-fulfilment of economic and social rights 2008
Convention on Elimination of Discrimination Against Women (CEDAW) 1980 General Recommendation (GR) 30 2013 Expands the definition of 'conflict' and thus brings under its ambit states such as India and Pakistan who deny existence of armed conflict in country. GR30 adopts a rights based approach.	1980: Signed 2003: Ratified	1991: Signed 1991: Ratified	1980: Signed 1993: Ratified	CEDAW <i>General Recommendation</i> 30 on 'Women in Conflict... Post-conflict Situations' (2013), expanded the definition of conflict to encompass India's disturbed areas'. Earlier, women's groups had used CEDAW shadow reporting mechanism to get international accountability on women's rights violations in communal violence (Gujarat, Kandhamal and Muzaffarnagar), and women living under AFSPA (Northeast). ¹¹⁷ GOI had to respond to the Committee's repeated call for action.
Child Rights Convention, 1990 Optional Protocol 2002 on rights of child in armed conflict	1990: Signed 1994: Ratified	1990	1992: signed	Afghanistan: reservation on all provisions incompatible with Islam
Rome Statute International Criminal Court 1998	2003 Government not agreed as yet to ICC request for on-site visit			Support the court in principle voted for it in 1998. Reservations on mechanism for initiation of proceedings, and <i>provisions dealing with armed conflicts not of an international character</i> and immunity of the heads of government or state.
Convention on the Rights of Persons with Disabilities (2006) Optional Protocol	2012	2007	2008/2011 signed/ ratified	
International Convention on Protection of Rights of All Migrant Workers and Members of their Families (2003)	-	-	-	

Normative Principles	
<p>Beijing Platform for Action 1995 identified ‘women and armed conflict’ as one of the issue areas</p> <p>Strategic objective E.5. Provide protection, assistance and training to refugee women, other displaced women in need of international protection and internally displaced women.</p>	<p>India has persistently skipped over ‘Women and Armed Conflict as an issue of concern in conflicts its official reports Beijing +5 (2000), Beijing +20 (2015), in conformity with its declared position that India has no armed conflict and so this does not apply. However, the civil society shadow report includes a focus on this issue area.</p> <p>Pakistan [not applicable within Pakistan but accuses India of use of rape in conflict in J&K: Benazir Bhutto statement, Beijing 1995]</p> <p>Afghanistan Engaged with ‘Armed conflict’ issue by focusing on women in the security sector and flagged in the listing of priority areas implementation of NAP 1325 [GOA: MoFA “Report on Implementation of Beijing...” 2010-14 p42]</p>
<p>Guiding principles on Internally Displaced Persons, 1998</p> <p>Attention to women’s protection concerns including participation</p>	<p>Afghanistan’s National Policy on IDPs (2013) has adhered to the Guiding Principles.</p> <p>India does not recognise the authority of the Guiding Principles and zealously guards what it deems as an encroachment of its sovereignty</p> <p>Quote of Indian official rejecting Guiding Principles¹¹⁹: see [‘Part I: Q 1’].</p> <p>Pakistan has on occasion referred to UN Guiding Principles, and incorporated them in framing its “Return Policy framework: IDPs FATA” issued by the DG FATA Disaster Management Authority, Peshawar, 23 June, 2010 {WRN Pakistan IDP CC, 2016}</p>
<p>UNSC Resolution 1325</p> <p>Women Peace and Security and six sister resolutions: Calls upon ‘All actors involved in peace negotiation to ensure a gender perspective is applied in all repatriation, resettlement, reintegration initiatives; ensure the protection of civilians in camps; women’s needs to be addressed in the design of humanitarian assistance (UNSCR 1325 OP 8 (a), 12; UNSCR 1889 OP 12)’</p>	<p>Afghanistan has adopted a National Action plan on 1325 & 1820.</p> <p>The national IDP policy makes no reference to NAP 1325</p> <p>India claims it has no armed conflict, and therefore brushes aside the domestic applicability of UNSCR1325. It has resisted the consolidation of proposed 1325 indicators arguing that no representative international body was mandated to identify them (Ambassador Hardeep Puri). India is wary about women’s groups leveraging 1325 within the country and internationally.</p> <p>Pakistan also is wary about campaigns around UNSC 1325 and has refused to recognise internal armed conflicts in the country. Prefers to use nomenclatures like Temporarily Displaced Persons, rather than Internally Displaced Persons, which is a recognisable category in international regimes.</p> <p>Both India and Pakistan use euphemisms to refer to conflicts – e.g. ‘other calamities’, ‘disturbed situations’</p>
<p>Sphere Standards 1997 on humanitarian response in disaster or conflict were formulated collectively by a group of humanitarian NGOs and based on two principles i) those affected by disaster or conflict have a right to life with dignity and therefore assistance, ii) all possible steps to alleviate human suffering</p>	<p>Afghanistan National Policy on IDPs refers to sphere standards as a reference in ‘Emergency Response’ 6.1.2; ‘Right to Housing’ 7.3.1.1.f</p>
<p>Pinheiro Principles, 2005</p> <p>Approved by the UN Sub-Commission on Protection and Promotion of Housing Rights. Principles reflect widely based principles of HL and HR law and standards.</p> <p>Hyogo and Sendai Frameworks of Disaster Risk Reduction, 2005-2015)</p>	<p>Pakistan’s DRR Policy frameworks refer to these global guidelines</p>

13.2 National Laws and Policy Regimes impacting Conflict IDPs

The Constitutions of all three countries have strong fundamental rights chapters providing for a range of human rights without discrimination (with exception of FATA and PATA), and incorporating the rights and principles of UDHR, ICCPR, ICESCR. Of particular relevance to IDPs is Afghanistan's Article 38 which guarantees that 'a person's residence is immune from invasion', and Article 39, 'Every Afghan has right to travel or settle in any part of the country except in regions forbidden by law'. Freedom of movement and settlement and 'life with dignity' is guaranteed in all three constitutions. Afghanistan is signatory to a slew of international human rights treaties, and has adopted a National policy on IDPs, a National Action plan on UNSCR 1325. At issue in all three countries is lack of political will and capacity.

In the context of India and IDP protection, the Constitution places socio economic rights in the 'Directive Principles of Policy' (similar to Pakistan's "Fundamental Rights and Principles of Policy"). Although socio-economic rights are therefore not placed in the justiciable section of the constitution, the Indian courts have proactively intervened to read the fundamental 'right to life' and expand the justiciability of socio economic rights.¹²⁰ This is relevant for our purposes in establishing accountability for state failure to protect, i.e. deprivation of IDPs of their socio-economic rights. It is important to reiterate that IDPs are equal citizens, entitled to enjoy the continued protection of their state as measure of its sovereignty.

India Policy and Institutional Responses

India's institutional structures of accountability – the National Human Rights Commission and Women's Commissions and special procedures such as the Supreme Court appointing Food Commissioners - have drawn attention to the plight of IDPs and the inadequacy of the government's response.

- The Commission had issued several instructions in the wake of post-Godhra and Gujarat riots of 2002 and had appointed a Special Rapporteur, NHRC to monitor the humanitarian response. The Commission also intervened and monitored the criminal cases of this period related with Godhra violence.
- The Commission intervened in dealing with the issue of nearly 70,000 Chakma refugees who fled across the

international border into Tripura, India, escaping military operations and massacres in the Chittagong Hill Tracts Bangladesh in 1980s. Repatriation of refugees gathered momentum following an understanding between the two governments in the early 1990s, but persisting instability in the CHT resulted in estimated 50,000 refugees remaining in the Tripura camps. The pathetic living conditions in these camps worsened further and conditions were allegedly being created to force the remaining refugees to return to Bangladesh. The Commission visited the camps in May, 1996 halted the pressure to evacuate camps, and effected improvement in supply of food rations, water, medical care, educational facilities, payment of allowances, deployment of mobile task force for their safety and security.

- The NHRC intervened to halt pressure by student bodies in Arunachal Pradesh to expel Chakma refugees who had been settled there for over two and a half decades. NHRC invoked the writ jurisdiction of the Apex Court for enforcement of the rights under Article 21 of the constitution, of about 65,000 Chakma or Hajong tribals. Upon consideration of the matter, the Supreme Court on 9 January, 1996, in a landmark judgment, held that: "We are unable to accept the contention of the state government. that no threat exists to the life and liberty of the Chakmas guaranteed by Art. 21 of the constitution, and that it had taken adequate steps to ensure the protection of the Chakmas."
- The NHRC delegation visited the victims of ethnic violence sheltered in 15 relief camps in Assam's Kokrajhar district in 2007 and was highly critical of the extremely inadequate food rations (subsist for 10 days) and poor medical facilities for the 7,500 displaced families.¹²²

The Indian Supreme Court in the Right to Food case (2002) has in an interim order appointed Food Commissioners who on at least two occasions have drawn attention to desperate plight of IDPs in Northeast IDP camps or settlements, and in Gujarat.¹²³ Acting on an appeal by the National Human Rights Commission, a statutory body, the Supreme Court intervened to prevent the expulsion of the stateless Chakmas and Hajongs — 'refugees' who were displaced to Arunachal Pradesh in 1964. NHRC invoked Article 21, 'right to life' of the Constitution and helped the Supreme Court deliver its landmark judgment. The Supreme Court in September 2015 directed the Centre and Arunachal Pradesh government to

grant citizenship within three months to the Chakma and Hajong refugees who had migrated to India from Bangladesh in 1964-69 and settled in the state, arguing that they cannot be discriminated against in any manner.¹²⁴

In the Delhi High Court, Justice Gita Mittal in a significant judgment of 2010 upheld the right to shelter of the internally displaced Kashmiri Pandits who had been shifted from Jammu & Kashmir to Delhi. Posted at the local offices of the central organisation and department, they had been asked to vacate their government-allotted houses on superannuation (ACHR, *India Human Rights Report* issue 02, Oct-Dec 2010).¹²⁵

Both the National Human Rights Commission and National Commission for the Protection of Child Rights have undertaken visits and assessments in conflict-affected areas and advocated with the government for better protection of the human rights of IDPs including recommendations on the protection of children in civil unrest, and on relief and rehabilitation of displaced persons.¹²⁶

Institutions like the Planning Commission of India have also taken cognisance of the situation of IDPs. The proactive stance of Planning Commission member Syeda Hameed resulted in the Government of India including the Planning Commission in its paper, *An Approach to the Twelfth Five Year Plan*.¹²⁷

Given India's federal structure, responsibility devolves on the individual states of the Union to provide for protection. Law and order is a state subject, but security is the responsibility of the federal Home Ministry. Along with Jammu & Kashmir, many of the constituent states of the Northeast have been declared 'disturbed area' and are under emergency laws, such as AFSPA, which gives security forces impunity and wide-ranging powers. High levels of militarisation have resulted in erosion of capacity of the civilian administration.

With no national policy for IDPs in place, state responses towards providing protection vary and are often ad hoc and discriminatory, for instance, the arbitrary rates of ex-gratia compensation for loss. Also, who is entitled to relief and compensation is subjective and often depends on the mood of the proximate district official.¹²⁸ Relief camps may be closed randomly, even when there is no durable solution in sight and return is not possible, 'lest the forcibly displaced become dependent upon the government's rice, dhal and oil' relief (the Assam Disaster Management Manual 2015 stipulates three months).¹²⁹

A Disaster Management Act (2005) has been passed and the Disaster Management Division under the Home Ministry implicitly covers 'conflicts' under the umbrella rubric of 'calamities'. The Act defines 'disaster' as:

...a catastrophe, mishap, calamity or grave occurrence in any area, arising from either natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering, or damage to and destruction of property or damage to or degradation of environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.¹³⁰

The Act states there shall be no discrimination on the grounds of gender, caste and community in providing compensation and relief. National and State Disaster Management Authorities have been set up. The *Assam State Disaster Management Manual* (2015) incorporates gender concerns in its articulation, but the affected community's response was sceptical about a top-down Manual they were unaware of and which was not expected to bridge the huge gap between guidelines and the material situation.

India also adopted a *National Rehabilitation and Resettlement Policy* (2007) primarily focused on project-affected displacement (PAF). It establishes standards of return, repatriation or resettlement of relevance for IDPs. The NRRP bill from which the policy is derived states,

"However, involuntary displacement of people may be caused by other factors also, and the provisions of the Bill may apply to the rehabilitation and resettlement of persons involuntarily displaced permanently due to any reasons."¹³¹

Moreover, Clause 4.7 of the 2007 Policy "exempts the Ministry of Defence from conducting any Social Impact Assessment or Environmental Impact Assessment while acquiring any land in connection with national security."

While the policy recognises the special vulnerability of women, unmarried girls, abandoned women and the elderly, it does not provide for any specific entitlements or facilities to be made available. The category of 'affected families' does not recognise categories like female-headed households.

ASSAM-BODO PEACE ACCORD 2003

Clause 13: A Special Rehabilitation Programme for the people affected by ethnic disturbances in Assam, who are at present living at relief camps in Kokrajhar, Bongaigaon etc. shall be completed by the Government of Assam with active support of BTC. Necessary funds for their rehabilitation shall be provided by the Government of India and lands which are free from all encumbrances required for such rehabilitation shall be made available by the BTC.

Despite these provisions in the Accord, IDPs displaced in the 1993 violence still struggle in make-shift camp settlements, joined by new waves of IDPs, most recently the 2014 displaced.

There is no reference to gender violence concerns. No representation from Ministry of Women And Children is included in the National Monitoring Committee for Relief and Rehabilitation.

Afghanistan Policy Frameworks

Afghanistan's National Policy on Internally Displaced Persons (2013) defines IDPs but does not recognise them as a legal category. It incorporates gender sensitive language and provisions but donor driven, top down policies rarely make for effective implementation without sustained political commitment, especially as donor fatigue sets in. There was some expectation given the personal interest being shown by the office of the First Lady on IDPs protection needs, but that has proved short-lived. Evidently there is a lack of political will to fulfil the many obligations that Afghan government has signed up to. For instance, Afghanistan alone in South Asia is signatory to the International Criminal Court, but the government has yet to agree to the ICC's request for an on-site visit. In the context of a Tribunal, the ICC becomes important if war crimes are highlighted that need to be addressed.

In addition Afghanistan has important constitutional provisions providing for protection rights relevant to IDPs as equal citizens. In particular, Afghanistan adopted the

Elimination of Violence Against Women (EVAW) law, 2009, which for the first time criminalised VAW in Afghanistan and also proscribes child marriage and other customary practices that violate girls/women's rights, including those of IDPs. Afghanistan also has adopted a National Action Plan on UN Security Council Resolutions 1325 and 1820, which sets out actionable indicators for the protection and participation of women in the context of '*Displacement, Refugees & Asylum seekers*'.¹³² However, there is little evidence of synergies. Weak political will to implement plans coupled with lack of capacity undermines Afghanistan's architecture of policies and institutions.

Pakistan

The Principles of Policy, Chapter II, in Article 38 (b) and (d) of the Constitution of Pakistan 1973 clearly exhort the state to provide citizens' with work as well as basic necessities of life, such as food, clothing, housing, education and medical relief for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment. Although there is no specific mention of IDPs, as citizens of Pakistan they are entitled to these basic rights. However, FATA and PATA are governed by an exceptional regime and residents do not enjoy equal citizenship rights. [WRN (2016) Pakistan Community Conversation: "Women in Conflict: IDPs from North & South Waziristan", by Rukhshanda Naz, Islamabad]

Pakistan's National Disaster Management Authority, 2010 incorporates conflicts into its mandate under the euphemism '**other calamities**'¹³³

Pakistan's IDP policy has been articulated in the form of official Notices issued in response to the evolving IDP situation e.g. "*Return Policy Framework for IDPs from Federally Administered Tribal Areas*." [DG FATA Disaster Management Authority, Peshawar 23, 6, 2010]

The Gender and Child Cell of the NDMA was set up in 2010 with provincial offshoots as a part of the response to gender mainstreaming natural disasters and 'other calamities' in Pakistan. It was a donor driven policy and never organically incorporated. Moreover, the GCC has been vulnerable to the vagaries of erratic donor commitments and funding. However, in 2013, the GCC formulated a National GCC Framework 2013-2016.¹³⁴

The primary focus of the National Disaster Risk Reduction Policy (NDMA) 2013 is natural disasters, but

it also encompasses human-made disasters including from ‘civil unrest’. There is rhetorical recognition of the special needs of women and children, and attention to strengthening the resilience of vulnerable groups by involving women as stakeholders in disaster risk reduction (DRR). The caveat is, ‘culturally appropriate DRR interventions’. There is emphasis on developing methodologies to gather gender-differentiated data, but practices remain gender insensitive.¹³⁵

The 2014 *National Policy Guidelines on Vulnerable groups in Disasters*⁵⁸, NDMA Gender and Child Cell 2014 reiterate the need for attention to the special needs of vulnerable groups, including women who are poorer and less mobile than men and more vulnerable to the shock of disaster. This follows Pakistan becoming a signatory to the Hyogo Framework for Action (2005-2015) and the transition from a response-based action to more proactive policy with attention to vulnerable groups. Moreover, the Hyogo framework contains the most explicit reference to gender compared to any other policy framework on DRR.

14. RECOMMENDATIONS

To State(s):

- **Recognise** the magnitude and nature of the IDP problem and act to prevent the relentless production of IDPs by creating an alternative discourse to war and militarism, engage with the causes of conflict and build an inclusive and just peace through processes that include the participation of women at every level, local to national.
- **Ensure** that peace processes are inclusive of women’s participation and incorporate attention to addressing as an important priority a stable solution for IDPs/refugees as an aspect of peace building.
- **The Principle of Sovereignty** dictates that states have the primary responsibility to protect and assist IDPs. States must acknowledge accountability and provide redress and reparations for their own acts of commission and failure to exercise due diligence in relation to IDP protection rights and entitlements across the displacement cycle. No impunity for human rights crimes, including gender related human rights violations.
- **States** should not impose bureaucratic hurdles to humanitarian access, and must prevent armed groups from hampering, attacking, or impeding humanitarian personnel involved in assisting IDPs.
- **Institute** a National Commission of Inquiry into the situation of women living in conflict affected IDP situations across the country.
- **Adopt** a comprehensive National IDP Policy that is gender sensitive and aligned with International humanitarian and human rights laws, UN Guiding Principles and other recognised international humanitarian standards so as to ensure protection against ad hoc, arbitrary and discriminatory IDP regimes. Where a National IDP Policy has been recently adopted (Afghanistan) demand an action plan for implementation.
- **Implement** relevant laws and policies e.g. India: National Disaster Management Manual and Relief and Resettlement Policy. Ensure these are made gender sensitive and incorporate mechanisms that enable the participation of women in all consultative structures. Where gender sensitive structures have been instituted e.g. GCC in Pakistan’s Disaster Management Authority, states need to be more invested in and effectively integrated in planning and operational programmes.
- **‘Cultural Considerations’** should not be used as an excuse to exclude women; however, such constraints need to be pro-actively transcended and women need to be made part of consultative structures that are both transactional (basic needs) and transformative (political).
- **Develop** Regional Standards and indicators on IDP Protection with attention to the gender dimension and work towards the adoption of a Regional IDP Policy and Mechanism. Redress for IDPs should go beyond compensation for the loss of housing, land and property, and take into consideration the physical, mental and other types of harms suffered by the IDPs.
- **Constitute** a Regional IDP fund for Humanitarian Assistance similar to the SAARC Poverty Fund.
- **Establish** consistent, transparent and non-discriminatory practices of compensation, ex gratia relief across state/provinces and communities. Current practices of arbitrary and discriminatory compensation process need to be reviewed.
- **Facilitate** non-discriminatory access to national and international humanitarian agencies and remove bureaucratic hurdles such as the arbitrarily and erratically withholding the grant of government-issued no-objection certificates (NOC).

International Community

- **‘Third party states’** and agencies involved in pursuing doctrines such as the ‘war on terror’, should take responsibility for acts of commission and omission for failure to prevent the production of IDPs, and the perpetuation of operations that structurally entail as an integral part of military strategy ‘collateral damage’. They must be accountable for providing for redress and reparations.
- **Share** responsibility for humanitarian assistance, and commit to sustained and not erratic short-term engagement, with particular attention to incorporating international gender sensitive standards in humanitarian assistance as well as integrating women’s participation in all consultative structures across the displacement cycle.
- **Promote** the inclusion of women in efforts to tackle the causes of conflict and displacement and build an alternative discourse to war and militarism.

Humanitarian Agencies (national and international)

- **Prioritise attention** to incorporating gender sensitive frameworks in humanitarian interventions and develop consultative mechanisms that involve women in planning and implementation; institutionalise these practices in programmatic planning and implementation.
- **Sensitivity** to cultural considerations should not result in passive acquiescence to ‘going through the men’. Instead, it requires creative responses to ensure the inclusion of women IDPs and to use the IDP situation as an opportunity to reach sequestered groups.
- **Discriminatory** streaming of humanitarian assistance to co-ethnic and same faith communities can result in deepening conflict divides. IDP camps must not become breeding grounds for recruiting people into conflict, rendering camps full of women and children vulnerable to attack.
- **Particular attention** should be paid to provide vulnerable groups especially female-headed households livelihood alternatives to adopting high risk coping strategies.

15. ORGANISATIONAL ISSUES

Multi-level structure responsible for organising the Tribunal

15.1 Advisory Group

The present Advisory Group [*Initiative Board or Preparatory Steering Committee*] should mandate the creation of an Organising Committee [Some Members of the Advisory Group should be invited to join the Organising Committee].

The Advisory Group should expand and include international members and function as a high level support group carrying forward the vision of the Tribunal, providing guidance, political troubleshooting, and public voice. It will play the role of an eminent persons’ group.

Criteria: This eminent persons group would be drawn from human rights, especially gender rights advocacy groups, and comprise members with prior experience in public hearings and tribunals, belonging to any gender. As discussed above, a Tribunal is more aligned with a Human Rights Court and therefore in the selection of the advisory body, there would be a preponderance persons with legal expertise; a public hearing would look for greater diversity in background and expertise.

15.1.1 Regional Organising Committee:

An Organising Committee could have an optimal number of ten members, three from each country and the overall Coordinator. The Coordinator will play a pro-active role driving the Organising Committee’s work. It should be a mixed committee of women and men and women

Terms of Reference (TOR):

- The Committee will steer the Tribunal process and activities, be responsible for major decisions and provide direction to the Secretariat, the implementing body.
- One member of the Organising Committee from each country will participate in the various sub-groups e.g. **communication and dissemination strategy, documentation and resources, witnesses and testimony preparation, partnership building, Tribunal event management, and Tribunal Report and allied multi-media products.**
- Country Organising Committee Members will provide direction and guidance to country level Tribunal related processes, and work with the Tribunal country coordinator/secretariat and local partners.

- Organising Committee members will assist in the identification of local partners, panel of judges, experts, witnesses and facilitators
- Organising Committee Members should monitor, review and assess the implementation of the Secretariat's implementation of the Tribunal process.

Criteria

- Include persons of any gender with a proven record in human rights, and especially gender rights, advocacy
- Women and men, including legal experts and other professionals, scientists, writers, film makers, artists, academics, and social and human rights activists
- Experience with public hearings and tribunals would be attractive
- Organising committee members should be from the countries of the region (and in situ). Where relevant, one member from each country should preferably be closely associated with the affected region i.e. Northeast.

15.1.2 Country Level Organising Committee

The country level structure replicates Regional Organising Committee

15.2 General Coordinator

The **General Coordinator** is the point person of the Tribunal, responsible for cohesively holding together the various processes and activities of the Tribunal, steering and driving the plan of action, troubleshooting, identifying Partners, developing TOR, sustaining relationship with Partners, and consulting on national level activities and interlinking the national and regional level activities. The Coordinator will identify and bridge gaps in human and material resources. The Coordinator is responsible for keeping the Organising Committee informed.

Terms of Reference

A high-level professional with demonstrated conceptual and organisational capacity and legal background is desirable but not essential along with knowledge, understanding and familiarity with South Asia. The person must enjoy credibility with women's, and human rights' groups of the region if the Tribunal process is to have legitimacy in the country and region. The coordinator is the public face of the Tribunal for much of the process. As discussed earlier, the General

Coordinators were the driving spirit behind the Gujarat, Indonesia and Ayodhya Tribunals.

Country Coordinators will work under the direction of the General Coordinator and will be responsible for implementing the country level process. It is expected that the Country Coordinator, will be a member of the country level Organising Committee.

TOR: To be developed by General Coordinator

15.3 Secretariat

The Secretariat is headed by the General Coordinator and implements the decision of the Organising Committee [In some cases an existing NGO, e.g. Women in Black, Belgrade; Vimochana, Bangalore; and Simorgh Lahore, provided the Secretariat for Women's Courts; in other cases, a secretariat is created, like the 'Fondation IPT' for the 1965 Indonesia Tribunal]. Under the direction of the **Coordinator**, the Secretariat develops the roles and responsibility of the various categories e.g. expert witnesses, prosecutors, researchers and staff. The Secretariat shares responsibility for identifying and liaising with partners and developing mutually agreed upon TOR. The Secretariat facilitates the sub-groups and connects them with each other. The Secretariat staff is responsible for all logistics.

The Coordinator (s) will determine the Constitution of the Secretariat in consultation with the Budget Committee, and draw up TOR for staff.

15.4 Finance Committee

Tribunals are big budget events that require dedicated professionalised expertise to raise substantive funds both for the regional event as well as allied country level activities. Estimates range starting at half a million dollars.

- *Fundraising for country level activities* should be decentralised with local initiative encouraged, especially in Afghanistan and Pakistan, though it may be more difficult for India given the political targeting of rights based NGOs.
- *Fundraising for regional level activities* will have to be done on another scale, with a consortium of donors put together and managed by a dedicated fundraiser.
- *Co-sponsors* should include United Nations agencies, ICRC, multi-lateral associations and international humanitarian agencies.

- *Governments and Unions* (European Union) There are political sensitivities about the involvement of certain government implicated in a 'third party' role e.g. USA. Some are likely to be more acceptable Canadian, Scandinavian, Dutch and German Foundations,
- *Private Foundations and Individuals*: Open Society, One Earth Future Foundation, etc.

16. REACHING OUT TO PARTNERS AND ALLIES

The life-blood of the Tribunal process is dependent upon forging effective partnerships and garnering the support of allies at the local, country and international level. Multi-level and multi-category partners will be sought at the international, regional, country and local community levels. The nature of the partnership will be made explicit through the TOR in order to manage mutual expectations and disappointments.

International level:

This will include UN agencies, ICRC, international community, international foundations and INGOs (IDMC, Action Aid, Oxfam, Norwegian Refugee Council, etc.). Given their different political environments and different degrees of openness to international involvement and equations with international agencies, country partners will be encouraged to pursue autonomous partnerships. For instance, in the context of the Women's Court (Sarajevo), Kosovo country activities were supported by UNDP. Indeed WRN itself has followed this practice as in the case of a WRN meeting in Islamabad in November 2012 supported by UN Women, Pakistan. Afghanistan's internationalised protection process is structured around clusters under the United Nations in partnership with NGOs (e.g. gender based violence cluster, child protection cluster, etc.)

Note: The choice of an out of region international venue – as is likely for the South Asia Regional Tribunal – will demand a close partnership with one (or a coalition) of in situ third country/international groups.

Regional level:

SAARC is the only official regional arrangement in which these three countries come together. Regional Cooperation is stymied by the structural imbalance of a dominant India that integrates geographically but continues to be divided by

history and politics sowing mistrust and producing tension, hostile competition and confrontation. There have been some initiatives such as the establishment of the SAARC Development Fund, SAARC Food Bank Agreement and SAARC Convention on Trafficking.⁵⁹ In fact, at the Kathmandu summit, 2014, member states agreed to strengthen the Social Window of the SAARC Development Fund. It is these developments that encourage the possibility of the Tribunal recommending a **South Asia Humanitarian Fund for IDPs**. This builds upon the tradition of South Asian countries offering each other humanitarian relief in natural disaster situations.

Country level:

A Regional Tribunal requires the search for credible country partners with a rights-based sensitivity and importantly, capacity. The objective of creating a credible and legitimate platform calls for partnering with multiple stakeholders, especially at the level of country civil society actors. During field visits to Pakistan (August, 2015) and India (Sept-Oct 2015), WRN representatives sounded out potential partners on whether a Regional Tribunal process would be relevant and their willingness to be involved. While the idea of a Tribunal attracted many, several interlocutors were more excited about a Public Hearing process at the country level. Indeed many stressed the need for a locally rooted process.

The idea of a regional process evoked some wariness partly because of recent disappointment over setbacks in the India-Pakistan peace process. However, there was excitement about the possibility of exploring regional options when national legal processes are blindsided. Moreover, there was palpable appreciation of the inter-linkages and interdependence of Afghanistan, Pakistan and India, especially as evidenced in the dynamics of forcible displacement. Significantly **the Regional Tribunal was positioned in the minds of many as a peace intervention. In addition, many community groups working with IDPs located the proposed initiative as a humanitarian one.**

In Afghanistan, at a multi-stakeholder consultation in February 2016 co-hosted by the Afghanistan Independent Human Rights Commission, the Tribunal idea evoked enthusiasm, and a willingness to move concretely on country level activities. In contrast to India and Pakistan, international agencies (e.g. UNHCR) were part of the Tribunal consultation and support, and their involvement seemed possible and likely. However, concerns about security

remained a constant undertone. Also, mounting assaults on human rights activists by government agencies and extremist vigilante groups and the shrinking space for dissent made for some wariness in India and Pakistan. Equally, there was a renewed determination to resist and struggle for the human rights space. The Tribunal idea was not discussed in interactions with government officials in India and Pakistan.

16.1 Civil Society Space

The civil society space is crowded and provides ample scope for reaching out to multiple partners. However, care and circumspection is required to ensure the principle of ‘do no harm’ especially in view of cultural and political sensitivities. Identifying lead local partner(s) with credibility, access and capacity is crucial. Below is a select listing to communicate the wide range of civil society organisations.

Regional networks in the civil society space include South Asian women’s associations: South Asian Feminist Network (SANGAT), Women in Peace and Security (WIPSA); human rights networks: SAFHR, South Asians for Human Rights (SAHR), South Asia Human Rights Documentation centre (SAHRDC), People’s SAARC, South Asians for Justice, Asian Human rights Council; media association: South Asia Free Media Association (SAFMA); and bilateral peace-building alliances: Pakistan-India People’s Forum for Peace and Democracy (PIPPFD). There are also important trans regional networks, Asia-Pacific Women’s Alliance on Peace and Security (APWAPS), Asia Pacific Forum on Women, Law and Development (APWLD), Asian Centre for Human Rights (ACHR), Forum Asia, etc.

India has a large network of national, and community focused women rights’ groups including Jagori, Saheli, All India Democratic Women’s Association (AIDWA), All Tribal Women’s Association, Dalit Mahila Samiti, Majlis, Naga Mothers Association, Self- Employed Women’s Association (SEWA); human rights associations: Human Rights Law Network, Naga Peoples Movement for Human Rights (NPMHR), Muzaffarnagar Jan Adhikar Manch (MAJMA), People’s Union for Civil Liberties (PUCL) and People’s Union for Democratic Rights (PUDR), HAQ Centre for Child Rights; social movements networks: National Alliance of People’s Movements; NGOs: Centre for Social Justice, Centre for Equity Studies, The Other Media; women’s study centres, institutions: Centre for Women’s Development Studies (CWDS) Delhi, research institutions; health activist groups: Sama, Delhi Centre for Inquiry into Health and



Ajmala Khatoon waiting for justice for over 20 years, Hapachara IDP camp, BTAD, Assam, India

Allied Themes (CEHAT), Mumbai, housing and land rights networks (e.g. Human Rights Law Network (HRLN) and student federations.

Community based organisations in IDP affected areas in Assam: North East Network (NEN), Women in Governance (Win-G), North East Women’s Network (NESWN), Jhai Foundation, Omeo Kuman Das Institute, Promotion and Advancement of Justice, Harmony and Rights of Adivasis (PAJHRA), Tata Institute for Social Sciences (TISS), Assam, All Adivasi Women’s Association; student federations: All Assam Student’s Union (AASU), All Bodo Student’s Union (ABSU), Bodo Women’s Justice Forum, Lutheran Welfare Services, Ajmal Foundation, Action Northeast Trust (The ANT), Omeo Kuman Das Institute, Guwahati, North East Social Research Centre, TISS, Assam.

Afghanistan: Afghanistan Independent Human Rights Commission (AIHRC), women's rights NGOs: Afghan Women's Network, Women for Afghan Women, Afghan Women Skill Development (AWSDC), Humanitarian Assistance for the Women and Children of Afghanistan (HAWCA); international NGOs: TLO and Norwegian Refugee Council; NGO coordination networks such as Afghan Coordinating Body for Afghan Relief and Development (ACBAR). At the multi-stakeholder consultation was WRN Partner Equality for Peace and Democracy, Afghan Women's Judges Association (AWJA), Women and Children Legal Research Foundation (AWRC), Civil Society Joint Working Group (CSJWG) members, Afghan Women's Network (AWN), Research Institute for Women, Peace and Security (RIWPS), Afghan Women Journalist Union (AWJU), Afghan Women New Agency (AWNA), Heinrich Boll Foundation, etc.

Pakistan: Human Rights Commission Pakistan (HRCP), Sungi Development Foundation, Swabi Welfare Society, Samaji Beheedbood Rabita Committee (SBRC), Sarhad Rural Support Program, Al-Khair Foundation, Centre of Excellence for Rural Development (CERD), Community Advancement and Rural Empowerment Care, Sangi Foundation, Omar Asghar Khan Foundation, Pakistan For All, Frontier Rural Development Program, Hands Pakistan, Human Resource Development Society, Imran Khan Foundation, Initiatives for Development and Empowerment Axis, Kawish Welfare Trust, Khidmat e Khalq Foundation, Lawari Humanitarian Organisation, National Integrated Development Association (NIDA) Pakistan, Omair Sana Foundation, Pakistan Citizen's Alliance, Pakistan Red Crescent Society, Participatory Rural Development Society, Potohar Organisation for Development Advocacy (PODA), People Empowerment and Consulting Enterprise, Rural Support Program and women's Rights Organisations such as Aurat Foundation, Shirkat Gah, Khwendo Kor, Simorgh.

Challenges in forging partnerships:

- Managing mutual expectations, assessing capacity and respecting ethics of association
- Avoiding identification with partisan or sectarian organisations
- Faith-based organisations can be exclusionary and alienate the involvement of other civil society organisations e.g. Muzaffarnagar, India
- Negotiating partnerships in the context of a culture of

NGO-isation and competitive funding; co-optation of the voluntary sector: Government Sponsored Non-Governmental Organisations (GONGOs), and the depoliticisation of civil society activism

- Sensitivity to Protection and Risk concerns:
- Overall context of shrinking political space for dissent: **Sedition laws**
- Negotiating bureaucratic barriers: visas, 'No Objection Certificate'

16.2 Official Terrain

A human rights Tribunal posits an adversary structure as it holds the state /government accountable for acts of omission and commission for breach of (citizens') right to protection, including failure to exercise due diligence in the case of violations by non-state actors. Therefore, to expect government cooperation may be unrealistic. Nonetheless, government involvement is essential. Indeed in most Tribunals, the state/government individual as 'accused' party is called to the Tribunal and invariably when they refuse to appear, the Tribunal conveners (PPT Secretariat) appoint a defendant to robustly argue the case for the government.

Preliminary field visits for the WRN CCs in Afghanistan and Pakistan indicate confidence in getting government cooperation. Perhaps post-war transitional governments may be more open to cooperating, i.e. Afghanistan and Nepal. In transitional polities, political will is vulnerable to swings in political alliances. Presumably, the nature of the relationship of the country's organising committee with the government would be important. It is also a reminder that the Advisory Group and the Organising Committee should be broad-based and include people of eminence and influence.

In **Afghanistan**, the Ministry of Refugees and Repatriations (MORR) is expected to be more open to the idea of country level activities but much depends on the structure of power at the time (for instance, high expectations of support from the Office of the First Lady may be unrealistic as IDPs are no longer part of her Office's mandate). Nonetheless, the WRN Afghanistan group is reasonably confident about forthcoming government cooperation for activities in Afghanistan leading up to the Tribunal. In **Pakistan**, WRN Pakistan members suggested the possibility of the government (local and provincial administrations) providing a venue and extending hospitality

for some Tribunal related country-level activities. They did not even rule out government funding of allied activities. In **India**, the field experience made WRN India members much less optimistic about government cooperation, though local partners could be expected to bring in some ‘government good will’ and material cooperation for country activities. It needs to be reiterated that the Tribunal is a political act.

However, neither the state nor the government should be viewed as monolithic. It is possible to reach out to sympathetic institutions, for instance in India: National (state) Human Rights Commission, National (state) Women’s Commission, Minority Commission and Tribal Authority, National Child Rights Protection Agency, National (state) Disaster Management Authority, etc. In addition there are sympathetic individuals among judges, bureaucrats/district officials, and politicians. An important resource is retired judges and officer bearers of the judiciary, policy makers, former police and security officials.

17. RISK ASSESSMENT

The Tribunal is a political process and there is political sensitivity to a process that at the minimal ‘names and shames’ the government which is ‘accused’ of exercising lack of due diligence. Importantly, India and Pakistan still have colonial sedition laws on their statute books. Recently South Asian governments, and Indian institutions in particular, have been zealous in targeting human rights activists and branding dissent as seditious. Moreover, our governments closely monitor what Indians say in Pakistan and what Pakistanis say in India. A regional process to some extent does blunt suspicion especially one that is focused on women. However, IDPs are a politically sensitive subject. While it may be possible to publicly emphasise the humanitarian aspect, political sensitivities need to be foregrounded and contingency strategies planned to manage political anxieties and insecurities.

Our governments are increasingly squeezing the space for democratic dissent, and responding with coercive force to suppress people’s democratic struggles. It is a difficult time, but the counter reaction has been a surge in people banding together and asserting the people’s rights to democracy and justice. Human rights defenders have been facing the brunt of the growing climate of intolerance with tacit state complicity. Extremist forces are threatening to become the mainstream with state backing. The pervasive culture of impunity with

which extremist vigilante groups operate in the sub-region is a major source of risk and insecurity that needs to be reckoned with in actualising the Tribunal, especially its allied country activities.

18. VENUE: WHY AN OUT-OF-REGION LOCATION MAKES SENSE

Organising a Tribunal will have security challenges, and there will be particular concerns for the vulnerability of some witnesses – highlighting the need to organise the Tribunal in an out-of-the-region venue. Visa considerations are another reason, particularly for Indians and Pakistanis as their respective governments make it difficult for them to enter the other country. Cultural pressures could also inhibit women from testifying in the culturally common environment of the sub-region.

Options: **London, New York** or **Toronto:** [to be determined by where partnership is available]

Pros:

- Large diaspora, would be likely to take interest, and the existence of a diaspora media
- Presence of International media
- Presence of international governments, especially those who have a role and responsibility in producing conflict-induced IDPs; or in the context of humanitarian assistance
- Kabul, Islamabad and Delhi are sensitive to ‘naming and shaming’ in these capitals.
- International humanitarian agencies including INGOs will have a presence there.

Cons:

- Increased cost
- Obtaining visas for many participants

19. LIFE AFTER TRIBUNAL

As part of the Tribunal planning and organising process, the Tribunal Advisory Group and the Organising Committee should map the follow up strategies that begin immediately after the Event. Indeed in view of the two-tier process at the country level and the regional process, it is likely that country level organising committee(s) would develop stand-alone and



Second Tribunal Preparatory Committee Meeting Colombo, Sri Lanka, January 2016

interlinked strategies.

Follow up with testifiers: This is crucial and should be the work of the country level committee. It is necessary to have in place an identifiable sub-group that focuses on follow-up strategies in order to develop a time-bound action plan. Too often the fatigue that sets in immediately after the culmination of a process or in this case an event, breaks the momentum built up to carry the process through, unless a follow-up time bound action plan with adequate resources is already in place.

19.1 Follow-up Strategies

These strategies will be aligned with the stated objectives of the Tribunal and the process.

Follow Up with Testifiers: Support group constituted to aid the ‘women testify’ process should continue providing support on ‘witness’ concerns of security, psychological support making available copies of materials produced by the Tribunal relevant to pursuit of ‘cases’ in the court, and facilitating follow up of cases in court by connecting testifiers with legal aid cells.

Documentation and Dissemination

The timely documentation of the Tribunal Process, Hearings and Recommendations is crucial in expanding the outreach of the Tribunal message and impact. Adequate attention and resources need to be invested in this task from the beginning and a sub group assigned to plan documentation from the beginning of the process. Tribunals that have been well documented have had a more effective impact. Documentation includes publications, books and articles, film, oral history archives, poems, songs and art. Coordination between the country level and the regional process is necessary.

Dissemination is an integral part of the work of the Communication sub-group. While media management

and publicity will run parallel to the Tribunal process, in the immediate aftermath of the Tribunal Event, the Recommendations and Strategies for Action must be promptly publicised and sent to multiple stakeholders.

Advocacy: Lobby and pressurise governments to act on the Recommendations e.g.

- **Regional IDP standards, Regional IDP Policy, SAARC Humanitarian Fund for IDPs;**
- Adoption of National IDP Policy that is gender sensitive and implemented effectively
- Recognition and Acknowledgement of accountability
- Provision of Redress and Reparations
- ‘Third party states’ and humanitarian agencies should recognise their responsibility to prevent and redress the human rights violations of women IDPs
- Highlight the significance and magnitude of IDPs as the civilian face of war, stress the need to support the human rights of women in IDP-like situations and draw attention to the agency of the women who participated in The Tribunal.

Campaign to end cultures of militarism, doctrines of war and collateral damage.

Advocacy of women’s participation in all consultative process, and importantly peace processes and the inclusion of action plans for the redress and reparations for IDPs in peace agreements.

20. CARING FOR TRIBUNAL PROCESS STAFF

Respect, recognise and appreciate the Tribunal team and provide for adequate rest and support to sustain momentum in a very demanding process.

ENDNOTES

- 1 The Scoping Study builds upon the work of the Women's Regional Network, in particular Swarna Rajagopalan's
"Human Rights Tribunals: Lesson and Checklists", a desk based study, WRN, 2015 [to be uploaded]; Mackenzie McGrath's *'South Asia Women's Human Rights Tribunal Background Paper'* (Dec 2014), the result of a collective effort which included contributions from Vahida Nainar and David Akerson. It also builds upon the 'Regional Blueprint for the WRN Tribunal' developed by Chelsea Soderholm, Sidra Humayun and Aparajita Sharma, WRN 2015. Also acknowledge the contribution of *One Earth Foundation* in developing a paper on 'Women IDPs in Nepal, the Philippines and Sri Lanka' by Alexandra Amling, Kellie Brandt, Niyati Malhotra, 2015
- 2 Women's Regional Network Vision and Mission statements see www.womensregionalnetwork.org
- 3 As of the end of 2014, 38 million people around the world had been forced to flee their homes by armed conflict and generalised violence, and were living in displacement within the borders of their own country. Eleven million people were newly displaced during the year, the equivalent of 30,000 people fleeing a day. *Global Overview 2015: People internally displaced by conflict and violence* <http://www.unhcr.org/pag-ies/49c3646c23.html>
- 4 Brookings and LSE *"Under the Radar: Internally Displaced Persons in Non Camp settings"* Project on Internal Displacement Oct 2013
- 5 WRN Community Conversations on IDPs: Palwasha Hassan *"Afghanistan's Internally Displaced Women: Complex Realities,"* Kabul, WRN 2016; Rita Manchanda and Aparajita Sharma *Homeless at Home: Internally Displaced in India's Northeast*, Delhi, WRN 2016; Rukhshanda Naz, *"Women in Conflict: Voices for Equality, Internally Displaced Women from North and South Waziristan, Pakistan"*, Islamabad, WRN 2016
- 6 Francis Deng the UN Secretary General Representative on IDPs in his dialogues with governments emphasised the concept of national sovereignty as a form of responsibility. This concept essentially "...stipulates that states, as a measure of their sovereignty, have the fundamental responsibility to provide life-supporting protection and assistance for their citizens. If they are unable to do so, they are expected to request and accept outside offers of aid. However, if they refuse or deliberately obstruct access and put large numbers at risk, the international community has a right and even a responsibility to assert its concern..." cited in R. Cohen, *The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting in Global Governance* 10, 2004, pp. 466
- 7 W. Kalin and R. Goldman, "Legal Framework" in R. Cohen & F. Deng, *Masses in Flight: The Global Crisis of Internal Displacement*, Washington D.C.: Brookings Institution Press, 1998, pp. 74, 92; see also Robert Kogod Goldman "The Guiding Principles: Normative Status, and its Effective Domestic Implementation", Text of a public lecture at MCRG, Kolkata, 16 Aug 2005, in *Refugee Watch* Special Issue Nos. 24 – 26, Oct 2005 available at https://www.google.co.in/?gfe_rd=cr&ei=-jrEKVbGYGZTDuATqyoHYBA#q=Refugee+Watch+Special+Issue+Nos.+24+%E2%80%93+26%2C+October+2005+++
- 8 In the case of the IDPs from Waziristan, FATA Pakistan government denied direct access to UNOCHA, UNHCR, UNFPA, UNDPW, Multi-Stakeholder Civil Society Meeting, Potohar Organisation for Development Advocacy (PODA), Islamabad Aug 18, 2005
- 9 The Secretary-General to the UN Security Council formulated the Guiding Principles in his Report, *Protection of Civilians in Armed Conflict* (UN Doc. S/1999/957), recommending the Council to urge states to observe the principles. In March 2005, the Secretary-General in his report on UN reform, *In Larger Freedom*, urged States to accept the Guiding Principles as "the basic international norm of protection." Based on this report, the Chairman of the UN General Assembly circulated a draft Declaration for adoption by the Heads of State and Government in September 2005 that recognised the Guiding Principles as "the minimum international standard for the protection of internally displaced persons." Quoted by Robert K. Goldman "The Guiding Principles: Normative Status, and its Effective Domestic Implementation" op cit.
- 10 Robert K Goldman; see also Swarna Rajagopalan's compilation of Global Regimes, Conventions & Guidelines on Refugees and IDPs - Geneva Conventions: protocol I & II (1977) and Rules 129-133 IRC's compilation of Customary International Humanitarian Law at <https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>
- 11 <http://www.unhcr.org/43ce1cff2.html>
- 12 Sphere standards – minimum standards for the provision of assistance in four primary lifesaving areas: (1) water supply, sanitation and hygiene promotion, (2) food security and nutrition, (3) shelter, settlement and non-food items, and (4) health, as well as standards for monitoring and evaluating the effectiveness and impact of humanitarian assistance. The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response, 2011 edition accessed at <http://www.spherehandbook.org/>

- 13 Pinheiro Principles refer to UN Principles on Housing and Property Restitution for Refugees and Displaced <http://www.unhcr.org/50f94d849.html>
- 14 [http://morr.gov.af/Content/files/National%20IDP%20Policy%20-%20FINAL%20-%20English\(1\).pdf](http://morr.gov.af/Content/files/National%20IDP%20Policy%20-%20FINAL%20-%20English(1).pdf)
- 15 Pia Oberoi, *“Exile and Belonging: Refugees and State Policy in South Asia”* New Delhi: Oxford University Press 2006
- 16 Comment was made in the context of queries about reduction in assistance to IDPs. For instance the nutritional value of the food packages disbursed by the World Food Programme was significantly and arbitrarily reduced denying IDPs sugar and nutritional biscuits. Interview: Rukhshanda Naz, Islamabad 2015
- 17 Interview with Salman Asif, formerly, with the office of UN Resident Coordinator, focusing on humanitarian assistance, Islamabad, August 2015
- 18 Interview Nandita Hazarika, Assam State Disaster Management Authority, Guwahati, September 29, 2015
- 19 The Armed Forces Special Powers Act (AFSPA) was made law by the Parliament on 11 September, 1958, and grants special powers to the armed forces in “disturbed areas.” It was introduced as a legally enabling framework for the army and para-military forces to combat insurgency beginning with Nagaland and has since been extended to several states of the Northeast and Jammu & Kashmir. It is at the root of the culture of impunity and has been repeatedly criticised as sanctioning arbitrary abuse of power. The fourth and sixth sections of the Act enable security forces to “fire upon or otherwise use force, even to the causing of death” and ensure that no criminal prosecution will lie against any person who has taken action under this act.
- 20 Federally Administered Tribal Areas (FATA) has a singular administrative structure. Under the Constitution, FATA is included among the territories of Pakistan (Article 1). It is represented in the National Assembly and the Senate but remains under the direct executive authority of the President (Articles 51, 59 and 247). Laws framed by the National Assembly do not apply here, unless ordered by the President, who is also empowered to issue regulations for the peace and good government of the tribal areas. Today, FATA continues to be governed primarily through the Frontier Crimes Regulation 1901. It is administered by the Governor of the Khyber Pakhtunkhwa (KP) in his capacity as an agent to the President of Pakistan, under the overall supervision of the Ministry of States and Frontier Regions in Islamabad. <https://fata.gov.pk/Global.php?id=29&fid=2&pId=25&mId=13>
- 21 Samuel Hall, NRC, IDMC, JIPS, *Challenges of IDP Protection: Research Study on the Protection of IDPs in Afghanistan*, Kabul, November, 2012
- 22 2015 UNHCR country operations profile – Pakistan, <http://www.unhcr.org/pages/49e487016.html>
- 23 *UNHCR Afghanistan IDP Figures Analysis as of July 2015* <http://www.internal-displacement.org/south-and-south-east-asia/afghanistan/figures-analysis>
- 24 *Pakistan IDP Figures Analysis as of July 2015* <http://www.internal-displacement.org/south-and-south-east-asia/pakistan/figures-analysis>
- 25 Sibaji Pratim Basu, “The Other in the Self: The IDPs in India”, in *‘Reassessing Internal Displacement in South Asia’*, SAHR, 2013, pp. 75-130; Centre for Social justice et al., “A Study on Internally Displaced Persons of India: Mapping and Citizenship Rights”, 2013; also Tanushree Rao, ‘Protecting Internally Displaced Persons in India’, July 2013 <http://www.e-ir.info/2013/07/15/protecting-internally-displaced-persons-in-india/>
- 26 Najam U. Din “Internal Displacement in Pakistan: A Human Rights Perspective” in *‘Reassessing Internal Displacement in South Asia’*, SAHR, 2013, pp. 193-255; SAHR, ‘Internally Displaced persons: A fact finding mission to Balochistan’, 2008
- 27 Ongoing joint military operation against militants in Pakistan; named after the Prophet Muhammad’s sword.
- 28 ‘Jawans Accused of Rape’, *The Telegraph*, Kolkata, Aug 11, 2015; WRN Community conversation interview with Pratibha Burman Kokrajhar, Assam, India, 2 October 2015
- 29 Abdul Kalam Azam “*One year After the Khagrabari massacre: Quest for Justice Continues*”, Jhai Foundation, Guwahati, 2015, p. 25
- 30 UNSC Resolutions 1325 has been followed by a succession of Women Peace & Security Resolutions 1820 (2008), 1888 (2009) 1889 (2009), 1960 (2010), 2106 (2013), 2022 (2013) and 2242 (2015). See UN Women Sourcebook on WPS <http://www.unwomen.org/ru/digital-library/publications/2012/10/un-women-sourcebook-on-women-peace-and-security>
- 31 Fourth World Conference on Women, Beijing Declaration & Platform for Action 1995 http://www2.unwomen.org/~media/headquarters/attachments/sections/csw/pfa_e_final_web.pdf
- 32 “*The gender dimensions of Internal Displacement: concept paper & Annotated Bibliography*”, Women’s commission for Refugee Women and Children, UNICEF/ IDP gender Issue paper, Nov 1998 available at http://www.forcedmigration.org/sphere/pdf/watsan/WCRWC/unicef_idpgender_1998.pdf/
- 33 CEDAW General Recommendation 30, October 2013 <http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf>

- 34 UN Women 'Guidebook on CEDAW GR 30 & UNSC 1325' <http://www2.unwomen.org/~media/headquarters/attachments/sections/library/publications/2015/guidebook-cedawgeneralrecommendation30-womenpeacesecurity-en.pdf?v=1&d=20150804T164306>
- 35 Indian official to the CEDAW Committee –“There are no situations of ‘armed conflict’ within the territory of India, and hence the Security Council Resolution 1325 relating to Women in Armed Conflict is not applicable to India.” (CEDAW 2007)
- 36 The **Hyogo Framework** is a global blueprint for disaster risk reduction efforts during the next decade. In January 2005, 168 Governments adopted a 10-year plan to make the world safer from natural hazards at the World Conference on Disaster Reduction, held in Kobe, Hyogo, Japan. <http://www.unisdr.org/2005/wcdr/intergover/official-doc/L-docs/Hyogo-framework-for-action-english.pdf>
- Sendai Framework for Disaster Risk Reduction 2015-2030 called for “a gender, age, disability and cultural perspective in all policies and practices; and the promotion of women and youth leadership; in this context, special attention should be paid to the improvement of organized voluntary work of citizens.” Furthermore, the Sendai Framework emphasised that “women and their participation are critical to effectively managing disaster risk and designing, resourcing and implementing gender-sensitive disaster risk reduction policies, plans and programmes; and adequate capacity building measures need to be taken to empower women for preparedness as well as build their capacity for alternate livelihood means in post-disaster situations.” <http://www.unisdr.org/we/advocate/gender>
- 37 Maria Ahlqvist ‘Why should We Listen to Her?’ in Refugee Watch Special Issue Nos. 24 – 26, Oct 2005 https://www.google.co.in/?gfe_rd=cr&ei=jrEKVbGYG-ZTDuATqyoHYBA#q=Refugee+Watch+Special+Issue+Nos.+24+%E2%80%93+26%2C+October+2005+++
- 38 Kaapanda, Mekondjo & Fenn, Sherene. ‘Dislocated subjects: The story of refugee women’. Special essays in Refugee Watch Dec 2004, http://www.safhr.org/refugee_watch10&11_8.htm
- Rita Manchanda. Contesting ‘infantilisation’ of forced migrant women’ in N C Behera edited *Gender Conflict & Migration*, Sage, 2006
- 39 Banerjee, Paula in Raja, Joshva (ed.) *Refugees and their right to communicate: South Asian perspectives*. 2003. London. World Association for Christian Communication.
- 40 B.S. Chimni “UNHCR Guidelines on the Protection of Refugee Women, in Chimni edited *International Refugee Law – a Reader*, New Delhi: Sage, 2000:192; UNHCR *Commitment to Refugee Women*, 2001; UNHCR *Handbook for Protection of Women and Girls: Land and Resources* 2013
- 41 Najam U Din “Internal Displacement in Pakistan: A Human Rights Perspective” in ‘*Reassessing Internal Displacement in South Asia*, SAHR, 2013, pp. 193–255
- 42 Accessed at www.humanitarianresponse.info/en/system/files/documents/files/ocha_pakistan_weekly_return_snapshot_26_nov_2015.pdf
- 43 Rubina Saigol “At Home or in the Grave: Afghan Women & the Reproduction of Patriarchy’, Working Paper series 70, SDPI Islamabad 2002, pp. 18–28 <https://www.sdpi.org/publications/files/W70-At%20Home%20or%20in%20the%20Grave.pdf>
- 44 Lawyer and human rights activist Rukhshanda Naz speaking at the Preparatory Meeting of the Tribunal, Colombo 25 January, 2016
- 45 Tapan K Bose and Rita Manchanda, *States, citizens and outsiders: the uprooted peoples of South Asia*, Papers presented at the Seminar on Refugees, Migrants, Internally Displaced and Stateless Persons in South Asia: Need for a Regional Protocol, Kathmandu, November 18–22, 1996
- 46 Susanne Schmeidl and Dan Tyler “Listening to Women and Girls Displaced to urban Afghanistan” Norwegian Refugee Centre (NRC) and The Liaison Office, Kabul <http://www.refworld.org/pdfid/5513bec24.pdf>; NRC, IDMC “*Briefing Paper: Girl, Disrupted*” 7 March 2014 <http://www.internal-displacement.org/assets/publications/2014/201403-global-girl-disrupted-pic-brief-en.pdf>
- 47 *Nironjoy Islary, A Study of Trafficking of Minor Girls in Kokrajhar district (BTAD), Master of Arts Dissertation submitted TISS, Mumbai 2012*; “Study done by UNODC highlighted Assam as the 2nd highest trafficking zone. Of the four BTAD (Bodoland Territorial Council) districts of Assam three districts namely Kokrajhar, Baksa and Chirang also have the large number of trafficking cases in the present scenario. Kokrajhar is one of the trafficking hubs known as 6th highest trafficking zone of Assam where highest no. of trafficking takes place’, cited by *Hantigiri Nazary in Forum Against Human Trafficking* <http://www.assamtimes.org/node/15932>
- 48 Conversation with North East Network, Guwahati September 29, 2016
- 49 See <http://www.ndma.gov.pk/site/>
- 50 NDMA set up a Gender and Child Cell in 2010 with similar offshoots in the provincial disaster management authorities <http://www.pdma.gov.pk/gender-and-child-cell>. NDMA formulated a *National Policy Guidelines on Vulnerable Groups* in 2014. http://www.ndma.gov.pk/new/Documents/gcc_policy.pdf
- 51 Interview with a former Gender Focal Point, Islamabad August 2015

- 52 India Ministry of Rural Development: 'National Rehabilitation and Resettlement Policy' text available at <http://www.dolr.nic.in/nrrp2007.pdf>
- 53 Ministry of Foreign Affairs "Afghanistan National Action Plan on UNSCR 1325 & 1820: Women Peace and Security 2015-22" available at <http://mfa.gov.af/Content/files/English%20NAP%206.pdf>
- 54 Thompson Reuters Foundation initiative *Trustlaw* asked 213 gender experts on the basis of six key risks: sexual violence; non-sexual violence; cultural or religious factors; discrimination and lack of access to resources; and trafficking Survey <http://www.trust.org/trustlaw/womens-rights/dangerpoll/>
- 55 See Swarna Rajagopalan's "Human Rights Tribunals: Lesson and Checklists" a desk based study, WRN, 2015, [to be uploaded on WRN website]
- 56 Hideko Mitsui, "The Signification of the 'Comfort Women' through NGO trials" in Giwook Shin et al *Rethinking Historical Injustice and Reconciliation in Northeast Asia: the Korean experience*. Routledge London, 2007
- 57 <http://raetowest.org/vietnam-war-crimes/russell-vietnam-war-crimes-tribunal-1967.html#v1!-russ>
- 58 <http://thecry.com/existentialism/sartre/crimes.html>
- 59 "Report of the Citizen's Tribunal on Ayodhya" The Other Media, Delhi, 1994
- 60 <https://www.tribunalonfracking.org/what-is-the-permanent-peoples-tribunal/>; the rationale for organizing PPT Sri Lanka see http://www.pptsrilanka.org/index.php?option=com_content&view=section&layout=blog&id=2&Itemid=4
- 61 <http://globalresearch.ca/articles/TOK403A.html>
- 62 "Threatened Existence: A Feminist Analysis of the Genocide in Gujarat: A Report" by the International Initiative for Justice (IIJ) December 2003
- 63 Text of Opening Statement Chief Prosecutor available <http://1965tribunal.org/>
- 64 Report USIP, 26, January 2001, Available at <http://www.usip.org/sites/default/files/file/EI Salvador-Report.pdf>
- 65 Accessed at <http://www.womeninblack.org/old/en/bangalore/docs/courts-women>
- 66 Swarna Rajagopalan's 2016, op cit; Centre for Women's Global Leadership "Women Testify: A Planning Guide for Popular Tribunals & Hearings" by Niamh Reilly, Linda Posluszny, Rutgers State University New Jersey, 2005
- 67 Welcome Statement General Coordinator, <http://1965tribunal.org/>
- 68 'Crimes Against Women: Proceedings of the International Tribunal' compiled and edited by Diana E. H. Russell Nicole Van de Ven 1976, Distributed by Russell Publications, Berkeley 1990
- 69 Charlotte Bunch and Niamh Reilly 'Demanding Accountability: The Global Campaign and Vienna Tribunal for Human Rights' Centre for Women's Global Leadership, Rutgers University New Jersey 1994 <http://www.cwgl.rutgers.edu/docman/coalition-building-publications/283-demand-accountability/file>
- 70 Accessed at <http://www.rutapacifica.org/co/>
- 71 <http://nobelwomensinitiative.org/burma/>
- 72 Concerned Citizens Tribunal Gujarat 2002 'Crimes Against Humanity', Citizens for Justice and Peace
- 73 'Communalism In Orissa': Report of the Indian People's Tribunal on Environment and Human Rights Tribunal Led by: Justice K. K. Usha (Retired) Former Chief Justice, Kerala High Court Tribunal Convenors and Report Editors: Dr. Angana P. Chatterji and Advocate Mihir Desai, Sept 2006
- 74 <http://www.iptindia.org/wp-content/pdf/report/COMMUNALISM-IN-ORISSA.pdf>
- 74 <https://www.tribunalonfracking.org/what-is-the-permanent-peoples-tribunal/>
- 75 The Permanent People's Tribunal (PPT) 'Session on Agrochemical Transnational Corporations' <http://www.agricorporateaccountability.net/en/page/general/20>
- 76 National Peoples Tribunal on Kandhamal Aug 22-24, 2010 Full Report <http://www.sabrang.com/cc/archive/2012/jan2012/citizens%20tribunal%20Kandhamal%20Report%20Full.pdf>
- 77 "Women's Tribunal on Sexual Violence on Women during Conflict" 8 Dec 2014, was so-hosted by Nepal's National Commission on Human Rights. <http://apwld.org/wp-content/uploads/2014/12/Final-Verdict-14-12-14.pdf>
- 78 'International Criminal tribunal for Afghanistan, Tokyo March 2004, 'The People vs George W. Bush. <http://www.informationclearinghouse.info/article5855.htm>
- 79 'Women's Court - Feminist Approach to Justice' May 2015. <http://www.zenskisud.org/en/>
- 80 <http://www.rutapacifica.org/co/>
- 81 For a discussion on the choice of an appropriate model see 'Women's Court: A Feminist Approach to Justice' (Sarajevo)
- 82 <http://www.ptsrilanka.org/>
- 83 <https://www.opendemocracy.net/5050/rebecca-johnson/courts-of-women-resisting-violence-and-war>

- 84 See “Peoples Tribunal on Torture: Interim Observations of the Jury” 12-13 August 2008, from the Collected Works of Saumya Uma, <http://works.bepress.com/saumyauma/>
- 85 Kathmandu Tribunal ‘Verdict’ <http://apwld.org/wp-content/uploads/2014/12/Final-Verdict-14-12-14.pdf>
- 86 <http://www.kractivist.org/nhrc-jsa-public-hearings-maharashtra-rajasthan-gujarat-patients-demand-justice/>
- 87 This section draws generously from Centre for Global Leadership’s document ‘*Women Testify*’, Rutgers University 2005
- 88 Hideko Mitsui ‘*The resignification of the ‘comfort women’ through NGO trials...*’ [Note 54]
- 89 Lisa Yarwood ‘*State Accountability Under International Law: Holding States Accountable for a breach of jus cogens*’ Routledge 2011, p24
- 90 www.duhaime.org/LegalDictionary/B/BalanceofProbabilities.aspx
- 91 For a ‘List of Judges & Jurors in NGO Tribunals’ see Appendix in Swarna Rajagopalan’s “*Human Rights Tribunal Lessons & Checklists: A Desk Based Review for WRN 2015* [www.women-regionalnetwork.org]
- 92 “*Report of the Citizens’ Tribunal on Ayodhya*”, The Other Media New Delhi, 1993
- 93 ‘Women’s Court– Feminist Approach to Justice’ May 2015 <http://www.zenskisud.org/en/>
- 94 Indebted to Mackenzie McGrath’s ‘*South Asia Women’s Human Rights Tribunal Background Paper*’ (Dec 2014), the result of a collective effort that included contributions from Vahida Nainar and David Akerson. See www.womensregionalnetwork.org
- 95 *Universal Declaration of Rights of Peoples*, Algiers 4 July 1946. http://www.algerie-tpp.org/tpp/en/declaration_algiers.htm
- 96 Women’s Court Organising Body: Bosnia & Herzegovina: Mothers of the Enclaves of Srebrenica and Zepa Foundation CURE (www.fondacijacure.org); Croatia: Centre for Women’s Studies (www.zenstud.hr) Centre for Women War Victims – ROSA (www.czzzr.hr) Kosovo: Kosovo Women’s Network (www.womensnetwork.org); Macedonia: National Council for Gender Equality (www.sozm.org.mk); Montenegro: Anima (www.animakotor.org); Slovenia: Women’s Lobby Slovenia (www.zls.si); Serbia: Women’s Studies (www.zenskestudie.edu.rs); Women in Black (www.zeneucrnom.org) <http://www.zenskisud.org/en/o-zenskom-sudu.html>
- 97 There have been regional advocacy initiatives by South Asia networks towards developing a Regional Refugee Policy by SAFHR and by PIL-SAARC: see Tapan Bose ‘Protection of Refugees in South Asia: Need for a Legal Framework’ (SAFHR paper series 1998) and Bose & Manchanda edited States, Citizens & Outsides: Uprooted peoples of South Asia, SAFHR/Manohar 1999.
- 98 See UNAMA “Afghanistan Human Rights & Protection of Civilians in Armed Conflict: Special Report on Kunduz Province, Kabul December 2015” https://unama.unmissions.org/sites/default/files/special_report_on_kunduz_province_12_december_2015.pdf
UNFPA “Supporting Displaced Women & Girls in Kunduz’s Emergency”, Nov 2015 http://countryoffice.unfpa.org/afghanistan/2015/11/01/13005/supporting_displaced_women_and_girls_in_kunduz_s_emergency/
- 99 Samar Mianallah film “Da Bajaur Guloona or Homeless at Home”; See Amnesty international ‘USA Must be held to Account for Drone Killings’ Oct 2013 <https://www.amnesty.org/en/latest/news/2013/10/usa-must-be-held-account-drone-killings-pakistan/> “US Drone Strikes could be classified as war crimes ...” Amnesty International and Human Rights Watch Joint Report judges US attacks in Yemen and Pakistan to have broken international law ‘The Guardian 22 Oct 2013. <http://www.theguardian.com/world/2013/oct/22/amnesty-us-officials-war-crimes-drones>
- 100 Abdul Kalam Azad “One Year of Khagrabari massacre”, Jhai Foundation, Guwahati 2015; ‘Recent Militant Violence Against Adivasis in Assam: A Report’, Delhi Solidarity Forum 2015; WRN India CC “Homeless at Home: Internally Displaced Women in India’s Northeast”; see also Bibunghthi Team ‘Crisis In Western Assam, Causes and its Possible Solutions’ and ‘The Aftermath of Communal Clash in Western Assam’, *Bibunghthi English Magazine*, Kokrajhar, BTAD, Assam Vol 01, no5, Oct 2012, pp. 15–23, 27–28
- 101 Centre for Social justice et al. “A Study of Internally Displaced Persons: Mapping and Citizenship Rights”, Ahmedabad, 2013
- 102 Sajjad Hassan ‘*Survivors of mass communal violence in Muzaffarnagar: Profiles of loss, dispossession, and recovery*’, A Report, 2015; shorter version in MRG’s State of the World’s Minorities Indigenous Peoples’ Report, 2014: see also Supreme Court Judgment: CJI Sathasivam 2014, on criminal petitions filed in the context of the Muzaffarnagar riots. <http://supremecourtfindia.nic.in/outtoday/41339.pdf>
- 103 [“Pregnant Displaced Women...” <http://www.irinnews.org/report/84524/pakistan-pregnant-displaced-women-lack-facilities-skilled-medics>, Samar Minallah ‘Internally Displaced Women Problems and Needs’: ‘Legislative Watch’ Aurat Foundation Publication and Information Service, April–June 2009]
- 104 Leilani Farha, Special Rapporteur on right to housing highlights the risks faced by 59.5 million people who have been forcibly displaced by armed conflicts, especially women <http://www.housingrightswatch.org/sites/default/files/UN%20SR%20Right%20to%20housing%20report%202016%20eng.pdf>
- 105 Perceptions regarding state indifference and negligence: Sherry Rehman ‘Why the IDPS Matter’, The News May 2009 (Federal Information Minister and Member National As-

- sembly); Gulmina Bilal Ahmed 'No IDPs, Please' News line 5 June 2009, <http://www.newslinemagazine.com/2009/06/no-idps-please/>; WRN Pakistan Community Conversation 2016)
- 106 International Crisis Group "Women Violence & Conflict in Pakistan" Asia Report no 265, April 2015 [http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/265-women-violence-and-conflict-in-pakistan.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-asia/pakistan/265-women-violence-and-conflict-in-pakistan.pdf)
- 107 'Multiple sources reported that imprecise use of ground artillery and aerial bombardment by security forces resulted in extensive civilian casualties and collateral damage, both in FATA and in Swat. Militants imposed fines and carried out public beheadings, public displays of dead bodies, stonings, and lashings.' Source: 2008 Human Rights Report: Pakistan "Bureau of Democracy, Human Rights, and Labor" US Department of State <http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119139.htm>
- 108 Najam U Din "Internal Displacement in Pakistan A Human Rights Perspective" in SAHR edited *Reassessing Internal Displacement in South Asia*, 2013, pp 193-255; Mohsin Darwar, "Nothing to hope for".....Suffering continues in Waziristan after operation Zarb-e-Azb" July 15, 2015
- 109 Chagatai Khan 'Internally displaced persons (IDPs) in Pakistan' May 7, 2009 <http://chagataikhan.blogspot.in/2009/05/internally-displaced-persons-idps-in.html>
- 110 Samar Minallah 'Internally Displaced Women Problems and Needs': 'legislative Watch' Aurat Publication & Information service foundation April-June 2009
- 111 <http://tribune.com.pk/story/722344/exodus-revisited-displaced-families-from-n-waziristan-find-respite-in-bannu-afghanistan/>
- 112 Brookings & LSE "Under the Radar, Internally Displaced persons in non - camp Settings" Oct 2013 <http://www.brookings.edu/research/reports/2013/10/noncamp-displaced-persons>
- 113 Author interview with Pakistan Filmmaker Ammar Aziz's on Jalozaï camp the location of his film A Walnut Tree, Lahore August 2015
- 114 Assunta Nicolini 'Internal Displacement in Pakistan Finding Solutions' The Tribune April 21, 2014 <http://tribune.com.pk/story/698522/internal-displacement-in-pakistan-finding-solutions>
- 115 In the context of Afghanistan: Abdul Samad Hami, Deputy Minister of Refugees & Repatriations is quoted as saying, "We've spoken with the mayors and municipal leaders no one wants to integrate the IDPs. They say they are spoiling the community or the land and need to go" - in Brookings & LSE study 2013, p. 17 [Note: 108]
- 116 <https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>
- 117 CEDAW: Concluding Comments of the Committee on Elimination of Discrimination Against Women: India 37th session 15-Jan- 2 Feb (North East Network 2008)
- 118 http://www2.unwomen.org/~media/headquarters/attachments/sections/csw/59/national_reviews/afghanistan_review_beijing20.ashx?v=1&d=20140917T100717
- 119 See also Tanushree Rao [Note 26]
- 120 Tapan Bose, Manav Kapur and Soumya Jha 'Using Right to Equality for Economic, Social and Cultural Rights: Study of Law And Judgments' A study commissioned developed by SAFHR as part of the Research Study & Advocacy Programme on "A Rights Based Approach to Poverty Reduction", Delhi December 2015, available at www.safhr.org; Yash Ghai & Jane Cotterell 'Role of Courts in implementing ESCR' in *Economic, Social & Cultural Rights In Practice: The Role of Judges in Implementing Eco Social & Cultural Rights* Interrights, London 2004; pp. 58-91]
- 121 O.P. Vyas, NHRC, at MCRG Workshop on 'Internal Displacement in India: The Imperatives to Look at the Causes and Linkages and to Find Durable Solutions', 13- 15 July 2007, Bangalore <http://www.mcrg.ac.in/idp1.asp>; MCRG "Responsibility to Protect: IDPs and our National and State Human Rights Commissions" compiled and edited by Ishita Dey & Sabyasahi B R Chaudhury, Kolkata 2007 http://www.mcrg.ac.in/Responsibility_to_Protect.pdf
- 122 NHRC unhappy over Kokrajhar relief camps, The Assam Tribune, 16 November 2007
- 123 ibid
- 124 Amit Anand Choudhary "Grant citizenship to Chakma Refugees within 3 Months: Supreme Court" Times of India Sept 18, 2015, <http://timesofindia.indiatimes.com/india/Grant-citizenship-to-Chakma-refugees-within-3-months-Supreme-Court/articleshow/49015645.cms>
- 125 http://www.achrweb.org/ihrqr/issue2/delhi_high_court.html
- 126 National Commission for Protection of Child Rights (NCPCR) "Protection of Children's Rights in Areas of Civil Unrest", GOI, Delhi, 2010 available at http://ncpcr.gov.in/view_file.php?fid=61
- 127 An Approach to the Twelfth Five Year Plan GOI, 2011 see section on Social and Regional Equity pp. 104-105 http://planningcommission.gov.in/plans/planrel/12appdrft/approach_12plan.pdf
- 128 IDMC & NRC 'India: National and State Authorities failing to Protect IDPs' 2 sept 2010, <http://www.internal-displacement.org/assets/library/Asia/India/pdf/India-September-2010.pdf>
- 129 Text available at http://revenueassam.nic.in/pdf/assam_disaster_management_manual_2015.pdf

- 130 Text available at <http://atingl.nic.in/Downloads/THE%20DISASTER%20MANAGEMENT%20ACT%202005.pdf>
- 131 Supra Note 51
- 132 Supra Note 52
- 134 National Disaster management Act 2010 http://www.na.gov.pk/uploads/documents/1302135719_202.pdf
- 134 Supra Note 49; “National policy Guidelines on Vulnerable Groups in Disasters” 2014 http://www.ndma.gov.pk/new/Documents/gcc_policy.pdf
- 135 See www.ndma.gov.pk/Documents/drrpolicy2013.pdf
- 136 See: www.ndma.gov.pk/new/Documents/gcc_policy.pdf
- 137 SAARC Food Bank <http://www.ifrc.org/Docs/idrl/N646EN.pdf>; SAARC Development Fund <http://www.sdfsec.org/>; SAARC Convention on Preventing Trafficking <http://www.saarc-sec.org/userfiles/conv-trafficking.pdf>

SELECT BIBLIOGRAPHY

Amling, Alexandra; Brandt, Kellie; Malhotra, Niyati: 'Women IDPs in Nepal, the Philippines and Sri Lanka', One Earth Future Foundation, 2015

Bunch, Charlotte and Reilly, Niamh L. 'Demanding Accountability: The Global Campaign and Vienna Tribunal for Human Rights', Center for Women's Global Leadership, Rutgers University, New Jersey, USA and v. United Nations Development Fund for Women (UNIFEM) New York, USA, 1999

Hassan, Palwasha: "Afghan Internally Displaced Women: Complex Realities", Kabul, WRN 2016

Kalin, W. and Goldman, R.: "Legal Framework" in R. Cohen & F. Deng, *Masses in Flight: The Global Crisis of Internal Displacement*, Washington D.C.: Brookings Institution Press, 1998

Manchanda, Rita and Sharma, Aparajita: *Homeless at Home: Internally Displaced in India's Northeast*, Delhi, WRN 2016

McGrath, Mackenzie: 'South Asia Women's Human Rights Tribunal Background Paper', Dec 2014

Naz, Rukhshanda: "Women in Conflict: Voices for Equality, Internally Displaced Women from North and South Waziristan", Islamabad, WRN 2016

Oberoi, Pia: "Exile and Belonging: Refugees and State Policy in South Asia", New Delhi: Oxford University Press, 2006

Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325, UN Women, 2015

Rajagopalan, Swarna: "Human Rights Tribunals: Lesson and Checklists", WRN, 2015

'Reassessing Internal Displacement in South Asia', edited, SAHR, 2013

Reilly, Niamh & Posluszny, Linda: 'Women Testify: A Planning Lanning Guide For Popular Tribunals & Hearings,' Center for Women's Global Leadership, Rutgers, The State University of New Jersey, Douglass College, 2005

Saigol, Rubina: "At Home or in the Grave: Afghan Women & the Reproduction of Patriarchy", Working Paper series 70, SDPI Islamabad 2002

Samual Hall: 'Challenges of IDP Protection: Research study on the protection of internally displaced persons in Afghanistan', Norwegian Ministry of Foreign Affairs, November 2012

Soderholm, Chelsea; Humayun, Sidra; Sharma, Aparajita: 'Regional Blueprint for the WRN Tribunal', WRN 2015

'The Women's Court: A Feminist Approach to Justice', edited by Stasa Zajovic, Women in Black and Center for Women's Studies, Belgrade, May 2015

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