

Parallel Report

THE RIGHT TO ADEQUATE FOOD IN INDIA

Reference: Second to fifth periodic reports of India
UN Doc. E/C.12/IND/5 submitted to the CESCR, 40th session



FIAN
FOR INTERNATIONAL
AGRICULTURAL
LAW

FIAN India Delhi Office

1/14 B, Jungpura-A,
New Delhi-110025, India
fianindia@yahoo.com
www.fian.in

FIAN Andhra Pradesh

502, D-Block, 3 Keerthi Tower
Lalapet, Secunderabad-500017
Andhra Pradesh, India
Tel: +91 40 27015838
fian_andhrachapter@yahoo.co.in

FIAN Karnataka

9th Cross Bhagyanagar
Belgaum 590006
Karnataka, India
Tel: +91 831 2484491
fianashraya@sancharnet.in

FIAN Uttar Pradesh

A-8, Sarvodaya Nagar
Indira Nagar Lucknow-226016
Uttar Pradesh, India
Tel: +91 522 2349556
fianup@yahoo.com

FIAN Tamilnadu

11 P.T. Rajan Road, 5 Street
Madurai 625002
Tamilnadu, India
Tel: +91 452 4360810
fiantn@rediffmail.com

FIAN West Bengal

195 Jodhpur Park
Kolkata 700068,
West Bengal India
Tel: +91 33 24128426, 24732740
fianwestbengal@vsnl.net

FIAN INTERNATIONAL

Willy-Brandt-Platz 5
69115 Heidelberg, Germany
Tel.: +49-6221-6530030
Fax: +49-6221-830545
E-mail: fian@fian.org
<http://www.fian.org>

Editorial Board:

D. Gurusamy, John Bosco, T. Ravi Kumar, Ujjaini Halim,
Ashwini Mankame, Sabine Pabst, Sanjay K. Rai,
Sandra Ratjen, and Ana-Maria Suarez-Franco.

Photographs: Mohan Dhamotharan

Printed on recycled paper
Published April 2008

We would like to express our gratitude and appreciation to Misereor (www.misereor.de) for funding FIAN work in India, especially the documentation of cases presented in this report, and to Welthungerhilfe (www.welthungerhilfe.de) for funding the elaboration of the monitoring tool which has been used as a framework for this parallel report.



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Acronyms

AAY	Antyodaya Anna Yojana	FFM	Fact Finding Mission
APL	Above Poverty Line	FIAN	FoodFirst Information and Action Network
ASI	Archeological Survey of India	FPS	Fair Price Shops
BIAS	Budgetary Information and Analysis Services	FTWZ	Free Trade Warehousing Zones
BMI	body mass index	GB	Gender Budgeting
BoA	Board of Approval	GC	General Comment
BPL	Below Poverty Line	GDP	Gross Domestic Product
BT	Bacillus Thuringiensis	GNI	Gross National Income
BVJM	Bisthapan Virodhi Jan Manch or People's Organisation against Displacement	GOI	Government of India
CAI	Catchment Area Treatment	HEDCON	Health, Environment, and Development Consortium
CBGA	Centre for Budgetary and Governance Accountability	HZL	Hindustan Zinc Limited
CEC	Central Empowered Committee	IBRD	International Bank of Reconstruction and Development
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	ICCPR	International Covenant on Civil and Political Rights
CEFS	Centre for Environment and Food Security	ICDS	Integrated Child Development Scheme
CESCR	Committee on Economic, Social and Cultural Rights	ICERD	International Convention on the Elimination of Racial Discrimination
CETP	Common Effluent Treatment Plants	ICESCR	International Covenant on Economic, Social and Cultural Rights
CIL	Coal India limited	ICN	India Committee of the Netherlands
CIRCUS	Citizen's Initiative for the Rights of Children under Six	IDCO	Industrial Development Corporation of Orissa
CMPDJ	Central Mine Planning and Design Institute limited	ILO	International Labour Organisation
CPI	Communist Party of India	IMSE	Institute for Motivating Self Employment
CRC	Convention on the Rights of the Child	IMF	International Monetary Fund
CRZ	Coastal Regulation Zone	INR	Indian rupees
CSPSA	Chhattisgarh Special Public Security Act	IPR	Industrial Policy Resolution
CWS	Centre for World Solidarity	JBN	Jai Bheem Nagar
DC	District Collector	JFM	Joint Forest Management
DLC	District Labour Council	K.M.C	Kolkata Municipal Corporation
DPR	Detailed Project Report	MDGs	Millennium Development Goals
EGS	Employment Guarantee Scheme	MDMS	Mid-day Meal Scheme
EPZ	Export processing Zone	MIDC	Maharashtra Industrial Development Corporation
ESCR	Economic, Social and Cultural Rights	MNC	Multinational Corporation
ETDZ	Economic and Technical Development Zones	MOEF	Ministry of Environment and Forests
FAO	Food and Agricultural Organisation	MOU	Memorandum of Understanding
FCI	Food Corporation of India	MPDA	Meghalaya Preventive Detention Act
FDI	Foreign Direct Investment	MSFC	Maharashtra State Farming Corporation
FDST	Forest Rights to Forest Dwelling Scheduled Tribes	MSP	Minimum Support Price
		MSSRF	MS Swaminathan Research Foundation

NAPM	National Alliance of People's Movement	SCP	Special Component Plan
NBA	Narmada Bachao Andolan	SCSP	Scheduled Caste Sub Plan
NCA	Narmada Control Authority	SEEPZ	Santacruz Electronics Export Processing Zone
NCD	non-communicable diseases	SEZ	Special Economic Zone
NDA	National Democratic Alliance	SHG	Self-help group
NDMA	National Disaster Management Authority	SIPCOT	Small Industries Promotion Corporation
NFBS	National Family Benefit Scheme	SGRY	Sampoorna Gramin Rozgar Yojana
NFFWP	National Food for Work Programme	SPO	Special Police Officer
NGOs	Non-Governmental Organizations	STF	Special Police Task Force
NHRC	National Human Rights Commission	STP	Sewage Treatment Plants
NIDZNAT	National Industrial Development Zones for New and Advanced Technology	ST	Scheduled Tribes
NMBS	National Maternity Benefit Scheme	TPDS	Targeted Public Distribution Scheme
NMP	National Mineral Policy	TSP	Tribal Sub Plan
NMW	National Minimum Wage	TWAD	Tamil Nadu Water and Drainage Board
NOAPS	National Old Age Pension Scheme	UAIL	Utkal Alumina International Ltd.
NPRR	National Policy on Resettlement and Rehabilitation	UCIL	Uranium Corporation of India Limited
NREGA	National Rural Employment Guarantee Act	UDHR	Universal Declaration of Human Rights
NSSO	National Sample Survey Organisation	UN	United Nations
NTFPs	Non-Timber Forest Products	UNICEF	United Nations International Children's Education Fund
OMC	Orissa Mining Corporation	UPA	United Progressive Alliance
PAFs	Projected Affected Families	VAK	Vikas Adhyayan Kendra
PAPs	Project Affected Persons	VJAS	Vidharbha Jan Aandolan Samiti
PDS	Public Distribution System	WB	World Bank
PEM	Protein-Energy-Malnutrition	WTO	World Trade Organization
PESA	Provisions of the Panchayats (Extension to the Scheduled Areas)		
PHEP	Public Health Engineering Department		
POPs	Persistent Organic Pollutants		
POTA	Prevention of Terrorist Activities Act		
PSSP	Prakrutik Sampad Surakhya Parishad		
PUCL	People's Union for Civil Liberties		
PVCHR	People's Vigilance Committee on Human Rights		
PWD	Person with Disability		
RPDS	Revamped PDS		
RTI	Right to Information Act		
SC	Scheduled Caste		
SC	Supreme Court		
SCC	Supreme Court Case		

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Acknowledgments

An undertaking such as the compilation of this Parallel Report relies upon the dedication, hard work and good will of a wide range of organisations and individuals and FIAN gratefully acknowledges the contributions of all those who participated in the planning process and implementation. We would also like to profoundly thank all those who gave us valuable contributions of cases, articles, and timely advice.

We would like to take this opportunity to thank the following organisations: IMSE, Health, Environment and Development Consortium (HEDCON), Social Watch, SEVA, Vikas Adhyayan Kendra (VAK), Ekta Parishad, PVCHR - People's Vigilance Committee on Human Rights, Campaign for Survival and Dignity, Jharkhand Resource Center of CWS, Lok Adhikar Manch (Peoples' Rights Forum), Janhit Foundation, Parivartan, Agrabamee, Ecumenical Sangam Rainbow, People's Watch Tamil Nadu, Grassroots India Trust, Institute of Objective Studies and all others who have contributed to this work.

We also thank Manu Alphonse, Hasrat Arjjumend, Adv Bipin Bihari, C. R Bijoy, Samarendra Das, Xavier Dias, Subrata Dutta, Christophe Golay, Biplap Halim, Babu Jesudoss, Dilip Kamat, Prabhu Lal, Felix Padel, Pravinbhai Patel, D. Prempati, Anil Rana, Xavier Raj, Monimoy Sinha, Neetu Sharma, and Suman.

From the FIAN International Secretariat we thank: Julie Bergamin, Bastiaan Colombaroli, Kerstin Fink, Thomas Hirsch, Nastja Horvat, Dr. Rolf Künemann, Gesa Petersen, Sandra Ratjen, Carolina Ruiz, Yifang Tang, and Nina Treu.

We would also like to express our gratitude and appreciation to Misereor for funding FIAN work in India, especially the documentation of cases presented in this report, and to Welthungerhilfe for funding the elaboration of the monitoring tool which has been used as a framework for this parallel report.

Finally, FIAN extends special thanks to the many individuals and communities, who shared their experiences with us and helped us to present their case. This report would not have been possible without their struggle and courage.

1. Introduction

FIAN, the International Human Rights Organisation for the Right to Feed Oneself, presents this Parallel Report on the Right to Food in India.

Of the many aspects concerning economic, social, and cultural rights, FIAN concentrates on the right to freedom from hunger and the right to adequate food. India, since 1979 is a State Party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Under Art.11 of the ICESCR, the States Parties are obliged to guarantee the right to be free from hunger and the right to adequate food. The right to adequate food is realised when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. More specifically, the right to adequate food derives from the following obligations of States implied by Article 11:

- a. The obligation to **Respect** existing access to adequate food requires States parties not to take any measures that result in preventing this access.
- b. The obligation to **Protect** requires measures to be taken by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.
- c. The obligation to **Fulfil** means that the States must pro-actively engage in activities intended to strengthen people's access to and utilisation of resources and means to ensure their livelihood, including food security. Furthermore, wherever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) this right directly.

The Government of India has designed several policies and schemes to support the most vulnerable sections of the Indian society to overcome hunger and malnutrition. These are efforts by the Government of India which have to be acknowledged. However, there are still numerous shortcomings in the policies and schemes and with regard to their implementation.

This report is aimed at providing detailed information concerning the right to adequate food in India. It by no means provides an exhaustive account of all the violations that occur in India. To do so would be beyond the scope of such a document. The issues presented here provide a clear indication of the severity of the situation in India and the Government's role in respecting, protecting, and fulfilling the right to adequate food according to the obligations resulting from international and national law.

As elaborated in this report, food availability is not the problem in India. There is plenty of food to feed every man, woman and child; yet there are several reports of starvation death from the country as case studies indicate. The problem lies in the accessibility of food to those most vulnerable to hunger and starvation and the failure of the State to take effective steps to prevent such a situation.

This report is the outcome of several years of FIAN and civil society work on the right to food in India. It is especially the outcome of two processes undertaken in India. One is the three year process funded by Misereor, Germany which focused on capacity building of FIAN chapters in India as well as of NGO representatives interested in the rights based approach, case documentation, organisation development and reporting on the situation of the right to food in India. The second is the participative elaboration of a monitoring tool funded by Welthungerhilfe, Germany which includes work in India with various civil society actors. The monitoring tool to monitor public policies is based on the Voluntary Guidelines on the right to adequate food adopted under the auspices of the FAO in 2004. The Tool serves as a framework and methodological support to the information gathered in the present report. It is a pioneering exercise which we hope will develop in the coming years and will inspire other processes in different countries.

We are confident, that this report is not the end of the process, but will lead to deepening the understanding of interested stakeholders in the rights based approach; create public awareness through activities using the report; encourage co-operation with other likeminded organisations

and contribute to the emerging alliance on the right to food; promote the justiciability of the human right to food; and support the victims of violations of the right to food by addressing cases of violations identified.

2. Monitoring the Human Right to Food in India

India is a subcontinent and the seventh-largest country with a geographical area of 3.3 million square km. It covers 2.4 percent of the world's land area, and is home to 15 percent of the world's population counting more than a billion people. India borders Pakistan to the west; China, Nepal, and Bhutan to the north-east; and Bangladesh and Myanmar to the east. It is bounded by the Indian Ocean on the south, the Arabian Sea on the west, and the Bay of Bengal on the east. India has a varied terrain with upland plain (Deccan Plateau) in the south, flat to rolling plains along the largest river Ganges, deserts in the west and Himalayas, the highest mountain range in the world, in the north.

Indian civilization goes back to more than 5000 years. The Republic of India, which attained freedom on 15th of August 1947 from more than 150 years (1776-1947) of British rule, is a union of 28 States and seven centrally administered Union Territories. The modernisation associated with industrial revolution benefited India during the British rule at the cost of collapse of traditional industry and flooding of Indian markets with cheap British goods. Severe famines were attributed to shortfall of rain and British economic policies that forced farmers to work on Indigo plantations, restrictions on internal trade, inflationary measures that increased the price of food, and substantial exports of staple crops from India to the United Kingdom.

2.1 Democracy, Good Governance, Human Rights, and the Rule of Law

Legal guarantees for human rights norms around the right to food

India has ratified the following international law relevant for the right to food: ICESCR (10 April 1979), ICCPR (10 April 1979), CEDAW (9 July 1993), CRC (11 Dec. 1992).

The Indian Supreme Court stated that all national courts must apply the international human rights norms when they decide on human rights violations. According to the Supreme Court, national courts must interpret domestic laws in accordance with the international obligations of the Government¹, and they must base their decisions directly on international human rights law when it provides a better protection for the victims.² In a recent case on the right to food, the Supreme Court stated that:

“The provisions of the covenant (on economic, social, and cultural rights), which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can certainly be relied upon by courts as facets of those fundamental rights and hence, enforceable as such...”³

This means that in India national courts have to ensure that the Government respects its international obligations to respect, protect, and fulfil the right to food, without any discrimination.

Application of the legal standards with adequate participation of people threatened by or suffering hunger and malnutrition or the exclusion from resources

India is commonly known as the largest and the most populous democracy in the world.⁴ India has a stable democratic system and maintains electoral democracy. The Constitution⁵, which

1 Supreme Court, Jolly George Verghese v Bank of Cochin, 1980. On the domestic application of international human rights treaties in India, see A.S. Anand, Chief Justice of India, The Domestic Application of International Human Rights Norms, available at: http://www.humanrightsinitiative.org/jc/papers/jc_2003/background_papers/BP_Anand.pdf.

2 Supreme Court, Sheela Barse v Secretary, Children's Aid Society, 1987.

3 Supreme Court, People's Union for Civil Liberties v. Union of India & Ors, 2001.

4 British Broadcasting Corporation (BBC), Country profile: India, 9 January 2007, available at: http://news.bbc.co.uk/2/hi/south_asia/country_profiles/1154019.stm.

5 The Constitution of India is available at: <http://lawmin.nic.in/coi.htm>.

came into force in 1950, defines India as a sovereign, socialist, secular, democratic republic. One of the important features of the Constitution is the inclusion of Fundamental Rights. The Fundamental Rights of every Indian citizen include the freedom of speech, expression, belief, assembly and association, migration, and choice of occupation or trade. These rights also protect every Indian from discrimination on grounds of race, religion, creed, or sex, and are enforceable in courts of law. The Constitution also includes the directive principles of the state policy, which are guidelines to the central and state government and provide a framework for social justice and economic welfare. India has a federal form of government and a bicameral parliament. It has three branches of governance: the Legislature, Executive, and Judiciary. The States have their own Legislative Assemblies. The Head of the States are called Governors. Appointed by the President, they normally exercise the same powers in the States as the President does at the Central government level. The electoral machinery is centralized in an independent statutory body called the Election Commission.

The Constitution also provides for decentralization in the form of a general directive to the state to establish Panchayat Raj institutions (PRIs) at the village level as the lowest rung of governance. The introduction of Panchayat Raj, established in most states in the late fifties of the twentieth century, signified the beginning of a new era of participatory development and laid the foundation of 'democratic decentralization' to mainly promote people's participation in rural development programmes, provide an institutional framework for popular administration, act as a medium of social and political change, facilitate local mobilization, and prepare and assist in the implementation of development plans. In 1992, the Constitution's 73rd Amendment Act conferred constitutional sanctity and power to Panchayats giving them an important role in shaping rural progress with the goal of integrating the poorest and most marginalized into the mainstream of development. It reserves a quota of Panchayat membership and chairperson positions for Scheduled Castes⁶/Tribes and women. It also enables the weaker social sections to voice their problems. Thus the basic objective of Panchayat Raj is to evolve a system of democratic decentralization and devolution of power instead of people with a view to ensuring rapid socio-economic progress and speedier and inexpensive justice.

Hunger and malnutrition is most prevalent in areas inhabited by Adivasis and Dalits. Though there have been efforts to identify food insecure areas within India⁷, even in the prosperous zones malnutrition exist, while in food insecure areas there are households which do not face any hunger and malnutrition. One has to be cautious in identifying such zones.⁸

Hunger and malnutrition in India corresponds to a high extent to the most vulnerable groups in India. There is a long tradition of discrimination of Scheduled Tribes and Castes, women and children and economically weaker sections of the society. With regard to naming victim groups, however, one has to be careful to avoid general terms. While the newly rich women of the middle class and their children are increasingly facing the problem of obesity⁹, women and children from to marginalized groups (for instance Dalits and Adivasis) suffer most from hunger and malnutrition. Surviving as a daughter of a poor family, without land, belonging to a Scheduled tribe or caste, working in the unorganized sector in the rural or urban India is a continuous fight against hunger beyond access to any Government programs mainly due to discrimination.

6 Schedule castes refer to the Dalits who are the lowest rung of the cast system in India.

7 Food Insecurity Atlas of Rural India, World Food Programme of the United Nations and M.S. Swaminathan Research Foundation, MSSRF, Chennai 2003.

8 Hunger Mapping in Context of Jharkhand State, Jharkhand Resource Centre of CWS and Sukhad Virodhi Abhiyan, 2007.

9 Amanda Cunningham observes that "In India, which has more undernourished people than any other country in the world, a new problem is emerging: urban, middle-class obesity, especially among children. Experts warn that diabetes and heart disease could rise dramatically in the next 25 years unless the government tackles the problem. And that, in turn, could overwhelm India's already over-burdened health care system.", in India sounds alarm on rise in obesity cases, 13 September 2006, available at: <http://www.npr.org/templates/story/story.php?storyId=6069745>.

The Right to Information Act (Act No.22/2005)

The Right to Information Act is a law, which came into force on 12th October 2005 and extends to the whole of India except of Jammu and Kashmir. The Act empowers citizens to get access to information available with the government authorities in order to:

- Inspect works, documents, and records.
- Take notes, extracts or certified copies of documents or records.
- Take certified samples of material.
- Obtain information in form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts.

Under this act any citizen may request information from a public authority including executive, legislative, and judiciary. The Act covers also bodies or authorities “owned, controlled or substantially financed” by government including non-Government organisations. By applying in writing to the Public Information Officer specifying the particulars of the information sought for the responsible authority is obliged to provide the information within 30 days from the date of application or within 48 hours in case the information concerns the life and liberty of a person. Failure to provide the information within the specified period is regarded as a deemed refusal and refusal with or without reasons may be ground for appeal. No fee will be charged from people living below the poverty line. The right to food information can be powerful in fighting for the full realisation of the right to food and water.

However, there are a considerable number of cases where the Act is not properly implemented. In Singur, e.g., since early 2006, several petitions under the Right to Information (RTI) Act are pending before the local authorities demanding transparency in the land deals between the Tata Company and the state government, with special regard to the farm lands in Singur. The government has not responded to a single one — a clear violation of the RTI Act, 2005. Till the time the active resistance against the land acquisition in Singur started, the state government was not willing to give even the people directly affected any information regarding the land acquisition or negotiate rehabilitation proposals.¹⁰

Regarding the required consent of the people for the planned project (according to the 74th Amendment of the Constitution), all meetings held were with party representatives and panchayat members but not with any gram sabha or with the project affected. No project details were provided to the gram panchayat nor was its consent sought, as reported to a panel for public hearing on October 27, 2006¹¹.

Established and implemented mechanisms to ensure the protection of right to food defenders and the persecution of attacks against them

Human rights activists are often regarded as a threat to national interest, since they ask accountability from the state and expect states to meet their obligations. As a consequence, they face considerable risks when taking forward issues deemed sensitive by the government. The range of violations used by state actors like police, military personnel, paramilitary forces and intelligence officials to intimidate and stop working defenders of human rights include torture, preventive illegal or arbitrary detention, disappearances, ill-treatment, the use of excessive force, and the violation of due process rights. In addition to violating the law to deter defenders, state actors often misuse the law. Sections in the Criminal Procedure Code and the Indian penal code as well as preventive detention laws are applied arbitrarily to harass, intimidate, or obstruct peaceful protest by defenders.¹²

10 Vijayan, M.J.: Singur: Where The Left Turns Right, 8 January, 2007, Tehelka, available at: <http://www.countercurrents.org/ind-vijayan080106.htm>

11 The Public Hearing and further investigation on the struggle by the people of Singur, The Final Report, available at <http://www.doccentre.net/Tod/singur-final-report.php>.

12 Human Rights Defenders: Fighting an uphill Battle, Human Rights Features (Voice of the Asia-Pacific Human Rights Network), available at: <http://www.countercurrents.org/hr-hrf2910003.htm>.

Following are some examples to illustrate the persecution faced by human rights defenders in India:

In Singur, Hooghly District in West Bengal, the government, despite unwillingness of the majority of landowning farmers, has acquired land and handed it over to Tata's, the biggest Indian MNC, to build an automobile manufacturing unit. Farmers, who have organized themselves in different groups against the expropriation, are facing severe repression by the state government. Women are sexually harassed and several activists and journalists have been arrested by the police. Emergency Act 144, which prohibits meetings and retains outsiders from entering Singur, has been imposed on the regions. Over the past year, the people of Singur have struggled a lot to demand their right to land and livelihood security. However, adequate compensation has not been provided to them by the government and many villagers have not accepted their compensation.¹³

On July 2007 Saroj Mohanty was arrested, a long time activist with Prakrutik Sampad Surakhya Parishad (PSSP), which has over 15 years opposing the entry of large bauxite mining companies in Kashipur district in Orissa. The protest of the people against the efforts of the mining company UAIL and the Orissa government to push through the project for bauxite mining was met with severe repression, harassment, and arrests. As part of the repression, a number of PSSP activists and ordinary people were falsely charged, among them Mr. Mohanty.¹⁴

On February 15th 2008 the Dalit human rights activist and district human rights monitor in Salem district in Tamil Nadu, Mr. Arumugam Katuraja Kanagaraj, has been arbitrarily arrested and beaten. After his release, he had to undergo a medical treatment for the injuries obtained. He is being threatened to be killed once he comes back to his village. In the past, several cases and complaints had already been registered against Mr. Kanaraj after he registered a series of complaints against the President of Vellalapatti, in particular corruption and bribery committed in the framework of his function.¹⁵

On 14 May 2007, Dr. Binayak Sen was detained at the Tarbahar Police Station, Bilaspur district, and is being held at Raipur prison since then. Police officials later sealed his residence and searched his clinic. His organic farm in a nearby village was also searched.

This incident has followed the alleged involvement of police in unlawful killings. This follows the alleged involvement of police in unlawful killings of 12 Adivasis in Santoshpur on March 31. The allegations have been substantiated by a police inquiry but the state government refuses to approve the prosecutions of those suspected to be involved in the killings. Dr. Sen is the general secretary of the Chhattisgarh unit of the People's Union for Civil Liberties (PUCL), one of India's foremost human rights organizations, and has been instrumental in working on access to health for Adivasis. Dr. Sen has been detained under provisions of the Chhattisgarh Special Public Security Act, 2006 (CSPSA), and the Unlawful Activities (Prevention) Act, 1967, which was amended in 2004 to include key sections of the Prevention of Terrorist Activities Act (POTA), 2002. The POTA itself was repealed in 2004 following widespread criticism of abuse and human rights violations. The CSPSA allows for arbitrary detention of persons suspected of belonging to an unlawful organization or participating in its activities or giving protection to any member of such an organization and human rights organizations have demanded its repeal. Dr. Sen is the fifth person to be arrested under the CSPSA in the state.¹⁶

Charges that have also been filed against human rights defender Dr Lenin Raghuvanshi and other staff members of the People's Vigilance Committee on Human Rights (PVCHR). Dr Raghuvanshi is the Convener of the PVCHR and also a member of the District Vigilance Committee on Bonded Labour in the State of Uttar Pradesh, in northern India. In his work in the defence of human rights, Dr Lenin Raghuvanshi has focused on the protection of the right to food and on victims of death due to starvation.¹⁷

13 More information: Chapter 4, Case 12.

14 Hotline Asia Urgent Appeals- UA070727(5), available at: <http://www.acpp.org/uappeals/2007/07072705.html>.

15 Organisation Mondiale Contre la Torture, available at: <http://www.omct.org/pdf.php?lang=eng&articleId>.

16 Amnesty International Public Statement, available at: <http://asiapacific.amnesty.org/library/Index/ENGASA200132007?open&of=ENG-IND>.

17 Frontline, available at: <http://www.frontlinedefenders.org>.

Repression was also unleashed by the Meghalaya Government against activists of a movement against the proposed Uranium Mining by the Uranium Corporation of India Limited (UCIL) in the Domisiat/Wahkaji area of West Khasi Hills district of Meghalaya. This popular non-violent movement has managed to stop the mining of Uranium from the area. Instead of respecting the people's opinions, UCIL, supported by the State Government has tried to split the indigenous community's solidarity through bribes, and attempted to silence any dissent through use of the draconian Meghalaya Preventive Detention Act (MPDA). On 12th June, 2007 after announcing a Public Hearing on the issue, 16 activists have been arrested so far (many of them have reported torture), and 7 of them have been booked under the Meghalaya Preventive Detection Act (MPDA), which allows the government to hold them under custody for six months without bail or judicial trial. Most of the other activists have been forced to go underground.¹⁸

2.2 Economic Development Policies

India's economy encompasses traditional village farming, modern agriculture, handicrafts, a wide range of modern industries, and a multitude of services. India is emerging as the second fastest growing economy in the world. Indeed, the economy has posted an average growth rate of 6 percent since 1990 and of 9.2 percent in 2006-07¹⁹. The country can count on large numbers of well-educated people and has become a major exporter of software services. On the other hand it had a continuing public-sector budget deficit, running at approximately 10 percent of the GDP in 1997-2002.

After independence India adopted a centrally planned economy to achieve an effective and equitable allocation of national resources and balanced economic development. India's strategy sought to establish a socialistic pattern of society through economic growth with self-reliance, social justice, and alleviation of poverty within a democratic political framework using the mechanism of a mixed economy where both public and private sectors co-exist. The mixed economy model in India combined features of both capitalist market economy and the socialist command economy. India also initiated planning for economic development with the establishment of the planning commission and introducing the five year plans.

The focus of the first five year plan (1950-51) introduced after independence, was on raising the level of investment in irrigation, power and other infrastructure for accelerating growth. This focus underwent a change in the second five year plan which initiated a model of industrial development which emphasised the development of heavy industry under the public sector. Domestic industry was protected from foreign competition through high tariff walls, exchange-rate management, controls, and licences. This strategy of import substitution and heavy-industry promotion created a non-competitive, inefficient, capital-intensive and high-cost industrial structure but also discriminated against labour-intensive tradable agriculture and resulted in unwarranted export pessimism because of excessive concern about self-sufficiency. However, during the same period India built a large infrastructure not only in heavy and machine goods industries, but also in the areas of power, irrigation, credit, higher education, scientific research, and training.

During the 1960's and early 1970's India faced severe economic problems because of wars²⁰ with her neighbours, devaluation of the currency in 1966 due to foreign exchange situation and decline in food production leading to increased dependence on food imports under the United States Government's PL 480.²¹ In the late 1960s, agricultural growth revived with the adoption of green revolution technology in some regions. Coincidentally, the manufacturing sector, which had seen a notable deceleration in growth from 1964-65 to 1975-76, began registering far higher growth from 1977 to 1978. During the 1980s, the Indian

18 Himanshu Thakkar in Chattisgarh-Net Digest Number 1193, available at: <http://www.cgnet.in>.

19 World Bank data, available at: <http://go.worldbank.org/9ULBAD5AT0>.

20 India fought wars with her neighbours in 1962 (China), 1965 (Pakistan) and 1971 (Pakistan) causing resources diversion to the defence sector and decline in public investment.

21 The situation became critical in the mid-1960s with the failure of two consecutive crops in 1964/65 and 1965/66 and the country had to import large quantities of food-grains under PL 480.

economy witnessed an unprecedented growth rate of 5.4 percent per annum; limited liberalisation was initiated and steps were taken to modernise some of the most important industries. Thus policies of late 1980s made way for the Economic Policies of 1990s which introduced large-scale liberalisation process in India.

During the period 1979 to 1990, when the growth rate of Gross Domestic Product (GDP) accelerated to 5.4 percent, the gap between savings and investment widened substantially. The need to finance large capital expenditures and imports of machinery and raw materials, including oil, led to heavy borrowing from abroad. The result was a cumulative increase in foreign debt and in repayment liability. Foreign debt increased from USD 23.5 billion in 1980 to USD 63.40 billion in 1991. In 1991, nearly 28 percent of total export revenues went to service the debt. As long as the international credibility of India was high, loans were forthcoming and the country could go on living on foreign borrowing. However, the combination of a number of factors, including the sharp rise in import prices of oil and the downgrading of India's credit rating, led to a loss of confidence that resulted in the drying up of short-term credit along with a net outflow of non-resident Indian deposits. Thus, in spite of borrowing from the International Monetary Fund (IMF), the foreign exchange reserves declined.

It was against this background that the New Economic Policies was introduced. The multilateral agencies such as the IMF and the World Bank (WB) insisted that the policymakers undertake structural reforms before they agreed to salvage the country from the foreign exchange crisis. The reduction of direct state control of the economy was expected to improve economic efficiency. Step by step the market has been opened through the reduction of trade barriers and the liberalization of foreign investment policies. The liberalization process has led to political changes with direct and indirect impact on the hunger situation in the country benefiting some while leading to the impoverishment of others.

Today it is widely recognised that, although the 1990s saw a period of sustained economic growth as India moved towards a more market-oriented economy, this growth did not benefit all Indians equally.²² While middle and upper classes in urban areas have benefited from economic growth, the poorest have suffered a decline in living standards and rising food insecurity.

National Policies aiming at socio-economic and/or sector wise development strategy, which entail aspects relevant for the right to food

Attaining food security through self sufficiency, social justice and alleviation of poverty has been the aim of the Government of India since independence. The Government has initiated and refined an array of policies, programs and schemes to fight hunger and malnutrition, as well as to attain self sufficiency in food production. This section will provide an overview of such policies and analyse the salient features and impact on the situation of the right to food in India.

Economic policy²³

The Economic Policies of the 1990's aimed to liberalise and gradually integrate with the world economy by the dismantling of tariff walls, the protection of foreign direct investment and upgrading the technology of production in various fields. The broad thrusts were on financial stability, outward-looking policies and deregulation of domestic markets. The reforms consisted of two components. The short-term immediate stabilization measures focused on correcting the disequilibrium in the foreign exchange market through demand reduction, reforms in trade policy, a reduction in the fiscal deficit and the dismantling of barriers to the free flow of capital. External competitiveness was to be improved through a large nominal depreciation of the exchange rate. The medium-term structural adjustment programme introduced reforms in fiscal, exchange rate, trade and industrial policy as well as policies concerning the public sector, the financial sector, and the capital market. These reforms included elements such as deregulation of prices and investments, changes in the structure of taxation and public expenditure, moderation in wage

²² Swaminathan et al, National Food Security Summit, 2004, p. 15.

²³ The discussion on economic and agriculture policy was inspired by and quoted from the publication, *Struggle for land in the era of Neo-liberal Restructuring: A case from West Bengal in Neoliberal Subversion of Agrarian reform*, edited by Dr. Ujjiani Halim, IBON Foundation, 2006, p.1-58.

increases, privatisation of public enterprises and greater integration with the world economy. The adjustment policies introduced were not specific to the agricultural sector, but concerned the entire economy. But given the importance and predominance of the agricultural sector in the Indian economy, in terms of both income generation and employment the impact on agriculture was significant.

Agriculture policy

There were several agricultural components in the first and subsequent five-year plans. The first and most important was the implementation of land reforms during the mid-1950s with the objective of eliminating intermediaries and bringing about a greater degree of equality in land distribution. The second agricultural component was the undertaking of substantial investment in rural infrastructure (public investments in irrigation and power). Policies to provide cheap institutional credit and other subsidies to the farmers to encourage private investment in irrigation were introduced.

The mid-1960s the technological “upgrading” of Indian agriculture was initiated under the Green Revolution. The focus of agricultural policy became the modernization of agriculture through extending seed-fertilizer technology to different parts of the country. However, measures taken to involve small and marginal farmers in the production process by providing them with new inputs, including seeds, fertilizers, and credit at subsidized rates remained inadequate and Green Revolution techniques were mainly adopted by the privileged farmers.

Administered prices were the third area of policy during the planning era. In the context of pervading food shortages up until the mid-1950s, the agricultural price policy had aimed at serving the main planning objective of keeping food grain prices low in the interest of food security. With the founding of the Agricultural Price Commission in 1965, the price policy also provided incentives to farmers to increase production by establishing remunerative prices and assuring Minimum Support Prices (MSP). The objective of the price policy was to reconcile two opposing interests - that of the farmers for fair remuneration and that of the consumers for reasonable prices.

The fourth important component of the policy was the establishment of a comprehensive management system for the procurement, storage, and public distribution of food grains to provide food to consumers at reasonable prices. During periods of scarcity, minimum support and procurement price operations were combined with compulsory procurement, levies on millers, zonal restrictions and other measures to enable the distribution of food grains (at subsidized rates) through the Public Distribution System (PDS). Sufficient food stocks were kept for running the PDS and also to help to stabilize prices through open market operations.

The fifth component was tightly controlled trade and exchange rate policies. In the case of agriculture, except for a few traditional commercial crops, the sector was insulated from world markets through the almost total control of exports and imports. The estimated surplus over domestic consumption requirements determined the quantities to be exported and vice versa for imports. Food grains, sugar, and edible oils were imported in times of scarcity to prevent domestic prices of essential commodities from rising and to impart a measure of stability to domestic prices in the interest of both producers and consumers. Foreign trade in most agricultural goods was subject to quota or other restrictions such as minimum price requirements.

Finally, the financial policy attempted to mobilize resources for public sector expenditure and for public investment. A system was created to extend cooperative and institutional credit to the rural sector, thus facilitating private investment in infrastructure and encouraging the adoption of new technology.

The agricultural policy of pre-liberalisation did achieve some of the State’s objectives. The land reforms had modest success in distributing land to the landless and giving land tenure to the tillers. But the slow process of the implementation of the land reforms failed to redistribute land. Only in West Bengal and Kerala, where communist State Governments followed the agrarian reform more seriously, the situation was little better.

Policies also succeeded in accelerating the growth of agriculture and food grains production. Accelerated growth in food grains production resulted in a greater degree of food security for a rapidly rising population and in a reduction of dependence on food imports. By the end of the 1970s, India had become marginally self-sufficient in food grains. The steady growth in food grains production, over time, increased both physical and economic access to them. The availability of cereals increased by more than 20 percent from 1960 to 1990. Access to food for the poorer sectors of the population improved as the rapid growth in productivity lowered the real price of wheat and rice. Access also increased because the proportion of per capita income required to buy food declined over time. Finally, anti-poverty programmes such as the Integrated Rural Development Programme (1977), the Rural Landless Employment Guarantee Programme (1983), and the National Rural Employment Programme (1980) and, later on, the Jawahar Rozgar Yojana (1999) improved access. Effective mechanisms were developed for the relief of food scarcities and for resolving the problems of severe droughts through the initiation of special employment programmes.

However, the huge fertilizer, irrigation, electricity, credit eventually became unsustainable incurring debts for the farmers since they were unable to keep up with the rising cost of the inputs - fertilisers, irrigation pumps, and regular fresh supplies of seed - which intensive agriculture requires. The use of fertilizers not only impacted the soil but also the water bodies in the areas. Punjab, for example, is a case in point (please refer to special topic 4.1. A case study on Malsinghwal, the "Village for Sale" in Punjab).

At the same time, external trade policies, domestic regulation of agriculture and related policy distortions heavily discriminated against agriculture relative to manufacturing. Moreover, land reform failed to bring about an equitable distribution of land and, as a consequence, very large inequalities continue to exist in the rural areas. Finally, the new technologies that were encouraged by the policies and regulations were more appropriate for the richly endowed irrigated regions of India. Regional inequalities in productivity and income have remained high and in some cases have tended to increase. **Agriculturists in general, and small and marginal farmers and landless labourers in particular, remained extremely poor in the less well-endowed regions. The incidence of rural and urban poverty was very high. According to the Planning Commission estimates, in 1987-88, 39 percent of the population in rural areas and 40 percent in urban areas of India were living below the poverty line. As many as 83 million children in India were malnourished in 1991.**

Policies on mining, rehabilitation, and resettlement

India is rich in natural resources. The country mines and produces more than 80 mineral commodities in the form of ores, metals, industrial minerals, and mineral fuels and is among the world's leading producers of iron ore, bituminous coal, zinc, and bauxite, with 10 percent of world deposits. Mineral resources contributed 2 percent to GDP in 2001 and accounted for 20 percent of exports²⁴. The mineral wealth in India is however found by and large in forest area and also in areas inhabited by tribals for example in the States of Orissa, Jharkhand, and Chhattisgarh²⁵.

Like other sectors mining sector also underwent changes after liberalisation. The State controlled public sector entered the field of mining in Independent India under the Industrial Policy Resolution (IPR) of 1956. The IPR reserved the mining of 17 major minerals including coal, lignite, iron ore, manganese ore, chrome ore, gypsum, gold, diamond, copper, lead, zinc, tin, molybdenum and wolfram for the public sector on the rationale that these minerals were crucial to the industrial development of independent India. In 1991 the Government of India introduced economic liberalisation in the country followed by the National Mineral Policy (NMP) in 1993.²⁶

The policy introduced for the first time the idea of encouraging private investment in exploration and mining. Thirteen major minerals—iron ore, manganese ore, chrome ore, sulphur, gold, diamond, copper, lead, zinc, molybdenum, tungsten, nickel, and platinum group of minerals—

24 India in Encyclopedia of Nations, available at: <http://www.nationsencyclopedia.com/Asia-and-Oceania/India-MINING.html>.

25 Case reference from these States will clarify the issue.

26 Ministry of Mines of India, National Mineral Policy 1993, available at: <http://mines.nic.in/>.

hitherto reserved exclusively for the public sector were opened up to the private sector. Induction of foreign technology and foreign participation in exploration and mining was encouraged and foreign equity investment in Joint Ventures (JVs) in mining promoted by Indian companies was allowed. While generally there was a limit of 50 per cent on foreign equity the government announced its intention to consider relaxation of this limit on a case-by-case basis.²⁷ The liberalisation in the mining sector aimed to attract capital and technology to explore minerals in more difficult terrain and greater depths. The policy of 1993 makes specific reference to the Rehabilitation of Displaced Persons due to land acquisition for mining. It states that “While compensation is generally paid to the owner for the acquisition of his land, efforts shall be made to ensure suitable rehabilitation of affected persons especially those belonging to the weaker sections that are likely to be deprived of their means of livelihood as a result of such acquisition.” **However, the policy did not make concrete suggestions/ mechanisms on rehabilitation of the displaced.**²⁸ (Please refer to chapter 3, cases 13, 14, and 15.)

2.3 Market Systems

The philosophy of agricultural planning has changed. The emphasis is no longer solely on attaining self-sufficiency in food grain production or to keep hunger and starvation at bay. Farmers are being asked to diversify, produce crops that are suitable for export and to compete in the international market. With promise of cheap food available off the shelf in the global market, the focus has shifted from agriculture to industry, trade, and commerce, from the small and marginal farmers to the agro-processing companies.²⁹

Cultivation of staple food is being replaced by cash crops, tomatoes in place of wheat, durum wheat (for bakery purposes) replaces wheat as a staple diet in Punjab and Haryana, flowers in place of rice, and so on. In the coastal areas, private enterprises are taking away the fish catch depriving the local communities of a livelihood and the only nutrition source. In Kerala, for instance, vast tracts of forests and paddy fields have been converted into rubber, coffee, and coconut plantations. **Commercial crops are eating into the fertile land tracts meant for growing essential food grains.** The diversion of good agricultural land, which in any case is limited, to commercial farming and even industries, is further exacerbating the crisis in sustainability.³⁰ Trade liberalization measures have not only shifted the focus to export-oriented cash crop agriculture but also opened the door to cheap imports in the developing countries, and India is no exception. Cheap food imports depress prices for domestic produce, and large scale cash crop cultivation has not only shifted land away from basic food production but has led to concentration of land and resources in the hands of big farmers, landlords, and private companies. It also accelerates the depletion of the natural resource base. Meanwhile, withdrawal of state subsidies and institutional support to agriculture has pushed up production costs and supplies of agricultural inputs.³¹ India has opened its market and in turn made the farming community vulnerable to the imports of highly subsidised products. Cheaper imports of skimmed milk powder, edible oils, sugar, tea, areca nut, apples, coconut etc have flooded the market.

There is strong link between farmers’ suicides and trade liberalisation in India.³² The 1990’s witnessed the rising costs of production and the falling prices of farm commodities. The late 1990’s reported some of the first farmers’ suicides mainly due to indebtedness. In 1998, the World Bank’s structural adjustment policies forced India to open up its seed sector to global corporations³³. The global corporations changed the input economy overnight. Farm saved seeds were replaced by corporate seeds which needed fertilizers and pesticides and could not be saved.

27 Ibid and Planning Commission, Report of the High Level Committee on National Mineral Policy,, New Delhi 2006, available at: http://planningcommission.nic.in/reports/genrep/rep_nmp.pdf.

28 Ibid.

29 Devinder Sharma, Agricultural Trade and Development - The Indian Experience of Liberalisation of Agriculture, August 2005 available at: <http://www.oxfam.org.au/campaigns/mtf/povertyhistory/docs/sharmapaper.pdf>.

30 Ibid.

31 Ibid.

32 This part on farmers’ suicides quotes from Vandana Shiva’s, The Suicide Economy of Corporate Globalisation, 05 April, 2004, available at: <http://www.countercurrents.org/glo-shiva050404.htm>

33 Corporations, like Cargill, Monsanto, and Syngenta.

Patents prevent saving seeds and seeds are engineered with non-renewable traits. This means that these expensive seeds have to be bought every year before planting. In the case of Vidharbha in Maharashtra introduction of the BT (Bacillus Thuringiensis) -cotton seeds promising bumper crop failed to meet expectation leading increased poverty and to indebtedness.³⁴ With increase in debts and inability to repay them farmers started taking their own lives. The Maharashtra Agriculture Minister, Balasaheb Thorat, admitted that BT had failed in Vidharbha and cautioned farmers not to sow it.³⁵ According to Kishore Tiwari, president of Vidharbha Jan Aandolan Samiti (VJAS) **nearly 100 farmers committed suicide in Vidharbha in September 2007 alone.³⁶ More than 25,000 peasants in India have taken their lives since 1997.³⁷**

India and the States reporting the suicides have not taken any long term concrete measures to address the issue. Instead in some cases short term relief is provided or there is outright denial that suicides are due to economic processes. The Government of Karnataka brought out a report on “Farmers suicide in Karnataka - A scientific analysis”. The report claimed that the farm suicides have only psychological causes, not economic ones, and identifies alcoholism as the root cause of suicides. Therefore, instead of proposing changes in agricultural policy, the report recommends that farmers be required to boost up their self respect (swabhiman) and self-reliance (swavalambam).³⁸

In 2004, 84 farmers in Buldhana district committed suicide but only 14 of the farmers’ families got compensation. The eligibility to be to be declared a farmers suicide and get compensation is often corrupted and at time baffling. Officials try to identify the cause of death anything ranging from ill-health to drunkenness but do not identify debt or causes of debt as possible cause. Moreover even if the cause is identified as ill-health, malnutrition or under nourishment as the cause of ill-health is never identified. Some of the farming families live in utter poverty yet have not been identified a BPL. The fact that a farmer’s family is not BPL is a valid reason for authorities to deny compensation.³⁹

Women face severe difficulty in this issue. As per government criteria to be declared a farmers suicide, the dead farmer should have land registered in his/her own or spouse’s name a person has to own land in his or her name. Only the family of farmers committing suicide is eligible for compensation from the government. This criterion has led the government to strike numerous women’s names off the list of farmers’ suicides.⁴⁰ If the land is in the father in laws name and not in a women’s name or her husband’s - her death has been declared as ‘ineligible’ for recognition as a farmer’s suicide. In this way the government in India is trying to deny the high rates of suicides in the country and have taken no steps to address the situation.

2.4 Legal Framework

“By means of deep meditation and magical power it may be possible to sleep on fire, but it is impossible to sleep with an empty stomach in a situation of poverty.”

Thiruvalluvar (50 B.C.)

In India there is a deeply rooted tradition of reflecting of the fundamental right to food of human beings and on consequences of violating the right to food. The Indian concept of Dharma stresses the importance of growing and sharing food. Atharva Veda⁴¹ states: “All have equal rights in articles of food and water”.

Sri Subramania Bharati, a south Indian poet of independence period wrote as an advice to those, who have power: “Take care that all people are fed with adequate food, failing to do so will make the victims organise and destroy such the world.” This message was implicitly oriented towards

34 Jaideep Hardikar, Bt-ing the farmers!, 2 July 2007, available at: <http://www.indiatogether.com/2007/jul/agr-btvidarb.htm>.

35 Jaideep Hardikar, Bt-ing the farmers!, 2 July 2007, available at: <http://www.indiatogether.com/2007/jul/agr-btvidarb.htm>.

36 Nithin Belle, Move to highlight farmer's suicide, Khaleej Times online, 2 October 2007, available at: http://www.khaleejtimes.com/DisplayArticleNew.asp?xfile=data/subcontinent/2007/October/subcontinent_October62.xml§ion=subcontinent&col=.

37 Vandana Shiva, The Suicide Economy Of Corporate Globalisation, 05 April 2004, available at: <http://www.countercurrents.org/glo-shiva050404.htm>.

38 Ibid.

39 P. Sainath, Whose suicide is it, anyway?, 25 June 2005, available at: <http://www.indiatogether.org/2005/jun/psa-whosesui.htm>.

40 Aparna Pallavi, When the one who dies, 18 September 2007, available at: <http://www.indiatogether.com/2007/sep/agr-womensui.htm>.

41 Atharva Veda is a sacred text of Hinduisim.

the British rulers, who have created during their rule a situation leading to poverty and famine in India. During the colonial period the Indian economy has been degraded to a producer of raw material for the British Kingdom. Neglecting food production led to famines, which cost lives of millions of Indians in a country of agricultural wealth. The political elite involved in the independence struggle as well as in forming the new nation after Independence were well aware of the prevailing socio-economic and cultural conditions of India. The society was characterized by inequality, discrimination of Dalits and Tribes, insufficient agricultural production and unequal distribution of land. Against this background, India's first Prime Minister, Jawarharlal Nehru declared on the occasion of First Independence day celebration on 15th August 1947 that the political freedom achieved out of 300 year old colonial oppression should be used as a means to strive for economic freedom of the masses living in acute poverty, exclusion, and deprivation.

Consequently, the democratic socialistic state of India embodied two major elements in its progressive new Constitution to attain the economic self sufficiency with a particular emphasis on securing food for all its citizens:

Element One: Embodying the Human Rights principle as "Fundamental Rights" in part III, Article 21 of the Constitution.

Element Two: Endeavouring to secure "Right to Livelihood" with an ingredient to provide "decent and dignified living" within a reasonable time as "Directive Principles of State Policy" in Part IV.

In addition the young country become part of "the United Nations" with an objective of entering into the International Community of Nations by means of accepting and acceding to the System of International Law (please refer to 3.1. for India's ratification status of relevant international treaties and conventions).

2.4.1 Indian Constitution⁴²

In 1950, India has adopted a very progressive Constitution aimed at ensuring all its citizens social, economic and political justice, equality, and dignity. The Constitution of India is the parent law upon which all other enactments are legislated in the form of Central Act or State Act. Therefore any law to be valid in Indian Territory must be within the constitutional framework. Like in many countries of the World the "The Right to Food" in Indian Constitution is not recognized as a "Fundamental Right". Hence there is no constitutional mandate to have a claim over it as a matter either fundamental right or human right. While the Indian Constitution has recognized the civil and political rights as directly justiciable fundamental rights, the economic, social and cultural rights and thus the "Right to Food" is included in the provisions of "Directive Principles of State Policy" (Article 37 and 38.2).

However, civil society organisations in India since decades have been struggling to explore the normative content regarding the right to food formulated in the Constitution and to create a situation, in which the right to food becomes a fundamental justiciable right. Important for this struggle is Article 21 of the Indian Constitution, entitled "Protection of life and personal liberty" and Article 47 "Duty of the state to raise the level of nutrition and the standard of living [...]" as well as judicial interventions of the Supreme Court of India and various Acts, which have cumulatively strengthened the right to food in India. Knowing the constitutional and legislative framework in India regarding the right to food is crucial for identifying right to food violations and supporting victims in realizing their right to food.

Although these constitutional provisions entitle everyone, a special protection is provided for the most vulnerable. The Constitution prohibits discrimination, including in the use of public sources of water (Article 15.2b), it abolishes untouchability (Article 17) and provides specific protection for women and children (Article 39 (f)) and for the Scheduled Castes and the Scheduled Tribes (Article 46). The State shall promote their special interests and protect them against social injustice or material abandonment. Many laws are protecting their access to resources. These include the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, prohibiting wrongful

⁴² This part is inspired by the Report of the Special Rapporteur on the Right to Food, Jean Ziegler, Mission to India (20 August – 2 September 2005), E/CN.4/2006/44/Add.2, 20 March 2006.

occupation or cultivation or transfer of any land owned by or allotted to a member of a Scheduled Caste or a Scheduled Tribe (3.1.iv) and any wrongful dispossession from his land or interference with the enjoyment of his rights over any land, premises or water (3.1.v). The new amendments to the Hindu Succession Act, 1956, increase the protection of women against discrimination in access to land, right to ownership and inheritance. Various laws have also been adopted at the State level to abolish the feudal system and provide land for the most vulnerable (Land Ceiling Acts).

Indian Constitution Part III, Article 21

“Protection of life and personal liberty – No person shall be deprived of his life or personal liberty except to procedure established by law.”

The phrases “Protection of life” and “personal liberty” have called several times for interpretation. A series of judicial interventions and interpretations have deepened the normative content of this fundamental right. According to the Supreme Court of India, “right to life guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter”.

The Supreme Court has also clarified, that according to its interpretation the Article 21 includes the right to water and “the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, and shelter over the head.” In other cases it protected the right to water of Dalits against discrimination by the upper castes, the right to water of poor communities affected by a gas disaster, the right of livelihood of traditional fisher people against the shrimp industry, and the right to livelihood of scheduled tribes against the acquisition of land by a private company.

An important milestone in clarifying the right to food in the Indian context and the obligations of the State to support victims in realising their right to food was the Public Interest Litigation filed by PUCL in April 2001 on behalf of people starving from hunger in the state of Rajasthan, while excessive amount of food was rotting in the government storages.

Indian Constitution Part IV: Directive Principles

The right to food or in general the economic, social, and cultural rights are defined in Part IV of the Indian Constitution as Directive Principles of State Policy, which are guidelines to the central and State Governments of India for framing laws and policies. The provisions are not enforceable by any court, but the principles laid down therein are considered as fundamental in the Governance of the country, making it the duty of the State to apply these principles in making laws to establish a just society in the country.

Following is a list of Articles under the Directive Principles, which are relevant for the right to food:

Article 37 of the Constitution of India states: “The provisions contained in Directive Principles (Part IV) shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws”.

Article 38 (2) provides for:

“The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities, and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”

Article 39 provides for:

that the citizens, men and women equally, have the right to an adequate means of livelihood;
that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;
that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
that there is equal pay for equal work for both men and women;
that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age of strength;
that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 39 (A) Free Legal Aid: "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

Article 41 provides for: "The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness, and disablement, and in other cases of underserved want."

Article 42 provides: "The State shall make provision for securing just and human conditions of work and for maternity relief."

Article 43 provides: "The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas."

Article 45 provides: "The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

Article 46 provides: "The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

The clearest statement regarding the right to food is to be found in the following Article of the Indian Constitution:

Article 47 states: "Duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

The Constitution pays also great attention to make sure, that most vulnerable groups are not excluded in enjoying their economic, social, and cultural rights. The Constitution prohibits explicitly the discrimination in the use of public sources of water (Article 15.2b), abolishes untouchability (Article 17) and it provides specific protection for women and children (Article 39 f) for the Scheduled Castes and the Scheduled Tribes (Article 46). The obligation on the state resulting from the Constitution has led to formulation of various laws and Acts.

The Supreme Court by virtue of its interpretative authority has laid down in a land mark judgement reported in (1996) 2 Supreme Court Case (SAC) 549:

(1) In any organized society right to live as a human being is not ensured by meeting only the animal need of a man.

(2) The right to live guaranteed in any civil society implies the Right to Food, Right to Water, Right to Decent Environment, Right to Education, Right to Medical Care and Right to Shelter.

(3) All civil, political, economic, social, and cultural rights enshrined in the UDHR and international conventions or the Constitution cannot be exercised without fulfilling the above said basic human rights.

(4) To bring the Dalits and Tribes into mainstream of national life, providing these facilities and opportunities to them in the duty of the state as fundamental to their basic human and Constitutional rights.

Summarizing the various interpretations of the Supreme Court of India and seeing Article 21 and 47 in the context of the above mentioned Articles, one can safely say that the Government of India has a constitutional obligation resulting from Article 21 and Article 47 to take appropriate measures to ensure a dignified life with adequate food for all citizens. The right to food can be regarded as a fundamental right by virtue of interpretation.

2.4.2 Right to Food Relevant Acts

The states of the Indian federation are governed by respective State Governments. The State Government is constituted by the respective State Legislative Assemblies with seat of Government at State capitals. The Union Government is constituted by the Parliament with its seat of Government (Union Government of India) at Delhi. By virtue of this federal structure; legislative powers are vested with the Union Government as Central Laws and State Governments as State Laws. The Central Laws are enacted by the Parliament and the State Laws are enacted by respective Legislative Assemblies.

There is a number of Acts, relevant in supporting victims in realising their right to food. An overview of such acts is given in Annex 1.

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989

The Indian Constitution accords special status to the most vulnerable groups of India, namely the Scheduled Tribes (ST) (Adivasis) and Scheduled Castes (SC). The term Scheduled Tribes refers to indigenous peoples, a collective term used in India is Adivasi. According to the 2001 Census the SC and ST comprise of 24 % of the Indian Population and struggling for their survival.

In 1989 the Government of India enacted the Scheduled Castes and Tribes (Prevention of Atrocities) Act, with the aim of preventing offences of atrocities against SC/ST and to provide Special Courts for the trial of such offences and for the relief and rehabilitation of the victims. The Act is valid for whole of India except the State of Jammu and Kashmir. Even though the Act focuses on preventing human rights violations it includes also following paragraphs, which are relevant for right to food and water of vulnerable groups. However, de facto discrimination remains widespread in India.

According to this Act, it is punishable if whoever, not being a member of a Scheduled Caste or a Scheduled Tribe:

(iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

(v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;

In the years of 2002 (27,894 cases) and 2003 (22,603 cases) thousands of cases were registered under this Act. However the implementation of this Act is regarded as poor, only 2.31 % of the cases ended up in conviction.

The National Rural Employment Guarantee Act 2005

One new instrument by the Indian Government addressed to the rural poor, is the National Rural Employment Guarantee Act (NREGA). Poverty in rural areas shall be eradicated through provision of employment as universal and enforceable legal right. The government advertises NREGA as “an Act to provide for the enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household.”

It is important to mention that NREGA is not another scheme like numerous others in India aiming to reduce poverty. NREGA provides a legal guarantee of employment and places a judicially enforceable obligation on the state. Programmes and schemes can be cancelled at bureaucratic level, but a law can only be changed through the Parliament. In the legal history of India, this is the first time, that the right to claim wages as a matter of the human right to work is formulated as an Act.

The NREGA was passed in the Lok Sabha on 23rd of August 2005 and came into force initially in 200 districts out of 593 districts all over India on 2nd February 2006. It will be extended to the whole rural India within a period of five years.

NREGA is a law whereby anyone who is willing to do unskilled manual labour at the statutory minimum wage is entitled to being employed on public works within 15 days. In case employment cannot be provided, an unemployment allowance has to be paid. The work guarantee in NREGA 2005 is limited to 100 days per household per financial year, which starts 1st of April. Families living on the margin of subsistence and threatened by hunger can secure through this Act a family income which allows them to cross the poverty line.

In order to benefit from this act any household, who is willing to do unskilled manual labour at the official minimum wage has to register with the Gram Panchayat, which has to issue a job card, based on which work can be applied for. Registration is per household, while applications are formulated by individuals.

In addition to the guaranteed 100 days work per year, the Act states, that the work has to be within 5 km of the applicant's residence and safe work environment as well as care for children has to be provided.

Schemes under the NREGA will be implemented by the State Government; with funding provided by the Central Government, the planning and implementation authority of the Scheme are the Panchayats at the district, intermediate and village levels.

Transparency and accountability is important if schemes under this act have to reach the poor. Therefore the Act includes following suggestions:

The wages are to be paid “directly to the person concerned and in presence of independent persons of the community on pre-announced dates”, muster rolls and other relevant documents are to be made available for public scrutiny. It is also stated here, that The Right to Information Act, which was also enacted in 2005 “should be followed both in letter and spirit in all matters relating to NREGA”.

However, 100 days of work is not enough to ensure the food security throughout the year. Since work is provided in return for wages NREGA does not address the hunger situation faced by those who cannot work – the old and infirm. Implementation of the NREGA poses several challenges in the coming years.

First experiences with NREGA between February 2006 and March 2007 show, in spite of a general positive impact, different shortcomings. According to CAG (Controller & auditor General of the NREGS) audit, barely 3,2 percent of the registered households could avail 100 days of employment in one year. The average employment was just 18 days.⁴³ “The performance audit...revealed significant deficiencies and scope for improvement”, the report says highlighting examples from all states of alleged corruption, inefficiency, diversion and misutilisation of funds as well as unreliable figures.

(Please refer to special topics 4.10 for an example of problems regarding the implementation of NREGA)

The Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996 (PESA)

The Provisions of the Panchayats (Extension to the Scheduled Areas) Act (PESA) 1996 is an important piece of legislation regarding tribal self-rule and opportunities for development. It effectively places the control over natural resources in tribal areas in the hand of the people, by strengthening the role of Gram Sabhas and Gram Panchayats. The use of resources should be decided collectively by the village population, thereby ensuring that their interests are the primary consideration. More specifically, PESA mentions four types of resources that should be under the control of the people.

Water

Clause 4(j) of PESA states that “planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level”

The appropriate level here depends on the size of the water body. With an area of under 5 acres, the control lies with the Gram Panchayat; water bodies up to 10 acres fall under the responsibility of the Janpad Panchayat while all bigger ones than 10 acres are under Zila Panchayat’s control. Most of the ponds and streams in the area of study fall into the first category; therefore, the Gram Panchayat is the crucial institution for the management of water here. Water management concerns questions of fishing rights and rights to use water for irrigation, as well as control over common usage such as for washing and bathing.

Minerals

The prospecting and excavation of minor minerals is addressed in clauses 4(k) and 4(l) of PESA. The clauses state that

(k) “the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease”

and that such recommendations are also required

(l) “for grant of concession for the exploitation of minor minerals by auction”.

The term “minor minerals” refers to minerals of lesser economic value; the government retains full control over minerals of major economic value such as iron, bauxite, and copper. Nevertheless, the commercial use of minor minerals is an important source of revenue for the village, as rocks and minerals are in high demand. Further, the excavation of minerals is one source of employment for the villagers; so the question of control will have a large impact on people’s life.

Forest

Clause 4(m) emphasises that Panchayats must be endowed with power that let them function as proper institutions of self-government. It specifically mentions the “ownership of minor forest produce” as one of these powers. Considering the significance of the forest for the livelihood of

⁴³ The Indian Express (Mumbai), 10-1-08

rural communities, this is indeed a very important point for ensuring self-rule in the Scheduled Areas. Minor forest produce refers largely to Non-Timber Forest Products (NTFPs), the cutting and sale of wood is a separate issue with complex legal provisions. Giving ownership of the minor forest produce to the people allows them to set own rules for collection and sale as well as giving them the right to monitor trade activity with the government.

Land

In the same clause, the PESA Act mentions that the local self-governance institutions should have

(m) (iii) “the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land”

Alienation here primarily refers to the illegal appropriation of tribal land by non-tribals as has been the practice for many years. However, it can also apply to other forms of alienation within a village community, since the ownership of land is a crucial issue for livelihood. It is also important to notice that the Gram Sabha should be able to take action, not only act as a controlling body, which is indeed a form of substantial power.⁴⁴

The government, having realised the importance of the drawing up of plans and people’s ability to actively take part in it, incorporated provisions for planning into PESA. Clause 4(e) states that every Gram Sabha shall “approve of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at village level”.

Further, the Gram Sabhas are encouraged to design their own plans for development, in general as well as specific terms. A report on Planning at the Grassroots Level - An Action Programme for the Eleventh Five Year Plan compiled by an expert group in March 2006 recommends the following:

3.9.10 The planning exercise ought to lead to a five-year plan for the period corresponding with the national plan period, and annual plans that define and prioritise areas and schemes from such a plan. The longer-term plans would capture the overall picture of the Panchayat and allow people to understand what planning and governmental funding could hold out for them. Once a five-year plan is prepared, the annual plan can be drawn out from it. Considering the size and availability of personnel of gram panchayats, it is obvious that they would need assistance and help in the preparation of projects and schemes, but the decision should be that of the Gram Sabha. Development Meets/Workshops at Gram Sabha level would be necessary leading to the emergence of a draft plan, with schemes and projects listed in priority.

These clauses give significant powers of approval and planning to the Gram Sabha. However, the legal basis is not sufficient; the provisions also need to be accepted by the institutions and offices involved in the process. Moreover, the Gram Sabha needs to be enabled to play this active role in the creation of development plans. The Gram Sabha members must be trained in this work. Yet these aspects show great deficiencies at the ground level, which questions the value of the provisions (please refer to special topic 4.9.).

Scheduled Tribes (Recognition of Forest Rights) Act, 2006

The intention of the Scheduled Tribes (Recognition of Forest Rights) Act, 2006 is to fulfil the need for a comprehensive legislation to give due recognition to the forest rights of tribal communities. These rights were not recorded while consolidating state forests during the colonial period as well as in independent India.

Recognizing the close relationship between tribal communities and forests, the National Forest Policy in 1988 made provisions to safeguard some customary rights of tribals on forest land. The Ministry of Environment and Forest (MoEF) issued on September 18, 1990 six circulars, that pre 1980 occupation of forest land would be eligible for regularisation provided the State Governments develop eligibility criteria according to local needs and conditions. However, the

⁴⁴ From: No Democracy, no Food – Status of People’s Access and Control over Livelihood & Development Resources under PESA, Jana Wendler, Food & Democracy Campaign, c/o Grassroots India Trust, New Delhi.

State Governments failed to implement the 1990 Guidelines. Instead, in many states Forest Departments started with eviction of tribal people in large scale. The harassments and human rights violations during such evictions led to massive protests of the civil society and especially of tribal communities.

As a reaction to the ongoing injustice to tribal communities, the Scheduled Tribes (Recognition of Forest Rights) Act was passed in December 2006. The Act recognises forest rights of Scheduled Tribes with respect to forest land and their habitat. According to the Act forest rights in the core areas of national parks and sanctuaries shall be granted only on provisional basis for a period of five years from the date of commencement of this Act. If the holders of such rights are not relocated within five years with due compensation, the rights would become permanent. The rights can be inherited but they are not transferable.

The Act focuses on the rights of Scheduled Tribes who have been residing in forests for generations but whose rights have not been recorded. The Act provides a framework for recording the forest rights, the nature of evidence required for such recognition in respect of forest land. The Act extends to the whole of India except the State of Jammu and Kashmir.

Forest dwelling Scheduled Tribes means the members or community of the Scheduled Tribes who primarily reside in forests. It includes the Scheduled Tribes pastoralist communities and those who depend on the forests or forest land for bona fide livelihood needs.

According to the Act, following rights of individuals or community are defined as forest rights of forest dwelling Scheduled Tribes:

- right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe;
- community rights, by whatever name called, and used in erstwhile princely States, Zamindari or such intermediary regimes;
- right of ownership access to use or dispose of minor forest produce;
- other community rights of uses or entitlements such as grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
- rights, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;
- rights in or over disputed lands under any nomenclature in any State where claims are disputed;
- rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest land to titles;
- rights of conversion of forest villages into revenue villages;
- rights of settlement of habitations and un-surveyed villages, whether notified or not;
- right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
- rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of any state;
- any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal.

These rights are only recognised if the forest tribes or tribal communities had occupied forest land before the 25th day of October, 1980 (The Forest (Conservation) Act, 1980 came into force

on this date). The right of settlement (i) shall be heritable but not alienable or transferable. The Act restricts the area to maximum 2.5 hectares per nuclear family of a forest dwelling Scheduled Tribe and prohibits that members of a forest dwelling Scheduled Tribe shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed. The registration is in the name of both the spouses in case of married persons and in the name of the single head in case of single member household. According to the Act the “forest rights shall be conferred free of all encumbrances, including requirements of net present value and compensatory afforestation for diversion of forest land.”

The Gram Sabha is the authority to initiate the process for determining the nature and extent of individual or community forest rights. In case the affected tribal people are not satisfied with the Gram Sabha actions, they can write a petition within 60 days to the Sub-Divisional Level committee and in case aggrieved by the decision of the Sub-Divisional Level Committee to the District Level Committee. Both committees should be constituted by the State Government in order to examine the resolution passed by the Gram Sabha and are also responsible to record of forest rights and forward to District level committee for final decision. If a person shall be guilty of an offence against the Act in terms of restricted use (no killing of wild animal, felling of trees, unsustainable use of forest or forest product) be punished with fine up to one thousand rupees and in case of repetition, the forest rights of the person shall be derecognised.

As the Act is new, it is not possible to assess the impact of the Act, but following are some of the limitations and dangers feared by the victims and supporting civil society groups:

- The Scheduled Tribes (Recognition of Forest Rights) Act, 2006, aims to recognize and enforce the rights of FDSTs to forest land and resources. However, the Act will face the challenge of finding a balance between the interest of recognizing forest rights of FDSTs while protecting forests and wildlife resources.
- Unreliable data and procedures: The GOI does not have any proper record of FDSTs residing inside India’s protected areas and the core areas of national parks and sanctuaries.
- Allotment of Land - The Act prescribes 2.5 hectares as the upper limit of forest land that an FDST nuclear family may be allotted. However, there is a possibility that this might result in elimination of legal protection for forest cover, which could lead to heavy ecological damage [9]. For instance, the possible depletion of watershed forests of Central India, which allow penetration of rain water into the sub soil, could lead to drying up of rivers such as Narmada, Tapti, Mahanadi, Godavari, Krishna, and Cauveri [10]. The counter-argument is that the Bill only seeks to recognize the forest rights of FDSTs who have been cultivating the forest land for generations.
- According to estimates, around 2% of the recorded forest area in the country is under encroachment. It is possible that through the Act the tribal families’ loose land, which is above 2.5 ha leading to impoverishment.
- As the Act defines a period of 5 years to relocate families from core areas of National Parks and Sanctuaries or they would get permanent right over land in core areas. Based on previous experiences one can expect massive relocation without proper compensation leading to increased poverty.
- The Act defines October 25th of 1980 as the cut-off date for recognizing forest land rights of the tribal communities. However, it is not elaborated what kind of evidences (oral testimonies, evidence of leaders of the village, written records, constructions, etc.) are required to verify the claim over the occupancy of forest land at that time. It is very unlikely that poor, marginalised, and often illiterate FDST communities, who have been already forced in the last centuries to move to new areas, have clear documents. Current occupancy of forest land would make their position much better.

Exclusion of Non-Scheduled Tribes

The Act specifies that FDSTs would be granted forest rights only in places where they are scheduled. However, such a clause could lead to denial of rights to tribal communities on the ground that they do not reside in the area where they are scheduled even though many tribal people have been displaced due to development projects and creation of protected areas.

The Act recognizes only rights of Scheduled Tribes, **but by doing so it excludes the rights of other communities who depend also on the forest for their survival and livelihood. It is feared, that this Act could lead to massive eviction of such people and increase social tension between scheduled tribes and other forest communities.**

Role of Gram Sabha

Although the Gram Sabha has been given the power to initiate the process of determining forest rights, the final decision rests with the DLC. Even though the Act envisages involvement of grassroots institutions, the Gram Sabha does not have the power to recognize forest rights or enforce such rights. It is again feared, that DLC may be beyond reach of local communities.

Eviction, Relocation, and Compensation

The Act does not place any explicit restriction on the methods that can be used to remove non-eligible forest dwellers. This is a concern, given the history of cases where brutal force has been used to evict tribal families [24]. The Act mentions that FDSTs would be relocated from core areas of national Parks and sanctuaries with due compensation. However, **the Act does not clarify exactly what kind of compensation would be offered to the tribal people, and what recourse they would have if such compensation is not satisfactory or is altogether denied.**

Unclear Definitions

Certain terms mentioned in the Act have not been defined and may lead to dispute and ineffectiveness of the Act. What is exactly meant with 'the right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use.', or 'community forest resource', 'nuclear family' or 'members or community of the Scheduled Tribes who depend on the forests or forest land for bonafide livelihood needs', or 'livelihood needs'.

Penalties

The Act imposes a fine of INR 1,000 on FDSTs in case of contravention of provisions of the Act. If the offence is repeated, the person's forest rights might be derecognized for such period as decided by the DLC on the recommendation of the Gram Sabha. However, the Act does not specify whether an FDST has the right to appeal such a ruling of the DLC to a higher authority (such as the State Level Monitoring Committee) other than to a court. The member of a committee is also required to pay a fine of INR 1,000 if found guilty of contravening the provisions of the Act. Such a small amount (20 Euro) is not going to impress committee members. As explored in this Act, a vigilant role of the civil society is needed to enforce the implementation in the spirit of the right to food. Without such a continuous pressure from civil society on the responsible authorities, one cannot expect much change in favour of tribal communities. Considering past negative experiences of the tribal communities with the State Authorities this last aspect is creating uncertainty among the tribal communities. **An Act developed to protect their rights may turn into an Act leading to massive eviction of Tribal Communities. Careful monitoring by Civil Society is necessary to avoid this negative consequence.**

2.4.3 Access to Justice and the Justiciability of the Right to Food and Water ^{45 46}

Administrative and judicial remedies, their accessibility, and effectiveness for the protection of the right to food

India can be quoted as one of the best examples in the world in terms of the justiciability of economic, social, and cultural rights, including the right to food. Under the Constitution of India, public interest litigation is permitted to protect the basic human rights of the most vulnerable (civil and political rights recognized in Part III of the Constitution). Although the right to food is not directly justiciable, its inclusion in the directive principles of State policy is important because it serves to guide interpretation of fundamental rights, including the right to life protected by Article 21.⁴⁷ For the Supreme Court of India, “[the] right to life guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter”⁴⁸ and the right to life protected by Article 21 includes the right to water⁴⁹ and “the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head [...]”⁵⁰. This progressive interpretation of the right to life by the Supreme Court means that in India the Government has a constitutional obligation to take steps to ensure to all individuals a dignified life, with adequate food.

The extensive interpretation of the right to life and the possibilities offered by public interest litigation explain why so many social movements have sought appropriate remedies before the Supreme Court in the last decades. This is what happened in 2001, when the People’s Union for Civil Liberties (Rajasthan) approached the Supreme Court on behalf of people starving from hunger. At that time, reports were suggesting that people were dying from hunger in the drought-stricken regions of Rajasthan, while food was rotting in the government storage facilities. It was also reported that food was being thrown into the sea, or exported internationally at highly subsidised prices to reduce storage costs, rather than being distributed to the hungry and starving. To respond to this situation, and to similar situations in other States, the PUCL sent a petition to the Supreme Court. Its original petition addressed the situation in six States, but the Supreme Court broadened its scope to cover the entire country. For the Supreme Court, the Government has a direct responsibility to prevent starvation:

“The anxiety of the Court is to see that the poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government – whether Central or the State. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry.”⁵¹

This case is about the obligation to fulfil the right to food. To ensure the fulfilment of the right to food, the Supreme Court directed⁵² all destitute people to be identified and included in existing food based schemes and directed State Governments to fully implement all these schemes, including the Targeted Public Distribution Scheme (TDS), the Antyodaya Anna Yojana (AAY), the Integrated Child Development Scheme (ICDS), the National Old Age Pension Scheme (NOAPS), the National Maternity Benefit Scheme (NMBS), the National Family Benefit Scheme (NFBS), and the Mid-day Meal Scheme (MDMS) by providing every child a cooked meal instead of dry rations. The Supreme Court also directed the most vulnerable, including the primitive tribes, to be placed in the AAY lists, to ensure their access to food at a highly subsidised price. To increase access to information, it directed that all its orders and the lists of beneficiaries be made publicly available. The Supreme Court also directed that Chief Secretaries/Administrations of the States/Union Territories should be held responsible in case of starvation or malnutrition deaths or persistent

45 This part is inspired by the Report of the Special Rapporteur on the Right to Food, Jean Ziegler, Mission to India (20 August – 2 September 2005), E/CN.4/2006/44/Add.2, 20 March 2006.

46 We would like to thank you particularly Christophe Golay, research associate at the Graduate Institute of Development Studies, Geneva, for his major contribution to this part.

47 “No person shall be deprived of his life or personal liberty except according to procedure established by law”, Constitution of India, 1950.

48 Supreme Court, Chameli Singh & Others v. State of Uttar Pradesh, 1996.

49 Supreme Court, Narmada Bachao Andolan v. Union of India, 2000.

50 Supreme Court, Francis Coralie Mullin v. Union Territory of Delhi and others, 1981.

51 Supreme Court, People’s Union for Civil Liberties v. Union of India & Ors, 2001.

52 The directions of the Supreme Court and the reports of its Commissioners are available on the website of the Indian Campaign on the Right to Food: www.righttofoodindia.org.

default in compliance with the orders. These directions by the Supreme Court have significantly improved the implementation of many food security schemes in many States, particularly since the Court has also appointed two Commissioners to monitor the implementation of its orders

People's Union for Civil Liberty (PUCL)

Starvation deaths in the state of Rajasthan, despite excess grain storage by the Government and non-functioning of Government food distribution systems led PUCL to file in 2001 a Public Interest Litigation under Article 32, contending violations of Articles 21 and 47 of the Constitution of India. The writ petition requested to clarify if "the right to Life" under Article 21 of the Constitution includes the right to food and what are the duties of the State to provide food to people, who are drought affected and unable to purchase food. The petition concludes with a request to the Supreme Court to order the Government of Rajasthan to (a) provide immediate open-ended employment in drought-affected villages, (b) provide gratuitous relief to persons unable to work, (c) raise the PDS entitlement per family and (d) provide subsidised food grain to all families. Though the final judgment is still awaited, significant interim orders have been passed. For example on 28th November 2001, the Supreme Court directed that all destitute people to be identified and included in the existing food based government schemes and directed the State Governments to fully implement the following schemes:

- Targeted Public Distribution Scheme (TPDS) "The States are directed to complete the identification of BPL families, issuing of cards and commencement of distribution of 25 kg. grain per family per month latest by 1st January, 2002".
- Antyodaya Anna Yojana (AAY) "We direct the States and the Union Territories to complete identification of beneficiaries, issuing of cards and distribution of grain under this scheme latest by 1st January, 2002".
- Mid Day Meal Scheme (MDMS) "We direct the State Governments/Union Territories to implement the Mid-Day Meal Scheme by providing every child in every Government and Government assisted Primary Schools with a prepared mid day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. Those Governments providing dry rations instead of cooked meals must within three months start providing cooked meals in all Govt. and Govt. aided Primary Schools in all half the Districts of the State (in order of poverty) and must within a further period of three months extend the provision of cooked meals to the remaining parts of the State".
- National Old Age Pension Scheme (NOAPS) "The States are directed to identify the beneficiaries and to start making payments latest by 1st January, 2002. We direct the State Govts./Union Territories to make payments promptly by the 7th of each month".
- Annapurna Scheme "The States/Union Territories are directed to identify the beneficiaries and distribute the grain latest by 1st January, 2002".
- Integrated Child Development Scheme (ICDS) "We direct the State Govts./Union Territories to implement the Integrated Child Development Scheme (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as under: Each child up to 6 years of age to get 300 calories and 8-10 grams of protein; Each adolescent girl to get 500 calories and 20-25 grams of protein; Each pregnant woman and each nursing mother to get 500 calories & 20-25 grams of protein; Each malnourished child to get 600 calories and 16-20 grams of protein; Have a disbursement centre in every settlement".
- National Maternity Benefit Scheme (NMBS) "We direct the State Govts./Union Territories to implement the National Maternity Benefit Scheme (NMBS) by paying all BPL pregnant women INR 500/- through the Sarpanch 8-12 weeks prior to delivery for each of the first two births".
- National Family Benefit Scheme (NFBS) "We direct the State Govts./Union Territories to implement the National Family Benefit Scheme and pay a BPL family INR 10,000/- within four weeks through a local Sarpanch, whenever the primary bread winner of the family dies".

While giving directions to those eight schemes, the Supreme Court upholds that “It is the case of the Union of India that there has been full compliance of its obligations under the Scheme. However, if any of the States gives a specific instance of non-compliance, the Union of India will do the needful within the framework of the Scheme.”

After the notable Supreme Court interim order dated on 28th Nov 2001, which gave significant directions on eight important schemes, the later interim orders have shifted their focus on those eight schemes one by one. For instance, the recent Supreme Court order on Integrated Child Development Scheme (ICDS) on 13 December 2006 directed “All the State Governments and Union Territories shall fully implement the ICDS scheme by, inter alia, (i) allocating and spending at least INR 2 per child per day for supplementary nutrition out of which the Central Government shall contribute INR per child per day. (ii) Allocating and spending at least INR 2.70 for every severely malnourished child per day for supplementary nutrition out of which the Central Government shall contribute INR 1.35 per child per day. (iii) Allocating and spending at least INR 2.30 for every pregnant women, nursing mother/adolescent girl per day for supplementary nutrition out of which the Central Government shall contribute INR 1.15.”

This PUCL case represents a great advance in the justiciability of the right to food as a human right, as the orders of the Supreme Court have transformed the policy choices of the Government into enforceable, justiciable rights of the people. In that case, the most vulnerable had access to justice because their right to food was not fulfilled. This case is essential for human rights organizations because today it is possible to monitor the implementation of the food based schemes in the whole country, with a real impact for the most vulnerable.

In other cases, the Supreme Court has issued orders that are related to the obligations to respect and protect the right to food. The Supreme Court in 1986 stated that “any person who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21”.⁵³ In the following years, it protected the right to water of Dalits against discrimination by the upper castes (Appa Balu Ingale case)⁵⁴, the right to water of poor communities affected by a gas disaster (Bhopal case)⁵⁵, the right to livelihood of traditional fisher people against the shrimp industry (aquaculture case)⁵⁶, and the right to livelihood of scheduled tribes against the acquisition of land by a private company (Samatha case).⁵⁷

These decisions by the Supreme Court – all based on the right to life – mean that in India, theoretically, when the Government is not complying with its obligations to respect, protect or fulfil the right to food, at the maximum of its available resources and without any discrimination, all victims should have access to effective remedies, including access to justice – at the state and national level (including the Supreme Court) – to claim their right.

The real situation is of course very different from that ideal. Despite great advances in the justiciability of the right to food in India, there remain difficulties in enforcing existing legislation, in ensuring the implementation of court decisions and in ensuring access to justice for the poor. The decisions of the Supreme Court in the aquaculture case and Samatha case have for example never been fully implemented. Article 39A of the Constitution requires the State to provide free legal aid to ensure that the most vulnerable will have access to justice, but lack of implementation, high costs, long delays in court proceedings, and the lack of full independence of the judiciary at the local level have made the judicial system virtually inaccessible for many.

⁵³ Supreme Court, *Olga Tellis v Bombay Municipal Corporation*, 1986.

⁵⁴ Supreme Court, *State of Karnataka v. Appa Balu Ingale*, 1993.

⁵⁵ Supreme Court, *Research Foundation for Science v Union of India and Anr.*, 2004.

⁵⁶ Supreme Court, *S. Jagannath v. Union of India*, 1996.

⁵⁷ Supreme Court, *Samatha v. State of Andhra Pradesh*, 1997.

The following examples illustrate the lack of access to justice in India:

Case number 5 "Government fails to implement Supreme Court Order to restore land to 154 Dalit families in Uttarkhand", where despite a Supreme court ruling from 1996 stating the rightful landownership, 154 Dalit families remain separated from their rightful land;

Case number 11 "Sardar Sarovar Dam threatens the livelihood of thousands of people in the Narmada valley", where despite a Supreme Court Judgement in 2000 regarding the increase of the height of the Sardar Sarovar Dam to be preceded by implementation of resettlement and rehabilitation measures six months prior to impending submergence, adequate rehabilitation has not been provided, and even though dam height was increased.

Case Number 14 "Forcible Eviction of Adivasi Families from Kinari village in Lanjigarh block in the state of Orissa", where according to a recently received update the Supreme Court, after a case lasting over three years, is about to give clearance to Sterlite/Vedanta to mine bauxite on the summit of Niyamgiri in the state of Orissa based on the recommendation of the Ministry of Environment and Forests as well as Government of Orissa. If mining is permitted there, two of India's strongest Constitutional guarantees will be overturned: the right of a "primitive tribal group" to their territorial integrity and to decide on their own path of development (Schedule V of the Indian Constitution); and the right to religious practices and beliefs (Article 25 of the Constitution), since the summit of this mountain is sacred place of worship to the Dongria Kondh's supreme deity Niyam Raja (case number 14).

One of the main obstacles which impede access to recourse mechanisms is the insufficient infrastructure. An example is the only SC/ST police station in Jharkhand, situated in Ranchi. It is totally inadequately equipped - too few policemen, no power, no telephone or even furniture. In 2005, while 27 cases were lodged, charge sheets were filed in only five, and six were said to be incorrect. In 2006, 60 complaints were filed, but only nine were charge-sheeted and as many were found to be incorrect. In 2007, 73 cases were registered, only two charge sheets were filed, and two charges were found false.

While tribals constitute 27 percent of Jharkhand's population, and Dalits 11 percent, there is only one police station in the whole state to look into their complaints. Jharkhand has spent more than 3 billion on the modernisation of the state police and 13000 constables have been recruited, in the last seven years, but the condition of the SC/ST police station has not improved.⁵⁸

A key recommendation of the UN Special Rapporteur on the right to food in his country mission report on India is that one way to improve this situation is for all States to set up the human rights courts and a special court as required under the Protection of Human Rights Act, 1993, and the Scheduled Castes and Scheduled Tribes Act, 1989.⁵⁹ This will be a step to ensure the rights of the people in India.

2.5 Access to Resources and Assets

2.5.1 Access to Land

Although agriculture contributes only a fifth of India's GDP⁶⁰, it is the means of livelihood of about two-thirds of the people, the majority of whom are poor and landless. Prior to the liberalization of the Indian economy in June 1991, agricultural policy was governed by a planning framework. Since food availability emerged as a major concern, accelerating agricultural and food grains growth with a view to providing food security became the central objective of India's agricultural policy.

In the mid-1960s the technological "upgrading" of Indian agriculture was initiated under the Green Revolution. The Green Revolution enabled India to achieve self-sufficiency in food grains.

58 Available at: Jharkhand News, Jharkhand Online Network, www.jharkhand.org.in/news.

59 Report of the Special Rapporteur on the right to food on his mission to India, Op.cit.

60 In 2007, agriculture contribution to GDP is 16.9 percent. Ministry of Finance, Department of Economic Affairs, Economic Division, INDIA: Economic and Financial Data - Special Data Dissemination Standard [SDDS] National Summary Data, available at: http://finmin.nic.in/stats_data/nsdp_sdds/index.html.

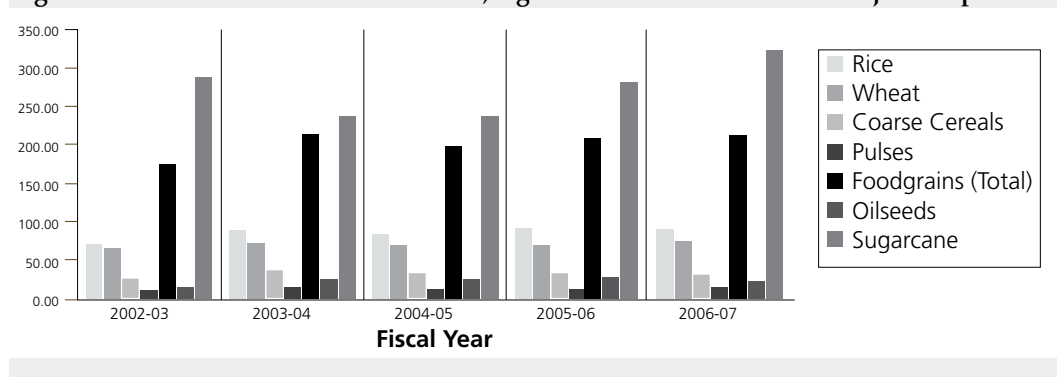
The production of the total grain crossed 191 million tons in 1994/95, which represented a big leap from 51 million tons in 1950/51. More specifically, India saw a multi-fold increase in wheat and rice production. However, the agricultural growth rate has slowed down from 3.5 percent in mid 1980s to 1990s to less than 2 percent in mid 1990s to 2000s.⁶¹

The results of the Green Revolution saw increase in food production but only in selected States like Punjab, Haryana etc. Green Revolution was very water, fertilizers and pesticide intensive but subsidies from the government and Minimum Support Price (MSP) supported farmers in growing crops and also made it possible to procure grains for the Public Distribution System. These mechanisms ensured the food security of the peasantry and the poor. In the nineties India embarked on the liberalisation process with systematically opening up the market and introducing changes in the economic, agriculture, mining and other policies. The impact of the reforms on food security has been very disturbing.

Change in government policies under liberalisation and cutback in subsidies made intensive agriculture of the Green Revolution era unsustainable. Huge debts, electricity, and water bills exacerbated the situation of farmers especially small land holders and in turn the agricultural labour that they employed. Low MSP also made agriculture difficult leading to an agrarian crisis in India, a sharp decline in the agricultural growth rate. One of the most shocking symptoms is the farmers' suicides in India. Reports from Punjab (the granary of India), Vidharbha regions of Eastern Maharashtra, Andhra Pradesh and Karnataka provide heart wrenching cases of farmers taking their own lives by consuming pesticides intended to kill pests in their fields. In India around 40,000 farmers have committed suicide due to indebtedness since 1997.⁶² These farmers are small land holders with 3 to 4 acres of land.

In March 2008 the Government of India has announced a waiver of farm loans as a relief measure for the farmers. However, there is a lot of criticism that this loan waiver no solution to the immediate crisis neither to long-term agrarian problems.⁶³

Figure 1: Production trends in India⁶⁴, Agriculture Production of Major Crops



61 Ministry of Finance, Govt of India, Budget Report 2006, available at: <http://indiabudget.nic.in/es2005-06/chapt2006/chap84.pdf>.

62 Social Watch in India, Citizens' Report on Governance and development 2007, available at: <http://www.socialwatchindia.net/publication2.htm>.

63 "The waiver does bring great relief to large numbers of farmers. But it is no solution to even the immediate crisis let alone long-term agrarian problems. Nothing in this budget will raise farm incomes. Which means farmers will be back in debt within two years. Their incomes have long been much lower on average than those in other sectors. And they fall further behind each year. Worse, fresh credit will not come cheap. Pleas for 'low-interest or no-interest loans' have been ignored. There is no mention of a price stabilisation fund to shield farmers from the volatility of corporate-rigged global prices. Besides, the idea of a five-year repayment cycle has not been touched. And the highly unjust crop insurance rules that dog regions like Anantapur remain unchanged.", P.Sainath in : India Together, 1 April 2008, available at: <http://www.indiatogether.com/2008/mar/psa-waiver.htm>

64 Ministry of Agriculture, Govt. of India, available at: <http://dacnet.nic.in/eands/Area,%20Production%20and%20Yield%20of%20Principal%20Crops.htm>.

**Constitutional and other legal provisions to guarantee and enforce the right to natural resources (land, forests, fisheries, water, etc.) and the right to productive resources (capital, access to appropriate technologies, access to information, extension services) of rural communities/
Legal provisions to rule out forced evictions; safeguard of issues like adequate compensation, resettlement and restitution in constitutional/legal provisions**

Under the Indian Constitution Scheduled Areas have been created to safeguard the right of indigenous communities over natural resources. Guarantees like the Panchayat Extension to The Scheduled Areas (PESA) Act and the Forest Rights Act were initiated (please refer to chapter 2.4. Legal Framework for more information). The PESA Act is said to be one of the most important recent legislations meant to protect the rights of the Adivasis. However, there is lack of information about the state of implementation of the Act.

More generally, acquisition of land by the government for public purpose is governed by the Land Acquisition Act, 1894. This Act enables the Government to acquire any land in the country for a “public purpose” (the term public purpose is, however, not defined). The Government does not provide comprehensive information on all the land acquired using the Land Acquisition Act in the past, its current utilization, and the status of displaced people, although development planning, land acquisition and resettlement and rehabilitation are closely linked.

Mining and large scale projects have displaced people in India since Independence. The Planning Commission estimates suggest that 21.3 million people were displaced development projects between 1951 and 1990 alone.⁶⁵ The past history of the treatment meted out to displaced people does not inspire any confidence among the targeted communities. There is widespread and determined resistance to land acquisition.

In January 2008 the government tabled the Rehabilitation and Resettlement Bill, 2007. The bill seeks to “provide for the rehabilitation and resettlement of persons affected by the acquisition of land for projects of public purpose or involuntary displacement due to any other reason”.

The issue of Rehabilitation and Resettlement has been taken up in the National Mineral Policy in the Report of the high level Committee, Government of India Planning Commission, which sheds light on some States like Orissa, Chhattisgarh and Andhra Pradesh which have drafted Rehabilitation and Resettlement (R and R) Policies applicable to all kinds of project including mining in their States. The basic objectives of the State policies concerning relief and rehabilitation are basically the same.⁶⁶ A brief analysis of the three above mentioned States R and R policies indicate that the main goals of the policies are to avoid and minimise displacement wherever possible, to recognize voices and includes special needs of displaced communities, especially the one of indigenous and vulnerable communities and to ensure environmental sustainability.⁶⁷ The existing packages in the States which offer various types of assistance to project affected persons (PAP) are generally common to all kinds of projects, including mining projects. The Orissa and Chhattisgarh packages provide employment to family members in the mining project or cash assistance, training for self-employment, homestead land, or cash for relocation elsewhere as well as housing assistance. In the case of Orissa, additional types of assistance common to PAPs include maintenance allowance of INR 2000 per month per family for one year and assistance for temporary shed (temporary shelter). The Andhra package includes a free house for those whose houses have been acquired due to mining project, land allotment, and financial assistance. Compensations to those who have no land allotted in lieu of the acquired land would get cash equivalent to the minimum agricultural wage for specific amount of days according if they are landless, farmer or landless labourers. A special attention to tribal is recognized in the three States policies. Preferential allotments of land and resettlement as well as financial assistance are offered

65 Soumitra Ghosh and C.R. Bijoy, India: End of Forest Evictions? New Forest Bill., In World Rainforest Movement, Issue number 106, June 2006, available at: <http://www.wrm.org.uy/bulletin/106/Asia.html>.

66 Report of the high level Committee on National Mineral Policy, Op.cit.

67 According to the Orissa, Andhra and Chhattisgarh model.

to tribal PAPs. In addition the recalling of the Samatha judgment⁶⁸ the R and R policies lists facilities to be provided to persons in the Scheduled areas, i.e. the tribals, in paragraph 113 of the Order. These include maintenance of roads and communications in the Scheduled areas, supply of potable water to tribal, providing employment in the project and construction of houses. Apart from those packages, the report emphasizes that where resettlement takes place, companies are required to ensure that living standards are not diminished, that community and social ties are preserved, and that they provide fair compensation for loss of assets and economic opportunity. Although the intention in all the policies seem, just practical case examples from the mining areas in India indicate that rehabilitation of displaced persons is not implemented and from one day to the other persons face impoverishment after being displaced from their land.⁶⁹

The policy provides no safeguard against double or triple displacement which has happened in the past due to poor planning of resettlement process and project assessment, especially in the dam related submergence and displacement. This is one of its major lacunae, in absence of such a safeguard chances are that these communities can be displaced again and again over a period of time.

In a landmark judgement on February 21st, 2008, relating to the Omkareshwar Dam in the Narmada valley, a bench of the Madhya Pradesh High court directed that “every farmer, encroacher, and adult son of farmer must be provided agricultural land for land with a minimum allotment of 5 acres of irrigated land (...), and “that the present water level cannot be raised until the resettlement and rehabilitation of all the oustees of the project including the allotment of land is completed.”⁷⁰

Recognition of rights to land and territory of indigenous peoples and other ethnic groups at the national level⁷¹

There are many examples of situations where the communal, collective and customary rights to land and natural resources are not respected. Cases 1,2,3,6,7,11,13 and the Special Topic 4.3 Wealth Creation and Adivasi Homelands – the case of Greater Jharkhand of the present report illustrate this lack of respect. Killings, arbitrary detention, harassment and persecution (as in cases 8, 9, 10 of the present report) are also affecting individuals and groups who claim their legal entitlements to access natural and productive resources, which is key to the realization of the right to adequate food under article 11 of the ICESCR.

Right of women to inherit and possess land and other property; discrimination of women or any other rural group in the entitlement to natural resources rights, to productive resources rights or to labour rights; existence of customs/customary laws that deny women’s equal entitlement to natural and productive resources rights.

Women’s access to land and food producing resources is linked to her position in society. Even though by law women have right to access land (The Hindu Succession Amendment Act 2005) at the societal level discrimination denies women this access. Land solely in the hands of men does

68 Samatha Judgement - The Supreme Court in its 1997 judgment (Samatha) has banned transfer of land and mining lease and license to the non-tribal in 5th schedule areas. The judgment has declared as void and impermissible all transfer of land belonging to the State of Andhra Pradesh at any time in the past or present in “Scheduled areas” to non-tribals and all mining leases or prospecting licenses when so ever granted by the concerned State Government in such areas to non-tribals. The judgment was quite explicit in favor of tribal and declared that the government is a non-tribal person and all land leased to the private company in schedule area are null and void.

69 The National Policy on Resettlement and Rehabilitation (NPRR) for Projected Affected Families (PAFs), 2003, was gazetted on February 17, 2004, by the National Democratic Alliance’s (NDA’s) ministry of rural development. The attempt at formulating such a policy is good but it has several drawbacks. NPRR in its preamble says, ‘the Policy essentially addresses the need to provide succour to the asset less rural poor, support the rehabilitation efforts of the resource poor sections, namely, small and marginal farmers, SCs/STs and women who have been displaced. A close study of the various provisions, however, doesn’t say the same or fails to elaborate how provision of this succour will be achieved. For instance the NPRR defines a family as PAFs consisting of such persons, his or her spouse, minor sons, unmarried daughters, minor brothers or unmarried sisters, father, mother and other members residing with him and dependent on him for their livelihood. It makes provisions for adult sons to get compensation but not for adult females. The absence of such a provision has meant that the women headed households, unmarried-daughters, widows, and deserted or divorced women are not liable for compensation. This results in marginalisation and disempowerment of women and decline in their social, physical, and economic status. NPRR has special provisions for PAFs of Scheduled Tribes (ST), but treats Schedule Castes families with general PAFs. The policy merely reiterates the fact that the PAFs of Scheduled Caste category enjoying reservation benefits in the affected zone shall be entitled to get the reservation benefits at the resettlement zone. For STs the policy says each Project Affected Family of ST category shall be given preference in allotment of land and will be re-settled close to their natural habitat in a compact block so that they can retain their ethnic, linguistic, and cultural identity and very generously mentions free of cost land for community and religious gathering.

70 Narmada Bachao Andolan press release from 22 February 2008, available at: <http://www.narmada.org/nba-press-releases/february-2008/Feb22.html>

71 In connection with the 50 000 MW Hydroelectric Initiative towards Hydropower development in India, as of September 2007 39 Memorandums of Understanding with both public and private sector developers have been signed. These projects are being pursued in spite of the huge impact on the livelihood of the tribal people living in the respective areas and who are dependent on the land for their survival. For more information please look at: Massive Dam Plans for Aruchanal worry locals, 17 February 2008, Shripad Dharmadhikary.

not ensure the welfare of women. Overall discrimination against women (preference for boys, change in residence after marriage and fear of property being divided) denies women access to land and societal pressures prevent women from claiming their rights.⁷²

Possibility for peasants, small-scale farmers, fisher folk, foresters, and other food producers and persons belonging to vulnerable groups in urban areas, particularly women, to earn a fair return from their labour, capital and management

The Government of India has formulated several policies to improve the conditions of the weaker sections of the society but the absence of a uniform and comprehensive wage policy for all the sectors of the economy of India leads to exploitation and difficulties in the unorganised sector. Wages in the organised sector are determined through negotiations between the employer and employees. The minimum wage act 1948 was primarily designed to protect workers in the unorganised sector, where labour is vulnerable to exploitation, due to illiteracy and lack of bargaining power. The National Minimum Wage (NMW) has been considered at various fora in the past. However, State/UT Governments are not unanimous on the need of a NMW as socio-economic conditions vary from state to state, region to region as also from industry to industry due to different geographical, topographical, and agro-climatic factors.⁷³ States decide the minimum wage in the State.

(please refer to cases 24 and 26, as well as to Special Topic 4.12 “Sandstone quarrying in Rajasthan”)

In India, around 60 percent of the national income is contributed by the unorganised sector;⁷⁴ and employs around 85 percent of the working population in India.⁷⁵ One parameter of the unorganised sector is that the workers are not able to organize themselves to pursue common objective. In order to improve the condition of the workers in the unorganized sector India is taking steps to introduce social security and other welfare schemes for workers in the unorganised sector. The National Commission on Enterprises in the unorganized sector set up in September 2004 was working towards this aim. However, this bill will be introduced only in the winter session of the parliament in 2007. The cabinet also approved a health insurance scheme for below-the-poverty-line (BPL) workers and their families in the unorganised sector. The beneficiaries will be issued smart cards for the purpose of identification.⁷⁶ **The Bill is expected to offer the same treatment to agricultural and non-agricultural unorganised workers. The implementation of the bill will by and large decide if the situation of the unorganised workers improves.**

(Please refer to special topic on weavers as well as study on sandstone mining, annex on sandstone mining related laws, and cases 23, 24, 26, 27, which give examples on situations, where the payment of minimum wages is not enforced; case 25 shows how the possibility for poor people to earn their living from rickshaw driving is being denied.)

Policies and programs in place to effectively broadening sustainable and secure access to and control over land and related resources; Number of landless and near landless households

According to National Sample survey, Household Ownership Holdings in India, 2003, about 10 % of all rural households were landless.⁷⁷

According to the West Bengal Human Development Report, 2004, the number of rural households that are landless in the state is rapidly increasing. The report, brought out by the development and planning department, government of West Bengal, and released last month, sees this as a “disturbing trend”, particularly in a state that undertook land reforms on a massive scale after the ruling Left Front government came to power after 1977.

72 Bina Agarwal, Are We Not Peasants Too? Land Rights and Women's Claims in India, available at: <http://ccc.uchicago.edu/docs/AreWeNotPeasantsToo.pdf>

73 National Minimum Wage Act 1948 is available at: <http://labour.nic.in/wagecell/mwact.pdf>.

74 N.S.Sastry, Preservation of Micro Data on Informal Economy at the national level - Case study of India - , available at: http://mospi.gov.in/informal_paper_2003_09.htm.

75 Kiran Moghe, Understanding the unorganised sector, September 2007, http://www.infochangeindia.org/agenda9_02.jsp.

76 Press Information Bureau, Government of India, available at: http://pib.nic.in/release/rel_print_page1.asp?relid=28432.

77 Available at: http://www.mospi.gov.in/nss_press_note_491.htm.

The land reforms programme, West Bengal government undertook the task of redistributing vested land and securing of tenancy rights through universal registration. This scheme was popularly known as 'Operation Barga'. According to NSS data, the proportion of rural landless households in West Bengal went up from 39.6 per cent in 1987-88 to 41.6 per cent in 1993-94, to 49.8 per cent in 1999-2000. "In other words, by the end of the decade, nearly half of rural households in West Bengal were landless", the report says. The figure for rural India as a whole is 41 per cent.

Though the direct cause for this trend is not clear, the report sees the substantial diversification of rural employment to non-agricultural activities as a contributing factor. It notes that farming may have become a less attractive avenue of economic activity in the state as farmers have been facing growing difficulties with cultivation, prevalent almost across the country. Rising input prices, stagnant crop prices, reduced access to institutional credit and other agricultural extension services, may be some reasons for this shift.

While the report sees "strong evidence" of a decline in landlord dominance in West Bengal, it also notes "more complex class configurations" with the emergence of a "new rich" category in rural areas. It notes that "salaried groups and traders emerging along with surplus farmers" are becoming "more economically and politically influential".

Percentage of a certain rural group (women, indigenous peoples, ethnic groups, fishers, forest communities, pastoralists, Dalits, etc.) without or with insufficient access to and control over land and related resources.

Land reforms, backed by administrative and political measures, were effective in terms of redressing certain caste-based social inequalities in the state, it says. However, the report notes that despite all these measures, the pattern of redistribution shows that **gender inequalities still persist**. Land redistribution is potentially a very important instrument for redressing this balance, however, in practise, many land reform programmes are lacking in this regard. The incidence of joint pattas and single pattas to women remained very low. While joint pattas to women accounted for less than 10 per cent of the total, single pattas accounted for less than 6 per cent of the total.

In particular, Dalits account for a sixth of India's population, but they are mainly landless and where they own land at all, it is marginal and usually of low quality. Of the Indian poor, 40 per cent are landless agricultural labourers; 45 per cent are small or marginal farmers. (60 per cent of Indian farmers own less than an acre of land). This means that 85 per cent of the poor are either landless or marginal farmers. Dalits mainly belong to the first category.⁷⁸

As much as 77 per cent of the Dalit workforce is in the primary or agricultural sector of the economy. But as very few of them own land, they form the bulk of agricultural labourers in this country.

Please refer to case 5 as illustration for non implementation of land reform programs.

Another facet of the hunger in rural areas is the situation faced by the landless or land tenants. **Land reforms, aimed to provide land to the landless and social justice, were never effectively implemented. Lack of access to land, denial of titles to the land are some problems that hinder people from growing food and feeding themselves and their families. Landless tenants who have settled on land for years do not have titles to the land in several cases. Due to lack of land titles there exists a constant threat of eviction from the land.** An example from Belgaum district of Karnataka in this report is a case in point.

The growing agrarian crisis (including droughts in some areas), lack of tenure security and employment opportunities in agriculture and allied sectors is making the hunger situation in the rural areas very acute. Most of the persons suffering hunger and malnutrition in rural areas are the Scheduled Castes, other backward castes and those who do not have any access to individual or community productive resources. The National Policy for Farmers that is being drafted aims to address the situation of the farmers. It remains to be seen how the right to feed themselves of the farmers will be ensured by the policy.

⁷⁸ PUCL Bulletin, June 1999, Dalits & Human Rights: The Battles Ahead, by P. Sainath, available at: <http://www.pucl.org/from-archives/Dalit-tribal/battles1.htm>

Among various reasons of hunger and starvation, eviction due to the development projects like expansion of industries, mining activities building dams, is very prominent, and has resulted in chronic food insecurity. Complete loss of access to land, forest and other sources to feed themselves renders people susceptible to chronic hunger and under nourishment. In the last 50 years as a result of various development efforts and economic liberalisation, the peoples control over and access to land water and forest has drastically reduced. Natural disasters like flood and cyclones further has worsened the situation of poverty.

Number of persons forcibly evicted from rural land

Since independence, more than 10 million Adivasis have been displaced due to projects like dams, mining, industries, roads etc. ⁷⁹ Out of all displaced persons in India between 1950 to 1990, Adivasis constituted 55 %.⁸⁰

There is no official database on the numbers of displaced people. According to recent estimates by Walter Fernandez, only in the states Andhra Pradesh, Orissa, Jharkhand and West Bengal from 1951 – 1995 10 million people have been deprived from their livelihood. **Fernandez estimates the total number of displaced people and project affected people at not less than 50 million.**⁸¹

Loss of land suitable for agriculture, forest, and fishing grounds due to non-ecological reasons within the past five years

At present land acquisition is much higher than it had been in the past. Between 1951 and 1995 In Orissa 40000 ha land had been acquired for industries. Since then, however, 100 000 ha have been acquired. In Andhra Pradesh, within five years, half as much land for industries has been acquired compared as in the past 45 years.⁸² Often, because of available infrastructure, fertile lands near roads and railway lines are used to establish industrial estates.⁸³⁸⁴ In Jharkhand, the government has signed 42 Memorandums of Understanding (MoUs) with different companies. The amount of land needed for these projects is estimated at 60 ⁸⁵000 acres.

The official figures regarding forest conversion for industrial or commercial interests and agricultural expansion between 1952 to 1980 are 4,5 million hectares. Since 1980 1.1 million hectares of forest has been diverted, out of that one third only within the past five years.⁸⁶

Special Economic Zones

In the era of globalisation, the introduction of liberal economic policies, and many market oriented 'development' programmes have arguably exacerbated inequality. **In the name of development, federal and State Governments have assisted large corporations and foreign investors expropriate community resources, such as land, water, and forest for commercial use.**

The Poor's access to land in rural India has worsened further due to various land acquisition drives of the State in the name of industrialisation and development. The latest addition to this initiative of land acquisition is Special Economic Zone (SEZ) and India has recently experienced most severe conflicts in the rural belts regarding access to land. The Ministry of Commerce and Industry lays down the regulations that govern the setting up and administering of the SEZs. The policy framework for SEZs has been enacted in the SEZ Act and the supporting procedures are laid down in SEZ Rules. The central commerce ministry's web site described the SEZs as "designated duty free enclaves to be treated as foreign territory for trade operations and duties and tariffs". These are zones reserved especially for all types of export processing units and industries where industries would enjoy special benefits and tax relaxation. The state will provide land, develop

79 Centre for Environment and Food Security (CEFS).

80 Planning Commission Government of India, 2001.

81 Walter Fernandez, available at: http://www.combatlaw.org/print.php?article_id=35&issue_id=1

82 Ibid.

83 Ibid.

84 "In West Bengal the land to the North of Midnapore railway station is rocky and undulating, while that to its south, near Kharagpur, is fertile. But being closer to the highway, 200 acres of the latter were acquired for Tata Metalliks in 1992, and later 96 acres more were acquired for a proposed Birla firm that never even took off. Hundreds of Lodha triba families have been sacrificed to private profit." Ibid.

85 Soren, Rajini: Displacement in Jharkhand, available at: <http://refugeewatchonline.blogspot.com/2006/07/displacement-in-jharkhand.html>

86 Kothari, Ashish: a long and winding path, available at: <http://www.flonnet.com/fl2504/stories/20080229500801800.htm>

infrastructure and render other support services at a subsidised rate to these industries in SEZ. Till date the Government of India approved 234 SEZs out of which 162 are approved on principle and 63 SEZs have been notified in different Indian States. The total land requirement for this purpose would be around 33,808 hectares for 234 SEZs and already notified 63 SEZs would be built on 17,800 hectares of land (GOI 2007)⁸⁷. But this is just the beginning and the master plan of expansion of SEZs would require more than 134,000 hectares⁸⁸ of lands in near future. The nature of the industries to be developed in these SEZ are not clear from the Government documents as majority of these industries are mentioned as 'multi product industry' and a few are information technology (IT), car manufacturing industry and refineries^{89 90}.

Goa is the only state in India which has declared that no more Special Economic Zones would be set up in its territory. This has to be seen as the result of pressure from different groups all over the state.⁹¹

(Please refer to Special Topic 4.2 Special Economic Zones: Profits at Any Cost as well as to case 10)

Measures taken to safeguard the right of the indigenous peoples, pastoralists and nomadic peoples to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.

In spite of legislative and policy measures to guarantee the rights of these groups, violations are numerous and cases 7,8,9,11,13,14,15 represent some examples of the lack of respect of the right to adequate food of indigenous, pastoralists and nomadic people.

Administrative, quasi-judicial and judicial mechanisms to provide adequate, effective and prompt remedies accessible to rural communities when their rights to natural and productive resources have been violated; number of people killed, arbitrarily detained, harassed and persecuted because of claiming their rights to natural and productive resources in the last five years.

In India today, there are not only numerous situations where the access to natural and productive resources is denied to those who are entitled to have such access, but increasing repression and violence are being observed against human rights defenders and victims involved in those situations.

(Please refer to cases 8, 9, 10, 12, and 15)

⁸⁷ Ministry of Commerce and Industry, Department of Commerce, SEZ in India, available at: <http://sezindia.nic.in/>.

⁸⁸ India has planned to develop 127 SEZ. In the first phase 67 SEZ would be developed covering an area of 134,000 hectares, SEZ homepage, GOI.

⁸⁹ As per information available from the proposal submitted to the central government dated October 6, 2006.

⁹⁰ Please also refer to "International Fact Finding Mission investigated displacement and destruction of livelihoods in Nellore district, Andhra Pradesh, due to SEZ and expansion of port", PANAP / PCFS press release, February 23, 2008

⁹¹ Mumtaz, Rifat and Madhumanti Sardar in : <http://www.infochangeindia.org/features475.jsp>

2.5.2 Access to Water

Constitutional and other legal provisions to guarantee the right to water of rural communities

Growing and consuming food, enjoying a healthy life are crucially linked with access to safe water. The National Water Policy of India 2002 treats Water as a prime natural resource, a basic human need, and a precious national asset. Planning, development and management of water resources need to be governed by national perspectives.⁹² The policy seeks to formulate strategies for optimal utilisation of water in order to provide the necessary amounts of water required for domestic use, irrigation, hydro-power and industrial use. With dropping water levels, increasing irrigation requirements and growing population, this is not an easy task. The water allocation priorities set down by the National Water Policy are as follows:

- Drinking water
- Irrigation
- Hydro-power
- Ecology
- Agro-industries and non-agricultural industries
- Navigation and other uses.

Accordingly, “adequate safe drinking water facilities should be provided to the entire population both in urban and in rural areas. Irrigation and multipurpose projects should invariably include a drinking water component, wherever there is no alternative source of drinking water. Drinking water needs of human beings and animals should be the first charge on any available water.” The importance of water as part of the ecology is recognized in the policy: “Water is part of a larger ecological system. Realising the importance and scarcity attached to fresh water, it has to be treated as an essential environment for sustaining of all life forms.”⁹³ The policy paper also emphasizes the need to especially safeguard vulnerable parts of the society: “Special efforts should be made to investigate and formulate projects either in, or for the benefit of areas inhabited by tribal or other specially disadvantaged groups such as socially weak, Scheduled Castes and Scheduled Tribes. In other areas also, project planning should pay special attention to the needs of Scheduled Castes and Scheduled Tribes and other weaker sections of the society. The economic evaluation of projects benefiting such disadvantaged sections should also take these factors into account.”

The importance of groundwater conservation is emphasised: “Exploitation of ground water resources should be so regulated as not to exceed the recharging possibilities, as to ensure social equity. The detrimental environmental consequences of overexploitation of ground water need to be effectively prevented by the central and State Governments”. However, the water policy also outlines: “Private sector participation should be encouraged in planning, development, and management of water resource projects for diverse uses, wherever feasible.” Private participation in the water sector requires that the State should protect the people from exploitation and create an enabling environment to enjoy their rights. Case studies indicate that state is failing to protect the people’s right to water (please refer to cases 18 and 19, as well as to special topic 4.6.)

The water situation in India should not be underestimated as it is an integral part of the hunger picture. In water quality, India ranks 120th in a list of 122 countries in the world and in terms of availability of water India ranks 133rd in a list of 180 countries. With a projected increase in population of 15 million every year, the main problems to be faced would be conservation and equitable distribution of water.⁹⁴ **At least 200 million Indians do not have access to safe and**

92 Government of India, Ministry of Water Resources, National Water Policy, April 2002, available at: <http://wrmin.nic.in/>.

93 “Water Quality: Both surface water and ground water should be monitored regularly for quality. A phased programme should be undertaken for improvements in water quality. Effluents should be treated to acceptable levels and standards before discharging them into natural streams. Minimum flow should be ensured in the perennial streams for maintaining ecology and social considerations. Principle of “polluter pays” should be followed in management of polluted water. Necessary legislation is to be made for preservation of existing water bodies by preventing encroachment and deterioration of water quality.” Ibid.

94 Shiva, Vandana, Bhar. Radha., Jafri, Afsar, Jalees, Kunwar: “Corporate Hijack of Water: How World Bank, IMF and GATSWTO rules are forcing water privatisation”, New Delhi: Navdanya, 2002.

clean water. The country's water resources are polluted with untreated industrial and domestic waste, pesticides, and fertilizers as case studies indicate (Please refer to cases 16,17,21,22).

Water scarcity is the single biggest threat to food production, as falling groundwater levels and shrinking rivers make less water available for agriculture. Sustained access to water for irrigation is a question of survival for a large part of the Indian population. Agriculture accounts for almost 80 per cent of water use in India. Ground water is the major source of irrigation in India. It fulfils almost 60 percent of the country's total irrigation needs, in rainless areas this rate being even much higher.⁹⁵ However, **excessive depletion of groundwater reserves has led to a dramatic decrease of the groundwater level. Industry too has become a huge consumer of ground water in agricultural areas. Diverting water from domestic and agriculture to industries poses serious problems. In most parts of India, ground water mining is taking place at twice the rate of natural recharge causing aquifers to drop by 1 to 3 meters every year. Access to clean drinking water is very critical to maintain a healthy life. Without proper water consumption the human body is unable to absorb food properly and could lead to serious malnutrition even if food is actually "consumed". Lack of access to clean water results in many water related infections and epidemics.**

Violations of the right to water and social conflicts caused by an inadequate management and administration of water resources

Illustrating the general problems exposed above, examples of violations of the right to water are presented in cases 16, 17, 18, 19, 20, 21, 22, , as well as Special Topic 4.6 Cases of privatizing water bodies in India.

2.5.3 Sustainability

The threats to sustainability and to the fragile environmental balance which is so crucial to maintain the services rendered by ecosystems to food production are manifold and numerous. One of these threats is the loss of fertile land due to mining activities. The loss already affects particularly Adivasis as the case 13 on the alarming developments due to coal mining in Hazaribagh shows. Furthermore, Special Topic 4.1 A case study of Malsinghwala, the "Village for Sale" in Punjab highlights how pollution and loss of soil fertility already impair the realization of the right to adequate food.

⁹⁵ International Water Management Institute and German Development Institute, Sustaining Asia's Groundwater Boom - An Overview of Issues and Evidence, November 2001, available at: http://www.water-2001.de/supporting/Asia_Groundwater_Boom.pdf.

2.6 Nutrition

India is classified by the Food and Agricultural Organisation (FAO) of the United Nations, as a low-income, food-deficit country. With 212 million undernourished people⁹⁶, **India has the largest number of undernourished people in the world and the highest levels of child malnutrition, higher than most countries in Sub-Saharan Africa.**⁹⁷ India has committed itself to attain the Millennium Development Goals (MDGs) by the year 2015.⁹⁸ The first of the eight MDGs is to eradicate extreme poverty and hunger with the related target to reduce by half the proportion of people suffering hunger by 2015. Reports indicate that India is lagging far behind in reaching the goal: recent studies indicate that **hunger and food insecurity in India are increasing despite almost 10 percent annual economic growth.**⁹⁹

A brief look at the statistical data reveals the dramatic situation of under nourishment and poverty in India. 20 percent of the Indian population is undernourished¹⁰⁰, of which 57 million children are malnourished and make up one third of the world's 146 million undernourished children.¹⁰¹ Almost half (47 percent) of the malnourished children are under the age of five years.¹⁰² One in three women is underweight and is therefore, at the risk of delivering babies with low weight and inheriting her fate to her children.¹⁰³ Nearly a third of children are born underweight (30 percent), which indicates that their mothers themselves are underweight and undernourished. Malnutrition also increases during early childhood, particularly for girls, reflecting persistent gender discrimination against girl children.¹⁰⁴

In 2006 the total population of India was estimated as 1027 million¹⁰⁵, making it the second most populous country. 28.6 percent of the people live below the poverty line¹⁰⁶ 27.8 percent of the population lives in urban areas with 23.6 percent of them being below poverty line and 14.8 percent living in slums. 72.2 percent of the population lives in the rural areas with 30.2 percent of them living below the poverty line.¹⁰⁷ The rural poor mainly fall in the group of the most disadvantaged group of agricultural labour with very limited ownership of assets.¹⁰⁸ The urban poor are usually labourers in the unorganized sector and are at times migrants from the rural areas.

There is strong correlation between under nourishment and poverty and discrimination. Poverty prevents persons from fully realising their potential and enjoying their rights. Poverty could be caused by denial of rights like access to land, forests, water; displacement for developmental/ industrial purposes, inefficient agricultural practices or change in governmental policies leading to a slow down in or closure of industry (like weaving, tea industry and foundry cases in the report) leading to loss of employment and income.

There are 933 females per 1000 males (946 in rural and 900 in urban areas). This skewed sex ratio is indicative of the secondary position of women in India and the unwillingness of parents to let female foetuses to survive until birth.¹⁰⁹

96 Food Agriculture Organization, The State of Food Insecurity in the World 2006, <http://www.fao.org/docrep/009/a0750e/a0750e00.htm>.

97 United Nations Development Programme (UNDP), Human Development Report 2005, available at: <http://hdr.undp.org/reports/global/2005/>.

98 The Millennium Development Goals are eight goals that United Nations member states have agreed to try to achieve by the year 2015. These goals range from halving extreme poverty to halting the spread of HIV/AIDS and providing universal primary education, all by the target date of 2015 – form a blueprint agreed to by all the world's countries and all the world's leading development institutions.

99 Report of the Special Rapporteur on the Right to Food, Jean Ziegler, Mission to India (20th August – 2nd September 2005), E/CN.4/2006/44/add.2 20th March 2006.

100 FAO, Op.cit.

101 United Nations Children's Fund (UNICEF), Progress for Children: A Report Card on Nutrition, May 2006, available at: <http://www.unicef.org/progressforchildren/2006n4/>.

102 FAO, Op.cit.

103 Ibid.

104 Jean Ziegler, Op.cit.

105 Ministry of Home Affairs, Govt. of India, 2001 Census, available at <http://mha.gov.in/fac1.htm#fag> and <http://www.censusindia.net/results/slum/Statement-I.pdf>.

106 World Bank, World Bank development indicators of 2005, available at: http://devdata.worldbank.org/wdi2005/Table2_5.htm.

107 Ibid.

108 Raghbendra Jha, Rural Poverty in India: Structure, determinants and suggestions for policy reform, October 2002.

109 Foeticide to eliminate females is practiced in India despite stringent laws against it.

Poverty Line Excludes Hungry Persons

The international standard for the definition of the poor i.e. a household that spends more than one third of its income on food, is followed in India, 95 percent of all households would be considered poor. If the China standard of food share of 60 percent, then 70 percent of all households would be considered poor (80 percent of the rural population and 60 percent of the urban population would be poor).¹¹⁰ However, only 26 percent fall under the BPL. The wrongful exclusion of poor from the BPL list leads to lack of access to food and causes malnutrition and under nourishment. Madhura Swaminathan draws the conclusion¹¹¹ that is that the proportion of persons suffering deprivations in food and nutrition is higher than those below the poverty line. For example 37 percent of urban household were BPL in 1993-94 while 80 percent of households were calorie deficit. If the objective of PDS is food security then it should also look at those facing the risk of under nourishment. While anthropometric measures suggest 50% adults in India are undernourished, 70 percent of households are deficient in food consumption.

Schemes to prevent hunger and malnutrition among children have been mainly set through the Midday Meal Scheme, the Integrated Child Development Services (ICDS), and the Maternity Benefit Scheme. However, the persistence of malnutrition among children and mothers and high mortality rates reveal that set targets of Government schemes haven't been met.¹¹²

Discrimination in the implementation of the mid day meal scheme prevents children from the Schedule Castes and Tribes from getting meals everyday. For instance in Uttar Pradesh discrimination takes various forms ranging from not permitting children to drink from the common water pot, denying entry into the kitchens where the mid day meals are cooked, asking the children to perform manual labour such a sweeping the school premises and loading bricks for construction work to even working in the homes of teachers.¹¹³ Negative stereotyping and considering these children as uneducable, favouring upper castes children persists. In cases where Dalit cooks were appointed to cook the mid day meals in Uttar Pradesh parents protested very vehemently and refused to allow their children to eat food prepared by the lower caste cooks.¹¹⁴ Such instances occur despite measures in place to protect and uplift the weaker sections of the Indian society. Out of school children (children who do not go to school) do not get mid day meals at all and face the threat of malnutrition.

Hunger and malnutrition among children is also critically linked to the ability of the family to earn a living or have access to food producing resources and feed themselves. Besides other means the ability to access food grains under welfare schemes is decisive in preventing hunger and malnutrition in India. The production of food grains in the country increased from 50 million tons in 1950-51 to around 211 million tons in 2001-2002, a sufficient amount to feed everybody in the country. India has managed to maintain a constant high level of food grains reserves. However this increase in food production did not translate in access to food for all and decrease in food insecurity. 30 percent of Indian population lives on 1700 kcal per day much below the minimum requirement of 2100 kcal.¹¹⁵ Greater part of the Indian population is still poor, with 28.6 percent living below the national poverty line (BPL),¹¹⁶ and 80 percent live on less than 2 USD per day.¹¹⁷ This indicates that a large part of the population cannot afford adequate food to maintain a healthy and sustainable life. Professor Patnaik on the basis of the NSS data on calorie intake for 1999-2000, found that 70 per cent of the Indian population was at or below the poverty line fixed by the Planning Commission in 1979 - at 2400 calories per person per day. She calculated that an average family of five was consuming at least 200 kg of grain less in a year than 50 years ago.

110 Right To Food editors Colin Gonsalves, P. Ramesh Kumar and Anup Kumar Srivastava; Human rights Law Network, Socio Legal Information Centre, New Delhi August 2005.

111 Madhura Swaminathan, Op.cit.

112 Citizens' Initiative for the Rights of Children Under Six (CIRCUS), Universalization with Quality: Action for ICDS, March 2006, available at: <http://righttofoodindia.org/data/cds06primer.pdf>.

113 Puja Awasthi, Caste discrimination persisting in U.P. schools, 17 August 2007, available at: <http://www.indiatogether.org/cgi-bin/tools/pfriend.cgi>.

114 Ibid.

115 FAO, Op.cit.

116 UNDP, Op.cit.

117 World Bank, Op.cit.

Food grains were available but the poor did not have the money to purchase them.¹¹⁸ This means even purchasing from the Public Distribution System (PDS). Having no access to affordable food makes people eat less and over the years become malnourished, children, the old and infirmed are more susceptible to ill-health due to lack of food.

Percentage of undernourished children under five years

According to Nutrition Foundation of India under-weight children under three in the total child population under three had not fallen at all (47% in 1998/9 and 46% in 2004/5/6). Still nearly half of India's children under three are malnourished.¹¹⁹

Figure 2: Trends in childhood (0-3 years of age) malnutrition in India¹²⁰

Nutritional Parameter	1992-93 NFHS-1	1998-99 NFHS-2	2005-06 NFHS-3
Stunted	52.0	45.5	38.4
Wasted	17.5	15.5	19.1
Underweight	53.4	47.0	45.9

Overall percentage of the undernourished population

The number of the poor has barely declined by 20 million people over three decades, 1973-2005, from 320 million to 300 million; and most of this decline has occurred during the most recent decade (1993/4-2004/5). Low and stagnating incomes among the poor have meant that low purchasing power remains a serious constraint to household food and nutritional security, even if food production picks up as a result of interventions in agriculture and creation of rural infrastructure.

Outcomes in terms of protein-energy malnutrition (PEM) speak for themselves: in 1998/9, according to NFHS 2, as much as 36% of the adult population of India had a body mass index (BMI) below 18.5 (the cut-off for adult malnutrition); eight years later (2005/6), that share had barely fallen to 33% of the population, despite a decade of robust economic growth.

Moreover, vulnerability in respect of health arises from the under-funding of the public health system and its inability to provide comprehensive care, which is a major concern for the majority of the population.

Figure 3 Distribution (%) by protein-calorie adequacy status (Source: NNMB Reports 2002):

	1-3 years	4-6 years	7-9 years		10-12 years	13-15 years	16-17 years
Children	31.8%	28.2%	28.1%	Boys	26.0%	34.7%	50.2%
				Girls	32.9%	43.1%	64%
Adult Sedentary Men	68.8%			Pregnant Woman	64.3%		
Adult Sedentary Woman	81.8%			Lactation Woman	62.2%		

About 30% of all adults have BMIs <18.5, (33% of women and 28% of men.) body mass index which defines adult malnutrition.

India is beginning to suffer from a double burden of under nutrition and obesity. This phenomenon, called "nutrition transition," means that the national health systems now have to cope with the high cost of treating diet-related NCDs and at the same time, fight under nutrition and the traditional communicable diseases.

High levels of adult malnutrition are affecting a third of the country's adults. The absolute weights and heights of Indians on average have not shown significant improvement over the last 25 years.

118 Prof. Utsa Patnaik, *The Republic of Hunger*, available at: http://www.ideaswebsite.org/featart/apr2004/Republic_Hunger.pdf.

119 NNMB Reports 2002.

120 NFHS surveys, IIPS, Ministry of Health and Family Welfare, Government of India.

Figure 3 gives per capita quantity of cereal consumption per month in 15 major States as estimated from the 50th (1993-94), 55th (1999-2000) and 61st (2004-05) rounds of National Sample Surveys (NSS), (Ministry of Statistics and Programme Implementation, Government of India).

Figure 3: Changes per capita cereal consumption in 15 states in physical terms over the last decade in major States

Year	RURAL								
	Monthly per capita consumption (kg.) in								
	AP	ASM	BHR*	GUJ	HAR	KTK	KRL	MP**	
1993-94	13.3	13.2	14.3	10.7	12.9	13.2	10.1	14.2	
1999-2000	12.65	12.63	13.75	10.19	11.37	11.53	9.89	12.94	
2004-05	12.07	13.04	13.08	10.07	10.66	10.73	9.53	12.16	
	MAH	ORS	PUN	RAJ	TN	UP***	WB	IND	
1993-94	11.4	15.9	10.8	14.9	11.7	13.9	15.0	13.4	
1999-2000	11.32	15.09	10.58	14.19	10.66	13.62	13.59	12.72	
2004-05	10.50	13.98	9.92	12.68	10.89	12.87	13.18	12.12	
Year	URBAN								
	Monthly per capita consumption (kg.) in								
	AP	ASM	BHR*	GUJ	HAR	KTK	KRL	MP**	
1993-94	11.3	12.1	12.8	9.0	10.5	10.9	9.5	11.3	
1999-2000	10.94	12.26	12.70	8.49	9.36	10.21	9.25	11.09	
2004-05	10.51	11.92	12.21	8.29	9.15	9.71	8.83	10.63	
	MAH	ORS	PUN	RAJ	TN	UP***	WB	IND	
1993-94	9.4	13.4	9.0	11.5	10.1	11.1	11.6	10.6	
1999-2000	9.35	14.51	9.21	11.56	9.65	10.79	11.17	10.42	
2004-05	8.39	13.11	9.01	10.84	9.48	10.94	10.39	9.94	

*includes Jharkhand, **includes Chhattisgarh, ***includes Uttaranchal Source: Nss 50th, 55th and 61st Rounds

Figure 4: In both *rural and urban* India, the share of food in total expenditure continued to fall throughout the three decades prior to 2004-05. The overall fall was from 73% to 55% in rural areas and from 64.5% to 42% in urban areas. In *urban* India, not only the shares of cereals and pulses have fallen, but there has been a fall in the shares of other food groups as well, such as milk and milk products, edible oil, and sugar. In *rural* India, however, the shares of milk and milk products, egg, fish and meat, and fruits & nuts have increased by about 1 percentage point each, the share of vegetables has increased by 2.5 percentage points, and that of beverages, refreshments & processed food has increased by 2 percentage points since 1972-73; only the shares of sugar and pulses (the latter, largely during the last decade) have declined noticeably, apart from cereals.

Figure 4: Composition of food consumption, All-India, rural and urban 1972-73 to 2004-05

Sector	Year	% share of major food groups in total expenditure									
		All food	Cereals	Pulses	Milk and milk-products	Edible oil	Egg, fish and meat	Veg- etables	Fruits and nuts	Sugar	Bever- ages, etc.
Rural	72-73	72.9	40.6	4.3	7.3	3.5	2.5	3.6	1.1	3.8	2.4
	87-88	64.0	26.3	4.0	8.6	5.0	3.3	5.2	1.6	2.9	3.9
	93-94	63.2	24.2	3.8	9.5	4.4	3.3	6.0	1.7	3.1	4.2
	99-00	59.4	22.2	3.8	8.8	3.7	3.3	6.2	1.7	2.4	4.2
	04-05	55.0	18.0	3.1	8.5	4.6	3.3	6.1	1.9	2.4	4.5
Urban	72-73	64.5	23.3	3.4	9.3	4.9	3.3	4.4	2.0	3.6	7.6
	87-88	56.4	15.0	3.4	9.5	5.3	3.6	5.3	2.5	2.4	6.8
	93-94	54.7	14.0	3.0	9.8	4.4	3.4	5.5	2.7	2.4	7.2
	99-00	48.1	12.4	2.8	8.7	3.1	3.1	5.1	2.4	1.6	6.4
	04-05	42.5	10.1	2.1	7.9	3.5	2.7	4.5	2.2	1.5	6.2

Per capita **intake of calories and protein** has declined consistently over a 20-year period from 1983 to 2004/5, according to NSS data (Fig. 5). *Rural* calorie consumption per day has fallen from 2221 to 2047, an 8% decline. The *urban* calorie consumption fell by 3.3%, from 2080 to 2020.

Figure 5 Per capita intake of calorie and protein

	Calorie (K cal/day)		Protein (gm/day)	
	Rural	Urban	Rural	Urban
1983 (NSS 38th Round)	2221	2089	62.0	57.0
1993 (NSS 50th Round)	2153	2071	60.2	57.2
1999- 2000 (NSS 55th Round)	2149	2156	59.1	58.5
2004-05 (NSS 61st Round)	2047	2020	57.0	57.0

Source: NSS Report No. 513 Nutritional Intake in India, 2004-05

The nutritional situation of the population and of vulnerable groups in particular. The trends observed in the evolution of this situation

- Older people: Around 93% of our labour force works in the informal sector, without any form of social protection, especially against old-age. With growing migration of younger rural residents to urban and fast-growing rural areas, elderly parents are often left behind in the village to cope on their own. Old age pension is thus becoming a crying need for those dependent on insecure employment in the informal economy as well as for parents left behind.¹²¹
- Women: with growing male migration, women also have to tend to the family farm, as agriculture feminizes and to take care of the elder people, who are left behind.
- Percentage of ever married women in the age group 15-49 who were anaemic has increased from 51.8% in 1998-99 to 56.2% in 2005-06
- Pregnant women: Percentage from 15-49 years old has increased from 49.7% in 1998-99 to 57.9% in 2005-06
- Children: High levels of under-nutrition particularly in children: over 70 to 80% of the calories consumed by the children are derived from cereals and pulses, In the absence of fats, milk, eggs and sources of iron, children starve themselves. The resultant Iron deficiency anaemia further worsens their appetite.
- As much as 74.2% of the children of 6-35 months were anaemic (NFHS-2) which has increased to 79.2% (NFHS-3).

121 11th Five year Plan (2007-2012), Government of India, December 2007. New Delhi.

2.7 National Financial Resources

Public institutions in charge of disseminating information on national expenditures in general

The following public institutions are in charge of disseminating information on national expenditures: The Planning Commission of the Union Government (State Governments); the Ministry of Finance (Govt. of India) particularly the section dealing with Expenditure Budget (through its Expenditure Budget Vol. I and II), the Ministry of Statistics, Planning Implementation, the other respective ministries, departments and their public relations offices (through their assigned officers) of those concerned ministries and departments.

Proportion of the budgets for investment or social expenditure is allocated to the groups vulnerable for the right to food / Budget allocations oriented to compensate situations of inequality / discriminatory practices in the allocation of the budget corresponding to the right to food

The Scheduled Caste Sub Plan (SCSP) is a tool to ensure inclusion¹²². The beginning was made in the preparation of Special Component Plan (SCP) for the SCs in 1979-80 with specific direction that “this SCP has not only to be improved quantitatively and qualitatively but should also be implemented satisfactorily”.

This plan strategy introduced during the 6th Five-Year Plan period (1980-85) is to ensure adequate benefit to the SC population. It envisages allocation of funds under the SCSP out of the total plan outlays, proportionate to the percentage of SC population represented in the states/UTs. It gives thrust to family oriented income generating schemes for the economic development for SCs. It was emphasized that the funds under SCSP should be made non-divertible. SCSP is an integral part of the annual and Five Year Plan; this concept ‘Special Component Plan’ (SCP) is now being renamed as Scheduled Caste Sub Plan (SCSP).

Dr. Manmohan Singh, the present Prime Minister, during the 51st National Development Council meeting held on 27.6.2005 had reiterated that “SCSP and TSP should be an integral part of Annual Plans as well as Five Year Plans, making provisions therein non-divertible and non-lapsable with the clear objective of bridging the gap in socio-economic condition of the SCs and STs within a period of 10 years ...”¹²³

Like Scheduled Caste Sub Plan, similar plans related to other vulnerable groups are there, for example, at the National Level, Government of India has some specific plans like:

- Tribal Sub Plan (TSP)
- Women Component Plan [through the instrument of Gender Budgeting (GB)]

It was the Ninth Five Year Plan (1997-2002), which adopted “**Women Component Plan**” as one of the major strategies of planning and budgeting and directed both the Central and State Governments to ensure that “not less than 30 per cent of the funds/benefits are earmarked in all the women’s related sectors” (**Ninth Five-Year Plan, Government of India**).

“I confess that policy makers often tend to forget that one-half of the population is constituted by women and they are entitled to an equal share - and an equal say - in all programmes and schemes. Gender Budgeting has gained wider acceptance and credibility. Four more ministries/departments have set up gender budgeting cells taking the total number to 54. Honourable Members will find in the Budget documents a statement embracing 33 demands for grants contributed by 27 ministries/departments and 5 Union Territories. According to the statement, INR 11,460 crore

122 DO. No. M-13054/2/2005-BC, 10, January 2006, To real time inclusion: Will to actualize SCSP and challenge inclusion in the private sector, Paul Divakar, Sadanand Bag, Semmalar, T, Umesh Babu, & Ashutosh.K.Vishal. The Indian Economy Review, 2008. Union Budget 2008 - 09 : An inclusive intent. An IIPM Think Tank & Great Indian Dream Foundation. Volume V, Annual Issue: 29th February 2008.

123 Sixth Five Year Plan, GOI, Planning Commission (1980-85). To real time inclusion: Will to actualize SCSP and challenge inclusion in the private sector, Paul Divakar, Sadanand Bag, Semmalar, T, Umesh Babu, & Ashutosh.K.Vishal. The Indian Economy Review, 2008. Union Budget 2008 - 09 : An inclusive intent. An IIPM Think Tank & Great Indian Dream Foundation. Volume V, Annual Issue: 29th February 2008.

has been provided for 100 per cent women-specific schemes and INR 16,202 crore for schemes where at least 30 per cent is for women-specific programmes” (*Budget Speech of P. Chidambaram, Minister of Finance, Union Budget 2008-09, Government of India*).

In the 2007-08 Union Budget, a mere seven percent of the total gender budget pool went to the most **marginalized women**.¹²⁴

The analysis of Union Budget 2008-09, done by “Centre for Budget and Governance Accountability” reveals the following facts¹²⁵

1. Total allocation for women is 3.6% of the total government expenditure (as per the Gender Budgeting Statement).
2. Women specific allocations in agriculture as a percentage of total allocations in agriculture is 3.66% (2008-09 BE)
3. Allocations for women when compared to the total allocations in health remain stagnant at 53%.

Figure 6: Summary of the allocations on women as presented in the Gender Budgeting Statements (in Crore Rupees)

	No. of Demands*	Total Allocations under Part A of the statement**	Total Allocations under Part B of the statement**	Total magnitude of Gender Budget
2008-09	33	Rs. 11,459.61 (BE)	Rs. 16,202.06 (BE)	Rs. 27, 661.67 (BE)

* In Union Budget covered under the Gender Budgeting Statement.

** Part A presents women specific provisions where 100% provisions are for women.

*** Part B presents women specific provisions under schemes with at least 30% provisions for women.

**** Proportion of total Union Government Expenditure, shown in brackets.

Source: Gender Budgeting Statement, Expenditure Budget Vol. I, Union Budget - various years.

With the promises not kept, Indian state has again betrayed Dalits in 2008¹²⁶. The towering claims of achieving growth with inclusion have faltered again. The total budget allocation under Plan Outlay for the year 2008-2009 is INR. 2,43,385.5 crore and under the SC Sub Plan1 (SCSP) the Government of India is liable to allocate INR. 40090.90 crore exclusively for Dalits (16.7% of the total plan budget) but it has allocated just INR. 11715.07 crore (29% of the total due under the SCSP) for the welfare of SCs, which means again SCs have been deprived of to the tune of INR 28375.9 crore. This year again, it has diverted 71% of the amount due to SCs under the SCSP; This exposes the stark ‘untouchability’ that is being practiced by the finance ministry and in the whole of union budget.

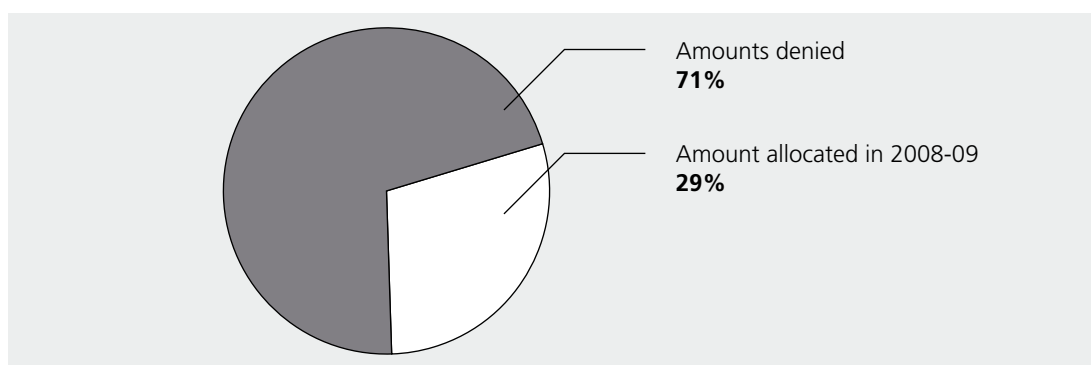
124 Gender Budgeting and Beyond emerging issues for budget 2008 – 09. Yamini Mishra and Bhumiika Jhamb, Centre for Budget and Governance Accountability. The Indian Economy Review, 2008. Union Budget 2008 - 09 : An inclusive intent. An IIPM Think Tank & Great Indian Dream Foundation. Volume V, Annual Issue: 29th February 2008

125 And where are the Women in the Union Budget 2008-09?, Yamini Mishra and Bhumiika Jhamb, Centre for Budget and Governance Accountability, March 2008.

126 “Budget Day - A Black Day for Dalits Again” - Growth with Exclusion of Dalits is the policy of UPA (a budget critic, published during Union Budget 2008-09) by NCDHR, Delhi.

Figure 7 and 8: Amount Denied to SCs in the ‘Inclusive Budget’ - 2008-09

Total Budget	Total Plan Outlay	Amount Due to SCs	Amount Allocated in 2008-09	Amounts denied	% of Amount Denied
750883.53	243385.5	40090.90	11715.07	28375.9	71



With this denied money of INR 28375.9 crore, one Crore SC children would have had access to education + 100 000 health centres could have been set up in rural areas + 200 000 small scale industries could have been set up + 500 000 SC families could have been provided with 5 acres of land each – in one year alone! Had this Special Component Plan been implemented in the last 27 years, India would have been free of poverty!

Even during the last budget year 2007-2008, the volume of denial & diversion of Dalit funds is INR. 20,280 Crore in the Union Budget¹²⁷. The total budget allocation under Plan Expenditure for the year 2007-2008 is INR 205100 crore and under the SCSP the Government of India should have allocated INR 32816 crore exclusively for SCs (16 percent of the total plan budget). As against this only INR 12535.75 crore has been allocated or in other words SCs have been deprived of INR 20280.25 crore in the last year budget.

Only 6 Ministries / Departments have allocated funds under SCSP, 9 Ministries/Departments have made some notional allocations and other 49 Ministries/Departments do not even mention anything about SCSP allocation. The Departments who have allocated more than 10% are Ministry of Social Justice & Empowerment, Ministry of Labour & Employment, Department of Women & Child Development, Department of Secondary Education & Higher Education (Ministry of HRD), Department of Elementary Education & Literacy (Ministry of HRD) and Department of Health & Family Welfare.

However, looking at the pattern of their allocations, the priorities mismatch with the basic principle of SCSP, which clearly states that it will target the individual and family welfare and economic development of Dalits. For example, the government has allocated a huge sum of INR 57560 millions under SCSP for school education and literacy whereas allocation for higher education it has been only INR 16600 millions.

Health and Family Welfare department has allocated INR 25570 millions for SCs and STs which goes to general health programmes like TB control, Leprosy Eradication, control of blindness, etc. Thus the allocations do not fulfil the goal of equipping or empowering Dalits, reducing economic inequalities or enhancement of their economic position and are grossly under and out of sync with the great economic growth we witness in the country today.

Children¹²⁸: In a recent study by HAQ, which spread across seven financial years (2000-01 to 2006-07), it has been found that of every INR 100 allocated in the Union Budget, an average of

¹²⁷ The Indian Economy Review, 2008. Union Budget 2008 - 09 : An inclusive intent. An IIPM Think Tank & Great Indian Dream Foundation. Volume V, Annual Issue: 29th February 2008

¹²⁸ Budgeting for children in India, Bharti Ali, HAQ: Centre for child rights, new delhi. The Indian Economy Review, 2008. Union Budget 2008 - 09 : An inclusive intent. An IIPM Think Tank & Great Indian Dream Foundation. Volume V, Annual Issue: 29th February 2008

INR 3.10 p has been allocated for children. It is worth questioning if this investment is really enough for the children who constitute more than 40 percent of the country's population and carry the burden of economic growth.

Scheduled Castes¹²⁹: The proportion of total plan allocation of the Central Govt. meant for SCs in 2006-07 (BE) was only 5.2%.

Scheduled Tribes: The proportion of total plan allocation of the Central Government earmarked for STs is a mere 4.88% in 2007-08 (BE).

Farmers¹³⁰: Total investment in agriculture, as a proportion of GDP has declined from around 2.2 percent in 2000-01 to 1.7 percent in 2004-05. Even if 90% of farmers were to be given a subsidy of INR 5000 per hectare, it would still be less than 10% of agricultural GDP.

When the overall allocation pattern is analysed among the departments¹³¹, it does not seem to be adequately compensating; because, the Ministries/Departments which share the major chunk of the plan budget like Dept. of Commerce (INR 14750 millions), Dept. of Urban Development (INR 23360 millions), Ministry of Tourism (INR 9530 millions), Dept. of Road Transport & High Ways (INR 124990 millions), Ministry of Power (INR 54830 millions), Dept. of Land Resources (INR 15000 millions), Dept. of Drinking Water Supply (INR 75600 millions), Dept. of Scientific & Industrial Research (INR 10700 millions), Atomic Energy (INR 45960 millions), Ministry of Environment & Forest (INR 13510 millions) and others like coal, transport, eat-up a major proportion of budgetary allocations both during the introduction of budget as estimates and also during their revision during the middle of the financial year.

The above mentioned data clearly shows that there is inequality in sharing of the total budget amount, both among the Ministries/Departments with regard to equitable allocation of plan budget amounts which have direct and indirect impacts on the plans, schemes and programmes implemented by the respective ministries concerned with development of the vulnerable groups esp., in terms of ensuring even their basic rights like right to food and food security.

The budget support for the implementation of NREGA (National Rural Employment Guarantee Act) was inadequate considering the political importance and advertisement this scheme has been given. Even as the programme was expanded in 2007 compared to 2006 when it was initiated, the budget allocated was cut by 10 per cent.¹³²

Budget proportion effectively allocated to investment or social expenditure increased or decreased during the last five years

India's record on spending for social sectors has been quiet inadequate and lacking inclusive policy perspectives. India's commitment to social expenditure, through the lens of budget analysis, can be analysed as follows:¹³³

"India's performance with respect to social security is dismal as the country is among the lowest of the spenders amidst all other welfare states of this globe.

- During the years 1982-83 to 2003-04, the total expenditure on social services, by the centre and all states together, which reached a peak during 1986-87 at 7.2% of GDP and after that started decreasing and dropped to 5.8% of GDP in 1996-97.
- Subsequently, by 2000-01, it went up to 6.7% GDP and again came down to 6.4% of GDP in 2003-04.

129 Budget for the excluded: Special focus on the dalits and adivasis. Sakti Golder, Centre for Budget and Governance Accountability. The Indian Economy Review, 2008. Union Budget 2008 - 09 : An inclusive intent. An IIPM Think Tank & Great Indian Dream Foundation. Volume V, Annual Issue: 29th February 2008

130 A level playing field for the small farmer, M Rajivolchan. The Indian Economy Review, 2008. Union Budget 2008 - 09 : An inclusive intent. An IIPM Think Tank & Great Indian Dream Foundation. Volume V, Annual Issue: 29th February 2008

131 Indian Economy Review, 2008. Union Budget 2008 - 09 : An inclusive intent. An IIPM Think Tank & Great Indian Dream Foundation. Volume V, Annual Issue: 29th February 2008

132 Patnaik, Utsa: Neoliberal Roots, available at: www.frontlineonnet.com/stories/20080328250601700.htm - 31k.

133 Globalisation & the Indian state. a quarterly newsletter of the Globalisation and Indian state research project. 2007

- Total Expenditure on education increased from 2.9% of GDP in 1982-83 to 3.5% of GDP IN 1989-90.
- By 1996-97 it was at its lowest (2.7% of GDP)– it rose to 3.2% in 2000-01 and was at 2.8% in 2003-04.
- Combined expenditure on health and family-welfare, water supply and sanitation dropped from 1.7% of GDP in 1986-87 to 1.3% of GDP during 1996-97, which was the lowest figure through out the period under consideration, and it rose to 1.5% of GDP during 2000-01, followed by a decline, to 1.43% of GDP, during 2003-04.

An important point to be noted here is that increases in expenditure on education and health after 1996-97 were mainly due to pay scale revisions. These sectors, being among the largest government employers, hence their salary bills were naturally higher.”

Compared to the other social sectors, housing and urban development show a some what different trend:

- Total public expenditure on housing as a percentage of GDP increased from 0.19% during 1982-83 to 0.23% during 2003-04 and total public expenditure on urban development increased from 0.23% of GDP to 0.27% of GDP over the same period.
- Total public spending on labour and employment took a major hit and was reduced to one-third between 1982-83 and 2003-04.
- Likewise, over the same period, total public expenditure on social security and welfare came down drastically from 0.75% of GDP to 0.33% of GDP.

For social services taken together, the expenditure by the Central Government never exceeded 1% of GDP through out the time period between 1982-83 and 2003-04, while all states taken together have spent more than 5% of GDP.

(Please also refer to Special Topic 4.4 Towards a human rights based assessment of the federal government budget of India)

2.8 Support for Vulnerable Groups

The caste system, officially prohibited by the Constitution, is still prevalent and reflects religiously and occupational defined hierarchies. A commonly used classification of castes (varnas) identifies four categories: Brahmins (teachers, scholars, priests), Kshatriyas (kings and warriors), Vaishyas (traders) and Shudras (agriculturists, service providers, some artisan groups) and a category of people outside this caste system, in former times called “untouchables”, now referred to as “Dalits”. However, in everyday life the Indians use a much finer classification of castes and sub castes. The status of each of such “jatis” varies from region to region. Despite official prohibition of discrimination due to caste by the constitution, exclusion of lower caste people from their basic human rights is still a reality in many parts of India. The Scheduled Castes comprise about 166 million (2001 census) or 16.2 percent of the population.¹³⁴ The Scheduled Tribes, India’s indigenous people, also referred to as Adivasis (which means “original inhabitants”), comprise about 68 million, around 8.2 percent of the population.¹³⁵ The Schedule Tribes and Castes enjoy special status under the Constitution of India, however at the societal level they face discrimination and also are the section of the Indian society which suffers most from extreme poverty, food insecurity, and violations of their right to adequate food.

The National Human Rights Commission Reports state that incidence of poverty among Scheduled Castes is 36 percent while 46 percent of the Scheduled Tribes population suffer from hunger and malnutrition.¹³⁶ As a result of discrimination, many Dalits are still expected to work as agricultural labourers without being paid regular or minimum wages, many held in debt bondage by their higher-caste employers. Widespread discrimination and the continuous economic exploitation

¹³⁴ Census of India, Op.cit, available at: http://www.censusindia.gov.in/Census_Data_2001/India_at_glance/scst.aspx.

¹³⁵ Ibid.

¹³⁶ National Human Rights Commission Reports (NHRC) 2003.

prevent Dalits from owning land, as they are seen as the “worker class”.¹³⁷ The poor nutritional status, higher under-nourishment, higher incidence of anaemia among children and women, and higher incidence of mortality among the Scheduled Caste children, are one of the darkest impacts of this structural exploitation.¹³⁸ The Schedule tribes, particularly those living in forest and hill areas, are extremely marginalized, many having lost access to traditional forest livelihoods and food resources through the creation of forest reserves¹³⁹ ¹⁴⁰ or through mining projects or denial of traditional rights, face threat of hunger and malnutrition. Often tribals are unable to get access to food through PDS or other government services provided for the poor either due to lack of information on their entitlements, not identified as poor or corruption in the system.

The workforce in the unorganised and informal economy are also prone to hunger and starvations. Lack of work contracts, benefits, and low wages much below minimum wages prevents unorganized workers from accessing food. 92 percent of the total workforce in unorganised sector has low and irregular incomes¹⁴¹ and many a times do not have access to any social security benefit or legal protection. It is expected that the situation will improve with the policy on the unorganized sector. In the urban area often city beautification projects or infrastructural development infrastructure deny people access to their source of income – ban on rickshaw pullers or street vendors.

The declining sex ratio in India 933 females for every 1000 males is mainly the outcome of denying girls and women their rights (especially food and healthcare). Persistence of intra-family inequities; women not only eat the least and last, but in situations of absolute household food insecurity they may not eat at all.¹⁴² In the case of India one observes not only the “feminisation of poverty” but also of “feminisation of hunger”. Women are by and large responsible for feeding the family that is procuring, cooking and storing food; but also collecting fuel and water for the family. Inability to feed their family and themselves requires them to work. At work they are often denied minimum wages at par with the men.

(Please also refer to Special Topic 4.5 Right to Food of the trafficked people for further information on groups who are particularly at risk)

Identification of vulnerable groups

There is a variety of socio-economic disadvantages of particular groups in India, which limits their access to food and food producing resources. Some of the prominent factors for discrimination of certain groups are:

- structural discrimination (of women, dalits, Adivasis)
- age (children and the aged)
- disability (disabled people)
- Mobility (migrants)
- Stigma and discrimination (e.g. HIV /Aids infected people)¹⁴³

The study “Hunger mapping in Context of Jharkhand State”¹⁴⁴ proposes the following classification of food insecure households:

- Adivasis in possession of very poor quality of land, mainly upland
- Dalits with very small amounts of land

137 Jean Ziegler, Op.cit.

138 Harsh Mander, Special Commissioner on the Right to Food case of the Indian Supreme court, Food security programme in India, January 2006, p.16.

139 C K Janu, Adivasi Gothra Mahasabha, The South Indian Adivasi Experience in the Nagar Hole National Park and the Muthanga Wildlife Sanctuary, Speech at the Vth World Parks Congress, Durban, September 2003, Kerala State, South India, available at: http://www.forestpeoples.org/documents/asia_pacific/india_nagarhole_wpc_sept03_eng.shtml.

140 Ramanathan, Usha, IELRC Briefing Paper 2004-1. <http://www.ielrc.org/content/f0401.htm>.

141 This statement is made by the National Centre for Labour (NCL), which is the federation of unorganized sector workers. In: Labour File. A Monthly Journal of Labour and Economic Affairs, p. 19, Published by Centre for Education and Communication, New Delhi, India. (NCL further states that ‘India has a total working population of 317 million workers. About 290.2 million (92% of the total workforce) are employed in the unorganized or informal sector).

142 Harsh Mander, All you who sleep hungry tonight, available at: http://www.infochangeindia.org/agenda6_02.jsp

143 Chatterjee, Chandrima and Gunjan Sheoran “Vulnerable Groups in India”, The Centre for Inquiry into Health and Allied Themes (CEHAT), Mumbai available at: www.cehat.org/humanrights/vulnerable.pdf

144 Hunger Mapping in Context of Jharkhand State, Jharkhand Resource Center of CWS, 2007.

- Artisan groups like weavers who lost their traditional means of livelihood
- People displaced from development project getting poor compensation / rehabilitation
- Urban Adivasis whose land and common property has been illegally alienated
- Retrenched labourers of sick and closed industries, e.g. tea gardens etc.
- Small and marginal farmers in drought and flood prone areas
- Old aged people with no one to look after them, destitute, poor pregnant and lactating women
- Women headed households¹⁴⁵

2.9 Safety Nets

Social Policy

In order to prevent hunger and malnutrition in the country, since independence, the Government of India has adopted many food-based schemes and food assistance programmes. India has the largest food schemes in the world. Some important programs are the food subsidy programmes – Public Distribution System (PDS) and Targeted Public Distribution System (TPDS), which provides 35 kilogramme of subsidised food grains per month, the Antyodaya Anna Yojana (2000) for poorest of the poor, the Annapurna Scheme (1998) provide 10kgs of free food grain to destitute poor; entitlement feeding programmes - the Mid-Day Meal Scheme (MDMS - 1995) for all primary school children, the Integrated Child Development Scheme (ICDS - 1975) for children under six and pregnant and lactating women; social safety net schemes - the National Maternity Benefit Scheme, the National Old Age Pension Scheme, the National Family Benefit Scheme, the Food for Work Scheme Sampoorna Gramin Rozgar Yojana, (SGRY) (2001), National Employment Guarantee Scheme (2005) provides 100 days of employment at minimum wages. In addition, there are minor programs run by the States with financial contribution from the Central Government.

The Public Distribution System¹⁴⁶ grew from a rationing scheme in big cities during the Second World War into a universal programme for the provision of cheap food and a component of the strategy to alleviate poverty. After independence PDS was continued as a measure to ensure food security. However, as part of the structural adjustment specific changes were made to the PDS in the 1990's to incorporate the targeting. Two major moves were made by government of India to dismantle the PDS¹⁴⁷ system; probably due to the nudging of the WB and the IMF. The first came in 1992 with the Revamped PDS (RPDS)¹⁴⁸ and the second in 1997 with Targeted PDS (TPDS). This coincided with another major policy shift in the 1990's away from the agricultural strategy of self sufficiency in food grains production.

In 1997 the shift from universal PDS was made to TPDS. The TPDS was different in the sense that a distinction between 'below-poverty-line (BPL) and 'above-poverty-line' (APL) populations were introduced with two groups differently in terms of quantities and prices. The narrow targeting of the PDS on households below the poverty line was initiated and the entitlements were altered from a per capita norm to a family norm. That means that each poor family irrespective of size and need is entitled to a uniform quantity of food grain (35 kilogram). There is no guaranteed entitlement of households above the poverty line.

Integrated Child Development Services (ICDS) is the only major national programme that addresses the health and nutrition needs of children under the age of six. It seeks to provide young children with an integrated package of services, including supplementary nutrition, health care and pre-school education. Since the needs of a young child cannot be addressed in isolation from those of his or her mother, the programme also extends to adolescent girls, pregnant women,

145 Please refer to Special Topics: 4.10.

146 The part on public distribution system has been inspired from, *Weakening Welfare: the Public Distribution of Food in India* by Madhura Swaminathan, Left World Books, New Delhi 2000.

147 In the early 1990's there was repeated increase in the price in the PDS shops and sharp reduction in the supply of food grains to the PDS since 1991, leading to the weakening of the PDS.

148 Revamped PDS involved targeting specific areas such as drought prone, desert, tribal, hilly and urban slum areas.

and nursing mothers. ICDS services are provided through a vast network of ICDS centres, better known as “Anganwadis”.

On 28 November 2001, the Supreme Court¹⁴⁹ directed State Governments to introduce cooked mid-day meals in all Government and government-assisted primary schools within six months. Mid day meal scheme address the issue of class room hunger and since its implementation the attendance of school has increased in several states. Even today, with more than 50 million children covered, India’s mid-day meal programme is by far the largest nutrition programme in the world. Special attention is also paid to women, old and infirmed through different schemes and the providing work is also made possible through the National Rural Employment Guarantee Act (NREGA) to help people to feed themselves.

When the right to food case started¹⁵⁰ in 2001, one of the main criticisms that the Government faced was that 60 million tons of grain lay in the godowns while people went without food and died of starvation. This criticism was neutralised by the Government by exporting 25 million tons of grain over a period of three years instead of using the grain to feed the poor in India.¹⁵¹ First the National Democratic Alliance (NDA) Government, and later the United Progressive Alliance (UPA) Government, chose to export this grain at BPL prices to Eastern Europe, some of it as cattle feed.

Deaths due to starvation continue to be reported from different parts of India, for example from the tea gardens of West Bengal, the weavers of Uttar Pradesh and the drought prone districts in Andhra Pradesh (Please refer to cases 30, 33, and 37). The most vulnerable to starvation are those excluded from the social welfare programmes and who have no access to any productive resources or income.¹⁵²

The implementation of the programmes and schemes has been inefficient and corruption has hindered the poor from getting their entitlements. The failures can be in general attributed to the following main reasons:

a) The programs are chronically under funded.

- Rice provided by the TPDS is not sufficient for the survival of a family household (initially only 10 kg, later 25 kg, and now only 35 kg per household per month are provided);
- The money allocated for the Midday Meal Program (a negligible 200 INR for infrastructure and 1 INR (less than 2 Euro Cent) per meal is even in rural India not sufficient to provide nutritiously high quality food.
- The allocation under the Maternity Benefit Scheme is a meagre 2 INR per day, which does not mean a significant improvement at all.

b) The programs are underutilised

- Even funds provided by the Central Government are not used by the State Governments to initiate and sustain anti poverty programs. The history of midday meals tells a sad story. Various states have till today, not properly implemented this program. Only after several strong reminders by the Supreme Court of India, some signs of improvement are visible. Under the ICDS, only about 22 per cent eligible children are served.¹⁵³ There are only 600 000 Anganwadis in the country, compared to an estimated 1700 000 required for universal coverage based on existing norms.¹⁵⁴

c) Loose monitoring and supervision of the programs

- Implementing programs, without outlining clear monitoring policies and implementing monitoring bodies and making them accountable is an essential weakness of the policies.

149 This order was given under the right to food case, which is elaborated in the legal frame work of this report.

150 Case details presented in the Legal framework section.

151 Colin Gonsalves, Lowering depths, growing pangs, 09 July 2006, available at: <http://www.indiatogether.org/2006/jul/pov-povjuggle.htm>.

152 Please also refer to ALRC Statement India: Starvation deaths ongoing due to administrative neglect, February 21, 2008

153 Sinha, Shanta, 2006: Infant Survival: A Political Challenge, Economic and Political Weekly, August 26, 2006.

154 Sinha, Dipa, 2006: Rethinking ICDS: A Rights Based Perspective, Economic and Political Weekly, August 26, 2006.

A major part of best programs is used by the elites, instead of being enjoyed by the ones, who are originally targeted. One can even suspect, that such ambitious programs with vast funding are only designed, to offer another opportunity to the elites to get richer through exploiting these funds for their own benefit.

d) Irregular flow of fund, corruption, and theft

- Grains sent for the Midday Meal vanish on the way from the godowns to the schools, or high quality grain is replaced by low quality grain. Corruption, theft manipulation of entitlement documents such as ration cards, death certificates are not exceptions. The benefits reaching ultimately the poor is often too meagre to change their livelihood substantially. Exclusion of those, who urgently need these programs such as the SC and ST undermine the intent of these schemes, namely to assist the poorest of the poor.
- (Please refer to cases 28, 32, 34, 35, 36, and 38 as examples for the malfunctioning of safety nets; as well as to annex 5 for more details regarding major deficiencies and performance evaluation of the TPDS system.)

Gender bias of social security and assistance

Government's food schemes are blind to women's barriers to access food. The design of various programmes resolutely neglects the consequence of intra-family inequities. The ICDS (Integrated Child Development Services) in most parts of the country supplies weekly dry rations to expectant and lactating mothers. The fact that they collect the rations in large numbers is officially assumed to ensure better nutrition for women in the crucial child-bearing phase.¹⁵⁵ However, in reality the ration usually contributes to the overall rations of the family and the women do not necessarily benefit from them. The same holds true for the National Maternity Benefit Scheme, which transfers INR 500 to an expectant mother and hopes that this will translate somehow into better nutrition for the mother.

The targeted food programmes only focus on women's reproductive function. Women are nutritionally deprived at all other stages of their life cycle, but only this phase attracts official attention, reflecting the patriarchal viewpoint that only sees women as producers of babies. These programmes stress nutritional support for pregnant women in order to secure the health of the baby. They do not speak of nutritional support for adolescent girls who will be mothers in the future. They do not speak of such support as an end in itself, as the woman's right to food.¹⁵⁶

Without any monitoring mechanisms it is difficult to ensure that women benefit from these schemes. Steps should be taken to ensure that women have access to food either through ration cards in their names or access to land and other food producing resources, obtaining minimum wages as per the law.

Gender disparity in India is very obvious in the trend of continuing declining female ratio in the country, social stereotyping, and violence at domestic and societal levels. Women particularly of the weaker sections including Schedule Caste (SC) and Schedule Tribe (ST), poor classes and minorities especially from rural areas and in the informal unorganised sector find inadequate access to productive resources, health, education and housing. The National policy for the Empowerment of Women (2001)¹⁵⁷ drafted by the Government of India aims to empower women and implement the gender equality enshrined in the Indian Constitution and other international commitments like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Implementation of the policy at the ground level poses several challenges to uphold gender equality.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ The National policy for the Empowerment of Women (2001), available at: <http://wcd.nic.in/empwomen.htm>.

2.10 Natural and Man-made Disasters

Disaster management, relief, and rehabilitation policies

India is prone to natural disasters and remains the worst-affected country in South Asia. More than half of India is reported to have been affected by earthquakes, and nearly 4,700 miles of coastline is whipped by cyclones, especially in the coastal States of Orissa and Andhra Pradesh. Close to 56 million Indians are hit by disasters each year. These disasters have caused extensive damage to life and property and have adversely impacted economic development. Disasters can disrupt food supply, water supply, and sanitation mechanisms.¹⁵⁸ Disasters force people to abandon their houses, either temporarily or permanently preventing people from having access to their land.

India enacted the Disaster Management Act in 2004 and a draft national Disaster Management Policy at the end of 2006. The Act put in place an administrative framework to deal with disasters. It envisages management and mitigation plans, a coordinated and quick response, and penal action against those who do not comply with its provisions. The Act has led to the setting up of the National Disaster Management Authority (NDMA), the National Disaster Management Institute, and the National Disaster Response Force. **Those programs are very new and constant efforts need to be done to guarantee the implementation of policies on ground.**

In India, relief work is still considered a short-term, supportive measure. The most critical needs of recovering pre-disaster living standards remain unattended. Rehabilitation does not consider initiatives to assist affected people regain sustainable livelihoods.¹⁵⁹ Particular attention needs to be directed to the poor and marginalised sections and communities. Not only are the poor the worst-hit, but their capacity to recover from a disaster is also limited by their social, economic, and political situation. In addition, the definition of the term “disaster” causes major shortcomings: River erosion is not treated as a natural disaster. Neither the Government of India nor the States have a policy for victims of river erosions. River erosion completely wipes out peoples homes, lands, and destroys livelihood. This gap in policy makes it very difficult for erosion victims to claim their rights.

(Please refer to cases 29 and 39.)

Coastal fisheries and agriculture were the worst affected economic activities when the Tsunami hit India in 2005. The Government quickly responded to the disaster and, together with relief organizations, civil society and the private sector, launched effective relief operations. Indian Government was able to move into the region fairly quickly with relief supplies to prevent widespread disease and famine.¹⁶⁰ Although the Indian response is a major improvement compared to the one during the earthquake in 2001 in Gujarat, the relief and rebuilding of the Tsunami devastated areas are far from being completed three years after.¹⁶¹ While the reconstruction process progresses, the majority of the affected people still live in temporary shelters. Thousands of tsunami victims on India’s remote Andaman and Nicobar archipelago are still living in temporary shelters. Vulnerable groups, especially women, have been excluded from support after the tsunami and discrimination in providing relief and rehabilitation was reported. Infrastructural work on public buildings, roads, and bridges has not yet been completed.

(Please refer to case 31.)

158 In 1987, one of the worst droughts of the century affected 285 million people and 58-60 per cent of cropped area. In India, with its large rural population this is a major calamity, <http://www.infochangeindia.org>.

159 Oxfam, India disasters report, 2000, available at: http://www.punjabilok.com/india_disaster_rep/india_disasters_index.htm.

160 Report from the United Nations, the World Bank and the Asian Development Bank, Tsunami, India: 2 years after, available at: <http://www.adb.org/Documents/Reports/Tsunami-India/tsunami-india.pdf>.

161 In May 2006, nearly 80 per cent of the tsunami-affected people in Tamil Nadu, south India, were to get relief from the Government and waiver of educational fees in schools was not been done properly, according to the Tamil Nadu Fishworkers Union, <http://www.tsunamiresponsewatch.org/2006/05/08/tsunami-hit-indian-fishworkers-list-out-unmet-demands/#more-587>.

3. Illustrative Cases of Violations of the Right to Food

Under the International Covenant of Economic, Social and Cultural Rights each State is responsible for ensuring that its own policies, legislation, and activities comply with the three levels of obligations and do not violate the right to adequate food for its population. The following situations clearly illustrate that the Government of India falls to meet its obligations and thus violate international human rights law. The situations are exemplary cases, which have been investigated by civil society but they are by no means the only ones.

The cases under review are divided into four categories: the access to natural resources which include land, forests and water; displacement; employment and wages; and social security.

3.1 Access to productive resources

3.1.1 Land and Forest

Case 1: Indigenous People (Toda) Fear Eviction from their Land in Nilgiri District, Tamil Nadu

Todas are an indigenous group traditionally living in the forests of the Nilgiri Hills. For the last two centuries the Nilgiri district was inhabited by these people owning lands and preserving the natural resources. In 1893, a governmental decision was issued, giving them the right to enjoy and possess their lands but due to the fact that the decision of land ownership has not been prolonged from June 1976, the community is in fear of being forcibly evicted.

Todas are an indigenous group of Tribal people living in scattered settlements (Munds) in the Nilgiri Hills in the state of Tamil Nadu. About 1500 Todas are living in 125 Munds in the forests of the Nilgiri District. According to a governmental decision from March 1893, Todas have the right to enjoyment and possession of over 2,948 acres of land. The government order cleared all doubts that the land in question is not government land, and is therefore not at disposal of the government.

Based on the inherent right according to the 1893 order, the Nilgiri District Collector issued an order dated 9th December 1974, entitling individual Todas to cultivate land of 5 acres. This right to cultivate land has vested individual possession and enjoyment of the land belonging to the Toda community. The enjoyment has been valid for a limited period from 9th December 1974 to 30th June 1976 and after this date; the right was to be renewed. Nothing has been done though.

The government perceives these people, who live on their traditional land, as invaders. The Forest Act 1882 is the source of law defining the forest land management. Referring to this Act and the traditional rights, the people are fighting to attain the right to access land by getting a legal document to prove their land ownership. As the District Administration has not complied with the conditional permit system, communities are in constant fear that they could be evicted at any time. Therefore they need a legal ownership document in continuation of the 21st March 1893 government order which will give them a right to possess and enjoy their land.

As a State party to the International Covenant on Economic, Social, and Cultural rights India and therefore the State of Tamil Nadu is duty-bound under international law to respect the people's right to feed themselves. But not providing the Todas with the right to access land and legalising their traditional right the State is failing to respect the Todas right to feed themselves in a sustained manner.

***Case 2: Fisher Folk Families are Threatened
by Eviction in Dandi Island, Baleshwar District, Orissa***

Subarnapur village is situated at the small island of Dandi, where 154 families have settled for more than 20 years. These people received eviction notices in 2001, and have been since then, under constant threat of being evicted from their land. What makes things worse is that the village is officially not recognised by the government and due to lack of citizens rights or land titles people are neither eligible for public welfare schemes nor would they in case of eviction get rehabilitation or compensation by the government.

Dandi is a small island in the coastal belt of northern Orissa at the West Bengal border. The largest and oldest village on the island is Subarnapur, which is home to 154 families of marginal fisher folk. The settlers on the island largely depend on sea fishing for their survival. Majority of them do not own boats or fishing nets. Some of the villagers also gather minor forest products or shells and crabs.

People have settled on the island for more than 20 years now, but the village is not officially recognized by the state. This means that people of this village are deprived of their basic rights as citizens of India. The government has been rejecting the people's demand for regularization of their land as they do not belong to an officially recognized village. They do not possess the titles of the land they have been living on for more than 20 years now and are not included in any safety nets which would ensure their right to food e.g. public distribution system, employment guarantee scheme, old age pension etc. There are no basic amenities on the island, there is no school, neither are there any medical services, water and sanitation facilities. Scarcity of drinking water and poor quality of water available on the island is an everyday problem for the villagers, in particular for women who have to cover a distance of approximately 8 km everyday to bring potable water for the families.

Moreover, there is a dispute between the revenue department and the forest department on whether the island is revenue land or forest land. This dispute has not been resolved yet, and among the local government officials in charge there are different opinions regarding the status of the island. This dispute increases the vulnerability of the inhabitants who regularly face harassment from both the revenue and forest departments. Villagers had paid fines to the revenue department because of encroachment and the forest department had served them with eviction notices (in January 2001).

This threat is aggravated by the fact that several commercial projects like salt factory and tourism projects are being initiated or planned to be established on the Dandi Island. The Chief Ministry of Orissa has announced that a government sponsored tourist resort would be developed on the island to expedite the economic growth of the area. However, according to the Coastal Regulation Zone (CRZ) notification and to a Supreme Court ruling of 1997, no permanent construction could be made within 500 metres from high tide level from the coast for industrial or development purpose. In addition, according to the land reform act villages of Dandi are entitled to get land on a priority basis, and the land cannot be leased out for business purposes denying the rights of the landless. Nevertheless, and based on experiences from other areas, people fear that construction would be enforced.

Once the island is developed for commercial projects, the villagers and people of Dandi would be evicted. Since they do not possess land titles, they are not eligible for rehabilitation or compensation facilities by the government. There is the fear that the government would take steps to evict them without paying any attention how their access to sea would be guaranteed and how they would be able to earn a living.

As a State party to the International Covenant on Economic, Social, and Cultural rights India and therefore the State of Orissa is duty-bound under international law to respect and fulfil the people's right to adequate food. By denying the people access to land, minor forest produce on which they depend to feed themselves the State is in breach of its obligations.

The case is a clear violation of the respect and protect bound obligations of the state, and leasing out the land for commercial purposes violates the CRZ Notification. Absence and lack of implementation of social welfare measures in Dandi is in breach of the fulfilment bound obligation of the state under the right to food and the right to life under Article 21 of the Indian Constitution and the Supreme Court orders. Failure of the state to provide the villagers with safe drinking water which is physically accessible is in breach of the fulfilment bound obligation under the human right to water and Article 21 of the Indian Constitution. Finally the unwillingness of the local state authorities (including the District Magistrate) to share information regarding the status of Dandi Island with the villagers and their support groups, despite several requests and applications, violates the Right to Information Act of India, 2005.

Case 3: Landless Adivasis struggle for access to land in Rahata Taluka, Maharashtra.

On July 21st 2003, Adivasi huts and more than a thousand acres of their crops were destroyed by the Maharashtra State Farming Corporation (MSFC) with support from the police in Rahata Taluka, Ahmednagar district of Maharashtra. 200 Adivasi families, including women (three of whom had just given birth) and children were rendered homeless in the pouring rain without any prior notice of demolition. The Adivasis reclaimed and settled on the land several times since 2004. They resettled and grew crop on the land in 2005, but their huts were demolished and crops destroyed by local landlords in connivance with the local authorities. The Adivasis once again claimed the land in 2006 and again 2007 but the powerful landlords of Rahata Taluka destroyed huts and crop in both the years. However the struggle to access the land continues.

Ahmednagar district in Maharashtra is known for its private and cooperative sugar mills. Sugarcane was cultivated on extensive farms either owned or leased by joint stock companies in the sugar sector. As part of agrarian reform a limit or ceiling on land ownership was set and any land beyond the limit was considered excess land. This excess land was meant to be distributed to the landless.¹⁶² Thus when the Land Ceiling Act came into force in 1961 the excess land in possession of these companies was taken over by the State Government. However, instead of redistributing it the Government set up the Maharashtra State Farming Corporation (MSFC) in 1963. It handed over the land to MSFC “for effective utilisation of the land” and the MSFC used this land to cultivate sugarcane required for the sugar mills. Some land remained fallow. Moreover after the Maharashtra Industrial Development Corporation (MIDC) was set up in Nashik district, water from the Godavari River and canal was diverted from Ahmednagar district to MIDC in Nashik district. This diversion of water reduced the irrigation to the MSFC lands and the sugarcane cultivation was reduced since sugarcane requires large quantities of water. Since then large tracts of MSFC land were lying fallow.

The MSFC lands, which remained fallow for more than thirty years, were cleared of thorny plants and weeds and cultivated by Adivasis since the 1990's. The Adivasis cultivated and settled on the land for about twenty years. But there had been tensions between the landlords and the Adivasis over ownership of the lands. In 1995, the Adivasis organised under the Bhoomi Hakk Andolan Samiti (Land Rights Movement committee). They demanded that their right to access the land be regularised in their names (be given titles to the land) since they were landless, they had cultivated the land, the land was their only source of livelihood and there was a lack of alternative opportunities of income.

The case of the Adivasis claim to the land was pending with the local authorities and therefore the matter was sub judice. Since the matter was sub judice, the demolitions were unjust. The Government resolution of 1991 of the State of Maharashtra states that encroachments made by landless people into Government wasteland prior to 1990 be regularised and the Aurangabad bench of Mumbai High court in 2001 has also endorsed the claim of the landless Adivasis over the land.

In July 2003 the Adivasi huts and more than a thousand acres of their crops were destroyed, they

¹⁶² In India land is a state subject there the agrarian reform in India was implemented differently (effectively or ineffectively) in every State.

were rendered homeless without any means to feed themselves. The struggle of the landless to gain access to the land has continued over the years despite harassment and persecution by the police, landlords, and the local authorities. The Adivasis reclaimed the land in 2004, again in 2005, 2006 and 2007 by building their huts on the land or growing crop but both have been destroyed time and gain by powerful landlords of Rahata Taluka.

On February 6th 2007, a document signed by the local authorities of the village declaring that the Adivasis have been cultivating the said land for the last 20 years was issued. At the same time the cases concerning demolition of more than 150 huts and crops of the Adivasis four years ago in 2003 was also being argued at the Session Court. On August 1st 2007 in a revision at the Higher Court the case was won and the demolition cases are planned to be reinvestigated. This is a ray of hope for the Adivasis struggling for access to land in Rahata Taluka.

As a State party to the International Covenant on Economic, Social, and Cultural rights India and therefore the State of Maharashtra is duty-bound under international law to respect and protect the people's right to adequate food. By forcibly evicting the Adivasis from their homes and destroying their crop time and again the State has violated the Adivasis right to feed themselves and exposed them to the threat of hunger and malnutrition. By directly being involved in the forcible eviction and by improper implementation of the law, the State violates the right to food of the Adivasi people. As the police was involved in demolition of Adivasis property, the State was involved in the illegal practice, and therefore it can be stated that the Government failed to respect the right to food of the people.

Case 4: Kulwalli land tenants struggle, Belgaum district, Karnataka

In the Kulwalli gram Panchayat in Belgaum district of Karnataka State in India, 950 families have been in possession of and cultivating surplus Inam lands for more than four decades. Records show that the settlement of people on the land since 1952. However till date the tenants do not have titles to the land and face threat of evictions from the land.

Inam means reward or gift. Land, which is called Inami land (rewarded land) was given to the persons as rewards or gifts for service rendered. The person receiving the land was called Inamdar. Under the Land Ceiling Act if the land possessed by a landlord was above the ceiling this was called surplus land and meant for distribution to the landless. In the present case the Inam was received by the Inamdar in the pre independence period as reward for providing information about Indian freedom fighters. The British government had given 9978 acres of land to one Linangouda of Khodanpur near Kittur as personal Inam.

Personal Inam was abolished by the Bombay Personal Inam Abolition Act of 1952, which came into force on August 1, 1953. Although the Inam system was terminated and land reform was implemented, in practice the Inamdar continued to be the owner of the land without payment of occupancy price and without even getting the land regranted in his favour.

The tenant families cultivating the land in Kulwalli gram Panchayat do not have the pattas or titles to the land and are struggling for the same. Some of the tenants belong to the Schedule Castes (Dalits), the rest are economically backward castes like Kunabi, Lingayat, Vakkil and Yadav. The land in question is also under dispute between the revenue and forest departments. In the 1980s, the cultivators realized that the land was still under dispute. They organized themselves to get legal control of 6,000 acres of the surplus Inam land under the ceilings act.

In 1955, under Section 35 of the Indian Forest Act, under Ex-Bombay Government Notification on 1955, some 7,965 acres of Inam land at Kulwalli was notified as forest land. In the light of this notification, the Forest Department was the owner of the land. This was done without any notice to the tenant cultivators who were still ignorant and who were paying rent in cash or kind to the Inamdar even after these laws were in place. In 1976-77, about 565 tenants had submitted Form No.7 under Section 48A of the Karnataka Land Reforms Act of 1961, seeking occupancy rights over the land they were tilling. Thirty of them were granted these rights and the rest were dismissed by the Land Tribunal on the ground that the lands were forest lands.

The “original owners”, the Inamdar, also tried to challenge the 1955 notification in the Karnataka High Court but the judge declined the relief. Thereafter the petitioners approached the divisional bench of the High Court, which in an order dated March 17, 1988 pointed out that even though the ‘management’ of the vegetation vests with the forest department, the ownership of the land is not regarded as changed due to the 1955 notification. Based on this, in 1991, the Inamdar again challenged the 1955 notification in the High Court. The Kulwalli Guddada Raitara Okkuta (Kulwalli land tenants) campaign launched in 1992-93 has also approached the legislators, and in a question that was raised in the Vidhan Sabha on October 10, 1991, the minister for revenue was asked to resolve the Kulwalli issue. In order to get occupancy rights, writ petitions were filed in the High Court in 2000 by the Campaign on behalf of 200 cultivators. They managed to obtain a stay order.

In 2004, the petitions were dismissed by the High Court on the ground that these lands were reserved as forest lands. The High Court further suggested that the aggrieved parties (the tenants) should approach the State and the Central Governments. Since then the tenants have tried to meet with the officials in Belgaum and in Bangalore at the State capital level to settle the land question and give titles to the tenants. However, nothing has been done till date. In December 2006 an International Fact Finding team from FIAN (FoodFirst Information and Action Network) visited the Kulwalli tenants and also the District Collector (DC). In a meeting with the persons responsible for this land issue, the FIAN team was given the promise that a commission will be set up to clarify the issue and survey the area. The struggle of the tenants continues.

As a State party to the International Covenant on Economic, Social, and Cultural rights India and therefore the State of Karnataka is duty-bound under international law to respect the tenants’ right to feed themselves. By not providing the tenants with the titles to the land they have settled, the State has failed to respect the tenants’ right to feed themselves.

Case 5: Government fails to implement Supreme Court Order to restore land to 154 Dalit families in Uttarkhand.

In the State of Uttarkhand (previously Uttaranchal), India, the State Government is acquiring more and more agricultural land for industrial purposes. This has made it difficult for evicted Dalits in the village of Ambedkar Nagar, district of Kashipur in Uttarkhand, to repossess their land. After 14 years of struggle, 154 Dalit families remain separated from their rightful land, despite a ruling in 1996 by India’s Supreme Court stating that they are the rightful owners of the land. In 2005 the Government of Uttarkhand finally expropriated the grabbed land from the landlord, with intentions to regulate the area for industry. This is in stark contrast to Supreme Court ruling and a violation of the right to food of the evicted land owners.

On July 25th 1993 the village of Ambedkar Nagar, was demolished and completely levelled. 154 Dalit families were forcibly evicted from their village - only a day after the land commissioners, Adv. Ram Antasr Kashyap and Adv. N. K. Pant, had verified that these villagers are the rightful owners of the land. The commissioners gave records of the Dalits’ ownership to the Magistrate. However, their lawful ownership of the land was not respected. The local landlord, Mr P. N. Mehta chased the families assisted by local armed police and grabbed their land. 40 men were imprisoned and all kept in one small cell. Several of the detained fainted because of the heat. In order to prevent custody deaths, the police released 25 of the imprisoned. The rest were bailed out 15 days later. Since then the families have not been able to return to their land. Many families are today settled in a nearby village; however none of them have been compensated for their loss of land.

The deprived Dalit families filed a petition in Uttar Pradesh High Court claiming their land. Honourable Munsif Sahib (Magistrate), Kashipur, Dist. Nainital (Uttar Pradesh), India heard the civil case No. 165 year 1993, Veer Singh etc. vs. Jasram Singh etc. On May 15th 1995 a favourable order was issued, recognizing the 154 Dalit families as the rightful owners of the land. Mr. P.N. Mehta was ordered by the court to return the land to the evicted families. This verdict has yet to be respected. On April 6th 1996 the Supreme Court of India maintained the High Court’s order. In 2005 the land in question was expropriated by the State of Uttarkhand, but not returned to the

families. Until today the people are still separated from their land.

Since 2004 the plight of the evicted Dalits of Ambedkar Nagar has been presented through meetings between FIAN and various politicians, amongst them the Honourable Congress President Smt. Sonia Gandhi and the Honourable Governor of Uttarkhand, Shri Sudarshan Agrawal. In August 2005 Mr. Jasram Singh, representing the evicted, met with the United Nation's Special Rapporteur on the right to adequate food, Mr. Ziegler. The report of the Special Rapporteur's mission to India reveals that 154 Dalit families have been forcibly evicted from their land and remain landless to this date despite a decision by the Supreme Court in their favour in 1996. As former Chief Justice, R. Mishra said in a meeting with the Special Rapporteur that: "Low caste people receive the land, but upper caste enjoys it." These are crimes punishable by imprisonment and fine under the Schedule Castes and Scheduled Tribes (prevention of atrocities) Act 1989, but the law is not enforced. Until today the people are still separated from their land. They have not been compensated for their loss of land.

As a State party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the State of Uttarkhand is duty bound to respect and fulfil the evicted Dalits' right to feed themselves. The expropriation of the land in 2005 from the landlord must benefit those who legally own the land. This is a disrespect of the Supreme Court verdict. By not giving the land to the rightful owners - the Dalits - the State is violation their right to feed themselves.

Case 6: 500 families of pastoralists are losing their source of livelihood due to restriction of traditional grazing rights in different districts of Tamil Nadu

Traditional nomadic pastoral communities of Tamil Nadu are struggling for their survival which is based on their traditional rights to grazing their animals. Government's restrictions with regard to access to grazing lands have already affected the herdsmen. The number of cows which was 35,000 in 1989 is now reduced to only 5,000.

Malaimadu and Pulikulam Madu are unique indigenous cattle breeds reared by traditional nomadic pastoral communities in different districts of South Tamil Nadu, like e.g. in the forest range of Western Ghats. Due to the prohibition of the Forest Department to exercise the traditional right of grazing animals, herdsmen are hardly finding enough fodder to feed their animals. The Forest Department is prohibiting cattle grazing, which is a traditional and cultural way of life of the community in the regions. The government has since 1979 stopped issuing entry passes for grazing in the forests. They are being denied grazing permits in traditional grazing sites that have been converted into protected areas, wildlife sanctuaries, national parks, or tree plantations under the Joint Forest Management (JFM) programme or bio diesel (Jatropha). Migratory routes of animals are blocked or herd passing pathways are encroached. Due to that situation the cattle population has decreased from 45,000 to only 12,000. The systematic extinction of these indigenous herds has affected 500 families of herdsmen and survival of natural farming on about 50,000 acres of land.

Pastoralists are conservers of domestic animal bio diversity and their way of life contributes to the ecology and economy of the nation as a whole. There is a strong need to recognize their role in conservation and to make use of their knowledge in natural resource management and to integrate them in forest management programmes in a holistic manner.

In 2002, India enacted a Biological Diversity Act that stipulates "conservation, sustainable use of land and access to biological resources including conservation of breeds of domestic animals under their surrounding natural habitat" where the breed has been evolved or maintained by the communities. This enacted legal position calls for the mandatory recognition of the role of indigenous communities, keeping livestock, which conserve native breeds by using indigenous knowledge in livestock breeding.

The newly enacted law "The Scheduled Tribes and Other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006" recognises the forest right and occupation in forest land by forest dwelling tribes and other traditional forest dwellers who have been residing in such forests for

generations but whose rights could not be recorded. Taking into consideration of the new Tribal Act 2006, there is a need for restoration of traditional grazing rights and camping rights in forest areas including wildlife sanctuaries and national parks and also of those areas embarked for grazing purpose. Furthermore, formalizing entitlements (including issue of permanent grazing cards) for the traditional pastoralists who maintain native animal breeds and depend upon them for livelihood with free access to grazing sites and migratory roots is important. Rotational system of grazing should be allowed instead of completely closing the forest for traditional grazing.

As a signatory to the United Nation's Convention on Biological Diversity, India has committed itself to respect, protect and fulfil its obligation to preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of Biological Diversity. Furthermore, as a State party to the International Covenant on Economic Social and Cultural Rights, India and the State of Tamil Nadu are duty-bound to respect the right to food of its citizens. By restricting the grazing rights of the pastoral community, the Government is violating the obligation to respect their right to food.

Case 7: Hunger deaths in Kolleru Lake Area, Andhra Pradesh

1500 people in village Gummalapadu the Kolleru Lake area suffer from hunger and starvation due to lack of income opportunities and lack of access to land and fish ponds. Several deaths due to hunger have already taken place.

Kolleru, a shallow fresh water Lake, is one of the biggest fresh water lakes in India. It is spread between West Godavari and Krishna districts of coastal Andhra region. This whole Kolleru lake area comprises 122 villages. The people of these villages are directly or indirectly dependent on the lake for their livelihood.

Kolleru Lake was occupied by the people and they constructed the bunds over this lake and converted them in to fish tanks in the 1970's. In 1974, the Government of Andhra Pradesh designed Kolleru development scheme to uplift fisher folk and scheduled caste community of the surrounding villages. The government also supported fishermen cooperative societies and encouraged fishing activities.

In 1995, Government of Andhra Pradesh declared Kolleru Lake as a bird sanctuary and in 1999 declared Kolleru Lake as Kolleru Wildlife Sanctuary. Due to the enforcement of government order No. 120 declaring Kolleru a wildlife sanctuary about 50,000 people would loss their livelihood options those are living in 73 Revenue Villages for centuries. The enforcement of order no. 120 deprives the affected communities from the ancestral land, livelihood, houses, and possibilities to feed themselves.

In order to free Kolleru Lake from occupations, and to restore its originality and to maintain the ecological balance, the government of the Andhra Pradesh started demolitions of the fish tanks. This process was called Operation Kolleru. This is named as "operation Kolleru." After "operation Kolleru" they do not have any tanks for fish farming and for the agriculture. Thus they lost all sources to earn income for their livelihood. Describe Operation Kolleru.

The situation in Gummalapadu a bed village of Kolleru Lake, a flood prone and economically backward area situated in Coastal Andhra region of Andhra Pradesh, is a case in point. The population of the village is around 1500; unemployment, poverty, illiteracy are rampant in the village. Most of the people are dependent on fishing and related activities.

Inti Babu Rao age 44 was resident of Gummalapadu village. Before implementation of the Operation Kolleru he lived along with his wife by earning some amount as his share from the village fish tank profit. He also used to get daily wages by working in fish tanks. With the operation Kolleru his income became zero. With the deteriorating family economic condition and inability to feed themselves his wife left him and then onwards he was staying along with his brother's family by paying from his share. After this operation not only him but almost all families of this village suffered economically and have been on verge of starvation deaths due to lack of income

opportunities. Baburao's brother's family due to their own financial problems gave up feeding him since they did not have sufficient food for themselves. Some neighbours and others in the village feed him for a while. But very soon he realized that others condition was similar to his and decided to stay back in the community hall without asking for food. After a week days he was dead.

This hunger death did not get any kind of attention from the government. So far, in the Kolleru area 11 hunger deaths have taken place and due to the very bad economic condition of the people there could be several unnoticed cases. Hunger and malnutrition will lead to more deaths unless the government does not take any active measures to provide sustainable livelihood or income sources to the people.

As a state party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the state of Andhra Pradesh are duty-bound under international law to respect and fulfil its people's right to feed themselves. By destroying the means of livelihood the State has failed to respect the right to feed themselves of the people around Kolleru. By not addressing the situation of hunger and starvation in the state of Andhra Pradesh and not providing relief to the people suffering from hunger, the state of Andhra Pradesh and hence India has failed to fulfil this right and its international obligations under the Covenant.

3.1.2 Displacement

Case 8: Adivasis face massive land eviction and State repression through construction of TATA Steel plant in Chhattisgarh

1,500 Adivasi families face eviction from their lands due to the planned construction of a TATA Steel plant in the area of Lohadiguda, Bastar District, Chhattisgarh. Apart from the loss of their land and means of livelihood, the local population is confronted with severe violence between conflicting groups in the State.

Bastar is a district in the north-east Indian state Chhattisgarh, where large natural forest areas still exist. The total forest area is 7,112 km² which is more than 75% of the total area of the district. Bastar is a very attractive area for tourism in Chhattisgarh. Of the total population more than 70% are tribals and they constitute 26.76% of the total Adivasi population of Chhattisgarh state. Each Adivasi group has its own culture and still follows its own traditional ways of life; some of them are still living in interior forests.

The Government of Chhattisgarh is pursuing a policy of industrialization and tries to attract business to invest there. TATA Iron and Steel Company Ltd. (TISCO/Tata Steel) is part of the Tata Group and plans to set up a steel plant in Bastar. Instead of establishing its industrial project on vast barren tracts of land, Tata has selected the irrigated land of a community of Adivasis. On the concerned land, Adivasi villages occupy a total area of 12,265 acres and 1,500 families shall be affected. Bastar should be particularly protected because it is declared a Scheduled area under the Constitution of India, enjoying special privileges and provisions. Despite these facts, the Government of Chhattisgarh has promised the land of the Adivasis to Tata Steel without taking the consent of the affected people.

The compensation packages for the land are far too low and will only be given to people who can prove land ownership. Since the majority of the Adivasis in Bastar are small sharecroppers who are not eligible to land titles, they will not receive any compensation. The Government states that there will be large-scale employment and prosperity for everybody in the entire area. However, the large scale employment will only be generated at the full operations of the plant which will not be achieved before 2018.

The issue of the TATA Steel plant has got linked to the confrontation of two armed groups. In Chhattisgarh, the Naxalites, a Maoist group which is also called People's War Party controls large areas of the state. These guerrilla forces have the revolution of India as their goal and are also active in other Indian States. They partially enjoy the support of the local population which is frustrated by the political, economic, and social neglect. Salwa Judum acts as their counterpart. It

is an organized, state managed group. The main cadre of Salwa Judum are comprised of Special Police Officers (SPOs) who are being paid and armed by the State.

The Salwa Judum fight has led to the forcible displacement of people under police and administrative supervision. According to official estimates nearly 70,000 people from over 644 villages are living as refugees in temporary camps, where living conditions are very poor. Nobody is allowed to enter those camps so there is very differing information about the numbers. There is no official record of the violence carried out by Salwa Judum and the security forces. Rather than being a “peace mission” as is claimed, the Salwa Judum has created a situation where violence has escalated. The Bastar region is getting militarized: village defense committees are being created, people are being encouraged to carry arms, and SPOs are being trained and armed. The local population is the first victim of the violent acts perpetrated by the two movements. The mostly illiterate peasants increasingly have to face attacks from both sides. In the affected villages, sexual harassment of several women through uniformed police officers has been reported.

As a State party to the international Covenant on Economic, Social, and Cultural Rights India and therefore the State of Chhattisgarh, is duty-bound under international law to respect, protect, and fulfil the people’s right to feed themselves.

By forcibly evicting the Adivasi from, and in the absence of adequate compensation and rehabilitation (including alternative land and sources of income), India and the State of Chhattisgarh are about to violate these persons’ human right to adequate food and housing. Moreover, according to the 73rd amendment of the Indian Constitution, Article 243G, the Panchayati Raj System of village councils prepares the plans for economic development and social justice. These village councils, however, were not even involved in the decision for the Tata Steel plant. Finally, the eviction and the attacks faced by Adivasis represent a violation of Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by India in 1968. In this context of violence, action by the Indian justice and by the international community is needed to defend the constitutional rights and the Human Right to adequate Food of the villagers many of whom will otherwise face homelessness, hunger, and malnutrition.

Case 9: Eviction of Adivasi people without proper compensation for the purpose of TATA Steel in Kalinga Nagar, Orissa

Land of the Adivasis had been acquired by the State Government without proper compensation and handed over to TATA Steel for the construction of a steel plant. Lack of alternative livelihood is leading to hunger and malnutrition among them. On January 2nd, 2006, as the Adivasi people demanded the immediate stop of the construction work on their land, a violent incidence between local population and the police led to the killing of thirteen Adivasis and one policeman in the area of Kalinga Nagar, Orissa.

The Industrial Development Corporation of Orissa (IDCO) allotted in 2004 approximately 6,000 acres of land to Tata Steel. The majority of Adivasis, although living in the Sukinda Valley for unrecorded times, could not obtain titles for their lands, despite a Supreme Court Ruling of 1997 (Samatha Judgement) telling the government to do so. As a result of not obtaining the land ownership papers, a minority of people could obtain compensation while most of them had to give away the land to the government for free and were not considered for compensation or jobs. A total of 760 families were to be ousted by the Tata project. In opposition to the plans of Tata and the government, the affected Adivasis formed an organisation called Bisthapan Virodhi Jan Manch (BVJM), which means “People’s Organisation against Displacement” to negotiate the compensation height. The fundamental claim from the Adivasis was an adjustment in their compensation; the second fundamental request was the certainty of at least one job per displaced family.

On January 2nd 2006, six bulldozers and other heavy duty earth moving equipment, Tata contractors, and top government officials of the district accompanied by armed policemen arrived in Champa Kola (Champa) village which lies in Sukinda Valley. There were also about 1,000 people of three Panchayats from 18 villages, among them hundreds of women and children. While a

delegation of three persons was walking to demand the immediate stop of the construction work, some villagers who followed triggered a detonation and were injured by land mines that had been set out. This led the police to start firing live ammunition, tear-gas shells and rubber bullets and to lathi (baton) charge. Seven Adivasis were shot and died. One policeman entered the crowd and got beaten to death by the villagers. Six villagers arrested by the police were killed in custody. Evidence of torture was found on the dead bodies.

A judicial enquiry was ordered. Although the process of inquiry had reached the final stage and the terms of reference assumed “national importance” in January 2007, the Supreme Court dissolved on May 5th the Commission. No preliminary results have been published and no new board has been constituted until now.

Despite a Supreme Court order, the Government has failed to give 60 percent of Adivasis their land titles and to grant the displaced people the promised compensation in every previous instance.

As a State party to the international Covenant on Economic, Social, and Cultural Rights India and therefore the State of Orissa, is duty-bound under international law to respect and fulfil the people’s right to feed themselves. By taking the lands and destroying the livelihoods of Adivasi people for the Tata Steel project – and by not adequately rehabilitating them, the Indian Government has failed to respect and protect the Adivasis’ right to adequate food. The people were forcibly evicted from their land without getting adequate rehabilitation. Their right to adequate food is denied since most of them no longer have their former resources for subsistence (e.g. agriculture, natural forest products). Very few realistic alternatives (of paid employment) are available for them in order to sustain themselves and their families.

Case 10: Inhabitants of Nandigram face massive land eviction due to construction of a Special Economic Zone, West Bengal

Livelihoods of 100,000 people from the area of Nandigram, East Midnapore District are endangered by the eviction from their lands due to the construction of a Special Economic Zone and have to face increasing state violence.

In July 31st, 2006, the West Bengal Government signed an agreement with the Multi National Corporation - Salim Group of Indonesia to implement various ‘developmental’ projects, including the setting up of a USD 4.2 billion mega chemical industrial estate, a chemical Special Economic Zone (SEZ) at Nandigram. Nearly 20,000 acres of land in one compact block in the district of Nandigram are acquired for the establishment of the SEZ. The envisaged project would result in the eviction of more than 100,000 people from their homes – some sources say up to 300,000 – who are mainly small and marginal farmers, sharecroppers, and agricultural labourers. It will also bulldoze 142 temples, 45 mosques, and 4 high schools.

No compensation and rehabilitation package have been announced so far for the affected people. Approximately 80% of the population of Nandigram belong to Scheduled Caste and minority communities, who lack access to adequate productive resources, education, health, and other social facilities. The majority of the people in Nandigram would be unable to find alternative livelihood opportunities if evicted from their villages, as they are only skilled farmers and have never practiced any other occupation. Land in Nandigram is fertile agricultural land and partly irrigated.

The affected villagers have been organising protests against the establishment of the SEZ peacefully but violence has been increasing since the beginning of this year. Eight persons lost their lives while defending their villages in January 2007. At least twelve more were killed through police fires during a religious procession on March 14th while many more were injured. Most of the protestors in this case were women who had been confronted with severe gender violence, at least two were raped, and many more sexually harassed. Children were also in the group.

Apart from the police firing, reports speak of several persons injured in clashes between protesting farmers led by Krishjami Raksha Samiti (Save Farmland Committee) and the police who were being aided by supporters of the Communist Party of India-Marxist - CPI (M). Human rights

activists have reported that both the CPI (M) supporters and police continue to conduct raids on homes and have detained an unspecified number of persons. Reports also say that the CPI (M) supporters prevented media persons and opposition leaders from reaching the area on March 14th and illegally detained two media persons covering the violent events on that day.

By the end of March 2007, the Government showed first reactions to the protest. The all Indian Commerce and Industry Minister Kamal Nath announced that no SEZs should be approved where land acquisition is being resisted and according to media information, the Government is currently revising the SEZ policy to make it more humane. West Bengal Chief Minister acknowledged his responsibility for the violence and promised compensation and rehabilitation programs but no official action in this direction has taken place yet.

As a State party to the international Covenant on Economic, Social, and Cultural Rights India and therefore the State of West Bengal, is duty-bound under international law to respect and protect the peasants' right to feed themselves. By acquiring their lands without taking effective steps to ensure the peasants' right to feed themselves, India and the State of West Bengal violate the human right to feed themselves. Use of force against peaceful demonstrators is against the fundamental freedom of the people.

Case 11: Sardar Sarovar Dam threatens the livelihood of thousands of people in the Narmada valley.

The construction of large dams in the Narmada Valley will directly and indirectly impact thousands of livelihoods in the Indian States of Madhya Pradesh, and Gujarat. People face displacement from their lands without relief and rehabilitation as per Court orders.

The Narmada River originates in the central Indian State of Madhya Pradesh and after flowing through Madhya Pradesh, Maharashtra and Gujarat States, empties into the Arabian Sea. The Narmada Valley Development project involves the construction of 30 large, 135 medium and 3,000 small dams on the river Narmada and its tributaries. The Sardar Sarovar Project is the largest of the 30 large dams and is being implemented by the Governments of Gujarat, Maharashtra, Madhya Pradesh, and Rajasthan. The proposed height of the Sardar Sarovar is 136.5 m. and will irrigate more than 18,000 square kilometres - most of it in drought prone areas like - Kutch and Saurashtra in Gujarat. It is estimated that around one million people will be adversely affected (displacements, loss of livelihood) if the project is completed.

According to a Supreme Court judgement in 2000 and the Narmada Water Disputes Tribunal Award increase with respect to the height of the Sardar Sarovar Dam should be preceded by the implementation of resettlement and rehabilitation measures six months prior to impending submergence. However, according to reports, adequate rehabilitation has not yet been provided for those affected even though dam height was increased. In 2004 the Narmada Control Authority (NCA) decided to raise the height of the Sardar Sarovar Dam on the Narmada River up to 110 m with talking necessary steps for rehabilitation. In 2006 it was decided to raise the dam height from the present 110.64 metres to 121.92 metres once again without effective relief and rehabilitation. The project affected persons have been rendered homeless because their villages have been submerged. Alternative agricultural land is not being provided, and where land has been allotted as in Maharashtra and Gujarat, it is uncultivable and inadequate.

In March 2006 over 300 dam-affected and activists of the Narmada Bachao Andolan (NBA – Save Narmada Movement) went on an indefinite sit-in (dharna) in New Delhi, demanding a halt to construction at the Sardar Sarovar dam. The police used indiscriminate force on these peaceful protesters, some were arrested while some had to be hospitalised. Even today the struggle continues with the State forcing some project affected persons to take cash compensation instead of land for land.

As a State party to the International Covenant of Economic, Social and Cultural Rights, India and therefore the States of Gujarat, Maharashtra and Madhya Pradesh are duty bound to respects and fulfil the peoples right to feed themselves and right to housing. Forced evictions of the families from their land, displacement without fair and just relief and rehabilitation

are clear violations of their right to feed themselves and right to housing. By exposing large number of families to hunger and malnutrition the State is failing in its obligations. The Governments of Gujarat, Maharashtra, and Madhya Pradesh must therefore take all necessary measures to ensure proper rehabilitation according to the judgement of the Supreme Court and Narmada Water Disputes Tribunal Award. The United Nations Declaration on Human Rights Defenders protects the right to peacefully react or oppose any action detrimental to human rights or fundamental freedoms. The State authorities and police should not use force against activists engaged in peaceful protest. Use of force should be properly investigated and action should be taken against the responsible officers.

Case 12: Forced eviction of 1,500 families from their agricultural land in Singur, Hooghly District, West Bengal

The Government of West Bengal has chosen Singur, famous for its agricultural economy, for developing an automobile manufacturing unit. The land grabbing, accompanied by violations of human rights, has taken place despite unwillingness of the majority of landowners to give up their lands. This land alienation has affected around 30,000 peasants who depend on these lands for earning their living.

Singur which belongs to Hooghly district is famous for its age-old flourishing agricultural economy and for its well developed infrastructure related to agriculture. The Government of West Bengal, however, has chosen Singur for developing an automobile manufacturing unit of Tata's, the biggest Indian MNC. The lands acquired by the state are multi-cropping agricultural lands with a cropping density of 220 percent and with well established system of irrigation. The process of selection of the site is quite controversial and marked with blatant violations of human rights. The land grabbing in Singur has taken place despite unwillingness of the majority of landowners to give up their lands, and this land alienation has affected livelihoods of around 30,000 poor peasants, share croppers (recorded & unrecorded) agricultural labourers, and other rural actors, who depend on these lands directly and indirectly for earning their living.

It is particularly offensive that the State Government has given Singur to Tata's when several other appropriate sites are available for the project which would have minimized destruction of livelihoods. In a press statement, TATA announces that only 800 to 2,000 employments may be generated in Singur most of which would require technical expertise. Therefore, it becomes clear that around 30,000 people, who would be ousted from their livelihoods, would never be accommodated in this new industry.

The agreement between TATA and the State Government has not been disclosed to the civil society, despite several attempts by organisations and individuals to seek information under RTI Act 2005.

In response to the people of Singur, who resisted the land acquisition, the Government unleashed a series of policing, terrorizing, raiding, ransacking, and assault on the villagers for over a period of seven months. Houses have been burnt down, children and women ruthlessly beaten up, arrested and violently murdered.

The peasants owning land in Singur will receive only one time monetary compensation. There is no provision of economic rehabilitation to the 15,000 peasants whose livelihoods would be directly affected, neither is any compensation offered to those agricultural labourers, sharecroppers and others who depend on these lands indirectly and would be deprived of their livelihoods due to land acquisition. Peasants' women would be severely affected as in most cases lands are not recorded in their names and they would not get the compensations themselves. Thus, they will lose their access to food producing resources i.e. land and would be exposed to hunger and starvation.

As a state party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the state of West Bengal is duty bound under international law to respect and protect the peasants' right to adequate food. By acquiring their lands without taking effective steps to ensure the peasants' right to feed themselves in a sustained manner, India and the state of West Bengal would violate these person's human right to food. The right to live in dignity as described under Article 21 and 39 of the Indian constitution is also violated.

Case 13: Coal Mining violates the Adivasis right to food and water, in Hazaribagh Jharkhand

The Hazaribagh district of the State of Jharkhand (formerly part of Bihar) has one of the richest rice and vegetable croplands and used to be covered by large forests. At the same time the region has got a remarkable stock of mineral resources especially coal. A coal-mining project in Hazaribagh violates the Adivasis Right to food and water.

The Parej East open cast coal mining project, south of Hazaribagh town in Jharkhand, India was financed by the World Bank in order to support the reform and expansion of the coal sector in India. The World Bank financed the project through two loans. One loan under the “Coal Sector Rehabilitation Project” was approved in September 1997 and provided over US\$ 530 million through the International Bank of Reconstruction and Development (IBRD) for the modernisation, maintenance and expansion of 24 open cast mines of Coal India Ltd (CIL), a public sector company. A second loan of US\$ 63 million from the International Development Association was given for the Coal Sector Environmental Social Mitigation Project to assist CIL’s efforts in this regard.

Thousands of people had to face involuntary resettlement, forced eviction from their homes and their ancestors’ land and the destruction of their traditional way of living and their food and water resources. In many cases people were forced out of their homes either by employing a policy of the accomplished fact, violence or other more subtle methods of persuasion (blind signatures by illiterate inhabitants, false promises of economic wealth by monetary transfers and especially by well-paid jobs in the mine). Once resettled, they faced a highly unsatisfactory situation at the resettlement sites where especially potable water and access to school for the children are extremely rare.

Although social mitigation and rehabilitation plans are supposed not only to grant social justice but also to bring improvement the people’s living standards they are deficient in many regards. First, those social projects don’t cover all the affected persons nor are they established in accordance their own wishes and needs. Second, compensation levels and rehabilitation measures according to the rehabilitation plans are often insufficient. Finally, in spite of binding compensation and rehabilitation standards, Central Coalfields Ltd. does not necessarily abide by them when dealing with project-affected people. With the World Bank’s financial and logistic participation in the Parej East project, World Bank standards- the so-called operational directives – for the execution of the social mitigation and rehabilitation action plans become compulsory for Central Coalfields Ltd. Those guidelines were not respected with regard to many important aspects. Finally, a formal complaint was filed with the Inspection Panel, the World Bank’s internal monitoring institution, in June 2001. The Inspection Panel reported that the World Bank had not followed its own operational directives in Hazaribagh. The Indian Government and the Bank largely ignored the recommendations of the Inspection Panel. Until today, the World Bank and Central Coalfields Ltd. have not properly implemented the Inspection Panel’s recommendations for the compensation of the affected population with regard to many crucial points. And the mining goes on and on, affecting further people while the earlier victims are still wailing over their loss and find it difficult to adjust to the new situation.

As a State party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the State of Jharkhand are duty bound to respect and protect the Adivasis’ right to access to land and feed themselves. By taking the lands and destroying the livelihoods of the people of Parej East for the open cast coal mining project – and by not adequately rehabilitating them, the Indian Government has failed to respect and protect the Adivasis’ right to access to land. As this project received financial assistance and logistic support from the World Bank (it is sheer irony that the loan project was titled “Coal Sector Rehabilitation Project”), there is a responsibility of the World Bank and of States on its governing board as well. The people were evicted involuntarily from their land without getting adequate rehabilitation. Their right to feed themselves is denied because most of them lack their former resources for subsistence (e.g. agriculture, natural forest products). Their right to water is also violated. Open cast mining leads not only to the destruction of the forest land and the villages,

but also to the destruction of water sources and wells. The water conditions in still existing villages and also on the resettlement sites are bad. Very few realistic alternatives (of paid employment) are available for them in order to sustain themselves and their families.

Case 14: Forcible eviction of Adivasi Families from Kinari village in Lanjigarh block in the State of Orissa.

In 2004 several Adivasis (35 families from Kinari village) households were forcibly evicted from Lanjigarh block, Kalahandi district of the Indian State of Orissa. They were evicted by the people of the company Sterlite Industries India Limited and the local police, to make way for bauxite mining and refinery activity on the Niyamgiri forests¹⁶³ in Southern Orissa. The Adivasis are solely dependent on these hills and the forests for their livelihood. Eviction and alienation from their land will lead to hunger and starvation. Furthermore mining would also dry up rivers, streams and ground water in the area and toxic from the red-mud would leach into the soil making it infertile and useless. If mining is permitted there, two of India's strongest Constitutional guarantees will be overturned: the right of a "primitive tribal group" to their territorial integrity and to decide on their own path of development (Schedule V of the Indian Constitution); and the right to religious practices and beliefs (Article 25 of the Constitution), since the summit of this mountain is sacred place of worship to the Dongria Kondh's supreme deity Niyam Raja.

Sterlite Industries India limited (subsidiary of Vedanta resources) will execute a one million ton export-oriented project of INR 4,500-crore (approx. USD 1,000 million) bauxite mining and alumina refinery project at Lanjigarh block, Kalahandi district of Orissa. An official agreement was signed on the 5th of October 2004 between the Orissa Mining Corporation (OMC) and Sterlite Industries for the purpose of mining of bauxite reserves at Lanjigarh. The proposed bauxite mining will take place on the Niyamgiri hills, which have 73 millions tonnes of high quality bauxite. The alumina refinery plant will be at the mining site. In 2004, several households were forcibly evicted from Lanjigarh (35 families from village Kinari) by the company in support from the authorities in Orissa. In total displacement of twelve villages of over ten thousand people will make way for mining and the alumina refinery plant.

The Vedanta project in Orissa comprises three units: an alumina refinery at Lanjigarh in Kalhandi district of Orissa, a bauxite mine located two km away and a smelter a few hundred miles away. The Lanjigarh refinery already completed a test run. The smelter is under construction. It is the bauxite buried under 630 hectares of forests that has been awaiting clearance. The reserves are situated on a hill called Niyamgiri, the slopes of which are covered with dense forests, home to the nomadic Dongria Kond tribe.

A report published by the Central Empowered Committee (CEC)¹⁶⁴ on the Alumina Refinery Plant being set up by VAL at Lanjigarh. According to the report dated 21 September 2005, the environmental clearance for the project was accorded on the condition that the project did not involve any forest land. However, this fact was apparently overlooked as it reportedly involves displacement of 102 families. Not only were the people displaced from their houses, they were beaten up, and the cash compensation was not adequate for the tribals who depended on agricultural ends for their subsistence.

A court judgement dated 23rd November 2007 concedes that Vedanta is not a trust worthy company, as outlined in a recent Norway Government report. Nevertheless, at present (March

¹⁶³ The Niyamgiri forests are historically recognized for their rich wildlife population. The area was declared a game reserve by the ex-Maharaja of Kalahandi. It has also been proposed to notify it as a wildlife sanctuary in the Working Plan for Kalahandi Forest Division, which has been approved by the ministry of environment and forests on 16th December, 1998. This area has been constituted as an Elephant Reserve by the State of Orissa vide Order N4643/WL (Cons)34/04 dated 20.8.2004. It contains elephant, sambhars, leopards, tigers, barking deers, various species of birds and other endangered species of wildlife. More than 75% of the area is covered by thick forests. Wild relatives of sugarcane are found here, which are valuable genetic sources for future hybrids, and therefore need preservation to maintain a pure gene bank. The forests also have more than 300 species of vegetation, including about 50 species of medicinal plants. These forests are yet to be surveyed properly for their floral and faunal wealth.

¹⁶⁴ Earlier, it was the rich flora and fauna of the hill that prompted the Central Empowered Committee to say "clearance may not be granted" in its report. Two rivers originate from the forests of Niyamgiri. The CEC had pointed out a whole range of issues with Vedanta starting with the fact that the company was asking for an ecologically rich area for mining. In addition, the company had been changing its stance in court. In the last hearing it actually argued that now that the plant had been cleared, it should be given the mine too as fate accompli. The detailed CEC report based on field visits found that contrary to what was being argued in court, the hills supported an entire eco-system. The hill was proposed to be notified as the South Orissa Elephant Reserve. The project area has 1,21,337 trees out of which at least 50,000 will have to be felled to enable mining. The bauxite deposits help retains water, which in turn gives rise to perennial streams. The CEC had gone to the extent of calling the environmental clearance "invalid". It said the "alumina refinery has sprung up by subterfuge, subreption and misrepresentation of facts".

2008) the Supreme Court is about to give clearance to Sterlite / Vedanta to mine bauxite on the summit of Niyamgiri.

Previous experiences of displacement in mining areas have shown that the displaced people end up living in small shacks of ill-planned resettlement colonies with no means of livelihood. Open-cast mining will be possible only after deforestation of the Niyamgiri hills. Deforestation will damage the soil as it will lose its capacity to retain water. This will result in the drying up of streams, underground water resources, and Bansadhara and Nagabali rivers, leading to desertification of the area. Furthermore red-mud, a by-product of open-cast mining usually disposed off in ponds would leach into the soil, affecting its water retention capacity and making it loose unstable and infertile. When it rains the red mud ponds will overflow and contaminate the water bodies. The affected people will not have access to cultivable land nor safe potable water. Mining experiences in other bauxite mining areas have indicated the above.

As a State party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the State of Orissa is duty bound respect, protect and fulfil the people's right to feed themselves. Alienation of the people from their land will threaten their right to feed themselves. By not stopping the mining companies to threaten their livelihood, the State Government of Orissa fails to protect the right to food of these people. As the State Government is actually involved itself in the mining activities, it is failing to respect the right to food of the tribal people. By failing to provide adequate means of sustainable livelihood as rehabilitation the state fails to fulfil the right to feed themselves of the people.

Case 15: Bauxite mining in Kashipur threatens the right to food of Adivasis in Orissa

In Kashipur, in Rayagada District of southern Orissa, Utkal Alumina International Ltd. (UAIL) a consortium of Canadian Alcan (45% share) and Indian HINDALCO (55% share) has been trying to start mining bauxite and processing alumina since 1992. The area is mainly inhabited by Adivasis, whose major source of livelihood is agriculture and the collection of minor forest produce. The depletion of forests due to strip mining threatens the Adivasis right to feed themselves and their right to water due to pollution of the sources of water. Around 60,000 people will be affected by this project.

The East Indian state of Orissa is very rich in mineral resources and the government of Orissa has welcomed corporations to exploit the states huge mineral wealth. One such mining project is proposed in Kashipur, Orissa by Utkal Alumina International Limited (UAIL). UAIL is a joint venture of the Aditya Birla Group and Alcan, a Canadian mining company. Norsk Hydro, a Norwegian company that had a stake in UAIL in 2000 withdrew from the project following criticism in Norway for its complicity in human rights abuses in Kashipur. The tribals of Kashipur have been opposing the establishment of the proposed 100 percent export-oriented alumina project and the peoples' protest has successfully kept UAIL from mining Baphlimali (a mountain held sacred by local tribals) for 13 years now.

In the Kashipur block, Rayagada district of Koraput in southwest Orissa, the local tribal people have been fighting against a state supported multinational alumina venture, which threatened their rights over the hills, forests, and livelihoods. Their lands are being acquired for 100% export orientated alumina plant and bauxite mining. The venture named Utkal Alumina International Limited (UAIL) is a consortium of corporations comprising Alcan, a Canadian transnational, and Indal. UAIL was granted a lease for extracting bauxite from the Baphlimali hills in Kashipur. Villagers have resisted the corporation and on the 16th of December 2000, three tribals were killed and 7 others were seriously injured when the police fired into an assembly of people in the Maikanch village in Kashipur block of the Rayagada district. Maikanch, which is situated down the hills of Baphlimali - a target of bauxite mining- has been in the forefront of an anti mining popular struggle.

In the month of December a couple of actions have been undertaken by the state to repress the tribal people and other supporters of the anti-mining protests. Finally this has led to violent deeds by part of the police. On 1st December 2004 protestors of a peaceful gathering, predominantly women, were mercilessly beaten up by police and on 16th December 2004 the police once again opened fire on the people attending a protest rally and 6 persons were grievously injured. An

enquiry Commission was formed under the Justice PK Mishra to investigate about the Maikanch police firing. The Commission has clearly identified the culpable officers. However the government is yet to take action.

Women have a particular difficult position. During police action on 1st December 2004 predominantly women were victims of violence. Women have to bring drinking water from far away since the access to water is polluted due to mining. Immediate impact on women: They are victims of torture of the police and men sponsored by the company.

The UAIL project will displace and alienate the tribals from their land and lead to the destruction of the fertile agricultural land, forests, perennial water-streams, the very basis of their livelihoods and livelihoods for generations to come. Moreover, future generations' food producing resources in the area will be destroyed due to ill impact of mining on environment and ecology. What is more, potable water is hampered and polluted due to mining activities. The UAIL project will displace and alienate the tribals from their land and lead to the destruction of the fertile agricultural land, forests, perennial water-streams, the very basis of their livelihoods and livelihoods for generations to come. Around 20,000 people will be affected in 82 villages. Mining in Orissa is proceeding without the consent of the people who will be affected.

In November 2004 the Chief Minister of Orissa in an interview to the press said that no opposition to Industrial development will be tolerated and that those who are opposed to Industrial ventures are criminals and should be taught a lesson. Since December 1st 2004 till date the State of Orissa launched a sustained campaign of mass repression and terror in Kashipur with armed paramilitary forces of terror and death have been marching through the whole area terrorising the people and forcing them to sign papers that they want the bauxite mining processing venture.

Threats, repression, and brutality of the State continue in Kashipur.

As a state party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the state of Orissa is duty bound to respect and protect the people's right to feed themselves. Alienation of the people from their land will threaten their right to feed themselves. By not stopping the mining companies to threaten their livelihood, the state government of Orissa fails to protect the right to food of these people. As the state government is actually involved itself in the mining activities, the state government is not respecting the right to food of the tribal people. Repression and use of force against protests violates people freedoms.

3.1.3 Water

Case 16: 10,000 people continue to suffer from lack of safe drinking water supply in Jai Bheem Nagar in Meerut, Uttar Pradesh

Jai Bheem Nagar (JBN) is a slum in Meerut city with a population of 10,000 people. The slum residents do not have access to safe drinking water and are therefore compelled to consume water contaminated with heavy metals like chromium, cadmium, lead, and mercury. The slum dwellers claim that the consumption and use of the polluted drinking water has caused cases of diarrhoea and skin diseases amongst the population.

Meerut city is located in the state of Uttar Pradesh, close to the Indian capital city of New Delhi. Jai Bheem Nagar is a slum in Meerut located on the banks of the Kali Ganga River with a population of 10,000 residents who are mostly Dalits. There is no provision of municipal water available to the residents of Jai Bheem Nagar although they have a Municipal Councillor, which means that the municipality should provide for basic amenities.

There are several distilleries, paper, sugar mills, and chemical units in Meerut, and other towns of Western Uttar Pradesh, which cause contamination of the river and the ground water. This contamination is due to discharge of hazardous effluents from the chemical industries, the leaching of pesticides from the nearby agriculture fields and the biomedical waste from Government Medical College of Meerut into the Kali Ganga River. These industries do not have Common Effluent Treatment Plants (CETP) and Sewage treatment plants (STP) to control the pollutants resulting in contamination of the water and making it unfit for consumption.

FIAN launched an urgent action in May 2006 urging the government of Uttar Pradesh to take rapid action to fulfil its state obligation to provide safe drinking water to the 10,000 Dalits living in the slum of Jai Bheem Nagar. The State Government of Uttar Pradesh then approved a project worth 20 million INR (Indian rupees) to construct an overhead water tank which would provide the residents with safe drinking water and they would no longer have to drink and use the polluted underground water. The project was ready to take off; money was sanctioned, a survey was conducted by the government departments to identify the exact location for the water tank and the project was foreseen to be completed by the end of December 2007. However during the State Assembly elections in May 2007, a new Government was elected. Due to the change of Government and administrative delays the project came to a standstill. The situation of the slum residents remains unchanged. The people of Jai Bheem Nagar continue to be compelled to consume water from private and Government hand pumps. The water is polluted, discoloured (a bad colour), and has a foul odour. It has also been reported that the water is highly contaminated with heavy metals like chromium, cadmium, lead, and mercury many times more than the acceptable limits.

Discrimination of vulnerable or marginalized groups like slum dwellers, women, and children is one of the major human rights concerns. Women and children in this case are particularly affected. Indeed, since the males are mostly daily labourers, the burden of fetching drinking water lies on women and children. They need to cover long distance, of 3-4 kilometres to fetch clean and safe water for daily uses. Moreover, pregnant women and children are the worst affected by the diseases due to the bad quality of drinking water.

In addition to the provision of water for domestic use, freshwater ecosystems fulfil many other functions which are fundamental for the various ecosystems and for the environment in general. Freshwater systems provide habitats for fish and other aquatic species, which are food resources for people. The Government has not take the necessary action to prevent the industries from polluting the river and ensuring the sustainable access to water of the present and future generations. Thereby, pollution of surface water leads to contamination of ground water. Once introduced in groundwater the pollutants remain there for a long time affecting the whole ecosystems.

As a State party to the International Covenant on Economic, Social and Cultural Rights India and therefore the State of Uttar Pradesh it is duty-bound under international law to protect and fulfil its people's human right to food, health and water. By not providing access to safe drinking water and by allowing the industries to pollute the rivers and contaminate the ground water through leaching, the State has violated the people's right to food, health, and water. The failures of the authorities to protect and fulfil access to drinking water and to protect the sources of water for human consumption against pollution are breaches of states obligations.

Case 17: Pollution of the Hindon River brings suffering to over 5000 people in several districts of Uttar Pradesh

Twelve villages in close proximity to the banks of the Hindon, with a population of about 5661 people, lack access to safe water. The water they consume and use in irrigation is contaminated with lead, chromium, cadmium, and pesticides causing several health problems in the population.

The Hindon River and its tributaries, Kali and Krishna, flow through six districts of Uttar Pradesh (Saharanpur, Muzaffarnagar, Meerut, Baghpat, Ghaziabad, and Gautambudh Nagar) before its confluence with the Yamuna River. In a highly populated and predominantly rural catchment, the Hindon River is relied upon heavily as a water resource for domestic, agricultural, and industrial use, while untreated groundwater is the primary source of drinking water. Twelve villages in close proximity to the banks of the Hindon, with a total population of 5,661, are largely dependent on agriculture as a means of income. Residents of these villages lack clean water due to the pollution of Hindon River and contaminated ground water and have been forced to consume its water although it is unfit for domestic use and also use it for irrigation purposes.

The dumping of untreated domestic sewage, municipal waste, and agricultural run off due to over-application of agricultural chemicals, and the discharge of large volumes of untreated industrial effluent from distilleries, chemical plants, and sugar and paper mills have polluted the water of the Hindon which has become unfit for human consumption. The Hindon River contains toxic lead, cadmium, chromium, and traces of virulent pesticides. Aquatic bio-diversity has become non-existent in almost all locations of the catchment as a result of the decreased level of oxygen. Not only has the surface water in the catchment area been contaminated, but contamination has also reached the groundwater level. This may affect millions of residents living in the catchment of the Hindon River and its tributaries who use the untreated ground water as their primary source of drinking water and irrigation.

Villagers have reported serious health problems as a result, such as, cancer, skin ailments, neurological disorders, and gastrointestinal problems. Women are most adversely affected because they perform domestic chores involving the use of water and often must walk long distances to fetch water from more adequate sources. Children are also especially susceptible to the water borne infections due to the contaminated waters, with negative impact on the enjoyment of the Right to adequate Food, in risk of developing malnutrition and even of death.

As a State party to the international Covenant on Economic, Social, and Cultural Rights India and therefore the State of Uttar Pradesh, is duty-bound under international law to protect and fulfil its people's human right to food and to water. By not providing access to safe water for drinking and irrigation; and by allowing industries to pollute the rivers and contaminate the ground water through leaching, the State of Uttar Pradesh and hence India violated these people's right to water and right to food. The failures of the authorities to fulfil access to drinking and irrigation water and to protect the sources of water for human consumption against destruction by pollution are breaches of states obligations and hence violations. The Government should urgently take measures to provide safe and clean drinking and irrigation water to the community and should take steps to prevent further pollution of the river.

Case 18: Livelihood of 43,000 people threatened due to large scale water exploitation by Coca Cola bottling plant in Gangaikondan, Manur Panchayat Union, Tirunelveli district, Tamil Nadu

Manur Panchayat Union is a dry land region and irrigation water for agriculture is scarce. In spite of that fact, the Government has given license to the Coca-Cola Company to tap groundwater to be sold at the market. Over-extraction of groundwater is endangering the livelihoods of about 43,000 people in 34 villages, who are totally depending on agriculture and animal husbandry.

The Coca-Cola Bottling plant started production in October 2005, based on an agreement with the Tamil Nadu Water and Drainage Board (TWAD) to sell water to the South Indian Bottling Company. Top priority is provided to earmark the required quantity of 900,000 litres per day every day throughout the year, neglecting the basic needs of drinking and irrigation of rural people. The TWDA department, which deals with water management, pled its inability to provide required water for irrigation and drinking water to the traditional water users of Tamirabarani River. A demand by the people of the Manur village to supplement water from Tamirabarani River to the Manur big tank for irrigation purposes has already been issued to the government in 1993. However, this demand had not been met. Instead, the application by Coca-Cola was sanctioned within a record time of 10 months.

In addition to the industry's impact on water availability in the region, trade effluents pose a severe threat on the health of both people and livestock. In the first half of December 2006, about 400 sheep owned by poor peasants living in near-by villages of the Coca-Cola factory died because of drinking the polluted sewage water.

Due to lack of irrigation water the self-dependent local food security chain is under severe threat, which will lead to debt burden, hunger, and malnutrition due to a lack of purchasing power. The groups going to be affected are women, children, small farmers, landless agricultural workers, and people depending on domestic breeding of cattle.

As a State party to the international Covenant on Economic, Social, and Cultural Rights India and therefore the State of Tamil Nadu, is duty-bound under international law to protect and fulfil the people's right to water and food. By not providing access to safe drinking and irrigation water and by allowing the Coca-Cola Company to overexploit and pollute ground water, the State failed in its obligations. The Government should implement measures to provide safe and clean drinking and irrigation water to the community. The Government is furthermore violating the Government Order 223/98, which totally bans any industry causing pollution.

Case 19: Over exploitation and pollution of groundwater by Coca-Cola factory destroys agriculture and drinking water resources in Plachimada, Palakkad District, Kerala

Plachimada in Palakkad district is suffering from severe depletion of ground water ever since a Coca-Cola plant was set up in 1998-99. Wells in the surrounding villages have dried up. Paddy farmers face severe difficulties in irrigating their fields. Furthermore, quality of water degraded and it became unfit for human consumption and domestic use.

In 1998-1999, a Coca-Cola Plant was established in Plachimada in Palakkad District. The company was leased 40 acres of land for the plant and employed 70 permanent workers and 150-250 casual labourers. The plant was producing 85 truckloads of beverages per day with 550-600 cases, each containing 24 bottles of 300 ml. In order to cover the water needs for this large production, the company dug 60-65 bore-wells on the land leased and extracted about 1,500,000 litres of water every day.

The intensive extraction of ground water led to a depletion of ground water levels in the area. The drying up of wells has affected the lives of all the people living in the area. Paddy (rice crop) farmers were unable to run their pumps long enough to water their fields, which led to a decline in the harvest. In addition, the ground water was severely contaminated, as salinity and hardness of water increased. High levels of calcium and magnesium were found, which make the water unfit for human consumption and irrigation. The Coca-Cola Plant also disposed foul smelling slurry waste as fertilisers, which lead to contamination and skin problems. Along with the effect on paddy crops, around 1000 landless indigenous families who are dependent on agricultural wage labour were affected by the contamination of water and loss of crop.

In 2002, thirty two organisations from within and outside Kerala started protesting against the operations of Coca-Cola. As a result of this, the Perumatty Panchayat (village assembly) took a decision on 7th of April 2003 to cancel the license agreement granted to the Coca-Cola plant and the Supreme Court had ordered a stay order until a decision was made.

In September 2003, the Panchayat issued show cause notice, which was challenged by Coca-Cola in the High Court of Kerala. The High Court in December ordered that Perumatty Panchayat has no power to refuse licenses and as Coca-Cola challenged the cancellation of license, it directed the company to resume operation.

In 2004, Coca-Cola filed an application to the Perumatty Panchayat for renewal of license, but the Panchayat rejected its application. The State Government reversed Panchayat decision saying that Panchayat lacked such a power. In June 2005, the Panchayat issued a three-month license to operate by imposing conditions for operation but the conditions were not acceptable to Coca-Cola. In November, upon application the High Court ordered the Panchayat to issue a license once more. A month later the company again applied for license and in January 2006 the Panchayat issued license to operate for three months from January 1st to April 1st, 2006.

Currently, aggrieved by the Panchayat's conditional license, the Coca-Cola management went for an appeal to the Supreme Court against the Kerala High Court order. The appeal is pending before the Supreme Court of India. The issue to be decided is whether the Perumatty Panchayat has power to withhold license for the plant to operate production.

Today the factory is closed. No production is carried on.

The failures of the authorities to protect the sources of water both for human consumption and irrigation are violations of the right to food and water. As a State party to the Covenant on Economic, Social and Cultural Rights, India is duty bound to protect and fulfil the human right to feed oneself for all of its population.

The State Government of Kerala, by not taking proper steps to tackle the ground water problems created by the Coca-Cola plant, violates the peasants' right to feed themselves. The State has the obligation to uphold and protect the rights of farmers in accordance with the Indian Constitution and international human rights standards.

Case 20: 4,000 small peasants are suffering from the disastrous impact of shrimp industries on agricultural lands in Thillaivilagam, Thiruvarur district, Tamil Nadu

Thillaivilagam Village in Thiruvarur district, Tamil Nadu, is situated within fertile agricultural lands with abundant ground water surrounded by large mangrove forests. Numerous shrimp farms with their negative impact on natural resources have been destroying these major sources of livelihood of the peasants.

About 200 shrimp farms have spread over about 500 acres. 4,000 peasants, out of whom half are Dalits, are the worst hit victims. Apart from land alienation, salinity of groundwater and surrounding fields and thus permanent damage of once fertile land are the major impacts of these industries. The area, which provides drinking and irrigation water to both Thiruvarur and Thanjavur districts, has become water starved with reduced groundwater levels and potability of water. Destruction of mangrove forests due to the chemically contaminated residues discharged by the shrimp farms resulted in reduced bio-diversity and increased fragility of the coastal environment and put severe threats on the livelihood of fishermen. 12,000 hectares of mangroves spread around the area are widely protecting the coastal environment. If the present situation continues, it may disappear totally.

The protest against the shrimp industry started in 1994, but though the affected people have been fighting for their rights since more than a decade, the shrimp industries continued to operate.

Despite a Supreme Court judgment from 1996 (please refer to annex for details), which prohibits shrimp farming within the Coastal Regulation Zone (within 500 meters from the High Tide), Government remained nearly inactive, only some oral statements were issued, but no action could be observed. Compensation by the Government has covered only half of the affected fields, and the amount paid was less than what farmers had invested.

As a State party to the international Covenant on Economic, Social, and Cultural Rights India and therefore the State of Tamil Nadu, is duty-bound under international law to protect and fulfil the people's right to water and food. By allowing shrimp farms to occupy and contaminate the lands and water and thereby destroying the sources of food of the farmers of Thillaivilagam Village of the Thiruvarur district, the State has failed to protect and fulfil the farmers Rights to food and water. Most of them lack their former resources for subsistence (e.g. agriculture, mangrove forest, and water for drinking and irrigation). Very few realistic alternatives (of paid employment) are available for them in order to feed themselves and their families.

Case 21: Livelihood of 20,000 people destroyed by chemical industrial estate in Cuddalore, Tamil Nadu

SIPCOT chemical industrial estate, once established with the argument to overcome unemployment in the state of Tamil Nadu, is causing pollution of the surrounding agricultural lands. Livelihood activities based on agriculture, fishing and animal husbandry, are being destroyed and this is affecting about 20,000 people.

The Small Industries Promotion Corporation of Tamil Nadu (SIPCOT) was started in 1980 along the coastal area 8 km south of Cuddalore to overcome unemployment in the region among coastal and the adjoining agrarian communities. Thirty two chemical factories had been erected between 1980 and 1982. SIPCOT is involved in the production of hazardous chemicals, pesticides,

pharmaceuticals, paints and dyes. These industries are classified as highly polluting industries and categorized as “Red” according to environmental laws and as such are totally banned to be established within five kilometres of any rivers, tanks, canals, and also dams. However, SIPCOT is located on the banks of ‘Uppanar River’ and close to the canals of River Pennar and River Gadilam. The entire premises extend over 300 acres of agricultural lands with abundant underground water in the midst of agrarian and fishing villages.

Farmers of the surrounding lands are facing extreme difficulties to cultivate because of the impacts of pollution of water, land, and air caused by the discharge of toxic pollutants. Fisher-folk traditionally living from backwater fishing is hugely affected because of the impact of pollutants joining into the backwaters.

The health of nearby village people is also affected. Face skin diseases, respiratory disorders, eye ailments, allergy, fainting, intestinal disorders, eye sight decline, and other occupational diseases are common.

An effective affluent treatment system is not in operation. Inaction of the state owned agencies and inefficient implementation mechanism has been beneficial for the polluters.

As a State party to the international Covenant on Economic, Social, and Cultural Rights India and therefore the State of Tamil Nadu, is duty-bound under international law to respect and protect the people’s right to food. The State is failing to implement The Environment (Protection) Act 1986, The Water (Prevention and Control of Pollution) Act 1974, and The Air (Prevention and Control of Pollution) Act 1981. The above mentioned three pieces of legislations together with Government Administrative Orders prohibit the establishment of any highly polluting industries within 5 km of the embankments of any notified rivers, reservoirs, canals etc. The Indian Government is violating its obligations to protect the right to adequate food of thousands of people living both on agriculture and backwater fishing.

Case 22: Water pollution and diversion destroys agriculture in 20 villages in Kongu Region, Western Tamil Nadu

35,000 acres of land and 40,000 people living in 20 villages are severely affected in the area near the Orathupalyam Dam site due to pollution caused by effluents from the textile industry in Thiruppur. Cultivation of paddy, sugarcane, banana turmeric is not viable anymore due to water pollution and subsequent degradation of agricultural lands. In addition, water which had been used for centuries for irrigation fields is being diverted to the textile industry in the nearby town Thiruppur. As agriculture and animal husbandry is the major source of livelihood of most of the people in this area, their right to food is being violated.

The Kongu Region of Western Tamil Nadu is known since centuries for its old agrarian cultural heritage. The 700 years old Kalingarayan irrigation canal is irrigating 35,000 acres of land between River Bhavani and River Noyal. 40,000 families directly depend on the irrigation system. As water is being pipelined to Thirupur Town, ground water has already been depleted to a high extent. Four important irrigation structures have already been destroyed. Furthermore, the industrial effluents are being released into river Noyal, badly affecting both agriculture and fishing grounds. As fish has nearly vanished from the polluted water, fishing is no more an income bearing activity.

Moreover the drinking water scarcity is acute in the villages around the dam both for human being and livestock.

Protests of local small farmers against this situation are being repressed by the State.

As a State party to the international Covenant on Economic, Social, and Cultural Rights India and therefore the State of Tamil Nadu, is duty-bound under international law to protect and fulfil the people’s right to water and food. By not providing access to safe drinking water and by allowing the industries to pollute the agricultural lands, rivers, and contaminate the ground water through leaching, the State has violated the people’s right to food and water. The failures of the authorities to protect the right to food and to protect the sources of water

for human consumption against destruction by pollution are breaches of India's states obligations under the right to food and water. The government should urgently implement measures to provide safe and clean drinking water to the communities and prevent further pollution of the two major river systems and agricultural land.

Some other cases of water issues have been documented Dr. Arun Kumar Singh.

3.2 Employment and wages

Case 23: Non-implementation of Minimum Wages coupled with lack of alternative employment opportunities leads to hunger and malnutrition of foundry workers and their families in Howrah, West Bengal

Howrah, once famous for its foundry industry, has seen gradual closure of many small industries mainly because of its lack of modernization and its inability to compete with cheap multinational products. The Government makes no efforts to develop policies to improve the situation; therefore further foundries are on the verge of closure, which causes unemployment. Moreover, non-implementation of minimum wages excludes workers from accessing adequate food and makes them vulnerable to hunger and malnutrition

Howrah, known as the twin city of Kolkata, is a small industrial township. Many small industries in the city have been gradually closed, badly affecting the foundry sector in Howrah. Although the Government has implemented several measures to provide support to the small industry sector including the foundries, little attention was paid to improve technology or operating practices. Faced with open market competition, this sector could not compete with cheap multinational products due to lack of investment. An estimated 500 foundries have been closed so far and several sick foundries are on the verge of closure. The Government has made no effort to find alternative income possibilities for the dismissed workers, nor did it ensure for safety nets for short term employment.

The condition of the workers in most of the foundries is deplorable. Although some of them are permanent workers, most people work on short contracts. As a result, they do not get the social benefits to which the workers in the foundry sector are entitled to. Moreover, the workers are not well aware of the contractual system. That is why they are exploited in several ways and in many cases they even do not receive the minimum wages they are entitled to.

The working conditions are very poor and the environment unhealthy which constitutes a violation of Article 7 of the ICESCR. Due to the strenuous requirements of the work, very few female workers are employed in the foundry sector and usually earn only half of the average salary of a male worker. Women workers are always paid less in comparison to their male counterparts on the pretext that they do little and easy work. By law, both men and women have to be paid equal minimum wages.

As a State party to the international Covenant on Economic, Social, and Cultural Rights India and therefore the State of West Bengal is duty – bound under international to protect the workers right to feed themselves. By not protecting the workers from exploitation, bad working conditions, and wage discrimination, the State Government fails to protect the right to work and right to adequate food of these people. On top of these violations, women suffer wage discrimination in violation of Article 3 of the ICESCR and of International Labour Organization Convention 100 which was ratified by India in 1958. Furthermore the State fails to fulfil the right to adequate food of these workers by not properly implementing the Minimum Wage Act of 1948, in order to secure the worker's right to feed themselves.

Case 24: Violations of the Right to Food of mineworkers in the Sursagar Mining Area, Jodhpur District, Rajasthan

About 40 000 mineworkers in Sursagar Mining Area in Jodhpur District are exposed to occupational diseases like asthma, tuberculosis and silicosis. The mineworkers are unable to access effective legal redress mechanisms to make the employers comply with the provisions for compensation of the disabled or the families of the deceased. Thus numerous families are

suffering from hunger and malnutrition.

Rajasthan, being the largest state in India, is called the State of mines and minerals. After agriculture, mining is the second biggest trade of the State. There are 42 varieties of major minerals e.g. lead and copper and 23 varieties of minor minerals, e.g. marble and sandstone. There are more than 12,000 mines and around 20,000 quarries located in Rajasthan employing 325,000 people. Besides the 32,000 official registered mines, there are estimates of thousands of other unofficial mines/quarries that report no annual revenue. In total, independent studies (National Commission on Labour) estimate that 2 million people are working in the mines. The mining sector is characterized by its unorganised and unplanned nature harming both the environment as the people. The age of the workforce ranges from 5 year old to above 50. Approximately 15 percent of the two million persons are children.

The Mines Act of 1952 encloses rules for basic facilities like toilets, supply of drinking water and shade, regulation of working hours and wages, and safety arrangements. In spite of this Act, the two million people working in the mines of Rajasthan are risking their lives and damaging their health trying to make a living.

In Sursagar Mining Area in Jodhpur district there are about 40,000 mineworkers. The mineworkers are exposed to occupational diseases such as respiratory ailments like asthma, tuberculosis or the most fatal one silicosis. In spite of the regulations and guidelines for operating mines and working in mines, the number of accidents and diseases like silicosis are still drastically high. On top of that, no compensation at all is paid to the mineworkers suffering from silicosis. The existing Rajasthan Silicosis Rules 1955 and the above-mentioned Mines Act are commonly neglected.

The people are forced to work under such conditions because of lack of any other alternative than starvation. This fact points to severe shortcomings of the state welfare systems in the area and failing of the Agrarian Reform, which are obligatory under the unconditional human right to food. The mineworkers are also unable to access effective legal redress mechanisms to make the employers comply with the provisions for compensation of the disabled or the families of the deceased.

India is a State party to the International Covenant on Economic, Social, and Cultural Rights and therefore duty bound to fulfil the right to adequate food for these mineworkers and their families. India fails to make the employers comply with the rules and regulations meant to safeguard these persons' human right to food. If the indirect guarantee of the right to food through compensation from the side of the employers is not effective, India herself is under an obligation to fulfil access to food and health services to the victims.

Case 25: Government plan to ban hand rickshaw pullers from the streets of Kolkata threatens the livelihood of 18,000 people

In Kolkata there are around 18,000 hand rickshaw pullers. Majority of them earns a meagre income and is uneducated so there is little chance for them to find other employment opportunities. According to recent announcements, the Government plans to ban this trade from the streets of Kolkata which will cause unemployment for most of the pullers.

The hand pulled rickshaws, an intrinsic part of Kolkata's tradition, was first invented in Japan in 1870 A.D. One of the oldest non-polluting vehicles plying on the streets of Kolkata, hand pulled rickshaws are frequently targeted as a cause of congestion. There have been periodic attempts to ban hand pulled rickshaws at least from the jurisdiction of the Kolkata Municipal Corporation (K.M.C). This negative attitude towards the hand rickshaw pullers has been partly shaped up by the Government's preoccupation to modernize the city by removing the hand rickshaw pullers from the streets of Kolkata.

It is estimated that there are about 18,000 pullers operating in various parts of Kolkata, out of which about 6,000 are licensed pullers.

Statistical data reveal the deplorable condition of the pullers: majority of them hails from Bihar and remote parts of West Bengal. Most of them earns between 3,100 to 3,500 INR (about 60 Euro)

per month, out of which they have to send a certain amount of their meagre income to their native places. Majority of the pullers cannot even sign their names so there is little chance that they could find job positions in other sectors of the economy in case the ban is implemented. Furthermore, many pullers do not consider their work as inhuman and are sceptic about Government's plans to rehabilitate/compensate them adequately. And even if compensation is paid that will only be paid to the licensed pullers.

India is a State party to the International Covenant on Economic, Social, and Cultural Rights and therefore duty bound to respect and fulfil the right to adequate food of its people. Due to meagre income of the pullers, they are not able to feed themselves adequately and live in utterly dehumanized conditions. The Government has not provided them with fixed fare charts nor with a system of social security. Banning the pullers from the streets of Kolkata without adequate compensation and rehabilitation for all pullers would be a violation of the obligation to respect and fulfil the right to food.

Case 26: Enforcing the payment of minimum wages to brick kiln workers, Barabanki, Uttar Pradesh

Brick kiln workers face exploitation and are denied minimum wages in District Barabanki in State of Uttar Pradesh. An income below the minimum wage excludes the brick kiln workers from accessing adequate food and they face hunger and malnutrition.

Tikaitganj in District Barabanki is situated in the central part of Uttar Pradesh (U.P.). After agriculture, housing and allied activities are among the largest employment providers in the unorganized sector and brick kilns are one of them. Indeed, the housing sector in India is among the fastest growing because of the increasing pace of urbanization. Thousands of families along with their children are engaged in brick kilns for their survival, despite the fact that brick kiln is one of the hazardous industries, especially for children. The sector is among the major employment providers for local and migrant families in Uttar Pradesh.

The worst part of the working of these brick kilns is the rapidly deteriorating conditions for the engaged workforce and the increasing exploitation of the migrant families. Poor Scheduled Caste and Tribe families migrate from their native places in Chhattisgarh, Madhya Pradesh, Jharkhand, and Bihar every year in search of gainful employment opportunities for their survival. A considerable portion of these migrant families are employed in the brick kilns of the State and face exploitation every time.

Normally the workers, especially migrant labourers do not get even the minimum prescribed wages and, therefore, cannot arrange sufficient food, clothing, and housing for their children and families. These families have to work 12-16 hours daily under inhuman conditions for a pittance of INR 200 to INR 300 weekly which barely allows them to feed themselves. These children are compelled to work under hazardous conditions for the survival of the family.

In particular case, in the brick kiln in Tikaitganj town area, 90 labourers are not getting the minimum wage which is INR 100 per day. This minimum is a minimum in the real sense of the word: without this minimum the workers can barely survive. The workers, who are Adivasis (indigenous people) from the neighbouring state Jharkhand, work under very bad and risky conditions. The brick kiln owner only pays INR 50 stating that he will pay the rest of amount by the end of the year. But experience shows that labourers never get the rest of the amount. This is a clear violation of the Minimum Wage Act passed by the Uttar Pradesh Government.

However, this case should not be seen as an isolated occurrence but as an example of a situation that is common in the State of Uttar Pradesh. There is an urgent need to address the issue so the rights of thousands of migrant workers and their children can be protected.

As a State party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the State of Uttar Pradesh is duty bound to protect the brick kiln from exploitation from the owner of brick industries and fulfil the brick kiln workers right to adequate food, by ensuring that they are paid according to the minimum wage. An income

below the minimum wage excludes the brick kiln workers from accessing adequate food and they face hunger and malnutrition.

Case 27: Denial of minimum wages in the informal sector leads to hunger and malnutrition, Lucknow, Uttar Pradesh

Women working in the informal sector of traditional handicraft called Chikan Kari¹⁶⁵ face exploitation and are unable to adequately feed themselves due to denial of minimum wages.

Uttar Pradesh (U.P.) is highly populated with nearly 170 million people with a low per capita income under the Indian average of \$330. 80 percent of the state population is settled in rural areas. 60 percent of the inhabitants depend on service with government departments and private enterprises, 35 percent depend on agriculture while 5 percent depend on the local handicraft called Chikan Kari. This activity, mainly undertaken by women, belongs to the informal sector and is very time-demanding.

Women Chikan Kari workers generally earn INR 30 per day. In the Chikan Kari work wages are determined by the types of stitches, therefore there should be fixed a piece rate system to enable the Chikan Kari workers to get a minimum support price. The women get work from stores through middlemen with no fixed rate for one piece (one piece of garment with the Chikan Kari handicraft). This arrangement reduces their bargaining capacity to get a better price for the handicraft and makes them vulnerable to exploitation. Due to illiteracy and lack of awareness the women are unable to demand their entitlement of a minimum wage of INR 58.50 under the Minimum Wage Act of 1948. (1 Euro = 55 INR). On September 17, 2004, the Government of India established a “national commission for the unorganized sector”. This was an advisory organ, which should monitor the situation in the unorganised sector and send periodic reports to the Government. However, presently this advisory organ is not functioning. A labour inspector was in place to monitor workers conditions. Although a very important position in order to safeguard and ensure the rights of the workers in the unorganised sector like Chikan Kari handicraft, this position was abolished in 2003.

As a State party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the State of Uttar Pradesh is duty bound to fulfil the Chikan Kari workers right to adequate food, by ensuring that they are paid according to the minimum wage with a fixed piece rate. An income below the minimum wage excludes the Chikan workers from accessing adequate food and they face hunger and malnutrition.

3.3 Social Security

Case 28: Displaced Adivasis face hunger and starvation due to lack of rehabilitation programmes in Sathyamangalam, Erode district, Tamil Nadu

Two Adivasi communities (Malayalis and Sholagars) in Sathyamangalam of Erode district in Tamil Nadu have been dependent for their live on the forest since centuries. Massive deforestation in line with 20 year long Special Police Task Force Operations made them loose their traditional homes and land.

Sathyamangalam is a sub-revenue division in Erode district. Within this territorial jurisdiction thick forest ranges alongside Western Ghat Mountains are located, home for indigenous people Malayalis and Sholagars. 30,000 families with a population of 180,000 live in 150 tribal villages. Traditionally they have been sustaining their livelihood mainly from small scale agriculture and the collection of forest produce.

In the beginning of 1970, Indian Government allowed deforestation in the name of development. During this process, a leader among the poachers, named “Veerapan”, gained great fame. By bribing officials and luring tribal people by gifts, he got involved in deforestation, animal poaching, and sandalwood smuggling. Atrocities under his rule like killing of forest officials, police officials got totally out of control, and his activities reached out to the neighbouring State of Karnataka.

¹⁶⁵ Chikan Kari is handicraft work with thread patterned on cotton cloth.

In order to catch Veerapan, the Governments of Karnataka and Tamil Nadu formed a Special Police Task Force (STF). The members of the STF intervened into 150 tribal villages and terrorized the inhabitants. Men were captured and lodged in concentration camps, women were sexually assaulted, and several people killed. Hundreds of them disappeared in the two decade long search for Veerapan. Finally, after 20 years of search he was killed. Because of police atrocities during the search operation, most of the Adivasis left their villages and either lost or had to sell their livestock.

During the last three years, people started to re-enter their homes. However, lack of infrastructure, death of cattle and non-accessibility to other food producing resources due to deforestation is making it impossible for them to secure their living.

As a consequence of the continuous struggle of the Tribal People Association, the Government had appointed an inquiry commission to assess the losses suffered by the people and to quantify damages. This report of the "Justice Sadasiva Commission" was submitted in 2003, demanding compensation for violations. However, so far, no redress is in sight for displacement and resultant hunger, malnourishment and loss of livelihood earnings.

As a State party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the State of Tamil Nadu is duty bound to respect and protect the right to feed themselves of the people. By evicting the indigenous communities from their lands and destroying the livelihoods of the Adivasis due to deforestation activities, and by not adequately rehabilitating them, the State has failed to respect and fulfil their right to food. Most of them lack their former resources for subsistence (e.g. agriculture, natural forest products, and cattle).

Case 29: Lack of rehabilitation for flood victims is causing hunger and malnutrition in Malda District, West Bengal

Every year during the rainy season, livelihoods and agricultural land of thousands of people are submerged and eroded. As the Government is not taking proper initiatives for the rehabilitation of the victims they have to face hunger and malnutrition.

Every year during the rainy season (June to September), livelihoods of thousands of people are destroyed and they are displaced from their lands due to the recurring floods and erosion caused by the river Ganga. The river Ganga is slowly shifting its course in Malda district. By this meandering phenomenon, the river erodes vast tracks of land in this region, depositing soil on the opposite river bank. Apart from this natural changing course of Ganga, government policies of river water management and construction of the Farakka barrage are frequently cited as causes for the large-scale erosion of the river banks and frequent flooding in Malda. From 1980 to 2003 around 4,900 hectares of land was eroded by Ganga. Over the last three decades about 2 million people have been affected by the devastating flood and riverbank erosion.

In a rural economy, based primarily on land, landlessness poses a major threat, leading to further marginalisation of the people. After loss of land, many people have started to work as daily labourers or undertake petty services, out of which they could not earn much. Government has not taken proper initiatives for the rehabilitation of the victims. Most of the victims of erosion had received some basic minimum relief immediately after the erosion but have never received any rehabilitation. The money which was allotted for rehabilitation by the Government was ultimately taken by the land owners so the erosion victims did not get any money themselves.

In addition to the inadequate rehabilitation package, no attention is paid by the Government authorities to undertake preventive measures. Victims of the erosion furthermore complained that the Government did not provide any information on rehabilitation land, there was no consultation or participative process and there was no information of when and where the erosion will start. The victims therefore have no means to neither protect themselves before the erosion strikes nor do they receive any immediate relief just after the erosion takes place.

Access to grains from the Public Distribution System (PDS) is difficult and usually grains are not

sufficient for the families to feed themselves. Sometimes the erosion victims cannot even afford to buy the subsidised grains from the PDS. Failure to implement Government Welfare Schemes exposes the erosion victims to hunger and malnutrition and is in gross violation of their right to food.

As a State party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the State of West Bengal is duty bound to fulfil the flood erosion victims right to feed themselves. General Comment No 12 states that whenever an individual or a group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that directly. This obligation also applies for persons who are victims of natural calamity or other disasters. In order to fulfil the right to food of the affected people Governments should implement appropriate long-term rehabilitation measures.

Case 30: Government remains inactive despite more than 500 starvation deaths in closed tea gardens in Jalpaiguri, West Bengal

Due to closing of tea gardens in Jalpaiguri more than 500 former workers and their family members have died of starvation due to lack of alternative sources of income. The West Bengal Government has so far failed to recognize those deaths as a cause of violation of the right to food. In spite of this grim situation among the desperate tea garden workers the Government has so far not taken any measures to control the situation of abject poverty, hunger, and malnutrition.

Between January 1, 2006 and March 31, 2007, 571 deaths occurred in the 13 (one has reopened recently) closed tea gardens of Jalpaiguri. 409 of those who died were below 60, the national average life span.

The Government of West Bengal is focusing its policies on industrialization and progress, but apparently it has stopped caring about the existing industries. The government does not give any attention to the acute misery of the workers who have lost their jobs due to the closure of tea gardens.

At a high-level meeting at Writers' Buildings on July 27, 2007, attended by the Union Minister of state for commerce, Mr Jayram Ramesh, state industries minister, Mr Nirupam Sen, and finance minister, Mr Asim Dasgupta, that the 13 closed tea gardens in Jalpaiguri would be reopened after new buyers for them will be found. The process of finding buyers would be set in motion soon and the Government hopes a number of them can be revived in the next couple of months. However, no relief is reaching the tea garden workers and their families now. Hunger deaths will continue, if no immediate action is taken.

As a State party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the State is duty bound to fulfil the right to food of the people. By not recognizing starvation deaths and not fulfilling the right to food of the ex workers in the tea gardens, the State of West Bengal has violated the people's right to food. The Indian Government has failed to provide alternative sources of employment, to promote economic interests, and to implement functioning social welfare schemes for the victims and their families.

Case 31: 200 Peasant families suffer from salination of their agricultural land as consequence of the tsunami in Nanamedu and Subavupulavadi villages in Cuddalore district, Tamil Nadu

Nanamedu and Subavupulavadi villages in Cuddalore District have the prosperous potential of cultivable lands and the essential volume of ground water surrounded by km of mangrove forests. The tsunami floods in 2004 submerged most of their fields, causing salination and severe degradation of soil fertility making it impossible for the farmers to get enough yields to secure their living.

During the earthquake and resulting tsunami in the Indian Ocean on December 2004, India was the third country severely battered after Indonesia and Sri Lanka. The earthquakes set off giant

tsunami waves of 3 to 10 meters in height, which hit the southern and eastern coastal areas of India and penetrated inland up to 3 km. In India the State severely affected by tsunami are Tamil Nadu, Pondicherry, Andhra Pradesh, Kerala and Andaman and Nicobar Island. On the Indian civil mainland, more than 11,000 people are confirmed dead and 5,500 still missing. It is estimated that 380,000 Indians have been displaced by the disaster and reconstruction is expected to cost more than 1.2 billion dollars. The people most affected by the tsunami were the local fishermen: eighty percent of the people who were affected by the tsunami came from fishing communities and over 50,000 fishing vessels were damaged by the waves.

Apart from fishermen, there are also a considerable number of peasants, whose livelihood had been destroyed by the waves. 100 farmers from Nanamedu and 100 farmers from Subavuppulavadi, most of them marginal farmers with land holdings between 0.5 to 2 acres, have been severely impacted upon due to the intrusion of seawater after the tsunami. As a consequence these farmers have to face a sharp decline in yield (65-85%) of their crops like paddy, vegetables, and cashew.

In order to overcome the salination, the affected farmers have been extracting ground water from 1,800 feet below the ground to irrigate the land. In spite of irrigating the lands for more than 30 times, the salinity of the land persists. They even tried to grow other than the crops they used to grow before, but the results were negative.

During the initial stage of Government relief work after the tsunami, the victims from the farmers' community had received some food assistance. The Tamil Nadu Government sanctioned also compensation for sand cast and saline agricultural lands affected by the tsunami. However, the amount sanctioned was far from being not enough, and, moreover, has not been issued so far. Some assistance was given to reduce the salinity of the land (distribution of gypsum, sowing of a certain kind of plant etc.), but these measures were only partly successful, and were not followed up.

As a State party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the State of Tamil Nadu is duty bound to fulfil the farmers right to feed themselves. By not providing adequate relief and rehabilitation post Tsunami disaster for the affected farmers the State has failed to fulfil the farmers' human right to food.

Case 32: Fifteen visually challenged persons claim their right to food and work in Lucknow, Uttar Pradesh

In Uttar Pradesh, non implementation of the Persons with Disability Act providing employment to the physically challenged persons denies visually challenged persons (blind) employment opportunities even though they possess the required qualifications.

The situation of physically challenged persons in India is very difficult since they often receive inhuman treatment as a burden on the society. Due to efforts of some human rights organisations in 1995 the Government of India framed the Persons with Disability (PwD) (Equal Opportunities, Protection of Rights & Full Participation) Act of 1995", which is known as Viklang Vidheyak in Hindi. One clause under this Act requires that the Government has to identify Government positions (jobs) to be reserved for persons with disabilities and only persons with disabilities are to be employed for these positions. In Uttar Pradesh a total of 3 percent of the Government jobs have been reserved for physically challenged persons, out of which one percent is reserved for visually challenged (blind). Although this act ensures that the visually challenged get an opportunity to earn a living in dignity, several visually and physically challenged (disabled persons) have not got job in Government since the Government has failed to implement the PwD Act.

The case in point concerns 15 visually challenged persons who applied to the Government for jobs/work but are still unemployed. They have good education, training, and are of optimal working age, fulfilling all the requirements to be employed by the Government. The people in this case want to work, earn a living and do not want to depend on the charity of family and friends to survive. In the absence of employment they are unable to feed themselves adequately and in dignity. There are many more visually challenged persons in Uttar Pradesh and India who face similar circumstances even though statistics in relation to the disabled persons are difficult to obtain for assessment.

In India the State has made special provisions to ensure the realisation of the right to adequate food of the persons with disabilities by ensuring them employment opportunities. The International Covenant on Economic, Social and Cultural rights stipulates in Article 11 that the States parties to the present Covenant recognize the right of everyone to an adequate standard of living; Article 6 stipulates that the States parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. And finally Article 7 stipulates that the States parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: Remuneration which provides all workers, as a minimum, with: (...) A decent living for themselves and their families in accordance with the provisions of the present Covenant(...)

The principle of non-discrimination is a cornerstone of the human rights protection system. This principle derives from and expresses the equality of rights and dignity to which every human being is entitled. On the basis of equality, all people are entitled to the same opportunities and to enjoy their human rights without discrimination. The principle of non-discrimination applies to the three types of obligations. For people with disabilities, access to food and means of its procurement can be extremely difficult. Limited mobility and low incomes put people with disabilities at particular risk for hunger and malnutrition.

As a State party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the State of Uttar Pradesh is duty bound to fulfil the right to food of persons with disabilities. By denying employment the state is failing in its obligation to fulfil the right to food of the visually challenged. It is recommended that India should improve monitoring mechanisms for the implementation of the PwD Act. A starting point could be collecting the statistics and identifying the potential beneficiaries under the act and also ensuring that information on the act and entitlements are easily available to them.

Case 33: Mass starvation of Yanadula tribals, Krishna district, Andhra Pradesh

Around 230 people (50 families) of the Yanadula tribe face hunger and starvation due to lack of employment opportunities and access to social programmes.

The Yanadula or Yanadi tribals are mainly found in Kaikalur Mandal¹⁶⁶ in Krishna district of Andhra Pradesh. As occupation most of the Yanadula are engaged in rag-picking, scavenging, and cleaning drains in order to make a living. Lack of employment opportunities, access to food and water are a perennial feature of life for the tribes of Krishna District, resulting in malnutrition, sickness, fatigue, and death. FIAN Andhra Pradesh has worked with the Yanadula tribe since 2005. The main reason for malnutrition is non-availability of food and income to access food. The tribal people belong to the oppressed (down trodden) caste and face discrimination from all sections in the society. They do not find adequate work and have to depend on scavenging, drainage cleaning and rag-collecting. Due to the unhygienic nature of their work they are themselves considered unhygienic and therefore untouchable by people. The Yanadulas are illiterates so are very often cheated by other people. All the above reasons are creating hindrance to acquire food for their livelihood. This is aggravated by the fact that there is widespread ignorance among most of the tribals as to their rights.

Since last forty years around 230 persons (50 families) live in small huts in the tribal colony in Kaikalur. The land of the colony was formerly burial grounds and has been under the government authority (government land). The Government has since turned the land of the tribal colony into costly property and wants the tribals to evacuate the colony. The threat of eviction from the land looms large over the tribals since they do not have the deeds of the land they have settled.

Inability to earn a living due to absence of wage employment everyday the Yanadulas suffer from hunger and malnutrition. Those who have white ration cards (Antyodaya Anna Yojana - AAY) cards can avail grains at lower prices from the fair price shops of the public distribution system. However, not all can afford to buy the grains since they do not have the money.

¹⁶⁶ A Mandal is like a block, slightly smaller than a taluk. The unit that is called a block in Tamil Nadu and Karnataka, is called a Mandal in Andhra Pradesh.

The men of the Yanadula tribe earn meagre wages as rag pickers, scavengers, and drain cleaners. They will earn on average 20 INR per day and if they get chance to clean the septic tank that day they will get 200 INR, but every day they won't get this opportunity. The women do not find work mainly due to discrimination (preference to have men workers) and lack of employment opportunities. Women are dependent upon the men for a living. Inadequate wages keep the community in a state of chronic hunger. Members of the community may only eat one meal per day mainly consisting of rice and water. The living conditions of the tribals are very poor since they do not have thatched roofs for their huts, which are located in low-lying areas. Being in low-lying areas heavy rains and floods contribute to the deplorable, unhygienic living conditions in which the community lives since water collects around the house, stagnates, providing breeding grounds for mosquitoes and causing different types of diseases. Lack of access to safe drinking and sanitation water causes diseases. The overall bad living condition and under nutrition due to lack has caused diseases causing deaths in the tribal community.

FIAN approached the local authorities several times on behalf of the Yanadula people to improve their conditions especially provide access to food and food producing resources. However, to date, no measures have been taken to improve the conditions of the community. The Yanadula community is a Scheduled Tribe¹⁶⁷ and according to Article 46 of the Indian Constitution, the State is obligated to "promote with special care the...economic interest...of the Scheduled Castes and Tribes...and to protect them from social injustice and all forms of exploitation." However, in the case of the Yanadula tribal community, the State has failed to do so.

As a State party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the State of Andhra Pradesh are duty-bound under international law to respect and fulfil its people's right to feed themselves. By not addressing the situation of hunger and starvation in the State of Andhra Pradesh and not providing relief to the people suffering from hunger, the State of Andhra Pradesh and hence India has violated this right and its international obligations under the Covenant.

Case 34: Exclusion of tribals from welfare schemes in Allahabad district of Uttar Pradesh

The Kols tribal community suffers from extreme poverty and its members are unable to feed themselves. Despite being poor they do not have access to any of the Government social security schemes and face the threat of hunger and starvation.

In Naibasti hamlet of Devghat Panchayat in the district of Allahabad, there are around 50 households (42 of them - Kol tribe and 8 - weaker castes) with a total population of 290. The village is situated in a rocky area of the State of Uttar Pradesh. Agricultural land is not irrigated and villagers are only able to get one crop a year depending on rain. For most of the families, daily wage earning is the only way to feed themselves. Only nine families in the village have 1 to 2 acres of agricultural land, all others are landless and daily wage earners. These landless families have no work opportunity and can normally work only 10 days in a month, earning INR 10 per day (1 Euro = 55 INR). Their livelihood is based either on extremely low paid or rarely available daily wage work. Majority of the families somehow survive through collection and sale of firewood from the forest.

The average annual income for a majority of the families is as low as INR 1500 per year. In spite of extreme poverty no State welfare facility is available to the poor villagers. According to the information given by the villagers, no one in the village has benefited from the following schemes: Mid-day meal for eligible children, Pension to Handicapped, Widow Pension, Red Card (Antodaya Ration Card), Annapurna Ration Card, SGRY (Sampoorna Grameen Rozgar Yojana), Maternal Benefit Scheme. This is not the situation in only one village; but there are thousands of such villages in the State where people are struggling for survival and their rights are being violated.

¹⁶⁷ Indian Constitution, Article 47: "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties..."

Indian Constitution, Article 46: "The State shall promote with special care, the education and economic interest of the weaker sections of the people, and in particular, the scheduled castes and scheduled tribes and to protect them from social injustice and all forms of exploitation."

As a State party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the State of Uttar Pradesh is duty bound to fulfil the people's right to adequate food. By excluding the tribals and the weaker castes from the State programmes the State is violating their rights to adequate food. The State should take immediate steps to identify the beneficiaries under the various schemes and immediately implement the social welfare schemes in the Naibasti hamlet. Monitoring mechanisms to ensure that the implementation continues effectively should be established.

Case 35: Failure of State social programmes leads to bonded labour of 600 Chenchu tribals, Andhra Pradesh

600 Chenchu tribals from Mahabubnagar district of Andhra Pradesh worked as bonded labourers on construction sites in the State of Meghalaya. Violations of their right to food and to feed themselves forced them into migration and bonded labour. The situation of bonded women is worse than that of men as they face wage discrimination and threats to their physical security. Due to pressure from the civil society State authorities took steps to rescue the Chenchus, who were brought back to their home in Andhra Pradesh but overall their situation is far from improved.

The Chenchu tribe is mostly found in the Nallamalai hills of Andhra Pradesh. The Chenchus depend on the forest for their food. The men are experts in collecting honey; while women usually pick gum, honey, berries, and roots from the forest. Forest products enable them to feed themselves and survive. In recent years, due to the reduction in forest cover and subsequent depletion of forest produce, the Chenchus have had difficulties in feeding themselves with the minor produce from the forest. The Chenchus from Pedakottapally division of district Mahabubnagar in Andhra Pradesh struggled to feed themselves and tried to survive as daily labourers, but jobs were scarce due to drought. The Chenchu lived in abject poverty. They have no accessible health care system, no education facilities for their children. They have no access to the different schemes and subsidised food assistance under the State social programmes specially designed for the fulfilment of their right to food. Most of them do not possess ration cards to get subsidised food grains. The situation is so dire that in the absence of immediate intervention, the entire community may starve to death due to long working hours, lack of medical facilities and lack of adequate food.

In September 2005, some desperate Chenchus migrated as far as the north-eastern Indian State of Meghalaya almost 1,700 kilometres away from their homes in Andhra Pradesh, with the hope of surviving as daily wage labourers. They covered the daily expenses and cost of migration through loans from labour contractors. The wages that the Chenchus earned in Meghalaya for 10-12 hours of work a day in a power company were barely enough to feed themselves. Unable to pay back the contractors' loans, they ended up as bonded labourers. Sometimes they were not paid at all.

Katraju Lakshmi was among the group which migrated to Meghalaya in September 2005. She worked as a construction labourer for the Lekhya power plant near Shillong in the State of Meghalaya. Lakshmi suffered from post childbirth weakness and ill health and faced acute poverty and lack of food. She was paid an advance of 1,000 INR by middlemen for labour contractors and then forced into bonded labour. Hard physical labour at the construction site in Meghalaya, denial of, and discrimination in, wages, combined with the lack of food, caused Lakshmi's ill health, and death on the 7th February 2006. Six hundred other Chenchus in Meghalaya, especially women working as labourers, are threatened by a similar fate. Chenchu tribal children do not get the benefit of the mid-day meal scheme or ICDS in spite of repeated directions of the Supreme Court of India in the case of PUCL vs. Union of India (196/2001).

In March 2006 FIAN and other civil society organisations intervened in the case and in the following months the local authorities in Andhra Pradesh took steps to bring back the Chenchus from Meghalaya. Most of the Chenchus immediately came back to their villages in Mahabubnagar. Steps were taken to get them work under the National Rural Employment Guarantee scheme. Although the condition of the Chenchus improved they continue to face malnutrition due to continued lack of access to means of livelihood and implementation of various schemes entitling

them to food and shelter. The condition of the Chenchus is precarious and they face the threat of being bonded into labour if the State fails to protect and fulfil their right to adequate food.

As a State party to the International Covenant on Economic, Social and Cultural Rights India and therefore the State of Andhra Pradesh is duty-bound under international law to protect and fulfil its people's human right to adequate food. The State has violated the Chenchu's right to feed themselves and their right to food, by not protecting their forest rights, by failing to implement adequate welfare schemes, by disregarding their right to a minimum wage and by not preventing them from getting into bonded labour. On top of these violations, women suffer wage discrimination and threats to physical integrity. Now that the State has taken steps to rescue the Chenchus, it should be ensured that their right to adequate food is protected and fulfilled.

The Constitution of India (Article 23) prohibits traffic of human beings and forced labour and the Bonded Labour System (Abolition) Act 1976 abolishes the bonded labour system in India. The monitoring mechanisms to prevent cases of bonded labour should be strengthened and made effective.

Case 36: Children at railway platform are denied their rights in New Delhi

New Delhi Railway Station and its adjoining areas are home for 600-700 children. It is difficult to state the precise number because the children keep moving. Daily on an average around 150-200 new children come to the New Delhi railway station from different corners of India. 60-70 percent of these newcomers are under 14 years of age. In most cases they come in search for food, work and a better condition of life.

The children end up at the railway station due to different reasons, some are orphans, or homeless and destitute, some have run away from children homes and many other reasons. The children do not have homes and families to take care of them. Sometimes their family as well is living at the platform due to poverty. Children do not go to school and lack health facilities. There is no proper and regular source to feed these children and they depend largely on begging or leftover food from pantry coaches, vending stalls and eating joints at and around the railway station. There are organizations that run kitchen to provide at least one meal to the children. The children try to get work in establishments near the railway station and small children engage themselves in begging outside temples near Connaught Place area of Delhi. The average income for these children is INR 30 (0.65 Euro). The children commonly suffer from stomach infection, fever, dermatological diseases, and wounds and in some cases Tuberculosis. Small children below the age of 12 years are worst affected because senior children exploit them. Susceptibility to illness is mainly due to the bad and unclean living conditions and lack of nutritional food.

State Governments have been empowered to establish and maintain Children's Homes for children in need of care and protection. However, there is not enough space for all the children. Furthermore, in many cases, children do go back to the same platform because the Government does not effectively implement specific programmes and policies for their rehabilitation. In all these circumstances, right to adequate food, housing, education, and health of these children is grossly violated. Under the 'Juvenile Justice Act 2000' the State Government of Delhi has the obligation to provide for the children's need for care and protection. The State Government is not only bound to its duties by the Indian Constitution, but also by international conventions and agreements.

In Delhi any child in need of care and protection may be brought before the Child Welfare Committee by any police officer, public servant, child line (a registered voluntary organization) or other voluntary organization, social worker or by the child himself. There are cases that remain unreported to this committee and hence it is not possible to figure out the precise number of children in question. Roughly 30 percent of the children at the platform are girls; girls are more vulnerable, especially to sexual violence by other destitute children at the platform and other persons, sometimes, sex is treated as a weapon against girls between the different groups.

No steps are taken to rectify matter and protect children. Such cases can be found at different

railway platforms and States in India. In the absence of any monitoring mechanism to ensure the protection and safety of children the State is in breach of its duties under International covenants.

As a State party to the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights India and therefore Delhi is duty-bound under international law to protect and fulfil its people's human rights. By not implementing the special rights for children and the lack of attention given to the children at the railway station of New Delhi, the State Government of Delhi is not fulfilling the Right to housing, education, health, and food of these children. The State is failing in its duties to ensure that the children are provided with an adequate standard of living. The State should undertake measures prevent children from ending up on the streets and protect them from all forms of violence and respect, protect and fulfil their rights.

Case 37: Weavers in Varanasi face hunger and starvation

400 weaver families mostly Dalits, in village Shankarpur of district Varanasi in Uttar Pradesh continue to face hunger and starvation due to slow down in the weaving industry. Despite several starvation deaths and protests from the weavers many continue to be excluded from social programme, face starvation and are reduced to begging for food.

After agriculture, weaving is the lifeline in the eastern part of Uttar Pradesh. There are an estimated 5 lakh (0.5 million) weavers in the district of Varanasi in Uttar Pradesh. The weavers are mostly Dalits and face discrimination in society. As a result of a slowdown in the weaving industry since the last four to five years, many weavers have lost their jobs, and are barely surviving due to lack of other income. Not all have been able to find an alternative means of livelihood and source to feed themselves. They depend mainly on the public distribution system (PDS) for their survival.

The public distribution system in India is made up of ration shops across the country through which grains, sugar, cooking oil and so on are sold at subsidized rates. Depending on the type of card allotted, a family is entitled to subsidised items from the ration shops. Persons below the poverty line can get a BPL (Below Poverty Line) card. The poorest among the BPL families are entitled to "red cards" for the AAY (Antyodaya Anna Yojana Scheme), which entitles them to highly subsidized rates of wheat and rice. The process of identifying the poor is flawed as many times the poorest do not get identified as AAY recipients.

Despite three starvation deaths in the Vishambhar family and one in the Kanhaiya family, 400 weaver families mostly Dalits, in village Shankarpur of district Varanasi in Uttar Pradesh continue to face hunger and starvation. One woman and two of her children died in village Shankarpur, Varanasi, due to starvation and hunger related diseases. Mrs. Jigna Devi Vishambhar died on 16th of April, 2005, her 16 years old daughter named Soni died on 21st of April, and on 21st of May the two-month old son died. The family was without any source of income, since Mr. Vishambhar lost his job as a weaver. Another weaver Mr. Kanhaiya died on 18th of September 2005 also due to starvation. However, the Vishambhar and Kanhaiya families were not identified as beneficiaries of subsidised food grains from the state social programmes. This is the plight faced by 400 other weaver families living in that area. Despite of a previous FIAN action on the case, the Vishambhar and other weaver families do not have the AAY (Antyodaya Anna Yojana Scheme) card. The authorities however maintain that they issued the AAY "red card" to Vishambhar. The family continues to be excluded from the social programmes, face starvation and is reduced to begging for food.

On August 22, 2005 FIAN India organized a round table meeting with Mr. Jean Ziegler, the United Nations Special Rapporteur on the right to food, in the Indian capital city of New Delhi, with FIAN participants from different parts of the country and members from other organizations and networks. During this meeting Mr. Vishambhar informed Mr. Ziegler about the grave situation faced by the weavers including the deaths due to starvation. International pressure by FIAN International along with a continuous and massive campaign by the PVCHR (People's Vigilance Committee for Human Rights) and the Bunkar Dastkar Adhikar Manch (Forum for weaver rights) lead to a success in the struggle against hunger in India. The Indian authorities met their

obligations under the right to food towards two weaver families who experienced starvation deaths and announced to take necessary steps to improve the lives of weavers in Varanasi.

FIAN International launched a campaign on World Food Day 2005, October 16th, to address this issue. Protest letters have been sent out, post card petitions gathered and demonstrations as well as public meetings held in order to highlight the plight of all those weavers suffering from hunger and starvation. The focus was on two families: The Kanhaiya family and Vishambhar family.

The sustained campaign in India by PVCHR and the Bunkar Dastkar Adhikar Manch as well as the international Urgent Action campaign by FIAN International and the Asian Human Rights Commission put pressure on the Indian authorities to fulfil their obligations under the right to food towards the weavers and their families. Mrs. Hosila Devi and Mr. Vishambhar received the red AAY card; Mrs. Devi additionally received ten thousand rupees under the National Family Benefit scheme and furthermore got an employment as a cook in a public school. The Government has also promised to take necessary steps to improve the condition of the weavers and to address the hunger and starvation situation.

However, the struggle of the weavers and their families is far from over and requires continued support. The recent success is an encouraging example on how concerted action and monitoring can bring about a change in the lives of those struggling for the realisation of the right to food.

As a State party to the International Covenant on Economic, Social, and Cultural rights India and therefore Uttar Pradesh is duty-bound under international law to fulfil its people's right to feed themselves. By an improper implementation of the existing welfare schemes, the State Government of Uttar Pradesh fails to fulfil the right to food of many weaver families. Under the human right to food, States are obliged to guarantee a minimum food income.

Case 38: Implementation of mid day meal scheme ensures the right to food of children, Uttar Pradesh. Out of school children denied mid day meals faced malnutrition

Mid Day meals address the problem of class room hunger and under nourishment among the children and ensures the children's right to food. The Mid-Day Meal scheme guarantees all children in government primary schools a cooked meal. However, children who do not go to school do not have the possibility to get food

States like Tamilnadu and Kerala had introduced mid day meal scheme in 1985 and 1995 respectively and National level mid day meal programme was launched in 1997-98 for primary level children, covering all the government and government aided school. Despite the importance attached to the scheme of midday meal, states like Uttar Pradesh, Bihar, and Jharkhand were yet to implement the scheme. FIAN started an intensive campaign through its case work and Fact Finding Mission (FFM) from year 2002. Although this work was focused on government owned primary school in village Khiri, Block Karaon, District Allahabad (UP). This is one of the most backward and tribal area of UP. FIAN organized FFM in 2003 and 2004. In between FIAN also organized other training and capacity building programmes for the community as well as the teachers in the area. FIAN also urged the Supreme Court of India to consider ways of holding these states accountable for this lapse and to order the state government to submit affidavits explaining why mid day meals are not being provided. At last, due to continuous pressure by FIAN, others Civil Society Organisations and the Supreme Court directions, the Government of Uttar Pradesh started the mid-day-meal scheme in 16 districts, including Allahabad district, from September 2003.

As a result of continuous pressure and advocacy from alliances of FIAN movement, mentioning the report submitted by FIAN, the Supreme Court again directed the State government to implement the scheme through out the state in 2004.

To meet the rising demands by FIAN and its alliances for the implementation of the mid day meal scheme, the central government allowed the U P state government to use 15 % of Prime Minister Gramodya Yojana (Prime Minister Village Development Scheme) for cooking cost of the meal

which will be managed by the local self government unit at every village and city level.

Consequently, Uttar Pradesh government started the cooked mid day meal scheme from October 2004 all over the state. As a result, Ninety One thousands four hundred twenty five (91,425) primary schools and around 17 million children are now being directly benefited from this scheme.

The Government of India provides only 1 INR (Indian Rupee) per child for . (1 Euro = 55 INR)

But on June 16, 2006 the Government of India decided to give INR 1.50 per child from July 2006 onwards. The Government of India has also suggested to all the states to provide 50 paise for each child thus the total allocation will be INR 2 per student for Mid Day Meal Scheme (MDMS). State governments of Uttar Pradesh and Uttaranchal are also ready to contribute 50 paise as suggested by the Government of India This increase from 1 INR to 2 INR per child will help towards improving the quality of the mid day meals. (1 INR = 100 paises, 1 Euro = 100 cents). Earlier minimum calorie intake per child granted under the scheme was 300 calories and 12 gram of protein, which has now been increased to 450 calories and 12 gram of protein per child.

Children who do not go to school do not get the benefit under the MDMS and face hunger and malnutrition.

As a state party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the state of Uttar Pradesh is duty bound to fulfil the children's right to adequate food. By providing the mid day meals the state is complying by its obligations. However, the state has to ensure that the meals provided are adequate, nutritional and the scheme is implemented without discrimination. The State should also formulate measures to ensure that out of school children have the same benefits under the MDMS.

Case 39: Flood victims do not get rehabilitation in Bahraich, Uttar Pradesh

Around 1500 families, mainly belonging to the Dalit community, lost their agricultural land and houses through a devastating flood of the river Ghaghara in Bahraich district of Uttar Pradesh in the year 2000 and 2001. So far these people have hardly received any assistance from the government. With the loss of their land, these people lost their major source of livelihood and face malnutrition due to lack of access to food.

Bahraich district in the Indian state of Uttar Pradesh is situated at the border with Nepal. Ghaghara is a huge river, which is particularly devastating during the rainy season. The adjacent areas of the river are quite fertile, yet during rainy season the smooth river becomes a furious flood, which frequently changes its track. The peasants on the shores of river Ghaghara are used to the land being drowned in the floods and they are aware of the risk of cultivating this land. In order to protect the land from erosion, the Indian government had constructed a check-wall on one side of the river. This has led to stronger erosion on other parts of the river. After this construction not only parts of the fields eroded, but whole villages and agricultural fields were washed away. During the year 2000 and 2001 about 1500 families lost their homes and fields through floods. The victims mainly belong to Dalit and other marginalized communities whose main occupation is agriculture. The soil erosion compelled local residents to shift to safer places, forcing them to lose their traditional and other sources of livelihood. The construction of the check-wall has benefited a few well-off farmers and has at the same time become the main cause for the destruction of a large number of poor farmers' livelihoods.

Government schemes meant for the benefit of the poor are still not fully enforced. Not all victims received BPL (Below Poverty Line) ration cards, new land, job, or houses. Instead, many still have to pay land taxes for their submerged land. Some peasants got land for their resettlement after paying INR¹⁶⁸ 5000 per bigha¹⁶⁹ to landholders but this land is also in the mouth of Ghaghara. People are now struggling for survival and they depend on labour work, which is not available locally, so the displaced people are compelled to migrate to cities. Many of them have borrowed

¹⁶⁸ 1 EUR = 56.3 INR.

¹⁶⁹ 1 bigha is about 2,603.7 m².

money to meet their daily expenses. Thus nearly all of them are indebted, unable to repay loan and interest. In 2002, a survey was conducted to find out the food problem of the displaced people. Results showed that only few families have food grains required for 7 to 10 days' consumption and that displacement has resulted in most of the women and children suffering from malnutrition.

Unless the Indian state enforces the schemes meant for them, the people will continue to face starvation. FIAN has worked on this case for several years and after FIAN's intervention, Indian Government has started rehabilitation process in the area. Until now (in 2005 and 2006) 450 families have been included for BPL ration cards, 45 families have occupied some small plots of land (average 1 acre) and the government is not opposing it but neither has allotted them this land. Steps should be taken to regularise the land in favour of the flood victims. Furthermore, 78 people were given old age pension.

The paragraph 15 of the general comment No. 12 stresses: "Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that directly. This obligation also applies for persons who are victims of natural calamity or other disasters."

As a state party to the International Covenant on Economic, Social and Cultural Rights, India and therefore the state of Uttar Pradesh are duty bound to fulfil the flood victims' right to adequate food. By not providing for either safety nets or for their rehabilitation, the state has failed to fulfil its obligations.

4. Special Topics

4.1 A case study of Malsinghwala, the “Village for Sale” in Punjab¹⁷⁰

On July 2, 2005, Malsinghwala a village in Budhalada block in Mansa district of Punjab was put on ‘SALE’ by the villagers. The population of the village is 2091 and has a sex ratio of 735 women per thousand males. In October 2006, India Today news magazine declared Punjab¹⁷¹ as the overall best state in the country for the third consecutive year. This is in the same state where Malsinghwala was on sale due to the drought like situation and consecutive crop failures.

Malsinghwala is one of the villages where extensive contamination of ground water has taken place due to over use of agro chemicals in the fields since last few decades. The Green Revolution considerably increased the food productivity in India but the high quantity of pesticides used in fields has resulted in serious implications such as soil and water contamination, related health problems and economic pressure on farmers due to expenses incurred on buying pesticides.¹⁷² Water and soil samples from the area reveal the presence of heavy metals banned Persistent Organic Pollutants (POPs), and high concentration of salt mainly due to use of saline ground water for irrigation which led to the formation of a layer of salt crust on the fields. Out of 1800 acres in Malsinghwala, 800 acres of agricultural land lies barren owing to the salt layering, lack of irrigation water and loss of fertility due to continuous use of pesticides. The livelihood of the villagers depends solely on agriculture so the economic condition hardly fulfils the basic needs of life. As villagers have to spend a lot on expensive pesticides, they get into huge debts to continue cultivation. In addition, contaminants affect the health of vulnerable children and aged people, who account for 45% of the population.

Some steps have been taken by the government to mitigate the problem of water contamination. According to a report published by the Central Ground Water Board the drinking water supply is provided to district towns and villages under the Rural Water Supply Scheme of Public Health Division. However, implementation is far beyond reality. Indeed, a water overhead tank installed by the government in Barech village, three kilometres away from Malsinghwala supplies water once a week to hardly 80 out of 349 households. Only few economically strong households can afford to construct an underground tank which helps in storing water, maximum for a week. Thus already poverty stricken Malsinghwala with 60% landless villagers, hardly in a position to afford two square meals a day are compelled to spend extravagantly in fetching water and fight diseases.

Malsinghwala case should not be seen as an isolated occurrence. Lack of food and water, loss of soil fertility due to huge amount of fertilizers and pesticides, incidence of diseases, huge debts, and indifference of the concerned authorities have been forcing other Indian villagers to put their villages for “Sale or Auction”.¹⁷³

4.2. Special Economic Zones: Profits at Any Cost¹⁷⁴

By C.R. Bijoy

No other economic ‘reform’ in India has seen such a rapid expansion of militant protests and conflicts as Special Economic Zones (SEZs). Local inhabitants, particularly in Raigad (Maharashtra), Jhajjar (Haryana) and Nandigram (West Bengal) cutting across caste, class and party affiliation rose up in revolt, with Nandigram seeing the most militant uprising leading to at least 14 deaths

170 This part is inspired by a research conducted by the Janhit Foundation: A Case Study of Malsinghwala – The village for Sale in Punjab; Violation of Human Right to Water, Janhit Foundation, available at: <http://www.janhitfoundation.in/publications/>.

171 Called “The Granary of India” or “The Bread Basket of India”, Indian Punjab produces 1% of the world’s rice, 2% of its wheat, and 2% of its cotton. From Punjab government Internet site, available at: <http://punjabgovt.nic.in/punjabatagance/LeadingByExample.htm>.

172 Consuming 2% of world’s total pesticides consumption, India stands at third position among the highest consumers in the world and that of highest in South Asia. About 20% of Indian food products contain pesticide residues above tolerance level compared to only 2% globally, as reported by the World Health Organization, in: A Case Study of Malsinghwala - The Village for Sale in Punjab; Violation of Human Right to Water, Janhit Foundation, available at: <http://www.janhitfoundation.in/publications/>.

173 Harkishanpura, a village in Bhatinda district, became the trendsetter by putting itself for sale in January 2001. Since then five other villages are awaiting auction.

174 References for this article:

1. Aggarwal, Aradhna. Revisiting the Policy Debate, Economic and Political Weekly, November 4, 2006, pp. 4533-4536
2. Gopalakrishnan, Shankar. Negative Aspects of Special Economic Zones in China, Economic and Political Weekly, April 28, 2007, pp. 1492-1494.
3. <http://sezindia.nic.in/HTMLS/about.htm>

in police firing on 14 March 2007. These come in the wake of growing struggles against land acquisitions for industries met nonchalantly with deadly state terror, as in Kashipur, Lanjigarh and Kalinganagar in Orissa, Singur in West Bengal or Bastar in Chhattisgarh turning central India into a war torn zone.

The intensification of the expropriation of livelihood resources of the masses since the 1990s with the launch of the New Economic Policy, followed by what is popularly referred to as 'globalisation', which in fact is liberalization, privatization and globalization, facilitated by the troika - the World Bank, International Monetary Fund and World Trade Organisation - has seen an outburst of conflict between the state and the people. The rapid accumulation of capital, the emergence of finance capital as the engine of change and control, and the materialization of the marauding global capital are set to change the political discourse of geographies and her peoples.

SEZ that promises to usher in a new era of rapid growth and employment as never before evoke intense debate. The West Bengal government has put all SEZ's on hold. The plans for a large multi product SEZ in Kalinga Nagar has been dropped by the Orissa government. Rehabilitation policies are being revised by Punjab and Haryana. Maharashtra government is planning to reduce the size of the planned MahaMumbai SEZ. The Finance Ministry and the Reserve bank of India are unhappy with the SEZ policy on grounds that the policy offers excessive exemptions which will lead to revenue loss and spur real estate speculation. The Rural Development Ministry objected to the large-scale acquisition of agricultural land threatening spinning off further food insecurity. The IMF and the Asian Development Bank have criticised the tax exemptions being provided making SEZ 'business-friendly' rather than 'market-friendly', inherently violating market principles and market reform which they ardently promote.

A number of patch work remedies are proposed. Avoidance of acquisition of prime agricultural land, improvement in the compensation package offered in rehabilitation, offer of shares in the companies in the project to the displaced, compensation for agricultural labourers and sharecroppers besides land owners, ceiling on the area of SEZ's and no land acquisition by the state governments but instead the private developer to buy land at the market price directly from the land owners are some proposed remedies. The Parliamentary Committee on Commerce has demanded a freeze on new SEZs pending a fresh look at the policy, ban on use of irrigated crop land, a ceiling on the extent of land for SEZs and that too on lease rather than purchase. The Commerce Ministry meanwhile issued a new notification making SEZ developers responsible for the rehabilitation of displaced persons "as per the policies of the State government". At the same time the Commerce Ministry has further liberalized exemption to now include contractors in SEZ units to claim exemptions to further promote SEZs while the Finance Ministry on the other hand is trying to tighten tax exemptions.

The Manufacturing of SEZ, the High-Speed Engine of Growth

However, what is noteworthy is that SEZ policy, followed by SEZ Act and Rules, emerged and established without much parliamentary debate over the last eight years across both the National Democratic Alliance and the United Progressive Alliance regimes. The SEZ has, as its predecessor, the Export Processing Zones (EPZs) which are 'industrial zones with special incentives to attract foreign investment in which imported materials undergo some degree of processing before being exported again' (The International Labour Organisation, 1998). EPZs are 'enclaves' dedicated to the promotion of export processing, isolated and insulated from the domestic economy with relaxed and liberal state controls in import, infrastructure and, in some cases, labour laws, simplified bureaucratic procedure, and favoured treatment to foreign and often domestic investors. The investors are to process all intermediate imports within the zone and to export without adversely affecting the domestic economy, attract foreign investment into and promote exports from the industrial and manufacturing sector within these initiatives that are not be extended beyond a specified geographical area, namely a 'zone'.

EPZs emerged in response to the emergence of finance and global capital as the major economic players, the rapidly accumulating capital that seeks to move out to invest, the growing competition between developing nations to attract foreign direct investment and the thirst of capital to have an

unfettered play in the pursuit of profit. Around 1967 Western capitalism was faced with a crisis of stagnation in growth, co-existing with high rates of inflation creating an economic downturn and slump. To snap out of this crisis, capitalism evolved a mechanism where the adjustment process heavily depended on lowering the cost of labour by migration of capital to the peripheral regions of South Asia in the form of EPZ. This led to the decision of US firms to locate assembly operations in low-cost East Asian locations in the 1960s, particularly South Korea and Taiwan, where the US had particular political and strategic interest besides influence. Both these countries established their first EPZs in 1965 around the same time as India. Now an international phenomenon, EPZs increased from 176 across 47 countries in 1986 to over 3,000 across 116 countries by 2002. This does not include the enormous numbers of industrial parks, free zones and other areas which strongly resemble EPZ's but are not officially declared as such. Three countries in particular - Taiwan, South Korea and China - are often cited as major successes in using EPZ's as part of their industrialisation strategy.

South Korea under US occupation and Taiwan under the Kuomintang had gone through far-reaching land reforms freeing agricultural surpluses for use in industrialization with the virtual elimination of the feudal landlordism. EPZ formed a part of the larger domestic industrial and economic development of these countries through export-oriented strategy. Moreover the EPZs were not central to this strategy.

Taiwan's first export-processing zone was set-up in 1965 in Chien-Jiang, Kaohsiung City, followed by the opening of more zones managed by Taiwan's Export Processing Zones Administration. Average annual growth in exports was high at about 61 percent from 1967-79 but new investment had largely dried up by the early 1980s with infrastructure becoming redundant, duty-free arrangements improving elsewhere in Taiwan, and investment migrating elsewhere in the Asian region in search of greener pastures in terms of higher returns per dollar of investment and lower wage rates.

South Korea organized special industrial parks and export processing zones focused on the under-developed regions away from the high investment receiving Seoul. The industrial parks for export production and the export-promotion zones were initially expected to spearhead the development of capital-intensive heavy industries such as iron, steel, and petrochemicals, but in the 1980s shifted focus to high-technology industries as computers, semiconductors, telecommunications, and biotechnologies. But these zones waned in importance that by 1985 the SEZ manufactured good exports amounted to only 2.9 percent of the country's total manufacturing exports.

In the case of China, the situation was different with a socialist command economy, state ownership of land in urban areas, and village commune ownership (collectivization) of land in the rural areas, and strong labour security. EPZs for earning much needed foreign exchange earnings commenced in the 1960s and SEZs beginning in 1979 with four SEZs, at Shenzhen, Shantou, Zhuhai, and Xiamen. Hainan Island was opened as the fifth SEZ in 1984 when 'open door' economic privileges were also offered to fourteen coastal cities. This opening up was carried out while insulating the economy of the remaining region of the country, as a strategy for regional development and that too of the poorer southern coastal areas. The strategy adopted was liberalization in a gradual manner with SEZ as the vanguard of market socialism. Unlike South Korea and Taiwan, SEZ in China was of central political and economic importance. In 1981, China clamped a moratorium on further SEZs. Large scale foreign investment came in from Hong Kong, Macao and Taiwan to tap geographical proximity and economic advantages as wage rates. The 1987 Land Administration Law provided the country's first property rights with provincial governments, municipalities, and SEZ's also empowered to create their own land regulations as long as they did not contradict the national legislation.

By the 1990s these export promotion zones became import processing zones with net exports barely 16 percent of gross exports due to the high import component. Property markets emerged by 1991 with administrative allocation of land and rise of a speculative market in land rights. Only less than half the land transferred was actually developed. The 'Zone fever' spread with the provincial and local government declaring special zones that the number was estimated from 6000 to 8700 zones covering 15,000 square kilometres, often in violation of national

or provincial regulations that more than 1000 such zones were cancelled by the national government. Uncontrolled speculative spin-offs forced the government to impose restrictions on the construction of hotels, restaurants, and commercial buildings. Economic and Technical Development Zones (ETDZ) and National Industrial Development Zones for New and Advanced Technology (NIDZNAT), smaller high-technology oriented zones, sprung up close to the cities numbering 54 by 2006. 5 million hectares of arable land were transferred to such zones between 1986 and 1995. By 1997 the government imposed a blanket moratorium on conversion of land-use across the country followed by a law in 1998 restricting conversion of agricultural land. The Hainan Development Bank that invested heavily in such zones closed down bankrupt. Some of the biggest public sector corporations faced financial crises and bankruptcies. The preferential tax treatment offered to investors are being removed and made uniform across the country. In Shenzhen, the biggest of all SEZs, a third of the workers received less than minimum wages and about half the firms owed workers wage arrears. Runaway pollution problems cost the country more than US\$200 billion a year, roughly 10 percent of China's gross domestic product and pollution-related deaths is estimated at 750,000 annually.

India set up the first special EPZ in Kandla, Gujarat, as early as in 1965. Santacruz Electronics Export Processing Zone (SEEPZ) followed becoming functional in 1973. Four more zones were set up by the Central government in 1984 at Kochi (Kerala), Chennai (Tamil Nadu), Falta (West Bengal), and Noida (Uttar Pradesh). Another one was set up in Visakhapatnam (Andhra Pradesh). SEEPZ in Mumbai for instance transformed the labour-intensive jewellery industry with its cottage industry status to a highly mechanized modern industry accounting for 55 percent of the Indian jewellery exports in 2002-03. The unit established by Tata Group in partnership with Burroughs, an American company, in 1977 in SEEPZ saw the beginning of India's export in software and peripherals. Citibank established a 100 per cent foreign-owned, export-oriented, offshore software company in SEEPZ in 1985. The first private EPZ started operations in 1998 in Surat, Gujarat. All these eight EPZs, including the one at Surat, have since been converted to the new SEZ scheme.

Foreign Direct Investment (FDI) to the total investment in EPZ was a low at 16.7 percent. The share of EPZ in the country's export was a mere 5 percent in 2004-05 accounting for 1 percent of employment in the factory sector and 0.32 percent of factory investment. All these indicate that the hype over EPZ has no basis as far as India is concerned.

EPZs were justified as necessary in order to overcome the often repeated shortcomings on account of the multiplicity of controls and clearances; absence of world-class infrastructure, and an unstable fiscal regime and with a view to attract larger foreign investments in India. The Special Economic Zones (SEZs) Policy was announced in April 2000 offering more lucrative incentives/benefits. During the period 1 November 2000 to 9 February 2006 SEZs functioned under the provisions of the Foreign Trade Policy with all existing zones being converted into SEZs. Statutes to formalize the fiscal incentives became operational subsequently.

The Special Economic Zones Act, 2005, passed by Parliament without much parliamentary debate in May, 2005 receiving the Presidential assent on the 23 June, 2005 supported by SEZ Rules, came into effect on 10 February, 2006. The Left parties opposed any relaxation of labour laws and insisted on the removal of two clauses in the Bill pertaining to the Central government's power to modify or withdraw the application of any law to SEZ's, and a clause empowering the State governments to withdraw application of labour laws in SEZ's which were amended by the Commerce Minister through amendments in Parliament. The debate over SEZ Act came up only with people's resistance that emerged subsequently.

Unravelling SEZ: A Boon or a Bane

The Act provides for drastic simplification of procedures and for single window clearance on matters relating to central as well as state governments for generating additional economic activity; promoting exports of goods and services, investment from domestic and foreign sources; creating employment opportunities; and developing infrastructure facilities. Single Window SEZ approval mechanism is provided through a 19 member inter-ministerial SEZ Board of Approval

(BoA). The functioning of the SEZs is governed by a three tier administrative set up. The Board of Approval is the apex body. Each Zone has an Approval Committee dealing with approval of units in the SEZs and other related issues. Each Zone is headed by a Development Commissioner, who is ex-officio chairperson of the Approval Committee. Once approved the Central Government notifies the area of the SEZ and units are allowed to be set up in the SEZ.

A whole range of incentives and facilities are offered under the Act including duty free import/domestic procurement of goods; 100% Income Tax exemption on export income; exemption from minimum alternate tax, Central Sales Tax, Service Tax and State sales tax and other levies, customs/excise duties, and dividend distribution tax; external commercial borrowing up to US\$500 million in a year is permitted without any maturity restriction; provision of standard factories/plots at low rents with extended lease period, and infrastructure and utilities. Most taxes and cesses are not applicable to goods procured from the Domestic Tariff Area. The fifteen year income tax holiday consists of total exemption for the first five years, 50% for the next five years, and 50% on reinvested export profits for the following five years, while Developers get a 10 year 100% tax exemption. Electricity taxes and duties are to be removed for electricity that is to be used within the processing area.

The main difference between an EPZ and SEZ is that the former is just an industrial enclave while the SEZ is an integrated township with fully developed infrastructure. In addition, state governments also enacted their own SEZ laws, primarily to cover state subjects.

All that is required to create an SEZ is simply finding land for it. Objectives of exports, employment, industrialization etc., are in effect deemed irrelevant to the declaration of the SEZ. It is however required that the unit would have a positive net foreign exchange earning within the first five years; the Developer confirms availability of space in the processing area for the unit, the applicant (a resident with a good financial record) undertakes to fulfil applicable environmental and pollution control norms; certain industries are to fulfil the respective sector-specific requirements; and units involving transfer of machinery from the Domestic Tariff Area (as per a clause added in October 2006) will not be approved. The State government is also to provide water, electricity, and other services required by the developer. SEZ's includes restaurants, housing and apartments, gymnasiums, club houses, multiplexes, shopping arcades and retail space, schools, convention or business centres and even swimming pools. Hotels are allowed in all SEZ's except IT, gems, and biotech SEZ's. The performance of the SEZ units is to be periodically monitored by the Approval Committee and units are liable for penal action under the provision of Foreign Trade (Development and Regulation) Act, in case of violation of the conditions of the approval.

341 SEZs were granted formal approvals granted as on July, 2007 covering a land area of 46,056.1 hectares. Of this, 130 have been notified as on 10 July 2007 for an area of 16,649.32428 hectares. Further in-principle approvals have been granted for an additional 170 for 148,768.3 hectares. The Ministry of Commerce claims that these zones would attract investment of about INR 100,000 crore including Foreign Direct Investment (FDI) of US\$5-6 billion creating 500,000 jobs by end of 2007. Total investment expected by end 2009 is INR 300,000 crore creating additional 40 lakh jobs, by December 2009.

The critique of SEZ has largely been around the issue of land acquisition and its fall out in terms of how much land, what kind of land and the compensation package; but SEZ portends much more than these. There is also the anticipation that SEZs will take the country to unprecedented growth levels. Speculations are rife with cynicism alongside that these are misplaced. But what is not being recognized nor debated is that SEZ, more than an 'economic growth model', is more of a 'governance model' that gives almost full rein to capital' and that too predatory capital.

The Transfer of Power: Abrogation of Democracy to Corporate Governance

SEZ's will be notified as 'industrial townships' under Article 243Q of the Constitution which exempts them from the provisions of Part IX of the Constitution that provides for elected local governments. Instead' an industrial township authority is constituted with the same powers and duties as a municipal body. There would be no democratic local governance institutions in SEZs.

The developer is to construct the zone and also effectively in control of the local governance in terms of provision of infrastructure and basic services such as education, health, transportation and so on. The Development Commissioner, along with the Developer, effectively replaces local democratic institutions centralizing powers with every arm of the state such as public services, police, judiciary, and local governance coming under the control of the Development Commissioner, the Developer and the Central government. This is evident from the three tier governance system in place.

Full powers are bestowed by Section 49 of the SEZ Act on the Central government to modify or repeal any Central law in its application to SEZs (with the exception of labour law), a power normally vested in the parliament. This exception is 'relating to trade unions, industrial and labour disputes, welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits applicable in any Special Economic Zones.' However, this exception is virtually nullified by the Rules that require that State governments declare SEZ's to be public utility services and delegate the powers of the Labour Commissioner to the Development Commissioner whose specified mandate is for 'speedy development' of the SEZ, especially the promotion of exports. Moreover, the SEZ Act only bars the Central government from relaxing labour laws but not the States. These include exemptions from the Minimum Wages Act, Contract Labour (Regulation and Abolition) Act, Employees State Insurance Scheme, requirements for posting information, and so on.

The Development Commissioner in most States is the authority for most clearances and for labour rights. The judicial and policing functions are altered with 'No investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer' without the permission of the Development Commissioner under Section 22 of the Act with the exception being only in the case of 'notified offences', notified by the Central government under section 21 of the Act, which are also to be intimated to the Development Commissioner. Special courts are provided under the Act in SEZ's for both civil and criminal matters that alone can try and adjudicate any civil dispute within an SEZ or any trial of a 'notified offence'. Ordinary criminal trials of non-notified offences can take place in ordinary courts, but investigation of such crimes is not possible without the authorization of the Development Commissioner. Appeals from the special courts will lie directly with the High Court of the State. These provisions produce a system of a separate judiciary for the SEZ with the Development Commissioner playing a key role. The net effect is the transfer of power over resources, governance, and people within the Zone to big business and investment capital, and the creation of a new economic, geographical, and political reality.

The SEZ Act itself insists that all those employed or residing in the Zone is to have an identity card with entry restricted to only 'authorized persons' into the processing area. The Zone will effectively be a secured enclosure, fenced off by boundary wall or wire mesh of a minimum height of two meters forty centimetres with top sixty centimetres being barbed wire fencing with mild steel angle and with specified entry and exit points. This clause was replaced in March 2007, with a requirement that the processing area and an FTWZ (Free Trade Warehousing Zones) shall be 'fully secured with measures approved by the Board of Approval.'

Economic Parasitism

Unlike India, the so-called 'success' stories of Taiwan, South Korea and China have two important features namely, (a) in all these countries the EPZs/SEZs followed a thorough land reforms that effectively eliminated the feudal landlordism which in the case of India remain cursory and (b) EPZs/SEZs formed part of a national economic and development strategy of the countries as a whole whereas India expects the SEZs to be the engine of rapid transformation of the national economy and development. That these 'successes' came with its own baggage of acute problems as enumerated earlier is another fact. Together, what it portends is further economic and political crisis besides the social and environmental fallouts.

SEZs are expected to bring in a flood of investment, especially FDI due to the unbridled incentives. INR 3,000 crore is estimated to be invested in the SEZs by the Ministry of Commerce by the end of the fiscal year 2006 - 2007. In contrast, India received an FDI of INR 1.06 lakh crore in 2006

(Union Budget 2007-2008). FDI also has shown a preference to acquire existing companies or invest in infrastructure rather than greenfield export-oriented projects. The projected large FDI into SEZs is sceptically viewed as chasing a mirage. FDI as a percentage of total investment in EPZs varied in Asia from a high 90% in Malaysia and 85% in Taiwan to a low of 16.7% in, significantly, India. Once the infrastructure is in place, production, and exports increases initially following initial large investments. Later, there is a 'levelling off' of foreign investment and exports. The cost of labour and general costs tend to rise subsequently driven by increased cost of living and services.

The exports are offset with high import component lowering net exports induced also by the reduction of duties and tariffs on imports. The importance of Zone to export promotion then declines leading to the inevitable reappraisal and reintegration into the domestic economy. In addition, under WTO the incentives provided in SEZs are treated as 'export subsidies' which lead to countervailing duties by the importing countries under the WTO Agreement on Subsidies and Countervailing Measures. Already India is subject to the largest number of countervailing measures for its exports from EPZs (and now SEZs) than any other country. And SEZ exports currently ranges between 7% to 9% of India's total exports only, which falls to half if one were to account for the invisibles.

The incentives dished out to SEZs will create a tilted playing field between SEZ and non-SEZ investors. Given the incentives, SEZs, rather than start new initiatives, would simply attract existing enterprises to relocate themselves from the domestic economy to SEZs to avail of the incentives in order to maximize profits. This would amount to a mere shift in existing investment from the outside to the SEZs rather than new investments. Of the SEZs notified, IT/ITES constituted the bulk of them with single sector IT SEZ forming the majority. This is followed by Textiles/Apparel/Wool and Pharma/chemicals. It looks that the relocation process is in effective swing as can be noticed by the exceptional number in the IT sector. The government in November 2006 itself decided to stop further in-principle approval of IT SEZs. The Software Technology Parks Initiative, the main scheme is also scheduled to end by 2009. The majority of SEZ investment is from the private sector. Real estate sector applicants form the majority in the private sector followed by IT companies forming nearly three quarters of non-public sector approvals. IT and multi product SEZ's, form the bulk of all applications by real estate companies. Real estate development rather than export generation is a factor to reckon with.

Further, with strains emerging, the removal of the imposition of duties on sales of products in the Domestic Tariff Area would result in the entry of SEZ units into production for the domestic market with its damaging effect on the competitiveness of existing production outside SEZs for the domestic market. This portends closures of industries and resultant unemployment outside the SEZs.

With favoured position and pampering along with relaxation of regulatory mechanism, SEZs could become the hub of economic offences. For instance, the 33rd Report of the Parliamentary Standing Committee on Finance found that show cause notices had been issued for more than INR 3,400 crore between 2002-2003 and 2004-2005 for fraud in export oriented units (EOU's) and some other export schemes.

Redrawing Land Maps

The establishment of SEZs, and a large number of them, requires substantial land to be acquired or purchased by developers. About 2 lakh hectares are required for establishing the approved and in-principle approved SEZs. The notorious Land Acquisition Act 1894 has been used to acquire lands in many cases whether the developer is a public sector or private sector, at a price well below market prices not taking the dependants of the land as an affected party in the acquisition normally. Land can be acquired under this Act only for 'public purpose' which are defined in Section 3(f) of the Land Acquisition Act and does not include companies. However, the judiciary has deftly reinterpreted the law to say that once the government has acquired a land, the government can sell, dispose or transfer rights of its land at will to whomsoever it wants to, irrespective of the original intent of acquisition. In effect, land acquisition by the State has

made a decisive shift from 'public purpose' to also 'private profit'. But with militant resistance, the developer purchasing land directly from the owner without the mediation of the state is a proposed remedy.

Acquisition of prime agricultural land became a major issue with all its serious implication which is now attempted to be restricted with restriction of acquisition on single crop agricultural land alone beside waste and barren land. Double cropped agricultural land, if necessary, is to be limited to 10 percent of the total land. More over such areas have powerful farming interests and is at the heart of agricultural economies. That the category of waste and barren land most often constitute survival resource base for the most marginalized in vast numbers is ignored. Land acquisitions, or alternatively land purchases, are therefore to increasingly focus on the marginal and tribal areas. Official rehabilitation schemes rarely work satisfactorily, be it by the state or the private sector. However, holding the state responsible is easier than the private purchaser in a democracy. The proposition to take the land on lease is also floated to ostensibly ensure permanent income to the oustees.

The lands are invariably located in close proximity to raw materials, urban centres, and transportation facilities. At least 35 percent of the acquired land is to be used as processing area while the rest could be for residential, and recreational facilities. The acquisition bypasses and belittles local self-governance institutions of the panchayats. The SEZs moreover become the nodal points for speculation fuelling large scale real estate activities around the Zones with the emergence of powerful land mafias in connivance with authorities to dispossess people of their lands in the surrounding areas driving land prices up within SEZs and around it. The attraction to SEZs is likely to vanish in due course defeating the main attraction of low cost SEZ. Almost as though recognizing this reality, the Reserve Bank of India has asked the banks to treat SEZ lending as real estate business and not infrastructure.

Promoting Disparities and False Hopes

SEZs will aggravate regional disparities. Over three-quarters of all approved SEZs are located in six States - Andhra Pradesh, Gujarat, Haryana, Karnataka, Maharashtra, and Tamil Nadu. Maharashtra and Andhra Pradesh alone account for more than a third of all approvals. These states are all relatively well developed States with high industrial capacity. These are also highly urbanized with the partial exception of Maharashtra. Obviously investment is channelised to areas of high levels of industry and investment which further propels these states to showcase their 'success' further.

Employment to the tune of 5 lakh to as much as 40 lakh is bandied about officially by the Ministry of Commerce. As indicated earlier, relocation of industries from outside to the SEZs to take advantage of the relative advantage would simply mean mostly the translocation or migration of existing labour than generation of new employment. In addition, the likely negative impact of SEZs on manufacturing outside the SEZs could spell a decline in employment outside. Between 1998 and 2003, while investments grew by 73%, employment growth showed only a 13.7% rise in EPZs. Net increase in employment, considering the growth in employment in SEZs, would therefore be actually far low.

The working conditions, in the context of the relaxed application of labour laws, could continue the turnover rate of 30% or 40% seen in the erstwhile EPZs. Labour abuse and violence in EPZs has led to consumer movements in the US for instance, demanding multinationals to respect labour rights. Workers are told that they could not organise trade unions because of the 'zone' status which are declared public utility services, a designation under the Industrial Disputes Act, 1947. Labour inspectors are reportedly issued orders by the Commerce Ministry not to visit the zones without prior permission from the Ministry. There is also the unemployment caused due to land acquisition or change in land use in and outside SEZ. The long term impact such as impact of pollution and change in land use in the surrounding areas could be colossal if one is to go by past experience.

The loss to the government on account of SEZ is incredible. In 2004 - 2005, the government

already incurred a loss of INR. 41,000 crore - a staggering 72% of customs revenues and 23% of total indirect tax revenue of any kind. The Finance Ministry estimates that INR. 1.75 lakh crore will be lost over the next five years.

These capital driven enclaves have all the bearings of impending economic crisis and the concomitant political and legal turmoil. SEZs are not simply about land-based displacement-inducing projects driven by the nexus of capital and state. It is also about the replacement of democracy by corporate governance, the new form of governance by capital supplanting people. It is also about growth with inequity, and social and environmental injustice. It is also about democratization of control over and governance of resources by people in response, as a matter of right and struggle.

4.3 Wealth Creation and Adivasi Homelands – the case of Greater Jharkhand

by Xavier Dias

“Poverty is therefore a most necessary and indispensable ingredient in society, without which nations and communities could not exist in a State of civilisation. It is the lot of man. It is the source of wealth, since without poverty, there could be no labour, there could be no riches, no refinement, no comfort, and no benefit to those who may be possessed of wealth”

Patrick Colquhoun (A London Police Magistrate)

Treatise on the Wealth Power and Resources of the British Empire, 1815¹⁷⁵

Introduction¹⁷⁶

This paper seeks to look at the impact and consequences of wealth creation through mineral extraction in Greater Jharkhand¹⁷⁷ from the Adivasis¹⁷⁸ and communities affected by mining point of view. It tries to question the accepted concepts and interpretations of facts hitherto set by the statuesque especially the mineral Industry and the State.

A hundred and fifty years of mining in these homelands has created billions of dollars of wealth for the State and the Industry. Adivasis have paid the price for the launch of opium traders, TATA Sons', into one of the top monopoly houses of India and it's ascend to a global company. Mineral extraction and the wealth it has created has made India a regional power¹⁷⁹, on the road to a 'developed nation' while Jharkhand the place from where this mineral is extracted echoes with starvation deaths each summer. Mining and its consequent land alienation, deforestation and in migration of outsiders is the first and major reason for the present State of pauperisation of the Adivasis.

Is this Keynesian economics that has failed? Is it internal colonisation? Is it a racist planned policy? A thorough analysis has to be made and answers sort. Plunder in the time of 'free market economics' sounds contradictory and a century and a half of sustained plunder may not always be tolerated. However one thing looks sure, if justice to the Jharkhand legal owners of the minerals is not addressed the colour of metals being plundered will turn red.

Colonisation Myths & Facts

'So that as national metaphysics teaches that man becomes all things by understanding them, this imaginative metaphysics shows that man becomes all things by not understanding them; and perhaps the latter proposition is truer than the former, for when man understands he extends his mind and takes in the things, but when he does not understand he makes the things

175 Quoted in Michael Perelman, The Invention of Capitalism.

176 Readers of this paper please note that I am neither an academician nor a researcher and hence not an intellectual. I write is taken from the subaltern classes of Jharkhand, which for them appear complicated, and try and return it to them in simpler terms, for a better praxis and mass consciousness to emerge. I do hope that the offshoot of this exchange could lead to challenging and getting challenged by the intellectual class as the present gap between knowledge and social action is acute and too dangerous to be ignored.

177 Greater Jharkhand is the homeland of Adivasis of India and comprises of the present State of Jharkhand, and Adivasi dominated regions presently in the State of Orissa, Chattisgarh and West Bengal.

178 The Indigenous Peoples of India prefer to call themselves Adivasi which means First Peoples.

179 All Uranium in India is mined in Adivasi homelands.

out of himself and becomes them by transformation himself into them”

Vico Giambatitista. *The New Science*

Columbus R.I.P.

According to historians the arrival of Columbus in the Americas is considered the birth of colonisation. What historians have missed out is the fact that two and more millenniums before Columbus set sail, peninsula India was colonised by what has been called the Aryan invasion who came across the land that is presently Afghanistan and crossed the Indus¹⁸⁰ River that borders Pakistan and India. According to D.D. Koshambi, a renowned Indian scientist, who brought in a total new dimension to the interpretations of Indian history the Aryan invasion was not only motivated by their desire for better pastoral lands but also for the technology of metal extraction (paraphrased).

Would it then be correct to say that the Adivasis nations here had a metallurgy science even before the coming of the Aryans? Or am I spinning another yarn? Being a layperson lacking in research skills I place the following arguments to support this thesis or hypothesis:

The Aryan's were a pastoral people continuously on the move in search of new territories; if they came and crossed the Indus river in search of metals too (Koshambi), it means that there were metals already being smelted here.

The other but stronger argument, for which I admit I do not have sufficient data and therefore it needs to be substantiated, is that the path that the Aryans took to reach the Indus River comes within a geological belt that is rich in hydrocarbons and not ferrous metals with the exception of Balujistan in present day South-West Pakistan which however was not in their path.

The third argument might seem more intriguing. The Rig Veda¹⁸¹ uses different adjectives to describe the Adivasis, however derogative they may be, they teach us something important. The Asurs are one of the Adivasis nations presently living here in Jharkhand whose main occupation was smelting iron. Today they are dispossessed landless wage labourers in the bauxite mines of south-west Jharkhand. In most Indian languages (rooted in Sanskrit) it has come to mean evil or the devil but more correctly demons and is so used even today¹⁸². This transition of the noun Asur to an adjective is revealing and is more than a metallic story.

WMD's of Circa 1000 BC's

At all stages during the evolution of present day human race 'might' and the 'power' that comes with it were the most sort after qualities. Therefore the discovery, possession and militaristic value of iron for these civilisation at that point of time would have been what we call a 'State of art' technology and comparable only to the recent 'shock & awe' varieties of WMD's¹⁸³.

Phantom The Devil

The emerging 'civilised' world, both Western and Oriental, in their race for domination saw all unfathomable technologies that could enhance power over the less powerful, until or unless they can compete or expropriate it, as the power of the 'devil'. As history writers scarcely analyse societies or their past from their political-economy, many of the above happenings get submerged and reduced to mythology.

Better To Reign In Hell

In India we mainstream societies too are beneficiaries of the fruits of the spread of civilisation and inheritors of this logic. It is also interesting to see this similarity in European history. The devil here was first introduced in images and folklore as seen with horns and claws. At that

180 The word Hindu got its name from this river as the later Mogul invaders pronounced the letter I as Sh.

181 The first text recordings in the world.

182 When the then General Secretary of the Hindu fascist party the BJP Sri L. K. Advani came to Ranchi in November 05 to celebrate its fifth founding anniversary of the Jharkhand State at a public meeting he called a rival political leader 'Asur'. Apart from being a crime as it violates a law to protect Adivasis and Dalits, no condemnations were made except J.M.A.C.C.'s press release that received two centimeters of space in just one news paper.

183 Weapons of Mass Destruction.

time before the use of metals animals with horns or claws were envied for they possessed the weaponry that enhances their survival in a world where might was/is right. Humans too started using these animal fossils as weaponry for their survival. Medieval Catholic catechism, some of which continues to this day, is full of such images of the devil with horns, claws, spears, fire, and the colour black. Full-power or all power attracts adulation and from those times, might was given it (and naturally we all admire John Milton). The first steam engine invented in Britain because of its steel and power and dragon like puffs of black smoke was christened 'Beelzebub', a Biblical onomatopoeic word meaning the devil¹⁸⁴. Similarly names 'dragon', 'silver ghost'¹⁸⁵ etc., gave the adoration and respectability that power attracts. It was this logic that transformed the Asurs the discoverer of iron to the adjective demon¹⁸⁶ out of fear of the power they had. Thus Asur the first smelters of iron became Asurs the demon.

Since the Asurs had this 'State of art' technology, it should have helped them to defend and also beat the invaders, but over the years they were reduced to subordinates. What were the factors that that made them lose their position of advantage? The reasons below could enhance the whole debate on colonisation, by reinterpreting the history of this region, address centuries of wrongs and injustices not only to work out reparations, which is a must, but may be much more.

Steel Democracy

The invaders appropriated the metal technology and then used the very same to defeat the Adivasi nations. Was this just a question of appropriation? I do not think so, there is another dimension to this which if understood well could help a world engulfed in conflict.

The Age of Info-Communications

The Aryan Invasion was the first known colonial encounters that the Adivasis faced. It should also be noted that prior to this there were thousand of Adivasi nations who were continuously in transit crisscrossing each other's territories but did not seek occupation or domination or expropriation. Politically, economically, sociologically and culturally it was what true globalisation is meant to be.

There are more than fourteen Adivasi nations in Jharkhand today all having their distinct languages most of which are not understood by the other and this did not seem to be an impediment to social harmony with one another and symbiotically with the forest diversity. In the history records or in folklore there is not an iota of evidence to show that the Adivasis had any conflict between their different nations. All the weaponry that they possess even today are not designed for inter-human conflict but for protection from the animal world and for hunting their food. Adivasis did not need weapons to settle inter-nation conflict; as they did it in a democratic way and probable non-verbally.

A value that even in present post-modern times, where art of communication has become a science supported with state of art technology, has no place in the democracy our nation States adhere to. Therefore as long as we blindly consider their culture as savagery, we too will continue to settle our conflicts with steel. This 'discovery' of metal technology and its expropriation from the repertoire of the Adivasis led to their subordination. Koshambi goes further and says it can be considered the birth of the gender divide in peninsula India.

Swords Sell. Ploughshares Don't

Koshambi when talking about the Aryans says that their conquest of territories in the Indian Peninsula was possible due to their mastery of war technologies, developed over their long journey through the Hindu Kush¹⁸⁷ range or present Afghanistan. What can also be deduced from this is

¹⁸⁴ An original Hebrew word meaning 'Lord of flies'.

Adivasis never refer to the elephant by a zoological name but instead call them 'the BIG Person' out of fear of their strength.

¹⁸⁵ One of Rolls Royce's flag carrier cars.

¹⁸⁶ On a lighter vein, when a few days ago (September 06) from the UNO podium and the next day in a Harlem Church in New York the President of Venezuelan Hugo Chavez called the present President of the U.S.A. a devil, he may not have been wrong; considering the WMD's the U.S.A uses and stock piles and which is also incomprehensible to most of us. However I hope that this deduction does not encourage an analogue that places President Bush on the same line with the Indigenous peoples of this Earth!

¹⁸⁷ The geographical region between Afghanistan and the present border with Pakistan.

that while the Adivasi economy used its metallurgical skills for their self-sustaining livelihoods the Aryan after expropriating these technologies from the Adivasis used it to add steel to their armoury and further their goal of dominance.

The need for reinterpretation of the history of colonialism and its consequent penetration of an economic system responsible for the subordination of Adivasis which continues today needs us to go one step deeper to understand the similarities and differences between the European and the Aryan colonisation.

While both these economies depended on: conquest of territories, expropriation, the creation of surplus production, gender and ethnic subordination for the proliferation of their dominance in neighbouring territories, the later i.e. European colonisation, due to the bounties of the Industrial revolution led to the accumulation and the formation of capital which ultimately became the foundation of modern capitalism, for which the descendants of the Aryans i.e. emerging class of Indian rulers (economic and political), could join only as comprador. This class of Indian rulers benefited from the European colonisation of the Americas as well as contributed to the formation of global capital.

Pre-Industrial Intercontinental Fair Trade

Columbus has also been wrongly credited by Eurocentric historians as the discoverer of the World, omitting a known fact that the Indian coastline was a hub of intercontinental mercantile trade, conducted by Arabs, Indians, Malay, Chinese, etc., who traded between Indonesia, China, Arabia, Africa and the present-day South American coast even before the birth of Joan of Arc¹⁸⁸. The period when Buddhism flourished in India could be considered as the height of this trade exchange. It was this effective market and delivery networks that stretched from Afghanistan¹⁸⁹ to Indonesia which later was to save Buddhism from extinction as after the persecution of Buddhist by the zealots of Sanatan dharam they fled to countries east of India Burma, Sri Lanka, Thailand, Cambodia, Viet Nam China, Indonesia, etc.

Present-day flora of India includes a large variety of fruits, spices, and medicinal herbs from Indonesia to South America (Bipan Chandra), this could not have come organically. The reason for mentioning this is that this period of pre-industrial trade when compared with that of the European conquistadors caused no form of domination, conquest or even penetration of negative values. Instead there is proof that this enhanced not only local economies, but also language, culture and technology. It was fair trade and not plunders. However the total picture was not as rosy as presented here but when one has been fed on a diet of stories of savages, pirates, butchers and Robinson Crusoe, the story of 'Man Friday' becomes passé.

Similarly the present economic and political model based on massive industrialisation, and now called free-market or growth economics, is projected as the one and only model for progress and development and now this theory even has a name the acronym TINA. Naturally the others were just smoked out. Those who have only used six lane concrete highways may never be able to understand that in a forest there are thousands of paths each different, each unique, each taking you to your destination. By destroying all our other options and straitjacketing us into just one paradigm are we too not being robbed of a richer life of diversity?

Civilised World's Economics & Adivasi Systems of life

'Thus the ancient conception in which man always appears (in however narrowly national, religious or political a definition) as the aim of production, seems very much more exalted than the modern world, in which production is the aim of man and wealth the aim of production'

Karl Marx 'Pre-Capitalist Economic Formations

The fundamental difference between the Adivasi economies and the economics of Keynes is that the Adivasi economy did not create surplus and therefore nothing was commoditised hence no false valuation created by speculation. It is for this reason and not 'racist' or 'Keynesian economics

¹⁸⁸ Read: Huberman Leo 'Man's Worldly Goods' Monthly Review NY.

¹⁸⁹ Remember the destruction of the statue of Buddha by the Taliban.

gone wrong', why the Adivasis have been dispossessed and pauperised. If we understand this as a racist policy or attitude it will deny the Adivasis of the glory of their spirituality. By limiting our understanding to a racist analysis we the Adivasi social movements and intellectuals of post-Independence (1947), will not be able to take on the penetration of capitalism (not capital as most economist claim) embedded and thriving here in its naked form, sucking up our natural resources, minerals in particular, like a gigantic vacuuming machine.

The Fetish & The Free

In contrast to the commodity fetish civilised world all common resources like land, water and the forest were commonly owned. The production of food items were from forest gathering and shift cultivation¹⁹⁰. This system maintained the ecology, supported bio-diversity, was totally controlled by the community and not centralised or depended on much of outside inputs. From the songs and other folklore we understand that the people were satisfied and happy. Their systems of administration were egalitarian and women enjoyed a role in society because they had a major role in the economy of the community. The health of the environment determined the health of the individual and hence any illness that came about needed the treatment of the environment together with the individual.

Never Say Die

Their understanding of life and death was that death was a part of life and hence not alienating. The community was taken care of by the spirits of their ancestors who lived amidst them. The places and spaces for the spirits were sacred and well demarcated. An individual lived with the blessing of the good spirits and by appeasing the evil ones. The jurisdiction of the spirits was the line of their jurisdictions. There was no hierarchy. Children were the most important part of the community and the transfer of knowledge was made by the participation of children in each and every event of the community. Individuality was respected, while individualism was scorned.

Impact of Brahmanism

To the Indian mainstream non-Adivasi world, the Adivasi were considered subhuman 'unarys' meaning no nose (Irfan Habib), a word more derogative than the term non-white. The Rig Vedas one of the earliest written words described them as: black skinned, flat nose, blood drinkers (non-vegetarians). The post Aryan system of Sanathan religion (mixed up today with Hinduism), brought in Brahmanism or the rule of the priestly class, which came in with a culture known today as Sanskritisation, its deadly caste hierarchy and the declaration of Adivasis and a larger section of artisan people as 'outcaste', 'untouchables' etc. The belief in karma or rebirth was instituted in order to perpetuate this dominance of the high caste through generations i.e. even after rebirth.

The rule or domination of the high caste continues even today and has played an important role in laying of the foundations of the economy of the Indian State. Untrue to the general belief that capitalism will wipe out other forces of domination and exploitation when replaced by class; capitalism has been able to build and replicate itself in India, using the caste system as its corner stone.

Tata God

A fact that is lesser known is that when Asia's first and India's largest monopoly houses, the House of Tatas (TISCO) in order to establish their first steel plant in India¹⁹¹, were guided by the knowledge of the Gond tribes of Gondwana, in presently Raipur District of the State capital of Chhattisgarh another Adivasi State encompassing a large part of Gondwana and Jharkhand. The Tata's had initial plans of setting up their steel furnace in Raipur and gained their prospecting

190 Adivasis of Jharkhand at one time considered consistent and continuous use of the land as a crime comparable to asking a woman to reproduce the same way. Some of the lyrics of the songs the women sing while in groups during transplanting and harvesting thank and bid farewell to the land.

191 The British rulers refused to let a steel plant built in the Raj as it would compete with their Sheffield markets so the USA stepped in and Kaiser & Company built the Tata Steel Plant in 1907. This was not for brotherly love but clearing the contradictions that would bring and end to colonial economy for a full blown capitalism. Kaiser & Co used the same blue print as the one they built in Pennsylvania, with the hearth in the centre of the city to keep it warm unaware that they were in the tropics.

information from the Gond nation¹⁹². For logistic reasons they shifted to present day Jamshedpur¹⁹³ in Jharkhand, another Adivasi homeland of the Santhal, Ho and Munda Adivasi communities.

From opium suppliers to the British, who need it to lure the Chinese rulers, to Labour suppliers when building the Bombay–Pune rail line¹⁹⁴ (here too the labour they supplied were the Warli Adivasis of the Western Mountain Range), it was the Adivasis of Jharkhand & Gondwana that launched the House of Tata's into one of the major Mineral Industries of the new world. Systematically the last of the Adivasi knowledge system of metal smelting was appropriated and then destroyed for the birth of Industrialisation in India.

Logic of Colonisation & Wealth Creation

Creation through innovation of new and more efficient forms of production and distribution and at the same time its destruction of previous forms of production and distribution is called: “capitalism’s tendency towards creative destruction”. Caught up in this unrelenting process of accumulation and creative destruction, the system runs roughshod over each and every thing that stands in its path: all human and natural requirements that interfere with the accumulation of capital are considered barriers to be overcome’.

Adivasi knowledge systems and livelihood was the first causality at the sacrificial alter of ‘National Development’ a word as religious and synonymous with ‘collateral damage’ today depending on which side of the fence you are. It wasn’t an ‘advent’ for them.

Britain’s 200 years (1700-1900) rule over India is rightly credited for the creation of the Indian Nation State and the building of Civil Society Institutions. Popular opinion often interprets the period of European colonialism as a victory of civilisation over barbarianism, Christianity over paganism, blessed by the Bull from Vatican. The creation of wealth and the laying of the foundations for the present day capitalist economy, that were the factual reasons for colonialism, are kept at the levels of academic discourse.

The expectation of any development paradigm is that it will raise the standard of living and social relations. The mission of capitalism promises more. Industrial mining on the homelands of Jharkhand belied both. After Independence (1947) India opted for the mixed economy under which the concept of planned development received a central focus. Thus planned mining was introduced in 1951. The private sector and the public sector were clearly demarcated giving the public sector a bigger role in India’s mineral wealth. ‘There was spectacular progress in Indian Mining Industry from 1947 to 1985 when mineral production grew a 120 times’¹⁹⁵.

Collateral Damage

This spectacular progress also termed National Development, has had 50 million¹⁹⁶ people uprooted from a self sustaining livelihoods and thrown into the gutters of industrial townships. 60% of these are Adivasi and Dalits (outcastes). A majority have not received any compensated for their lands and livelihoods lost. Some of them were rewarded with ‘jobs’ in these Development Projects. A job made them ‘wage earners’, that also meant they became members of a reserve army of labour, to be drawn up when needed and shunned when not. Women were the worst affected. From an egalitarian social status in society, they were reduced to a confinement for life in macho mining towns and shanties, facing subordinate relations, toxic and hazardous pollutants in their water, air, and food.

The pain and sufferings of the victims of the contradiction between the Adivasi System of living and that of civilisation i.e. ‘non-surplus’ economy v/s the ‘surplus fetish’ just cannot be explained in a paper like this, however statistics may tell a part of the story:

The life expectancy in India at the time of Independence (1947) was 50 years.

192 Lala L M ‘The Creation of Wealth’.

193 TISCO in Jamshedpur was established in 1907, over the graves of a hundred Santhal villages and forest.

194 One of the most perilous terrains, where unknown numbers of Warli People lost their lives.

195 D.D.Seth’s Encyclopaedia of Mining Laws. p. v.

196 By Central Governments own figures.

The life expectancy in India today (2004) is 60 years. The life expectancy of Adivasis who live in and around Mining townships in Jharkhand has come down to 35 years.

The infantile mortality rate is over 125 per 1000 births in the mining townships of Jharkhand. (The BPD Progress Report 9 Oct 2000 of Koraput mentions 95 per 1000). These are one of the highest in the world.

Nagaland another Indigenous State in India where industrialisation has yet to visit has a rate of just 5/1000 (incidentally that of the USA is believed to be 7/1000)

The male/female ratio is +female births in non mining villages and –female in mining towns¹⁹⁷.

Life expectancy, infantile mortality, male/female birth ratio are the best when evaluating 'development models' and life standards¹⁹⁸.

Social Consequences

The healthy social relations and culture that existed in Adivasi communities as a result of their closeness to the forest and to creativity is now changing for the worse.

There is no word for rape in most Adivasi languages. 20 years ago it was the Adivasis being raped by the mining town dwellers, Forest, and Government officials. Today an increase of incidents of Adivasis being raped by Adivasis is noticed. This phenomenon is also seen in the USA where more Afro-Americans are killed by their own people. When the dignity of a dignified people is blasphemed external conflicts get internalised.

The Overburden

Thus for colonialism to thrive and capitalism to take birth, it had to destroy the production systems and economy of the Adivasi homelands. Gondwana¹⁹⁹ homeland is completely off the map. The identity of Jharkhand as an Adivasi homeland is the only one today in peninsular India, but the hegemonic positions are with the non-Adivasis with the Adivasis retaining just a cultural position. The logic of 'creative destruction' took over.

Adivasi Metallurgy, language, system of administration, beliefs, forest, systems of health, and one by one were destroyed or assimilated or appropriated.

This process was rootless too thick skinned and inhuman to understand Human Rights. Some were assimilated others were annihilated, it's also called genocide. Assimilation not as equals, but as coolie proletariat i.e. daily manual workers, members of the reserved army of hard labour. Brahmanism was always there to see that those assimilated stay as outcaste.

'Overburden' according to the mineral industry is everything, but the mineral being extracted. This means all top soil, bio-diversity, air, rivers, water, people, etc., that are in the way. Adivasis the overburden was logically dismantled, and those who survived carry the burden of completing the onward march of wealth creation.

The story of Wealth creation in Jharkhand is the story of a destruction of a creation. Academicians, politicians et al today categorise the Adivasi community (the word nation is never used) as 'backward'; if they are so then their backwardness lies in their inability to comprehend their colonisers.

Mining Good for Health -Dr. (Mr.) W. Bank 'The World Bank decides if I have the right to live'²⁰⁰

The World Bank, the Government of India, and State Governments of greater Jharkhand and

¹⁹⁷ From primary data collected by B.I.R.S.A. MMC.

¹⁹⁸ World Bank for the first time admits that a coal mining project they funded in Jharkhand has caused poverty amidst the PAP's (their acronym for Project Affected People) see 'World Bank creates Poverty' Xavier Dias www.minesandcommunities.org.

¹⁹⁹ The homeland where the majority were Gond Adivasis its territories include parts of Chattisgarh, Orissa Madhya Pradesh and Andhra Pradesh.

²⁰⁰ A woman thrown out of here land by a WB supported Coal mine in Hazaribagh in the documentary 'Do I have the right to live'.

Industrialist are propagating the formula that mining is a panacea for 'backwardness' and therefore a pathway out of poverty. In support of this economics they cite the example of the USA, Canada, & Australia. Below is what the World Bank has to say:

...natural resource-based activities can lead growth for long periods of time. This is patently evident in the development history of natural resource-rich developed countries such as Australia, Finland, Sweden, and the United States. Mining was the main driver of growth and industrialisation in Australia and the United States over more than a century...

After plunder and massacring of over 20,000²⁰¹ Indigenous nations the Europeans took over their homelands and formed what are today the US, Canada & Australia. To begin with they had nothing more than their labour skills and the landscape²⁰². No economy of the "civilised world" existed there hence they had to commence the industrialisation process from a clean slate. Mining and farming were their only options. Initially it was gold mining; gold being a precious metal was revenue generating and therefore cannot be considered in this analogy. For these reasons mining preceded the building up of a modern industrial economy and therefore totally different from saying that mining caused it. By the fact that one event proceeded the other does not mean that it caused it²⁰³.

On the other hand according to the World Bank's listing²⁰⁴ of the world's most prosperous nations half of the richest twenty five nations are considered natural resource poor e.g. Switzerland, Japan, Ireland & Singapore. Similarly many of the poorest nations are considered resource-rich²⁰⁵.

Mining alone was never a significant stimulant to the economic development of these nations. During these countries initial industrialisation in the late 19th and early 20th centuries mining contributed just a small percentage of total economic output and did not dominate their exports it was dominated by other natural resources i.e. forestry products, fur, food etc. Besides it was never anywhere near the magnitude of dependence that occurs among many developing nations today²⁰⁶.

Our focus is on mining that is finite and non-renewable and not its broader category 'natural resources'. Canada and the Scandinavian countries economy was driven by the export of forest produce especially fur. As mentioned earlier for the US and Australia mineral were only a small segment of their export.

These countries are by size geographically continents with the lowest population density in the world giving them the advantage to mine in one region and develop in another. Such large land masses enabled them to balance off the disruptive impact that mining has on regional economies. Economist calls these depleted regions 'sacrificed' country. What this meant in reality was that as mining moved from one place to another it left behind ghost towns and depressed local economies and communities²⁰⁷. Thus the economic side effects of mineral development i.e. locally low incomes, high unemployment, and poverty continue to the present day especially in the US. A World Bank study shows that just to clear up the ecological damage caused by mining in the US would cost US \$900 Billion.

The role that mining played in these countries was linked to an overall transformation in business and financial organisations, education, research and knowledge development, human capital accumulation and infrastructure expansion²⁰⁸. This was strengthened by a better developed rule of law, markets and most importantly they had trade barriers, speculation, and manipulations. Capitalist values that shaped social life and culture e.g. private enterprise, entrepreneurship, surplus production, false valuation etc, further strengthened the process. They were 'labour poor' but 'natural resource' rich. None of these conditions are found in this greater Jharkhand region

201 Berger Thomas 'A Long and Terrible Shadow'.

202 Power Thomas et al, Digging to Development. P 9.

203 Ibid p. 9.

204 World Bank indicators database April 2002.

205 Power Thomas et al, University of Montana Economic Dept. A Historical look at Mining & Economic Development.

206 Ibid, p.9.

207 Appalachia in USA. The east coast of USA is often referred to the rust belt.

208 David de Ferranti et al, From Natural Resources to the Knowledge Economy, 2002.

and therefore it makes reasoning by historical analogy a façade for a hidden agenda.

On the contrary the economic history of developing countries and Jharkhand in particular show that the more reliance these countries places on natural resource export the lower the rate of GDP has been. Here sustained mining has brought in sustained underdevelopment.

Academic professionals especially those employed by the World Bank are today becoming a class that is losing its objectivity and tend to produce studies to suit their masters. It is a known economic fact that large investment in a particular industry just for exports is unsustainable or bad economics and yet we and our governments are being fed on this poisonous single item menu.

Within the present capitalist system where rapid industrialisation, of not only the industrial sector but also of the agricultural sector, where the social and ecological cost are not considered however destructive it can be, is not seen as antithetical to economic development. When this logic is applied to regions that are underdeveloped in political, economical and judicial institutions these non-renewable resources tend to be squandered, new social conflict²⁰⁹ emerge and irreparable damage inflicted on the environment. This can leave a developing nation perpetually poor²¹⁰. World Bank's research director Paul Collier analysed forty seven recent civil wars, and found out that what best predicted war was not a nation's history, ethnic makeup or the countries social issues but its wealth of export commodities i.e. minerals²¹¹.

Thus reasoning by historical analogy is nothing but encouraging storytelling or fairytales to rationalise a preconceived plan. Simplistic storytelling is a dangerous way to determine economic development policy.

The question is not one of unequal development. The question is of pauperisation of a once self sufficient people. Poverty areas are therefore created. Starvation deaths are on, even though the word genocide is avoided. Ethnocide another academic word is now accepted but is also diluted with the concept of 'assimilation into mainstream cultures and life'.

The State's determination to fulfil its human rights obligations should be reflected in the national budgets. National budgets include allocations for health-care, education however it is yet to be assessed how State's include their obligations in their budgets. The following article presents a brief overview of human rights budgeting in India.

4.4 Towards a human rights based assessment of the federal government budget of India

by Manu Alphonse

Budgets are a mirror to the priorities, perspectives, and policies of a government. Budgets are not mere financial statements but are political documents, reflecting the existing power relations in a society. Annual presentations of budgets are a constitutional duty of every government; and budget sessions are occasions for the Government to give an account to its citizens as to how it handles public money.

Motivated by the two major concerns of good governance (i.e. transparency, accountability and participation) and social justice (i.e. ensuring the fulfilment of basic needs and the enjoyment of rights of the marginalized), a broad spectrum of NGOs, human rights groups and social research institutes has emerged to assess budgets. These budget advocacy groups have been developing focused analytical tools and strategies towards both engaging policy/budget makers and generating peoples' lobbies on budget concerns.

Starting from broad issues such as effectiveness and sector allocations of public expenditures, patterns of public revenues including relative tax burdens etc., budget groups have come to be

209 Jharkhand has just entered a new phase of mega money corruption. A member of the present State assembly during the course of the past year has paid Rs 20 million to his party chief a central cabinet minister.

210 Dias X World Bank Creates Poverty, available at: www.miningandcommunities.org.

211 Dias X. Adivasi Homelands & Wealth Creation, available at: www.firstpeoplesfirst.in.

focused on specific perspectives of specific groups like indigenous people, women and children. Child Budgeting and Gender Budgeting have become widespread, forcing an increasing number of governments to make them integral part of their public policy. In India, Dalit budget advocacy around the Special Component Plan for Dalits, has gained significant ground over the years.

Though most of the work of the budget advocacy groups has been shaped by broad human rights concerns and perspectives, monitoring of public policy and making States accountable vis-à-vis the Socio-Economic and Cultural Rights (ESCR) of their populations is still in the beginning. Yet, respective international law has in recent times evolved dynamic concepts such as “progressive realization” (i.e. the State should not take any deliberate steps backward in the provision of these rights), “full use of the maximum resources available” (i.e. when large numbers of people are denied these rights, it is assumed that the State is not doing all it can) and “non-discrimination” (i.e. the State should not discriminate in the provision of these rights on the basis of race, sex, income etc.). This has provided sufficient space for civil society budget advocacy groups to push the frontiers of the government in terms of accountability in the field of ESCR, like the rights to food, to water, to housing, to education, and to health.

In India, in the early and mid-1990s, organizations such as DISHA in Gujarat (Tribal Budgeting), Tamil Nadu Peoples’ Forum for Social Development (Dalit Budgeting), HAQ, New Delhi (Child Budgeting), Public Eye Centre, Bangalore (Report Cards), Samarthan, Mumbai (Education) and others did pioneering work in budget advocacy in their respective States and sectors. The coming together of these various organizations led, in 2003, to “Peoples’ BIAS” (Budgetary Information and Analysis Services) and later to the establishment of the Centre for Budgetary and Governance Accountability (CBGA) in New Delhi. At the level of States too, public policy initiatives like Social Watch – Tamil Nadu, linking policy with budgeting, have emerged.

Over the past, significant progress has been made in fields such as Gender Budgeting, Child Budgeting, and Dalit Budgeting, leading to positive responses among policy-making arenas both at the Central and State Governments level.

In recent years these organizations, along with campaigns such as the Wada Na Todo Abhiyan, have attempted high profile budget advocacy efforts at the national level, linking budget advocacy with peoples’ monitoring of the Common Minimum Program of the UPA Government at the Centre. Initiatives such as the “Nine is Mine Campaign”, demanding allocation of minimum 6 percent of GDP for education and at least 3 percent for public health, have even had certain impacts in the formulation of the Indian Union Budgets of the recent years.

The human rights oriented budget analysis needs to be further elaborated, strengthened and systematically employed in order to better monitor State’s performance vis a vis its right to food related obligations under both national, as well as international law with the final aim to hold the State accountable.

4.5 Right to food of the trafficked people

By D. Prempati

The issue of trafficked people is an important one in India since 378 of the 593 districts in the country are affected by human trafficking. Of them, 10 per cent of human trafficking is international in nature, while around 90 per cent is inter-state. Children are not only kidnapped and trafficked to distant places for slavery and forced labours but according to various states reports they are also trafficked for domestic works, brick-kilns, stone quarries, embroidery units, carpet looms, begging and agriculture labourers, forced marriages, sexual exploitation and all kinds of servitude including removal of organs. Women are unfortunately a special target in trafficking. For example, owing to low sex ratio in Haryana, girls are brought from West Bengal, Assam and Bihar. Some of them are as young as seven years of age. The National Commission for Women estimates that there are 2 millions of domestic workers for every 5 millions Delhites. Also, there are 4 millions women or girls trafficked to Delhi ever year. 700'000 girls are trafficked to Delhi from West Bengal, Jharkhand, Orissa, and Chhattisgarh. The girls once evicted from their roots have to put up with inhuman conditions, like working for long hours, partial payment of wages, and no contact with their family members, and above all sexual abuse. Generally, trafficked people, suffers from violation of all their basic rights. They do not have the freedom of liberty and life let alone to minimum wages, freedom for bargaining of wages and social security scheme. Being exploited and living in constant threat they continue to face abuses and often face hunger and starvation. Thus, for the thousands of people entangled in the web of trafficking, right to liberty, housing, health, food still remains a dream.

National Law: Some of the legal provisions that have been in place in the country do not help these children in any way mainly due to lack of law enforcement and negligent attitudes of agencies and officials. Although the Article 23 of the Constitution prohibits human trafficking and forced labour, article 24 prohibits employment of children in hazardous work, and article 42 makes the provision for just and human condition of work, they do not effectively curb the trade which is taking an alarming proportion in the country. The Immoral Traffic Prevention Act of 1986 prohibits trafficking children for sexual exploitation but it does not cover or provide protection for any other forms of trafficking. The child labours Act of 1986, prohibits the engagement of children in hazardous employment, and regulates the condition of work. On October 10, 2006, a notification was issued by the labour ministry to ban the children working as domestic help and also in restaurants, if they were under 14 years of age. The Bonded Labour System (Abolition Act) 1976 aims at abolishing the bonded labour and prevents economic and physical exploitation. Even sections of Indian Penal code²¹² prohibits the buying selling, kidnapping, wrongful confinement and possession of minor with the intent or knowing that he or she will be used for prostitution or other immoral and unlawful purposes. Although the mentioned above acts exist, the trafficked people are still the principal victims of an absence of comprehensive law and no complete definition of what human trafficking is.

International: The international legal provisions like ILO conventions places serious curb on employment of children. India ratified a convention on the right of children on December 11, 1992. Article 32, explicitly protects children from economic exploitation and from performing any work that is likely to be hazardous or interferes with the education of the child or even harmful to his health, physical or mental, spiritual, moral or social development. It also obliges states to take legislative, administrative, social, and educational measures to abolish child labour. However, India still haven't signed and ratified the United Nations trafficking protocol.

Recommendations:

Parliament can play an important role in preventing the abuse of children.

Firstly, by initiating a parliamentary debate on trafficking laws in India in order to broaden and enact an inclusive laws vis-à-vis the existing anti trafficking laws which deals only with prostitution.

212 sec.342,365,367,370.

Secondly, identify the most affected and vulnerable states in India to formulate policies that can counter trafficking, like the cases of Jharkhand, Bihar, Chhattisgarh, Orissa, West Bengal, and Assam.

Thirdly, ensure release reunion and reparation of the victims with their families and rehabilitation. A separate budgetary allocation for the victims and their rehabilitation (transitory homes for counselling, vocational training, food, shelter, and education) should be made for them. And above all, sign and ratify the United Nations trafficking protocol.

There should be provision of mandatory registration of trafficking cases in police stations as well as accountability and proper follow up to the cases reported.

In any case no child under the age of 18 should be employed, registration with the labour department and its renewal every year should be made compulsory. The same copy is to be send to the police station.

There should be weekly update on: how many employees are brought into the agency, with name photograph, permanent address, employees name, and address, wage details working hours and parents consent form should be there. Ensure that employees are given all information on their wages rights during their time of registration. These are the things which could help mitigate the sufferings.

4.6 Cases of Privatizing Water Bodies in India²¹³

by Dr. Arun Kumar Singh

In Uttar Pradesh - In Mehdiganj, 10 km outside Varanasi on the Varanasi-Allahabad highway, the people of surrounding villages are agitating against the Coca-Cola factory located there. This movement has been going for the past one year and is gradually strengthening. The government and the local administration, however, seem reluctant to take any action against this factory. Coca-Cola on its part is spending huge chunk of money on image-building, taking the favour of influential local persons and has been able to successfully stop any action being taken against it.

The main issues being raised by the people's movement, which is part of National Alliance of People's Movement (NAPM), are as follows:

The factory is drawing a couple of hundreds of litres of water everyday from underground aquifer causing sharp fall of water table. The people feel cheated as they are being robbed of their precious natural resource over which they have their traditional right.

Coca-Cola had distributed the sludge from the factory to local farmers claiming it was good manure. It has now been proved from Coca Cola factories in Kerala and West Bengal that this sludge contains cadmium and lead. The sludge caused damage to the crops of farmers who had used it and they now demand compensation for this loss.

A portion of this factory is built on Gram Panchayat land and should be demolished.

The company had cheated the Revenue Department on stamp duty when it purchased this factory from Thums Up in 1999. It has been ordered by the court to pay the amount and an equal amount as fine, however, the company has not yet paid the entire amount.

The local people have not been able to obtain employment in the plant. There are merely 60-65 regular employees, all outsiders. About 400 local people persons are working on daily wages. The movement feels that the same infrastructure as engaged by the factory can be gainfully used to provide employment to more number of people through some other small-scale industry.

In May 2003, a local court found Coca-Cola guilty of illegally occupying a portion of Common Property Resources in village Mehdiganj, near Varanasi and failure to paying land revenues of approximately US \$31,406. The land they have occupied is agricultural land and thus also enjoys

²¹³ This article is a part of book "Privatization of Water in India" published by Vikas Adhyayan Kendra, VAK, Mumbai. It has been written by the Dr. Arun Kumar Singh for VAK. Writer is an environmental scientist and policy analyst. He has written several books and articles on water.

a subsidized electricity rates. The factory also disposes its toxic waste into neighbouring farms including mango groves, and has allegedly contributed to lowering groundwater levels, from 15 feet to 40 feet below ground. The struggle still continues.

In Rajasthan

The government of Rajasthan has handed over the Mansi Wakal Project to Hindustan Zinc Limited and recently work has started on this dam. This project has the distinction of being a project lying inactive since 1990, since owing to a strong people's movement not a single brick could be laid at the dam site. The river Wakal originates from the Aravalli hills near Gogunda village in Udaipur district, Rajasthan. After traversing a distance of 65 km, it merges with the Sabarmati River in Gujarat. Mansi is a tributary of Wakal. Mansi-Wakal was first conceived in 1990 as a twin project, under which two dams were planned to be built in two stages. As per the then Plan, 6 villages fell in the submergence zone in first phase and 22 in the second phase. Udaipur district is incidentally a tribal district, officially. Right from the beginning, from the Detailed Project Report (DPR), there have been irregularities in this project. When the author analyzed the technical documents^{214 215} numerous discrepancies were found. These included lack of vital information, wrong data in DPR, distorted facts, faulty process adopted for land acquisition, etc. For example, DPR was finalized in 1990 and though it mentioned the submergence of 67 ha of forests, till 1996 there has not been any attempt to obtain necessary clearance from the Ministry of Environment and Forests (MOEF), which is mandatory for any project involving diversion of 5 ha or more of forestland for non-forest use, nor was any compensatory afforestation plan enclosed with the DPR. Officials of the Forest Department of the state have stated that this figure of 67 ha only refers to the standing forests and the barren forest-land falling under submergence is actually many times more. Similarly, INR 3 million and INR 5 million marked for the catchment area treatment (CAT) in two stages respectively, are hardly sufficient for a total catchment of 900 sq km²¹⁶.

Udaipur is one of the greenest districts of Rajasthan, officially having 24.6 per cent of the area under forest cover, against the state average of 10 per cent. These forests are also the only source of livelihood of the forest dwelling tribals, who will be worst hit by the project.

The DPR has shown the life of the dam to be from 30 to 50 years, but has not carried out any measurement of the siltation rates in any of the two rivers. The most crucial question is however of displacement and rehabilitation, of which there is no mention in DPR. The total land of six villages falling in the submergence zone in the first phase (namely, Dewas, Gorana, Gadariawas, Mundavali, Talai and Chandwas) is estimated at 139.69 ha. In addition to this submergence, there will be island formation at a few places but no attention has been paid to the people likely to be affected by this. This submergence also includes many places of local religious importance, including a 750 year old Mahadev temple and an archaeological monument under the control of Archaeological Survey of India (ASI) but no plan of their relocation is prepared. All the land in these six villages, including that of 116 farmers, was transferred to the Irrigation Department, Rajasthan, at least on paper, way back in 1995, irrespective of whether the people accepted compensation or not. A sum of INR. 55,49,190 was fixed for compensation at that time. But the Chandreshwar Kisan Samiti, a people's movement against the project, has conducted its own studies and surveys and found that the losses have been grossly underestimated, valuation of trees has been omitted in calculating losses, and the compensation being offered to farmers is far less than the prevailing market prices.

There are other problems too. There are at least 24 villages down stream of the first stage dam which will go completely dry, as their only source of water will cease to exist. Even the wells in these villages are river based. Another 50 villages are indirectly dependent on the river and they too will be adversely hit. Thus the number of project-affected villages will be more than 100-plus, many times higher than the officially declared number.

214 Arun Kumar Singh (1990): Mansi-Wakal Project, Udaipur, Rajasthan – A Critical Assessment, Unpublished Mimeograph; Chandreshwar Kisan Samiti, Udaipur, Rajasthan. p 80.

215 Arun Kumar Singh (1995); Mansi-Wakal Project a Threat; Pioneer; New Delhi. December 14.

216 Idid.

At present all the 24 villages downstream of the project take two to three crops per year and therefore a strong movement in this area in the name of Harihar Kisan Samiti has also emerged to protect their rights. It is relevant to mention here that the MOEF guidelines stipulate that there should not be any adverse impact on the population and fisheries downstream from the dam.

The project was justified on the ground of supplying drinking water to Udaipur town, but it is a matter of general knowledge that it was being constructed to fulfil the ever-increasing demands of the marble industry. As there is no ground water legislation in the state, most of it has already been over-exploited by all. Now they have set their eyes on this river, which supports a population of 20,000.

Chandreshwar Kisan Samiti hence filed a petition in this regard in the High Court at Jodhpur²¹⁷, Rajasthan, pointing to grave irregularities and half baked truths in the DPR in 1992. The state government, after months of dilly-dallying with the issue, as it was unable to provide any rationale to the objections raised, finally filed an affidavit that it is no more interested in going ahead with the project and thus the matter was resolved.

However, the government of Rajasthan in 1995 entered into an agreement with the Hindustan Zinc Limited (HZL) to complete the Mansi-Wakal Project and a Memorandum of Understanding (MOU) was signed. As per this MOU, the project has been handed over to HZL on a turn-key basis. HZL and Public Health Engineering Department (PHED) will invest the money in the ratio of 70:30 respectively, and receive water in the same ratio, and the project will be completed by HZL in three monsoon seasons. However, work once again could not start on the project, due to strong opposition of people, despite the best attempts of HZL, from time to time. Once in 2000, the attempt of HZL turned violent leading to death of a farmer and work was stopped. Now HZL has once again renewed its effort with strong backing of the government in 2004. The police has forcibly entered the six villages and served notices to people to evacuate these villages. The tension is mounting in the area. Only the future will tell the fate of the project.

But treating of natural water bodies as commodity, both surface and underground, protest has picked momentum in India in a big way and in all likelihood will only accelerate in the coming years. This is increasing people's plight manifold, as expected, and as witnessed in other parts of the globe too, where the same drama has been enacted in the name of privatization in water sector. This also exposes the double-talk of the government which though it accords top priority to drinking water (as in its National Water Policy 2002) yet chooses supplying water to industry, when it comes to put words in practice.

4.7 Weavers' Struggle for Survival

By A.K. Sinha

The findings of a study conducted amongst sari weavers of Varanasi and power loom Cloth Weavers of Tanda, Ambedkarnagar are as follows.

The study comprised of interviews through structured questionnaire, Interface, Focussed Group discussions, observation, and participatory meetings with weavers and traders. The findings which were arrived at by interview of 235 weavers is presented and analysed here.

Weaving is a cottage industry and has been a thriving vocation giving livelihood to million of weavers spread over the entire country and particularly in the state of Uttar Pradesh - pure silk saris of Varanasi, handloom goods of Tanda and other eastern districts of Uttar Pradesh have been famous all over the world. Weavers' trade was a respectable profession, hereditary in nature, handed down from father to son.

According to official data, there are 12.4 million weavers engaged in this trade and vocation. Since liberalisation in 1990, big multinationals from all over the world entered the Indian markets with their mill made, fashionable and cheap cloth, and apparels. The entry of foreign companies in this business adversely impacted the weavers who lost market access and could not compete with

²¹⁷ Chandreshwar Kisan Samiti (1994); Petition filed in the High Court of Rajasthan, Jodhpur.

the cheap good from abroad especially the Chinese silk. Due to lack of work there has been heavy migration of weavers from U.P. to Mumbai, Surat, Bangalore, and other places. In the absence of any other skills in trade or vocation several weavers ended up as manual labourers in cities. Such migration also increases the number of urban poor

A significant number of weavers interviewed in the study are illiterate. Some own lands however mostly weavers are landless and depend on weaving to feed themselves. Weavers live in closed and heavily populated/concentrated localities approachable by very thin lanes and by lanes. Housing conditions are more or less slum like with no civic facilities of sanitation, water, electricity. The air is polluted because of insanitation decaying garbage and high density population, Working places are also in closed quarters, dark, dingy and without ventilation. There were no civic arrangements for sanitation in the areas of 60% respondents. Weavers have large families; most of the weavers form minority community send their children to religious schools. Their income is insufficient to meet their needs and requirements of the family. At times weavers have to take loan from local money lenders at exorbitant rate of interest. Interest is to be paid monthly and there is too much pressure for repayment so it causes anxiety and tension.

BPL beneficiaries are entitled to subsidized rations from the PDS organisation. More than half of the weavers belong to the category of BPL and have ration cards. But having card is one thing and to be able to get ration is different story. All the card holders' family testified that except 2-3 litres of Kerosene oil per month, they did not get any sugar, wheat, rice. Mostly the fair price shops remained closed except for 2-3 days a month where owner of the shops claimed to have received no rations except Kerosene oil. The kerosene oil is sold in black market and for some relief, card holders are issued 2-3 litres. As weavers are illiterate, when shop owner comes in possession of their cards, fake entries are made indicating that wheat, rice, sugar was also issued. However, ration is sold in open market. Even those who have the Red Antyodaya Ration Card reported of having received no rations except Kerosene oil.

The Government has shown concern about the plight of the weavers and a number of support and assistance schemes by Central and State Government have been launched. However, the study found that these special welfare schemes meant for weavers are not directly accessible to them. Political powerful men have constituted Cooperative Societies of Weavers and show false or fake membership. In Varanasi such cooperatives are found in abundance. The study also found that the welfare schemes like PDS and BPL assistance special schemes like widow pension, old people pension, maternity benefit, scholarship to children, are ridden with corruption. Being illiterate, weavers do not have any information or awareness about these schemes and often corrupt officials have to be paid bribes to receive entitlements. Due lack of income resources and inability to feed themselves, several weavers have committed suicides.

Some of the main grievances of the weavers are:

- No support from the State to the failing industry. 60-65% power looms have closed down.
- Out of 24 hours, electricity is available hardly for 3 hours causing power cuts in the looms and hindering work.
- A silk sari when finished and should fetch a price of INR 1,000/- when taken for sale to shop owners, they say take INR 300/-. Sale price reduced by 40%.
- Weavers are unable to feed themselves due to lack of income.
- Education is not affordable; private schools charging fees INR 100-150 p.m. Government schools are useless. We afford only Madrasa education where fees are INR 15/- p.m.

4.8 Beyond the hunger deaths in Chhattisgarh²¹⁸

By Hasrat Arjjumend

Occurrence of hunger deaths has become a common phenomenon in northern districts of Chhattisgarh. Hundreds of people died of chronic starvation within July and August 2001. Jimindar of Ramnagar village of Wadrafnagar block disclosed, "my family lost four members between 27th and 29th July. They fell sick in the beginning of July. We could not understand and continued on consulting local health practitioners. What else could we do, otherwise? We were just helpless as no one can even go to Wadrafnagar, the nearest town, in the rainy season due to complete cut-off from outer world". In Wadrafnagar area, Iria and Rihand rivers, flowing across the two sides of this landmass, on which there exists no culvert, let alone the bridge, have made about 60 villages like an island. Countless deaths were reported from this tract turning it into a graveyard. Jimindar further illustrated his misery, "last year the drought engulfed three-fourth part of crops and this year excessive rains barred us from sowing seeds. People here have nothing to eat, and just nothing...! Many people are selling or mortgaging their utensils, land, bullocks, and what not... to moneylenders and traders. Big farmers are also not able to provide any employment. You cannot find even two kilograms of rice here in my house or with else one. Flood of men and women flee to earn bread distantly at Renukoot, Banaras, Shaktinagar, and Singrauli and so on, they return with nothing but nightmares physical and economic exploitation. Say, this year we 15 persons worked for two months in Shaktinagar, the *munshi* (accountant or supervisor) of the contractor gave only *khuraki* (money for eating). At the end when we were close to die of hunger, we ran back on foot while begging throughout the way". Initially the media as well as the government system termed the epidemic as the chief cause of massive deaths. Joint Working Group of voluntary organizations from Surguja district then intensively studied Ramnagar, Raghunathnagar, and Chakota villages of Wadrafnagar block on 13th of August, and found hunger as the main reason of deaths. According to JWG "the increasing scarcity of food stuffs and sheer malnutrition reduced the immunity of human body and made it susceptible to diseases like cholera, dysentery, and fever. At some places where administration is providing medicines, the people are demanding food. Many people are borrowing loans on exorbitant interest rates. It is a disaster, well generated by multiple factors affecting the sustenance of the poor for decades". On surveying, the JWG investigated that 6 casualties occurred in Ramnagar village, 1 in Koti, 9 in Raghunathnagar, 1 in Sarna and 3 in Chakota village of Wadrafnagar area. Between 19th July and 9th August, among the dead were children (2 – 9 years), adults (19 – 48 years) and aged (55 – 70 years). Between 20th July and 10th August, as the block office of Wadrafnagar reported, 3193 persons had been affected in 45 villages of Wadrafnagar block by the epidemic, borne as a consequence of persistent starvation and malnutrition. Official figures claimed 49 lives to have already lost in these villages during this period. However, the government sources till 25th August had reported 106 lives. As soon as the issue appeared in the media, news of hundreds of deaths started coming from other corners of the district. Thus, the problem is not restricted to merely Wadrafnagar block, it expanded over Udaipur, Surajpur, Lundra, Rajpur, Ambikapur, Bhaiyathan, Mainpat, and other blocks too. "Afraid of the death toll people are being run away the homes. Whereas, on the other hand, such a serious issue is gradually ending up into a political hassle and wrestling", assessed the JWG.

Until the field visits of Joint Working Group of NGOs in Wadrafnagar block of Surguja, the Government officials, political leaders and media persons were considering the deaths as caused by cholera or malaria. Ironically nobody attempted to look into the empty houses of those who died of the said diseases. The families had nothing to eat for a long time. Several phenomena have been distinguished beyond these hunger deaths, which are described below:

Dispossession and Social Exclusion

Tribal population of the area mostly depends on the neighbouring forest resources. Depletion of forests has occurred during the last 40-50 years that caused serious repercussion on the lives

218 Arjjumend, H. 1999. Chhattisgarh in Peril. Samarathan - Centre for Development Support, Bhopal.
Britannica, 2001. Understanding Poverty. www.britannica.com.
UNDP, 2000. www.magnet.undp.org/Docs/policy.html. United Nations Development Programme, New York.
WFP, 2000. The Hunger Trap. World Food Programme, Rome.

of the tribal inhabiting the forest areas. Chhattisgarh was known to be among the densest forest regions of Asia. Unable to earn enough for livelihood the tribal people have resorted to labourers. Actually, these tribes were the masters of the forests till about the middle of the 19th century. Thereafter, the British rulers moved a forest policy in 1894 to regulate the rights of the forest-dwellers who could no longer claim the forest as their own. Thus the one-time 'lord of forest' was reduced to a 'wage slave' at the disposal of the forest bureaucracy and the forest contractors. The nexus of government and traders has now looted forest homes of the tribes forever. Dense forests have been replaced by monoculture of teak.

Although the occupation of NTFP collection and selling is the mainstay of the large section of the People, the plant material is depleted in the jungles. After the hard work for a full day the people do not find even a bit equivalent to their wage. *Tendu* leaf is chief most revenue giving NTFP. For this the government has the monopoly and opens the sale for a limited time. Mechanism of *tendu* leaf purchase has been proved to be the exploitative process. As a coping strategy to overcome the risk, the local people migrate to neighbouring states like Maharashtra and Uttar Pradesh during the season of *tendu* leaf collection. There the contractors purchase the NTFP material for unlimited time. During this journey many people fall sick and many die. After all, they do not return with the fulfilment of their aspirations. At home the poor NTFP collectors are extremely exploited by the local traders. People sell the non-scheduled products to the local traders. The collectors do not know the actual market rates and thus are exploited by these traders. The traders are generally the resourceful persons having access to money, information, and communication. They also have links with powerful politicians and government officials. Poor family in emergency cases badly needs cash or the foodstuffs. The local traders hold this opportunity. By giving cash, foodstuffs or other usable items they trap the poor into unending indebtedness.

Unprecedented depletion and degradation of natural resources land, water, forests, and grazing grounds have imposed widespread poverty. Poor people usually depend on common resources, the forests and tanks for harnessing their livelihood. Both degradation and infringement of these resources have largely impacted the disadvantaged classes in particular. Despite the plenty of natural resources, for million of people the prospect of two time meals a day remains a distant dream. Malnutrition, lack of education and ill health are rampant everywhere.

Employment available for the people is scarce. Low human development index (HDI) in the state is the indicator of extreme poverty. Due to unavailability of employment in the rural areas, or due to the worsened social situations, the SC and ST population generally migrate to urban areas which ultimately causes increase in urbanization growth among the SCs and STs. It is difficult to make a comprehensive quantitative assessment of the volume of present day migration. However, it is observed that the women migrate along with the rest of their families as well as separately. This year's dry spell in the region accounts for heavy rate of out migration.

Uneven landholding and the massive land alienation are also the main reasons of disparity and poverty in the rural areas. In Chhattisgarh, on an average a single family somewhere occupies 200- 500 acres of land, while the large majority of people in the villages has marginal landholdings or is totally landless. Land records of the Commissioner of Land Revenue, as compiled by Indira Gandhi Agricultural University, Raipur in 1987, reveal that 57.21% of total 202,834 holdings in Rajnandgaon district, for instance, were small & marginal landholdings. Surprisingly, out of the total area of 563,063 acres under total holdings, the small & marginal farmers held only 16.93% area. It reflects that big farmers are less in number (42.79%) but they hold majority of lands (83.7%). Informal estimates of NGOs disclose that 9-10 families in a typical village of Chhattisgarh own about 70% of the entire cultivable lands.

With most of the forests and community lands first taken up by the government and then handed over to the industrialists, the local inhabitants have been forced to work as labour. Situations of tribals and *dalits* have deteriorated even more than that of the remaining poor. The tribals are among the worst sufferers in this process because their alienation from traditional cultural and subsistence economy is also executed through land alienation. Modern legislation of land reforms recognizes the individual patta (entitlement) only. While much of the tribal land is communally owned. It could, therefore, be declared as state property according to present law, and

alienated from them. Such alienation is visible in the forest management system and development-induced displacement. Together with the land alienation by government machinery, the lust of urbanites, rural elites and traders to earn fat profits fast, has also resulted in impoverishment and pauperization of native tribal that gradually and systematically annexed the survival base of tribes. In the villages, there is more number of government projects. These projects/ programmes implementing agencies assume that communities lack knowledge and capacities. The government supported projects and services are not accountable to the community. Villages have little control over financial resources coming from outside. In the context of the role of state in the lives of poor, it is pertinent from the point that state accelerates the poverty in the villages. Poor experience that the government is ineffective, irrelevant, corrupt, harassing, and callous. Government machinery rather works in the interests of mighty, resourceful, capitalist traders, privileged, and politicians.

Poor are those who only suffer. The local elite and local leaders act as effective gatekeeper to government provided assistance, either diverting resources to their own use or further deepening their power over the poor by becoming the resource distributors. There is always collusion between local official and local elite.

Position of women in the society is considerably worse in the area. Educational level is low and women are victims of exploitation from home to society. There are tremendous burdens upon the women at home as well as in the society. Women are paid lower wages than men and are treated badly at work. In rural areas, there is a strong prevailing faith in magic and witchcraft. Women also face acute discrimination, harassment, exploitation, rapes, molestation, and torture.

Social fragmentation is now witnessed widely. The fallout from inequity within institutions, the state, civil society and the household is seen increasing the social fragmentation resulting in a decline in social cohesion and an increase in social exclusion. Poor do not benefit from new opportunities created by economic and political restructuring. Villages witness weakened bonds of kinship and community, as well as direct experience of the violence of the state, capitalism, market and the 'haves'. Therefore, in Chhattisgarh the poverty is the by-product of social exclusion. Discrimination and isolation "the hallmarks of social exclusion" have a profound negative impact on quality of life. Being poor can lead to stigmatization and marginalization from institutions leading to greater poverty.

Failure of PDS

In order of hearing on the writ filed by People's Union for Civil Liberties (PUCL) the verdict of Supreme Court released on 23rd July and 3rd September 2001 instructed the governments of 8 provinces to comply with their responsibility to ensure that food reaches the hungry. Particularly when the country has abundant food grains with 61,000 million tones available as against a buffer norm of 25,000 million tones, the Government of India accused the states that they didn't seem to lift the food grains which were offered to them under the public distribution system (PDS). Statistics show that the total allocation of wheat to the states was 2.93 millions tones during April-May 2001, but the take-off was merely 0.911 million tones (31.12%). As stated in the 8th and 9th report of the parliamentary committee of union ministry for consumer affairs and public distributions, about 2.25 million tones of food grains spoiled in the FCI godowns. Despite the huge surplus of food stored with the government, 270 million people are not able to feed themselves, and at least 150 million people have migrated from their motherlands as a result of severe drought. Chhattisgarh government has also kept not less than 1.2 million tones of rice lying in the FCI godowns in Raipur. But the state government failed to provide the food to the countless people of Surguja, Raigarh and Bastar districts who are living in chronic starvation.

Absence of appropriate water management

At the time of notification of separate state the Chhattisgarh had total population of 17,614,928 with the rural population of 14,091,942 (80%). In the state about 98 percent population relies on agriculture and forests. Despite the average rainfall between 1200 mm to 1800 mm, the maximum cultivable lands have rain fed farming. For the population of Chhattisgarh total annual requirements of food grains were assessed to the tune of 3,875,284 tones (1995-96). But the total annual production of food grains was 2,551,109 tones (rice: 2,392,690 tones, wheat: 96,224 tones,

sorghum: 12,195 tones, maize and coarse grains: 50,000 tones). Deficit of 1,324,175 tones had to be met out. Recurring droughts in the state for last few years caused the scarcity of food in the rural areas. As the rice is the main crop of the state that requires plenty of water, the repeated crop failure recounted the food insecurity. Although the rainwater harvesting by constructing tanks is the culture in the state, but the districts having hilly terrain e.g. Surguja, Raigarh, Bastar, Dantewara, and Kanker, rarely conserve the rainwater. In the southern districts of the state, the later three districts actually benefit from lush green forest cover that retains the rainwater and keeps moisture level high. Though the northern districts receive maximum rainfall (1600 mm) the rainwater is mostly wasted off. Last year there was pervasive drought in Surguja that did not allow the farmers grow even the staple crops. This year excessive rains barred the farmers sowing the seeds. Resultantly, acute shortage of food surfaced in the northern districts of the state. Even the big farmer could not provide on-farm employment to the poor and landless. Sad part of the story is that the government has not yet included Surguja in Drought Prone Area Programme despite the persistence of the droughts.

4.9 Pond use in fishing in Sidhma; Sarguja District, Chhattisgarh

By Jana Wendler

Sidhma village has one medium-sized pond suitable for a fishery. For years, this pond was indeed used for fishing, but by the Sarpanch only. As Bikul Sai, the leader of a self-help group (SHG) in the village, says, 15 years ago the Sarpanch on paper "paid" INR 300 to the Gram Panchayat for the lease of the pond. Since then, he was the only holder of such a lease, aided by his winning the position of sarpanch three times in a row. There had also never been any discussion or vote regarding the lease, and no one dared to challenge the activities of the panchayat secretary for a long time. Finally, in 2005 one SHG informed about their rights by local NGOs, complained to the Gram Panchayat about this practice. The sarpanch was then eventually forced to stop his exploitation of a communal resource. Yet the people are still waiting to receive any benefits from the pond, as the Sarpanch now appears to block the issuing of the lease to the SHG. The application has been running since March 2006, and there is no sign of progress. Meanwhile, the pond remains unused. This is a huge loss for the poor people Sidhma, as the estimated revenue from the pond is INR 20,000 per year. Although this case could not be verified through discussion with the Sarpanch or Gram Panchayat, it is interesting that records relating to the prior use of the pond were not available for inspection.

The case of Sidhma is a clear example of the failure of PESA as a functional law. For more than 15 years, one individual had been betraying the people he was supposed to represent. The coming into effect of PESA in 1996 did nothing to change the situation. The Gram Panchayat should have taken control of the pond, deciding on its use by consulting the village via Gram Sabha and ensuring the maximum benefits for the poorest. One would think that 9 years are sufficient for this process to take place, but it took the help of NGOs to change anything. Even now, it does not appear to be the case that the Gram Panchayat is giving out the lease for the benefit of the village. The longer the decision, whatever it will be, takes, the more income is lost. Clearly, this situation results from the bad implementation of PESA at the local level. The control of the water body is not in the hands of the Gram Panchayat, instead there are a few powerful individuals deciding the matter.²¹⁹

4.10 NREGA case studies in Sarguja District, Chhattisgarh

By Jana Wendler

Since NREGA is a recent initiative, which is supposed to replace and improve on SGRY and NFFWP, it seems an ideal opportunity for the government to create a well-administered and well-implemented scheme to help people out of poverty. But even before it has been put into practice fully and work projects started, NREGA is laden with problems and deficiencies.

²¹⁹ No democracy, no food – Status of People's Access to and Control over Livelihood and Development Resources under PESA, Jana Wendler, Food & Democracy Campaign, c/o Grassroots India Trust, New Delhi.

As before, the most serious issue is the lack of information and explanation. The introduction of a new initiative should be publicised fully, not just in official government circulations or the national press but in such a way that it reaches the target group – the rural poor. This is particularly crucial in a case like this, where the procedure of getting work requires initiative from the people themselves, as they need to register and later apply for work. If the initial stage of registration and application is already an indication of the overall success of the scheme, the outlook is grim. In Lalmati and Riri, the people had not even heard of NREGA. The process of registration, which is under control of the Gram Panchayats, had not taken place, and not even any initial information had been distributed. The lack of any information is also very visible in Ghangri and Bheski. In Bheski, a photographer appeared one day. One panchayat representative told the people once their photo was taken they would get work within a week. Of course this was not the case, yet no one ever explained the details of the application process or indeed the overall aim of NREGA. The people of the Lambidand hamlet in Ghangri only by chance came to know that a photographer had come to another part of the village. When they arrived there, he was gone, leaving them with no registration, no work, and therefore no food.

Other villages fare little better. Only about half the population of Banspara is registered by the Gram Panchayat; they received no instructions regarding the matter. Further, they were not aware that it is necessary to apply for work in a specific period of time with the Gram Panchayat. Therefore, the families were waiting to receive work, and no one had dared to ask any questions about the lack of employment offers. People from Sidhma reported the same problem. As above, this lack of information renders the whole initiative useless.

The absence of any instructions and discussions of schemes and help in following the procedures results partly from badly functioning Gram Sabhas. These meetings, which should be attended by all voters in the village, are the platform where explanations could be given and matters can be discussed. Yet low attendance, inflexible agendas, and disinterest of the representatives prevent this (see Section VII). But there are also no alternative sources of information, like government employees going out to the villages or information distributed on the local markets. Quite often NGOs have to fill this gap, yet it is beyond their capacity to replace a full system of information and instruction.

This situation is bad as it stands, but what makes things worse is that the government does not acknowledge these shortcomings. On the website of the Ministry for Rural Development one can find statistics relating to the progress of NREGA (see Annexure 1). The table, dated September 2006, claims that 91% of all rural households in Sarguja have registered for NREGA, all of which supposedly received job cards. One third of all registered households demanded employment, and 100% of this demand was apparently fulfilled. Comparing these figures to the observations in the sample village, there is a massive discrepancy. Seeing as the people of two villages had no knowledge about the scheme, while no proper registration was carried out in two further ones, it is hard to believe that 9/10th of all rural households are registered as beneficiaries of NREGA. Leaving out Kundi, where the matter of NREGA was not discussed, in none of the sample villages any employment opportunities had been created. Again, this questions the statement that 33% of the households have already received employment. Even without having done a full survey of the Sarguja, the claim that all demands for work were fulfilled seems more than doubtful. Such statistics strongly question the government's monitoring of the ground level progress of NREGA, as well as its preparedness to admit and address various shortcomings.²²⁰

4.11 Case stories on Hunger in Jharkhand

Collected by Jharkhand Resource Center of CWS (Center for World Solidarity)

Case 1 from rural areas

Lalji Singh and his family lives in a village named Bichalidag of Manika Block in Latehar district. There are altogether 9 members in the family including three sons and four daughters. The head of the family Lalji Singh, aged 45 years is suffering from joint pain (*Arthritis*) and almost lying on bed since last 7 years.

220 Ibid.

Lalji was the only earning member in his family, but now due to the joint pain he is unable to move any where. Family lies in dearth of regular source of income. Earlier he used to go to *Gujarat* for the sake of earning but due to this disease he can't go out for the work. Due to extreme poverty Lalji can not consult a doctor for proper medication and he used to consult local medical practitioner (Baidya) for the treatment of his joint pain.

To meet the family's daily requirements his wife now started serving many houses as maidservant. Their elder son migrated to other area to earn something for the family. He used to send money to clear the debts taken earlier by Lalji. However, the amount is not enough to pay their all debts.

Lalji Singh has only one acre of land in village Bichalidag. The agricultural produces from the piece of land is not adequate for their family. Total agricultural produces is hardly fulfil the food requirement of this family for one month. This family is in worst situation of accessing state entitlement schemes. They do not have BPL card and not even getting benefit from Annapurna and Antyodaya schemes to extenuate the food shortage. The nearest ICDS centre is 7 Km away from their house and hence no access of ICDS facilities. Over all, this family is living in real crisis. In most of the months this family depends on Rice and Salt and sometimes they only managed to get one meal a day.

The existence of this family is in real danger in this situation and they are not getting any way out to secure

Case 2 from rural areas:

Surfuddin Ansari, 65 years old and his wife lives in Barmasha village of Jarmundi block in Dumka district. They have six children living in a small hut. Surfuddin is a physically handicapped person. Surfuddin is the only earning member of his family. He possess total one acre of land of various category. Due to his physical disability he can not practice farming in his land to produce food grains. Presently, his only source of earning is begging. But, that too is not very easy for him particularly in the rural areas like Barmasha village where maximum house holds are comes under BPL category. In this case he has to cover a distance of 10 to 15 km. More pathetic situation is that he usually returns back to his home once in a week. Sarfuddin usually begs for nearly 20 days in a month and earn INR 20 to 25 in a day. The situation of this family is hand to mouth and they have nothing in their home to fulfil their needs. This family does not have any access to government benefit schemes and INR. 20 or 25 is not enough to provide two meals a day. However, they manage to live with only *rice and salt* once in a day. Some times the rest of the family use to sleep with hunger when Surfuddin do not reach his house after even 7 days.

Case 1 from urban slums:

Sahiman Khatun, 60 years is a blind and deaf widow women lives with her son Tabarak Hussain, 45 years who is also blind by birth, daughter in law Sadina Khatun (35 years) and grand sons Illiyas (10 years), Raja, Ruchuwa and Muchuwa and grand daughter Rubi (5 yrs.) at Nizamnagar, Ward No. 11, Moti Masjid at Hindpirhi locality in Ranchi city. Her husband Adusdir has died long back. Economic condition of this family is such that they hardly consume two meals a day and that through begging, the only earning sources of the family.

This family has been living in a rented 'Kuchcha' house for the last 4 years and for which they has to pay INR 400/- per month. The house is consisting of a single room without any ventilation facility. Three to four very old utensils, few old dresses and two to three plastic buckets are the only assets they have. The locality where they live is a slum deprives from proper road, drainage system, and drinking water facilities.

The ancestral house of Late Adusdir Hussain, husband of Sahiman Khatun was at village Ulihatu Chauli. Two elder brothers of Late Adusdir Hussain cheated Sahiman Khatun to get her husband's share on house and land after her husband's death. As a result she lost all her property and wealth and migrated first to Islamnagar and finally to Nizam Nagar. Her son Tabarak and daughter in law Sadina goes out for begging every morning and hardly able to earn INR 25 to 40 per day and there by to prepare a meal once in a day. During festival days only they manage to earn INR. 40 a day that hardly fulfil their dream of having two meals a day. Hardly, this family is able to cook a

meal during afternoon and if by chance is able to cook afternoon meal the family bound to save half of the cooked meal for their kids for the evening.

During summer, this family face hardship of availing drinking as well as domestic water and manage to take bath 4 days in a month where as, during rainy season trickling of rain water through the roof of their house disturb their daily normal life. During the summer and winter seasons this family makes themselves busy in begging but during the rainy seasons they hardly manage it. So, it becomes very hard to get a meal in a day during the rainy season. This family has BPL Card (Red Card) but is accessing kerosene oil only.

Due to extreme poverty, Sahiman Khatun was unable to nurture her son appropriately and now the future of her grand sons and daughters is also very dark even from their childhood.

Case 2 from urban slums:

Birsa Kachchap, age 45 a resident of Harijan quarter, ward no-11, Hindpiri is the head of his family. He belongs to Uraon sub cast under tribal community. Birsa is a physically challenged person and his two legs are now completely inactive. He some how manage to earn for his family comprises of his wife, son and daughter in law.

Birsa was originally from Dumbar Toli, Kudlaung, Ratu block of Ranchi district from where his father, Etwa Kachchap and mother Fulo migrated to Bhutan during his childhood with other members of the family. Etwa died there and after few years the family returned back to Ranchi. Birsa then started working as domestic servant for the livelihood of his family. At the age of 10/12 when Birsa tried to pluck leaves from the tree he fell down from the tree and broke his knee. Gradually due to almost no treatment his left limb becomes completely motionless.

Then he started living in a rented house in Hindpiri colony with his other family members like mother, elder brother and two sisters. Birsa, though he was incapacitated with his one leg started working as a daily wage labourer (Coolie). At the age of 20 he married to Hiramani, a resident of Sonahatu of Ranchi district. Hiramani gave birth to 8 children of them 6 already died leaving behind one boy and one girl child.

Now, their daughter is married and their son, Rashi Kachchap is also married. Rashi can not earn much as his left arm is polio affected. Rashi's wife is working as a maidservant along with his mother. She is earning INR. 300/- month only and this amount is not enough to fulfil two meals a day for the family.

Birsa and his elder brother were not given the share from their ancestral land property by their uncles living in the village Dumbar Toli. His elder brother is a rickshaw puller and is also not in a position to help Birsa even to some extent.

In the last year, one vehicle cracked down Birsa on the road. This time Birsa unfortunately has lost his right leg and become completely handicapped and presently can not do any hard work. He started doing darn work on cloths at home and earning INR. 3/ inch darn work. He not even gets this work regularly to secure his livelihood.

Wall and floor of the house is of *kuchcha* construction. During the rainy season life becomes very pathetic due to leakage of tile roof and rain water from drains penetrates into the house. The condition of the house is so bad that any time during the heavy rain it may fell down. But they are so helpless economically and physically to repair their house in time. Another dilemma of this family is that their house comes under the Ranchi Nagar Nigam's area. They purchased this piece of land which comes under the encroached land category at INR. 3000/- about 15 years back. Now, most of the time this family is living in panic and scared off to be home less once again as they are not legal holder of the land. In addition to this the family does not have any access to government benefit schemes meant for the poor families like them.

4.12 Sandstone quarrying in Rajasthan²²¹

Introduction

This article is based on a report, published by the India Committee of the Netherlands (ICN). It investigates the quarrying of sandstone in Rajasthan and its effects on the Budhpura village. The report examines the social, economic, and environmental impacts of the quarrying for the local population, focusing on how the villagers and labourers are affected. This business produces huge profits, but the wealth is not shared amongst those doing the hard work.

Economic situation / hunger problem / export of stones

India is the world's largest producers of stones such as granite, marble, sandstone, slate, and quartzite, accounting for about 27% of the world's total natural stone production. Rajasthan, as the largest producer of dimensional stones in India, makes up about 90% of the country's total natural stone production and about 10% of the world's production of sandstone earning a revenue of 6,450,000,000 INR. The sudden increase in exports within the last two decades has led to growing numbers of sandstone quarrying and processing units in Rajasthan.

Traditionally, the economy of the area depends heavily on agriculture, dairy farming, and similar activities with nearly 70% of the population involved. However, due to recurring drought, the harvest is often poor and the farmers earn very little making agriculture no longer a sustainable occupation. Thus many farmers are turning their land over to the Revenue Department who, in turn, leases the land out for quarrying. The farmers then end up working in the quarries as labourers or petty contractors. Yet the villagers do not benefit from this transformation. The surface area of irrigated land has decreased by almost 50% with a considerable increase in cultivable wasteland. The draining of quarries leads to siphoning off of groundwater from village wells, highly affecting the villagers as they are totally dependent upon ground water for farming and drinking water.

While the work force has increased due to the continuing influx of migrant workers, the daily wages of labourers have decreased. Workers are entitled to daily wages only and cannot claim any medical expenses, insurance cover, earned holidays or any other compensation due to accident or death.

During the rainy seasons (from July to September) there is no quarrying activity in the area and therefore no employment or revenue. Workers are forced to take an advance of INR 10,000 to INR 15,000 to meet their needs in the period where they do not have a steady income. This borrowed money has to be returned to the lender with due interest within a certain period of time. Because there are no fixed interest rates, the borrower is forced to pay whatever the lender asks to pay. Many labourers have trouble repaying the debts before the next monsoon starts, accumulating even more debts. With the continual accumulation of debts, the worker then becomes a bonded labourer.

Child labour

It is estimated that out of the 100,000 quarry workers in Bundi District, roughly 15,000-20,000 are children. In Budhpura alone there are an estimated 8,000 child labourers. Yet there appears to be a growth in child labour in the Budhpura sandstone quarries due to various reasons such as the low wages of parents; alcoholism of male adults forcing children to supplement their father's earnings; a severe lack of schooling facilities; the habituation of children of quarry workers who are born at and grow up around quarrying sites; and bonded labour to help pay off debts earned by their parents. Yet not a single case gets reported at the Dabi police station despite the widespread practice of child labour and a well informed public.

Migrant Workers

Because of the available work in the sandstone quarries, workers from other states are flocking

²²¹ Abstract from: Madhavan, P. and Raj, Sanjay: Budhpura Ground Zero" – Sandstone quarrying in India, December 2005, commissioned by India Committee of the Netherlands, available at: www.indianet.nl.

to Budhpura. Migrants arrive on a seasonal basis, especially at the end of the rainy season when quarry activities pick up again. About 80-90% of the quarry workers of the quarries in Budhpura are regular migrants. Often, due to accumulated debts during the quarrying season, many migrant workers fall into bonded labour to pay off their debts.

Silicosis

Workers in mines are in constant danger to their health. They inhale minute dust particles called silica which settle in the lungs causing silicosis, leading to pulmonary fibrosis and premature death. The lack of safety equipment provided to the workers, the lack of awareness, and the poor nutritional status of the labourers help worsen the situation. There is no hospital or well equipped healthcare centre in Budhpura, creating a particularly serious situation for the villagers. Quarry owners do not take responsibility for any treatment and the labourers are forced to pay for their own medical expenses. In addition, workers are not paid for the days they are absent from work due to illnesses or accidents.

5. Conclusions

To overcome food insecurity and fight against hunger and malnutrition India has formulated several policies. However, these policies are not sufficient to address the hunger situation in the countries and there exists a gap between the policies of ending hunger and their implementation. Lack of effective implementation, corruption, inefficiency and discrimination deprive the poor in India who continuously struggle for survival and endure different degrees of chronic and endemic hunger. Several assessments^{222 223} show that the bulk of the government funding does not reach the rural areas or to the urban poor directly due to various leakages in the distribution process. The social welfare schemes are poorly implemented, central provisions of funds are inadequate or under utilised^{224 225} and are not even demanded by the states, food grains meant for the poor are diverted and enjoyed by powerful elites, discrimination in distribution, irregular and untimely supports, corruption, biased political influences at grassroots are elements of a complex web of causes contributing to widespread hunger in a society of plenty.

Liberalisation of the economy ushered in several changes in different sectors adversely impact food security of the people. The government has failed to protect the people and facilitate the process of adapting to the changing realities. Crisis in the Agricultural sector is a case in point. Removal of subsidise and dominance of the market without and support from the State has destroyed the agricultural communities and threatened their right to feed themselves. Landless labourers who work on the land also face hardships due to the decrease in work opportunities as farm hands. Additionally failure in the land reform programme has denied the landless access to land. Change in policy allowing foreign products to flood the Indian markets without any safety valves has impoverished people. The situation of the weavers is an example of this impoverishment.

The Public Distribution System (PDS) is being dismantled in order to reduce government expenditure on food subsidies. The Targeted Public Distribution System (TPDS) has been introduced only to look after the food security of the people living below poverty line. Poverty itself is not clearly defined by the government and the criteria to decide which people are below poverty line are vague. The definition of the poverty line itself is based on calories intake and income. These parameters alone are insufficient to define poverty. Definition of poverty should take basic needs of life: shelter, clothing, healthcare, sanitation, drinking water and equal opportunity education into consideration. The poverty line considers calories intake but it is important to go beyond a simple caloric standard, because the body also needs proteins, fat, minerals, iron and vitamins. Nutrition deficiency is a leading cause of disease. According to the UNICEF, "Malnutrition limits development and the capacity to learn. It also costs lives: about 50% of all childhood deaths are attributed to malnutrition." A nutritious diet is a fundamental need of the human body and this must not be ignored when formulating a poverty line.

This report clearly indicates, that the Government of India even though it has ratified the International Covenant on Economic, Social and Cultural Rights, is failing to respect, protect and fulfil its people's right to adequate food and water and comply with the obligations it has accepted as a state party of the Covenant.

In the following lines, based on the cases documented in this report, the violations by the India Government relating to the right to adequate food are explained:

222 Ahluwalia, Pooja, The Implementation of the Right to Food at the National Level: A Critical Examination of the Indian Campaign on 'The Right to Food as an Effective Operationalisation of Article 11 of ICESCR, available at: (<http://www.fao.org/righttofood/kc/downloads/vl/docs/AH417.pdf>).

223 The Supreme Court Orders highlighting the terrible situation of victim groups as well as the inability of the Government authorities to ensure their right to food is well documented in the homepage of the Right to Food Campaign India: http://www.righttofoodindia.org/icds/icds_articles.html.

224 Analysing poor women focused programs, Sinha D. writes: "From the outset, this scheme has been characterised by low allocations, under-utilisation, long delays and procedural complications." http://www.infochangeindia.org/agenda6_18.jsp /.

225 Standing Committee report on education and midday meal, available at: <http://rajyasabha.nic.in/book2/reports/HRD/149threport.htm>.

5.1 Access to productive resources

5.1.1 Land, Forest and Displacement

The cases identified in this report show that the government fails to secure peoples' access to productive resources. Such disregard for peoples' livelihoods is clearly apparent not only throughout the States' domestic policies and activities, but also in its legislation. Some of the laws such as the Indian Forest Act have been leading to massive evictions of poor people from forest areas, separating them from their livelihood sources and leaving them in absolute poverty without appropriate rehabilitation and compensation. Even though various laws have been formulated to protect and ensure peoples' access to resources, the cases documented in this report show another picture.

Government agencies such as Ministry of Mines and Ministry of Forestry are responsible for resettlement of people without proper rehabilitation. Acquisition of land for mining has taken place without the consent of the people and without proper rehabilitation plan for the displaced Tribals. Through such processes access to food and water of hundred thousands of Indian citizens have been destroyed, (see cases on Kashipur, Lanjigarh, Hazaribagh, Bastar, Kalinganagar). Development and industrial projects like building of dams (Narmada), or construction of factories (Singur) are pushed through with complete disregard for those dependent on the land for their survival. Loss of agricultural land and the displacement without proper and just resettlement holds the Indian state in violations of its obligations to respect, protect, and fulfil its people's right to feed themselves. Rapid establishment of Special Economic Zones has been leading to land alienation of people who have lived in those areas (Nandigram). During such processes the political and social, economic and cultural rights of the people living in such areas are massively violated including killings of those resisting forced evictions. Only due to massive protests all over India, the Parliamentary Committee on Commerce has demanded a freeze on new SEZs, and some states have put the establishment of new SEZ to halt. On the other hand, The Government of India is unable to balance the needs of private enterprises for acquiring land exploiting natural resources and the fundamental rights of the poor people to feed themselves. Biased towards industrial development and even smoother procedures with regard to land acquisition by private, the Land Acquisition Act of 1894 (amended in 1984) is further proposed to be amended and is used as an instrument for faster and smoother acquisition of land for industry and commercial enterprises. This entails the danger of increased acquisition of land by private companies without properly resettling and rehabilitation the affected populations and thereby violating to respect, protect and fulfil the people's right to food (Singur).

Disregard for peoples' livelihoods is also apparent in respect to the government of India's agreements with intergovernmental organizations such as the World Bank. These agreements have been aimed at fostering economic growth. Under international human rights law India should ensure that such agreements do not threaten people's means of livelihood. In reality, however, their implementation has endangered many peoples' sustainable access to productive resources (Hazaribagh).

As described above, land resources are being alienated from the people who depend on them for their survival. Furthermore, land reform, once considered of great importance, has never been effectively implemented. Many landless remain without land or tenants remain without the titles to their land. Landless families have been struggling for years in vain to get titles to the land they have settled on (Dandi, Udham Singh Nagar, Rahata, Ahmednagar District) or which was excess or surplus land under the land reform and meant to be distributed to the landless.

There are even cases where people have land titles, but are prevented from local elites to cultivate the land. Further more, there are evictions of people from land they have settled (Ahmednagar). Secure access to land are crucial for people to feed themselves., however, in the case of the Todas in Nilgiri district of Tamil Nadu, the long due extension of traditional access to the land has not been granted, causing fear and insecurity among the community. In case of destruction of the forest or disruptions of livelihood through evictions like in Erode (Sathyamangalam) the state has failed to rehabilitate the victims adequately.

Access to forest and grazing land to graze their animals and thus secure their livelihood is most important to secure the livelihood of nomadic pastoral communities. By restricting access to forest and grazing lands, India is violating to respect the right to food of these people (Nomadic communities in south Tamil Nadu). Access to fishing grounds are necessary to ensure access to food. (Kolleru)

5.1.2 Water

Lack of access to clean drinking water and water for irrigation due to pollution of water resources, diversion of water for industrial purposes and steps towards privatization of water are some of the threats to the right to water of the people in India. Giving access to exploit water resources to water intensive companies are some examples. Non implementation of measures to prevent the pollution of water resources due to effluents violates the people's access to safe water.

By not preventing shrimp industries, textile industry or chemical industry to occupy land and contaminate water and thereby destroy the sources of livelihood of farmers and fisher folk in Thillaivilagam, Thanjavur district, Kongu region and Cuddalore in Tamil Nadu, the government has failed to protect the people's right to feed themselves and water. By not preventing industries from polluting water bodies, by not strictly implementing procedures of effluent treatment plants and ensuring peoples access to safe drinking and irrigation water India fails to respect, protect and fulfil people right to water (Jai Bheem Nagar, Meerut and Hindon River case) The Government of India is displaying similar disregard in its relations with private enterprises and transnational corporations by failing to ensure that its agreements with them comply with international standards and human rights principles. The consequences of Coca Cola Company and the bauxite mining in Orissa by UAIL and Sterlite, indicates that the government, through agreements or memorandums of understanding, often jeopardises many individuals' ability to feed themselves and their right to water. Depletion of ground water by Coca Cola in Kerala and Tamil Nadu has threatened the existence of many farmers. The state must give priority to its people before giving licenses to TNCs to exploit the country's resources. Drinking water and irrigation should be accorded priority as per the Water Policy.

5.2 Employment and wages

India fails to make the employers comply with the rules and regulations meant to safeguard persons' right to food, as can be seen in the mining areas of Jodhpur in Rajasthan as well as in the foundry sector in West Bengal and with the weavers in Uttar Pradesh. In the two latter cases as well as with the starvation deaths resulting from the closure of tea gardens and thus lack of employment in West Bengal, the government's responsibility towards supporting the viability of industries which secure the livelihood of thousands of workers has to be stressed and should be more prominently considered in economic policies.

In the cases analysed, the Indian government has failed to provide alternative sources of employment, to promote economic interest or to raise the level of working conditions, nutrition and standard of living. There is no clear minimum wage enforceable by the governments. Many workers are casual labourers doing their work in very precarious conditions. The job insecurity faced by the workers threatens their livelihoods. Under the contract system, many labourers do not get the benefits they are legally entitled to as workers. There is a problem of awareness of the workers regarding the schemes they are entitled to. Owners are reluctant to give them benefits and complain the procedures are complicated. Authorities do not play a proactive role.

Similarly, before putting a ban on a certain kind of occupation like the rickshaw pullers in Kolkata, it has to be ensured, that adequate compensation and rehabilitation mechanisms are in place which reach out to every affected person. In case of unemployment a proper functioning social security scheme should be in place. In addition, discrimination and under-payment of women could be observed. Minimum wages are in many cases not properly implemented. In addition contract systems threaten the right to food of the labourers. Women are at times denied minimum wages for the same work and face additional exploitation (Mineworkers in Rajasthan and Foundry Workers in West Bengal, Brick Kiln workers in Uttar Pradesh, Chikan Kari women

workers in Lucknow). The situation is worse in the informal sector where labour is exploited in absence of and lack of implementation of rules and regulations.

5.3 Social Security

The public distribution system has evolved as a major instrument of the Government economic policy for ensuring availability of food grains to the people at affordable prices as well as for ensuring the food security for the poor. The necessary shift from universal public distribution to Targeted Public Distribution System (TDPS) in 1997, has not contributed to address the problem of hunger and starvation of millions of Indians. The criteria of the identification of families below and above the poverty line and the Antyodaya Anna Yojana (AAY) beneficiaries are fuzzy and the process of identification through survey is flawed, rarely followed and not based on the ground realities. The public distribution system is not implemented to the detriment of the poor and vulnerable. In many cases Fair Price shops (FPS) do not remain open during the day and the whole month, the Price list and list of FPS committee members are not displayed outside the shops, the quality of grains is very bad, the quantity available is not as per rules and the grains cannot be bought in instalments. For the poorest of the poor the subsidized price of the PDS grains is still too high and not affordable causing misery and hunger. The poor implementation of its own policies violates the people's right to food.

There are people who have been excluded from the PDS due to inefficient targeting and other who cannot afford to buy food from the PDS. The State should take steps to identify people requiring support from the PDS and extend safety nets for those most vulnerable to hunger. A minimum income should be ensured for those who cannot afford to buy food or grains and face threat of starvation. State is failing to ensure that inability to feed oneself does not lead to exploitation of the people. Bonded labour is banned but still continues in some pockets of the country. Failure to protect the people and fulfil their right to food is a violation of the people's right to adequate food (Chenchu tribe bonded labour, starvations Tribal Colony and starvation deaths in Andhra Pradesh). Deaths due to hunger or Starvation still remain unacknowledged by the state. Lack of food and nutrition leads to illness and ultimately causes deaths is ignored by the State. Unless firm steps are taken to prevent deaths due to hunger starvation deaths will continue in the country.

Furthermore, lack of proper policies and lack of proper implementation of relief schemes to rehabilitate victims of natural calamities put the right to food of victims of such disasters at stake. Even though the Government of India has sufficient funds for the victims of the Tsunami, the victims after years of the catastrophe are still without proper shelter and struggle for their survival (Tsunami Case Tamil Nadu). As documented in the case of the victims of Bahraich and Malda, the State Governments of Uttar Pradesh and West Bengal have not been able to fulfil the right to food of flood and River erosion victims. According to its international commitments, the state is obliged to provide food to persons who are victims of natural or other disasters. Both states have not even developed a clear policy for supporting flood and erosion victims by securing their livelihood. The same condition applies for the victims of the Tsunami, whose lands got salinated due to intrusion of seawater. The state has an obligation to compensate affected people adequately and efficiently, so that even after disasters like the Tsunami, victims do not suffer prolonged periods of hunger and are able to build up a new source of livelihood for the future.

The state fails to address the situation faced by street children, who have no shelter, food, and clothing; and are often exposed to threats of violence. Children homes and other programme to support orphaned or destitute children are failing to protect Child rights. Although implementation of the MDMS is commendable it does not fulfil the right to food of out of school children and children who face continued discrimination in accessing food. India has taken special steps to fulfil the right to food of people with disabilities but failures in implementation denies the Physically challenged persons access to adequate food and right to work. The State has the obligation to respect, protect and fulfil the rights to its people.

6. Recommendations to the State of India

This report indicates the various types of violations of the right to adequate food that are occurring in India. FIAN would like to recommend the following to the Government of India in order to respect, to protect, and to fulfil the right to adequate food for its population.

1. Policies and laws

- Ensure that farmers are protected in face of increased market pressures and steps are taken to reduce instance of farmer suicides.
- Make efforts to frame a realistic definition of poverty and identify all those suffering from poverty and violation of rights. Ensure that those identified as poor do not face food insecurity and are able to feed themselves.
- Take steps to ensure effective monitoring of the implementation of various policies and laws.
- Respect, protect and fulfil the rights of children and ensure that they are not exploited.
- Give special attention to ensure the right to food of women and ensure that they do not face discrimination in accessing food.
- Implement effectively the special provisions made for the Schedule castes and Tribes.

2. Access to Productive Resources

Land, Forest and Displacement

- Implement the current land tenure system and in some cases reform it to ensure Adivasis' and landless peoples' secure and sustainable access to agricultural land.
- Take concrete measures to regularize the land in the name of the landless who have settled on land and are cultivating it (cases from Maharashtra, Uttarakhand, West Bengal, and Karnataka in this report).
- Ensure the Todas' right to access to the land in Tamil Nadu.
- Take steps to guarantee that agreements with private enterprises and transnational corporations are in conformity with international human rights law.
- Establish monitoring procedures to ensure that land acquisition does not destroy people's access to resources leading to the threat of hunger and starvation.
- Frame and implement procedures to ensure the participation of all the affected communities in the decisions concerning the implementation of projects like the Coal mining project in Hazaribagh (Jharkhand), the bauxite mining in Kashipur and Lanjigarh (Orissa), plants in Singur (West Bengal), Kalinganagar (Orissa) and Bastar (Chhattisgarh), and special economic zone in Nandigram (West Bengal).
- Take measures to implement, update, and improve the provision of adequate compensation and rehabilitation to all those who have been and will be adversely affected by different infrastructural or development projects in the country.
- Take steps to implement the recommendation of the World Bank Inspection Panel Report on the Hazaribagh coal mining case in Jharkhand.
- Take steps to guarantee the provision of adequate land for land compensation to the peasants with guaranteed social and cultural rehabilitation in Singur, Nandigram, Kashipur, Lanjigarh, Kalinganagar, Hazaribagh and Bastar.
- Take steps to prevent the use of violence in cases like Singur, Nandigram, Kalinganagar, Kashipur, Bastar and other areas where land acquisition is leading to use of violence by the state and other elements.

Water

- Ensure that the National Water policy of India is in compliance with human rights standards.
- Take steps to monitor the use of water for commercial purposes and ensure safe drinking and irrigation water to the people as a priority.
- Take steps to make sure that pollutants are effectively treated before they are released into the environment.
- Ensure that safe drinking and irrigation water is provided to the people as priority.

3. Employment and wages

- Monitor the payment of minimum wages in the formal sector and the informal sector and ensure that minimum wages are properly enforced.
- Ensure that minimum wages for women are guaranteed and take remedial action for non implementation of minimum wages.
- Take steps to ensure the long term viability of certain labour intensive industries or occupations (e.g. tea gardens, foundry sector, weavers, rickshaw driving)), and take steps to ensure alternative sustainable employment is available for those impacted.

4. Social Security

- Take measures to ensure effective short and long term rehabilitation of people who lost their source of livelihood due to natural disasters.
- A policy to rehabilitate victims of river erosion should be formulated guaranteeing the immediate relief and long term rehabilitation of river erosion victims.
- Monitor the effective implementation of the various schemes designed to provide food to the most vulnerable of the population.
- Take proactive steps to identify those people most vulnerable to starvation and take measures to prevent starvation deaths.
- Evolve a methodology to define, identify, characterize, and document starvation cases in India.
- Frame accountability mechanisms devised to combat hunger and starvation in India.
- Ensure the effective implementation of the Public Distribution System.
- Implement measures to monitor and take corrective action in case of irregularities in the implementation of Supreme Court orders on PDS in the PUCL right to food case.
- Ensure that those who cannot afford grains from the PDS get food and do not face hunger and starvation.
- Monitor the implementation of the NREGA as per the operational guidelines and inform people of their entitlements under the act.
- Ensure that the development of the infrastructural base undertaken through the NREGA, benefits communities.
- Take steps to make provisions for those, who are not able to work (old, infirm, disabled) under the NREGA.



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8. Annexes

Annex 1. Indian Acts with Relevance for the Right to Food

- The Indian Wild Life (Protection) Act 1972
- The Water Prevention and Control of Pollution) Act 1974
- The Forest Conservation Act 1980
- The Air (Prevention and Control of Pollution) Act 1981
- The Environment (Protection) Act 1986
- The Plant varieties Protection and Farmers Rights Act 2001
- Biological Diversity Act 2002
- Indian Forest Act, 1927
- The Minimum Wages Act 1948
- Workmen Compensation Act 1923
- Maternity Benefit Act 1961
- Equal Remuneration Act 1976
- Contract Labour Abolition and Regulation Act 1970
- Bonded Labour System Abolition Act 1976
- Child Labour (Prohibition and Regulation) Act 1986
- The Equal Remuneration Act 1976
- Untouchability Amendment and Miscellaneous Provision Act 1976
- Prevention of Block Marketing and Maintenance of Supplies of Essential Commodities Act 1980
- Forest Conservation Act 1980
- Maritime Zone of India (Regulation Of Fishing by Foreign Vessels) Act 1981
- Scheduled Castes and Scheduled Tribes Prevention of Atrocities) Act 1989
- Special Economic Zone Act 2005
- The Special Economic Zones Rules, 2006.
- Costal Aquaculture Authority Act 2005
- The Right to Information Act, 2005
- The Seeds Act, 1966, (Act No. 54 of 1966)
- The National Rural Employment Guarantee Act, 2005
- The Protection of Human Rights Act, 1993
- The State/UT Minor forest Produce (Ownership Rights of Forest Dependent Community) Act, 2005
- Panchayati Raj (73 rd Amendment) Act, 1992

- Urban Land (Ceiling and Regulation) Act, 1976
- The Urban Land (Ceiling and Regulation) Repeal Act, 1999
- The Scheduled Tribal and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2

Annex 2. Other Relevant Acts

- Married Women's Property Act, 1874
- Children (Pledging of Labour) Act, 1933
- Public Debt Act, 1945
- Minimum Wages Act, 1948
- Plantation Labour Act, 1951
- Essential Commodities Act, 1955
- Protection Of Civil Rights Act, 1955
- Slum Areas (Improvement and Clearance) Act, 1956
- Married Women Property Extension Act, 1951
- Orphanages and Other Charitable Houses Management Act, 1960
- Dowry Prohibition Act, 1961
- Food Corporation Act, 1967
- Consumer Protection Act, 1986
- Public Distribution System (Control) Order, 2001
- The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995.
- Hindu Succession (Amendment) Act 2005

Annex 3. Specific Land related/ Property/Agriculture laws

- Waste Land Claims Act, 1863
- Land Improvement Loan Act, 1883
- Agriculture Loans Act, 1884
- Indian Reserve Forest Act, 1884
- Land Acquisition Act, 1894
- Indian Forest Act, 1927
- Resettlement of Displaced Persons Land Acquisition) Act, 1948

Annex 4. The Directions of the 1996 December 11, Supreme Court Judgement (W.P. 561/94)

- The shrimp culture industries/ shrimp ponds are covered by the prohibition contained in paragraph. 2(i) of the Coastal Regulation Zone (CRZ) Notification 1991. No shrimp culture pond can be constructed or set up within the coastal regulation zone as defined in the CRZ Notification. This shall be applicable to all seas, bays, estuaries, creeks, rivers and backwaters. This direction shall not apply to traditional and improved traditional types of technologies (as defined in Alagarwami report), which are practiced in the coastal low-lying areas.
- All Aquaculture industries/ shrimp culture industries/ shrimp culture ponds operating/ set up in the coastal regulation zone as defined under the CRZ Notification shall be demolished and removed from the said area before March 31, 1997. We direct the Superintendent of Police, Deputy Commissioner of Police and the District Magistrate / Collector of the area to enforce this direction and close/demolish all Aquaculture industries/ shrimp culture industries, shrimp culture ponds on or before March 31, 1997. A compliance report in this respect shall be filled in this Court by these authorities before April 15, 1997.
- The farms who are operating traditional and improved traditional systems of Aquaculture may adopt improved technology for increased production, productivity and return with prior approval of the 'authority' constituted by this order.
- No Aquaculture industry/ shrimp culture industries / shrimp culture ponds shall be constructed / set up within 1000 meters of Chilika lake and Pulicat lake (including Bird Sanctuaries namely Yadurpattu and Nelepattu).
- Aquaculture industry/ shrimp culture industry/ shrimp culture ponds already operating and functioning in the said area of 1000 meters shall be closed and demolished before March 31, 1997. We direct the Superintendent of Police / Deputy Commissioner of Police and the District Magistrate / Collector of the area to enforce this direction and close / demolish Aquaculture industries / shrimp culture industries / Shrimp culture ponds on or before March 30, 1997. A compliance report in this respect shall be filled in this Court by these authorities before April 16, 1997.
- Aquaculture industry/ shrimp culture industry/ shrimp ponds other than traditional and improved traditional may be set up/constructed outside the coastal regulation zone as defined by the CRZ notification and outside 1000 meters of Chilika and Pulicat lakes with the prior approval of the "authority" as constituted by this Court.

Annex 5. National and State Legal Provisions on Community; Labour and Environmental Issues²²⁶

- The main law applicable on labour aspects of natural stone quarrying is the Rajasthan **Minor Mineral Concession Rules, 1986**. Environmental aspects are dealt with in respectively the **Environmental Protection Act, 1986; the Forest Conservation Act, 1980; the Air Act, 1981 & Rules; and the Water Pollution Act, 1974 & Rules**.
- **Environment (Protection) Act, 1986**
Under this measure, the central government has responsibility for deciding standards, restricting industrial sites, laying down procedures and safeguards for accident prevention and handling of hazardous waste, oversight of investigations and research on pollution issues, on-site inspections, establishment of laboratories, and collection and dissemination of information. Samples collected by central government officials can be admissible in court. The Department of Environment, Forests and Wildlife, which is within the Ministry of Environment and Forestry, was designated as the lead agency for administration and enforcement. The bill also sets standards on specific pollutants in specific industrial sectors. The measure provides guidelines for location of industries and quarrying areas, for permitting and restricting industries in environmentally sensitive areas, coastal zone regulations and Environmental Impact Assessments (EIA) of development projects. Committees convened to conduct EIAs must have disciplines in eco-system and water resource management, air and water pollution control, flora and fauna conservation, land use planning, social sciences, ecology and environmental health. Public hearings are also pre-requisite for project clearance. The measure also delineates a system where a manufactured product can receive certification as environmentally friendly or compatible.
- **Forest Conservation Act, 1980**
The Forest Conservation Acts gives the State jurisdiction over both public and private forests, and facilitates the extraction of timber for profit. Public forests, in which State governments have a proprietary interest, are divided into three categories:
 - _ reserve forests,
 - _ village forests, and
 - _ protected forestsIn extending to forests land which is not the property of the Government, the Indian Forest Act represents strong governmental intrusion into private rights. The Act also authorizes State Governments to acquire private land for public purposes under the Land Acquisition Act. These Forest Conservation

²²⁶ Cited from Madhavan, P. and Raj, Sanjay: Budhpura „Ground Zero“ – Sandstone quarrying in India, December 2005; study commissioned by India Committee of the Netherlands, available at: www.Indianet.nl.

Acts also provides protection and compensation for legally recognized individual or community rights to forest land or forest products.

• **Indian Forest Act, 1927**

This Act deals with four categories of forests, namely, reserved forests, village forests, protected forests, and non-government (private) forests. Any unauthorized felling of trees, quarrying, grazing and hunting in reserved forests is punishable with a fine or imprisonment. The Forest Act is administered by forest officers who are authorized to compel the attendance of witness and the production of documents, to issue search warrants and to take evidence in an enquiry into forest offences.

• **Forest (Conservation) Act, 1980**

This act was as a result of rapid decline in forest cover. Until then, deforestation averaged 1 million hectare a year. The Act prohibits the deletion of a reserved forest, or 30 the diversion of forest land for any 'non-forest' purpose, and prevents the cutting of trees in a forest without the prior approval of the Central government. Contravention of the Act attracts up to 15 days in prison.

• **Air (Prevention and Control of Pollution) Act, 1981**

This act aims at prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the purposes of the boards, for conferring on and assigning to such boards the powers and functions relating thereto and for matters connected therewith.

The Air (Prevention and Control of Pollution) Act, 1981 was amended by the Amendment Act in 1987. The Air Act framework is to enable an integrated approach to environmental problems. The Air Act expands the authority of the Central and State boards established under the Water Act, to include air pollution. States not having air pollution boards were required to set up air pollution boards. Under the Air Act, all industries operating within designated air pollution control areas must obtain "consent" (permit) from the State boards. These States are required to prescribe emission standards for industry and automobiles after consulting the Central board and noting its ambient air quality standards.

• **Water (Prevention and Control of Pollution) Act, 1974**

The Water (Prevention and Control of Pollution) Act of 1974 was amended in 1988. The legislation establishes a Central Pollution Control Board, and State Pollution Control Boards for Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal, as well as for the Union Territories. Each board, Central or State, consists of a chairman and five members, with agriculture, fish-

eries and government-owned industries all having representation.

Some of the main responsibilities of the Central Board, pursuant to promoting cleanliness and pollution abatement of streams and wells, include: co-ordinating activities of State boards and resolving disputes among them; providing technical assistance; conducting investigations; opening laboratories for analysis of samples; establishing fees for different types of sample testing; researching issues and problems; training personnel; conducting media and public awareness campaigns; collecting and disseminating data on water pollution; and working with State boards to set standards by stream or well. The State boards have similar responsibilities, although they also play an important subsidiary role of doing plant-level inspections and monitoring, and advising the Central Board of problems and trends at the local level. Plants can be required to provide the State with information on their pollution control technologies, and the State may acquire effluent samples, which are admissible in court. State board members also have unfettered access to any plant site at any time. In situations where a State board believes immediate action is necessary, it has the authority to prevent further discharges, and can also apply to a Judicial Magistrate for a restraining order. In the case of an emergency, State boards are empowered to take whatever measures they deem necessary.

Other acts and rules regulating aspects related to the quarrying industry are:

• **Noise Pollution (Regulation and Control) Rules, 2000**

These Rules aim at controlling noise levels in public places from various sources, inter alia industrial activity, construction activity, generator sets, loud speakers, public address systems, music systems, vehicular horns and other mechanical devices. It is assumed that such noise can have deleterious effects on the human health and the psychological well being of the people. The objective of the rule is to regulate and control noise producing sources, with the objective of maintaining the ambient air quality standards in respect of noise.

• **Indian Wildlife (Protection) Act, 1972**

The Wildlife Act provides for State Wildlife advisory boards, regulations for hunting wild animals and birds, establishment of sanctuaries and national parks, regulations for trade in wild animals, animal products and trophies, and judicially imposed penalties for violating the Act. This act also prohibits harming endangered species, hunting other species like those requiring special protection, big game, and small game (though licensing few species classified as vermin may be hunted without restrictions). The amendment to the Act in 1982, introduced pro-

visions permitting the capture and transportation of wild animals for the scientific management of animal populations. Comprehensive amendments to the parent Act in 1991 resulted in the insertion of special chapters dealing with the protection of specified plants and the regulation of zoos.

Workmen's Compensation Act, 1923

The Workmen's Compensation Act, 1923 provides for payment of compensation to workmen who suffered injury by accident. The Workmen's Compensation Act, 1923, aims to provide workmen and/or their dependents some relief in case of accidents arising out of and in the course of employment and causing either death or disablement of workmen. As per Section 1, the Act extends to the whole of India and it applies to railways and other transport establishments, factories, establishments engaged in making, altering, repairing, adapting, transport or sale of any article, mines, docks, establishments engaged in constructions, fire-brigade, plantations, oilfields and other employments listed in Schedule II of the Act. The Workmen's Compensation (Amendment) Act, 1995, has extended the scope of the Act to cover workers of newspaper establishments, drivers, cleaners, etc. working in connection with, motor vehicle, workers employed by Indian companies abroad, persons engaged in spraying or dusting of insecticides or pesticides in agricultural operations, mechanised harvesting and thrashing, horticultural operations and doing other mechanical jobs.

Maternity Benefits Act, 1961

Under this law, no employer can knowingly employ a woman in his establishment during the six weeks following the day of her delivery or her miscarriage. However, if the pregnant woman herself makes a request, she should not be forced to indulge in work of an arduous nature, or be forced to stand for long hours, since such work might adversely affect her pregnancy or health or the normal development of the foetus or cause a miscarriage.

Every woman is entitled to the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including 32 the day of her delivery and for the six weeks immediately following that day. The average daily wage is calculated on the basis of the amount payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she has absented herself on account of maternity. To be eligible for maternity benefit, a woman should have worked in an establishment for not less than 160 days in the twelve months immediately prior to the date of her expected delivery. The maximum period for which any woman can be entitled to maternity benefit is twelve weeks. This includes six weeks up to and including the day of her delivery and six

weeks immediately following that day.

Bonded Labour System (Abolition) Act, 1976

This Act seeks to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people. It is an attempt on the part of the State to extend an umbrella of protection over the poor and needy workmen who may accept any terms for pledging their labour in order to stave off hunger and destitution.

Section 2 (e) of the Act defines "bonded labour" as any labour or service rendered under the bonded labour system and "bonded labour system" as the system of forced, or partly forced labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that, (i) in consideration of an advance obtained by him or by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or (ii) in pursuance of any customary or social obligation, or (iii) in pursuance of an obligation devolving on him by succession, or (iv) for any economic consideration, received by him or by any of his lineal ascendants or descendants, or (v) by reason of his birth in any particular caste or community. The Act abolished the bonded labour system in the country and every bonded labourer stood freed and discharged from any obligation to render any bonded service. The Act also prohibits (i) making of any advance by any person under or in pursuance of, the bonded labour system, and (ii) compelling any person to render any bonded labour or other form of forced labour.

Child Labour Act of 1986

The Child Labour Act bans the employment of children, below 14 years of age in specified occupations and processes which are considered unsafe and harmful to child workers and regulates the conditions of work of children in employments where they are not prohibited from working. It also lays down penalties for employment of children in violation of the provisions of this Act, and other Acts which forbid the employment of children; The Act extends to the whole of India. The Child Labour Act of 1986 applies to all establishments and workshops wherein any industrial process is carried on. An "establishment" includes a shop, commercial establishment, workshop, farm, residential hotel, and restaurant, eating house, theatre or other place of public amusement or entertainment.

Annex 6. The major deficiencies of the TPDS

Based on the Mid-Term Appraisal of the 10th Five year Plan (2002-2007), Planning Commission, Government of India.²²⁷

The major deficiencies of the TPDS include (a) high exclusion and inclusion errors (b) non viability of fair price shops (c) failure in fulfilling the price stabilization objective and (d) leakages.

- a) The Central Government allocates food grains to States based on a narrow official poverty line. There is a need to look at this allocation criterion to States. If we go by the official poverty ratio criterion, only 28% of the population is eligible under PDS at all India level in 2004- 05. However, food insecure households may be much higher than the official poverty ratios. For example, under-nutrition among children and households is much higher than this figure.
- The use of BPL method for identifying households by the States. This identification differs from State to State. For example, some of the South Indian States do not follow the official poverty ratio for limiting the ration cards. In Andhra Pradesh, more than 70% of the households have ration cards. This is one of the reasons for high inclusion errors in Andhra Pradesh.
- b) Of the economic viability of fair price shops, which appears to have been badly affected by the exclusion of APL population from the PDS (which happened after PDS became TPDS in 1997).
- c) One of the objectives of the PDS has always been to ensure price stabilisation in the country by transferring grain from cereals-surplus to cereals-deficit regions. Targeted PDS has reduced the effectiveness of this objective. This is because under TPDS, the demand for cereals is no longer determined by State Governments (based on their requirements, and in practical terms on past utilisation) but on allocations decided by the Central Government (based on poverty estimates prepared by the Planning Commission)
- d) "the share of leakages in off take from the Central Pool is abnormally high, except in the States of West Bengal and Tamil Nadu". Further, "in terms of leakages through ghost BPL cards, there are fewer problems in Andhra Pradesh, Haryana, Kerala, Punjab, Rajasthan and Tamil Nadu than in other States". At the fair rice shop level, leakages were found to be high in Bihar, Punjab and Haryana.
- General awareness of the beneficiaries, high literacy and strong grassroots level organisations (particularly PRIs) have helped States like West Bengal and

Himachal Pradesh in minimising FPS level leakage, while in the case of Tamil Nadu, it is the elimination of private retail outlets". It has been documented that strong political commitment and careful monitoring by the bureaucracy are the key elements of the success of PDS in Tamil Nadu.

- => The nexus between officials, the mafia and ration shop dealers must be broken in order to reduce leakages. Monitoring and accountability of TPDS (food security watch) should be improved in a significant way. The TPDS needs to be strengthened by means of the effective use of information technology including introduction of a unique ID based smart card system.

Performance Evaluation of TPDS

- Only 22.7 per cent fair price shops are viable in terms of earning a return of 12 per cent on capital.
- The off-take by APL cardholders was negligible except in Himachal Pradesh, Tamil Nadu and West Bengal.
- The off-take per BPL card was high in West Bengal, Kerala, Himachal Pradesh and Tamil Nadu.
- The off-take by the poor under TPDS was substantially higher than under universal PDS.
- There are large errors of exclusion and inclusion and ghost cards are common.
- High exclusion errors mean a low coverage of BPL households. The survey estimated that TPDS covers only 57 per cent BPL families.
- Errors of inclusion are high in Andhra Pradesh, Karnataka and Tamil Nadu. This implies that the APL households receive an unacceptably large proportion of subsidised grains.
- Leakages vary enormously between States. In Bihar and Punjab, the total leakage exceeds 75 per cent while in Haryana and Uttar Pradesh, it is between 50 and 75 per cent.
- Leakage and diversion imply a low share of the genuine BPL households of the distribution of the subsidised grains. During 2003-04, it is estimated that out of 14.1 million tonnes of BPL quota from the Central Pool, only 6.1 million tonnes reached the BPL families and 8 million tonnes did not reach the target families.
- Leakage and diversion raised the cost of delivery. For every 1 kg. that was delivered to the poor, Government of India had to issue 2.32 kg from the Central Pool.
- During 2003-04, out of an estimated subsidy of INR. 7,258 crore under TPDS, INR. 4123 crore did not reach BPL families. Moreover, INR. 2579 crore did not reach any consumer but was shared by agencies

227 Available at : <http://planningcommission.nic.in/midterm/midtermapp.html>

involved in the supply chain.

Government of India: measures to strengthen TPDS:

- a) A Citizens' Charter - November, 1997: By the State Governments to provide services in a transparent and accountable manner under PDS. Instructions have been issued for involvement of Panchayati Raj Institutions in identifications of BPL families and in Vigilance Committee.
- b) PDS (Control) Order, 2001: The Order, inter alia, covers a range of areas relating to correct identification of BPL families, issue of Ration Cards, proper distribution, and monitoring of PDS related operations. Contraventions of the provisions of the Order are punishable under the Essential Commodities Act, 1955.
- These do not seem to have had much impact, since the NSSO estimates of 2006 suggest that the extent of leakage and diversion of grain has only increased.

