



**ЭКОНОМИЧЕСКИЙ
И СОЦИАЛЬНЫЙ СОВЕТ**

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Добавление

МИССИЯ В ИНДИЮ* **
(20 августа - 25 сентября 2005 года)

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Резюме

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В настоящем докладе анализируется проблема голода, недоедания и отсутствия продовольственной безопасности в Индии, а также развернувшаяся в стране общественная дискуссия по вопросу о "голоде посреди изобилия". Затем в докладе рассматривается нормативно-правовая база регулирования осуществления права на питание в Индии и исследуется вопрос, приняты ли в государстве политика и программы, обеспечивающие соблюдение Индией ее обязательств по уважению, защите и осуществлению права на питание. Далее в докладе исследуются основные выявленные характеристики положения и факторы обеспокоенности, связанные с осуществлением права на питание.

В ходе визита у Специального докладчика состоялся откровенный и конструктивный обмен мнениями с представителями правительства Индии как в центре, так и на уровне штатов, и на него произвела благоприятное впечатление решимость правительства Индии обеспечить реализацию широкого круга стратегий и программ, направленных на борьбу с голодом и неправильным питанием. Им был положительно воспринят достигнутый прогресс в области борьбы с голодом и нехваткой продовольствия в результате государственных вложений средств в сельское хозяйство и создание инфраструктуры в сельской местности в сочетании с реализацией таких программ, как Государственная система распределения продовольствия (ГСРП) и Комплексная программа развития сектора услуг для детей. Недавний факт признания возможности защиты права на питание в суде при рассмотрении одного из громких дел в Верховном суде страны также является примером, которому надлежало бы следовать всему миру.

Однако основной вывод доклада заключается в том, что, хотя голод был преодолен, миллионы индийцев по-прежнему страдают от хронического недоедания и серьезного дефицита микроэлементов в рационе питания, особенно женщины и дети и выходцы из каст неприкасаемых и других племен. Не только не удалось еще полностью изжить случаи голодной смерти, но и дискриминация в отношении женщин и представителей нижних каст, коррупция, безнаказанность и многочисленные разнообразные нарушения прав человека, включая принудительный труд, долговую кабалу и насильственные перемещения населения (лишающие людей доступа к производительным ресурсам) по-прежнему являются серьезными препятствиями на пути осуществления права на питание. В условиях происходящего перехода к более либерализованной и рыночно ориентированной экономике беднейшие слои населения несут непропорционально тяжелое бремя перестройки наряду с ростом недоедания в связи с сокращением государственных расходов на развитие сельских районов и реализацию социальных программ. С учетом уменьшения размеров заработка сельскохозяйственных рабочих, усиления влияния явления безземельности и растущих цен на продовольствие, отсутствие продовольственной безопасности особенно серьезно сказывается на жителях сельских районов. Наблюдаемый в последнее время рост экономики ведет к созданию новых рабочих мест главным образом в высокотехнологичных секторах, что не даст возможности компенсировать потерю средств к существованию, получаемых в сельском хозяйстве, от которого по-прежнему зависит жизнь двух третей индийцев. В связи с этим государственные ассигнования должны быть направлены непосредственно на развитие мелкотоварного сельскохозяйственного производства, что позволит улучшить продовольственную безопасность отдельных хозяйств, а также позволит усовершенствовать и не допустить ликвидации эффективно работающих программ обеспечения безопасности, включая Государственную систему распределения продовольствия, а также дальнейшего ухудшения положения в области осуществления права на питание в условиях переходного периода.

Хотя Специальный докладчик установил, что при прежнем коалиционном правительстве национального демократического альянса во главе с Бхаратия джаната парти беднейшие слои сельского и городского населения почти ничего не выиграли от намечившегося экономического роста, теперь в связи с избранием в 2004 году и приходом к власти возглавляемого партией Конгресс правительства объединенного прогрессивного альянса складываются значительные новые обнадеживающие перспективы. В завершение в докладе приводится ряд рекомендаций, призванных помочь правительству улучшить положение с осуществлением права на питание для всех индийцев.

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD,
JEAN ZIEGLER, ON HIS MISSION TO INDIA
(20 august - 2 september 2005)**

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Introduction

1. The Special Rapporteur visited India on an official mission from 20 August to 2 September 2005. The Special Rapporteur welcomed the invitation and the commitment of the Government of India to engage in open and frank discussions on the human right to food. For facilitating the mission he would like to thank Ambassador Hardeep Singh Puri and his adviser at the Permanent Mission of India to the United Nations in Geneva as well as Manjeev Singh Puri, Joint Secretary of the Ministry of External Affairs in India. He would also like to thank Dr. Maxine Olson, Resident Coordinator of the United Nations in India and Mr. GianPetro Bordignon, World Food Programme Representative in India, for their advice and support to his mission.

2. During his visit, the Special Rapporteur was honoured to be received in Delhi by Sharad Pawar, Minister of Agriculture; R.N. Das, Secretary of the Department of Food; and Anita Chaudhary, Joint Secretary of the Department of Food. He very much appreciated their organization of a comprehensive programme that allowed him to speak to Union, state and district officials in Delhi, Madhya Pradesh and Orissa. He was particularly honoured to be received by Abhijit Sen and the Planning Commission, and by M.S. Swaminathan of the National Commission on Farmers and a number of other leading Indian academics. He also appreciated being able to benefit from the experience of the United Nations system in India and particularly appreciated advice from the United Nations Development Programme, WFP and the Food and Agriculture Organization. He would also like to express his appreciation for the hospitality of the Chargé d'affaires of Switzerland, Olaf Kjelsen, and for the advice given by Denis von der Weid, director of the non-governmental organization, Antenna.

3. The Special Rapporteur benefited from meeting with a wide range of representatives from civil society organizations working on right to food issues, including members of the Right to Food Campaign, Supreme Court lawyer, Colin Gonsalves and economist Jean Dreze. The Special Rapporteur was honoured to participate in the national "Judicial colloquium on the right to food", held on 27-28 August 2005 in Delhi, an initiative of the Right to Food Campaign to bring together 70 senior judges from across India to discuss the human right to food. He appreciated meeting civil society organizations in Delhi, Bhopal and Shivpuri in Madhya Pradesh and in Bhubaneswar, Orissa, and would particularly like to thank the NGO, FoodFirst Information and Action Network, for collaborating in the organization of meetings. He was honoured to be received by communities in a large number of villages in the rural areas of Madhya Pradesh and Orissa as well as in urban areas and slums in these states and in Delhi.

4. India is an incredibly diverse and fascinating country, the birthplace of some of the world's most ancient cultures, with a population of more than 1 billion people, predominantly Hindu but also Muslim, Christian and Sikh, speaking 15 national languages and a myriad of local languages. It is a nation that has become a world power. Huge advances have been made since India's independence barely 60 years ago when non-violent resistance led by Mohandas Gandhi and Jawarlal Nehru brought the end of British rule. Today India has a solid democratic system, grounded in a complex federal State made up of 28 separate states and 7 union territories. The states are very different, socially but also ecologically, with the climate varying from tropical monsoon in the southern states to more temperate climates in the northern areas. The central parts of India are affected by drought (including Madhya Pradesh, Andhra Pradesh, Gujarat and

Rajasthan) and the Bay of Bengal is often affected by cyclones and flooding. Other natural disasters are common, including earthquakes such as the terrible quake that devastated India-administered Kashmir killing thousands of people in October 2005 and the tsunami of December 2004 that killed at least 11,000 people, injuring and displacing thousands more across the south-eastern coastal areas of the country.

5. The vast majority of Indian people (70 per cent) still live in rural areas and depend on agriculture for their livelihoods (65 per cent). The Indian economy is still largely based on agriculture, but industry (especially textiles, chemicals, mining and computer software) and services are becoming increasingly important. Although today the threat of famine has been conquered, hunger and poverty remain a chronic and pervasive problem, exacerbated by widespread discrimination under the caste system and against women. In recent years the issue of hunger has come back into the political spotlight, with debates about the paradox of mounting foodgrain stocks in the face of reported deaths from starvation and widespread undernourishment. This paradox of “hunger amidst plenty” and the fact that the poor may not have benefited from the recent economic growth of “India Shining”, may have contributed to the victory in 2004 of the new Congress-led coalition, the United Progressive Alliance. This new Government, with the release of its Common Minimum Programme, brings new hope for more concrete progress towards the realization of the right to food.

I. HUNGER AND FOOD INSECURITY IN INDIA

A. Hunger and food insecurity

6. India has made impressive progress in overcoming the threat of famine that plagued its history and overshadowed the early years of independence. The 1943 West Bengal famine, which killed more than 3 million people, was India’s last and largest famine although India also faced serious food shortages in the first few decades of independence.¹ Since independence in 1947, however, concentrated investment in agricultural production and rural infrastructure has quadrupled the production of rice and wheat, and India has become self-sufficient in basic food production. With rapid transport of foodgrains to areas facing shortages under the Public Food Distribution System (PDS), India has conquered the threat of large-scale famines even though many regions are regularly affected by drought, flooding, cyclones and other natural disasters. Although the growth in foodgrain production has slowed in recent years it has remained above population growth rates, so at the national level India has enough food to feed its population of well over 1 billion people.²

7. Nonetheless, despite these impressive gains household-level food security has not been achieved, levels of malnutrition, undernourishment and poverty remain very high and there are signs that hunger and food insecurity have increased since the second half of the 1990s. Nearly 2 million Indian children die every year as a result of serious malnutrition and preventable diseases.³ Nearly half suffer from moderate or severe malnutrition, with 47 per cent of children underweight and 46 per cent stunted in their growth. This is one of the highest levels of child malnutrition in the world, higher than most countries in Sub-Saharan Africa.⁴ Malnutrition is most severe amongst children in rural areas but is also high in urban areas.⁵ Nearly a third of children (30 per cent) are born underweight, which means that their mothers are themselves underweight and undernourished. Malnutrition also increases during early childhood,

particularly for girl children, reflecting persistent social discrimination against girl children who appear to be fed less than boy children. Micronutrient deficiencies are endemic and have a disastrous effect on physical and mental development. More than 80 per cent of women, infants and adolescent girls suffer from anaemia and iron intake is estimated to be below 50 per cent of the recommended daily allowance. Vitamin A deficiencies, particularly blindness, as well as iodine disorders have been recorded among children in hundreds of districts. Although the Tenth Five Year Plan 2002-2007 includes the prevention, detection and management of micronutrient programme, the Special Rapporteur was informed that the Indian Council of Medical Research's studies have shown that National Nutrition Goals have not been met.

8. The majority of the Indian population are still poor, with 25 per cent living below the national poverty line and 80 per cent living on less than US\$ 2 per day,⁶ which means that many people simply cannot afford adequate food to sustain a healthy and productive life. According to FAO, India is home to the largest share of the world's undernourished population, and more than 200 million Indian children, women and men eat less than the daily minimum calorie requirement.⁷ Official Indian statistics suggest that this situation may be even worse, with more than half (53 per cent) of the population estimated to be undernourished in the Government's own report on progress towards achieving the MDGs.⁸ It is estimated that the poorest 30 per cent of households eat less than 1,700 kilocalories per day per person (well below the international minimum standard of 2,100 kilocalories per day)⁹ even if they spend 70 per cent of their income on food.¹⁰ Average calorie consumption has been falling over recent decades - but while this is explained as a shift away from basic staple food amongst higher income families, it is also a sign of increasing food insecurity amongst the poorest. Over the last decade, in rural areas consumption of basic staple foods fell by 2.14 per cent but total calorie consumption fell by 1.53 per cent, which suggests that many people are eating less food rather than a more diversified diet,¹¹ especially with the price of basic foods increasing faster than real agricultural wages over the 1990s.

9. Although government statistics suggest that poverty fell across India from 36 to 26 per cent between 1993 and 2000, there is considerable debate about whether poverty has actually fallen or whether the drop in poverty is the result of changes in the data collected.¹² One explanation may be that the assumed cost of a minimum food basket no longer reflects the real cost of food in India.¹³ Poverty remains concentrated in the states of Bihar, Uttar Pradesh, Orissa, Madhya Pradesh, Maharashtra and Karnataka, especially in rural areas of eastern India (east Uttar Pradesh, North Bihar, North Bengal, coastal Orissa, Assam and Tripura) and central tribal India (Bundelkhand, Jharkhand, Vidarbha, Madhya Pradesh, Chattisgarh, Rajasthan, Western Orissa and Telangana).¹⁴ There are concerns about evidence of rising inequality since the beginning of the 1990s as it seems that under recent economic growth, the better off western and southern states have been doing better than the poorer northern and eastern states.

10. The hungry and malnourished are primarily children, women and men living in rural areas and are dependent on agriculture, working as casual workers but also as sharecroppers and tenant or marginal farmers with less than one hectare of land. Agricultural wages are very low and increasingly precarious, minimum wages not always enforced and many people lack work during the agricultural lean season. In some states, feudalistic patterns of land ownership persist, despite legal abolition and the official Land Ceilings Act that aimed to limit land concentration. In Madhya Pradesh, for example, the Special Rapporteur found large landholdings still belong

to the family of the former *Zamindari* king. Over the 1990s, the evidence suggests that concentration in land ownership is increasing, with many more households becoming landless and dependent on casual agricultural labour (45 per cent of households).¹⁵ The Special Rapporteur was also concerned to receive reports of the increasing “casualization” and insecurity of labour contracts, including serious concerns regarding workers on tea plantations across India.¹⁶ Since the late 1990s, it has been reported that at least 60,000 workers have lost their jobs as the international price of tea has fallen, and millions of others face wage cuts, more insecure contracts and rising malnutrition that include cases of starvation. ActionAid reports that more than 240 workers died from starvation and suicide between March 2002 and February 2003 in just four tea gardens in West Bengal.

11. Scheduled castes and tribes suffer most from hunger and malnutrition, making up 25 per cent of the rural population but 42 per cent of the poor.¹⁷ As a result of discrimination, many low-caste Dalits are expected to work as agricultural labourers without being paid, many held in debt bondage by their higher-caste employers. Although debt bondage is illegal, NGOs estimate that there are between 20 to 60 million bonded labourers in India, 85 per cent of them belonging to scheduled castes and scheduled tribes.¹⁸ Widespread discrimination prevents Dalits from owning land, as they are seen as the “worker class”, and even if they receive land (as a result of redistribution and agrarian reform programmes in some states), such land is frequently taken by force by higher-caste people in the area. Lower castes are also often restricted from using village wells, as observed by the Special Rapporteur in Shivpuri District. Tribal peoples, 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 Reserves, and many remain without food ration cards or access to government services. Tribal peoples also suffer disproportionately from displacement because of development projects such as dams, power plants, coal mines and mineral industries.¹⁹ There are no official statistics on the number of people displaced, but NGOs and academics estimate that dam projects alone have displaced up to 33 million people who have lost their lands and livelihoods.²⁰ Around 40-50 per cent of the displaced are tribal people even though they make up only 8 per cent of the population, reflecting the serious discrimination against tribal peoples.

12. Women and children, particularly girl children also, tend to suffer disproportionately from hunger and malnutrition as a result of discrimination. Women are particularly vulnerable as a result of social customs that women should eat last and eat least. Women are paid less than men for the same work, with the average agricultural wage rate per day for women about 16.4 rupees, while it is 23.4 rupees for men.²¹ Traditionally, women cannot inherit formal title to land (except in regions that practice matrilineal inheritance), which is increasingly problematic in the context of the feminization of agriculture. Child labour persists and the Special Rapporteur was particularly concerned to receive reports of child labour on farms contracted to transnational corporations, such as cottonseed production in Andhra Pradesh, where young girls have been employed instead of men to reduce the cost of labour.²²

13. In urban areas the hungry and malnourished are predominantly people surviving in the informal sector as well as vulnerable groups that are excluded from access to public services and food ration cards such as migrants, refugees, the homeless, the displaced, informal slum dwellers and street children.²³ The sick and elderly, who have no family members to support them, are also extremely vulnerable. Increasing urbanization is closely linked to poverty and food

insecurity in rural areas and shrinking rural wages is contributing to distress-induced migration to urban areas, seen in the rapid development of slum and squatter settlements in India's towns and cities.²⁴ More than 21 per cent of India's urban population now lives in slums with inadequate sanitation, housing and access to safe drinking water, severely affecting food consumption and absorption.

B. Recent developments

14. Today it is widely recognized within India 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.²⁵ Middle and upper classes in urban areas have benefited under India Shining but the poorest have suffered a decline in living standards and rising food insecurity. With the liberalization of the agricultural sector and ongoing withdrawal of the State from agriculture there have been deep cuts in public investment in agriculture that have not been made up by private investment. The shift towards a more export-oriented economy has seen a shift from subsistence to cash crops, reducing the cultivation of grains, pulses and millet for household food consumption.²⁶ With cash crops requiring increasingly expensive inputs such as seeds and fertilizer, many farmers have been pushed heavily into debt, which seems to explain the crisis of farmer suicides (reported to have reached 10,000 cases by the end of 2004). It has also brought greater pressure to consolidate landholdings for more capital-intensive commercial farming, with landless households increasing dramatically over the 1990s to around 45 per cent of rural households. Along with falling agricultural wages and rising food prices, these trends seem to have contributed to growing food insecurity amongst the poorest, especially in rural areas.

15. Unlike many other countries that have been subjected to the shock therapy of structural adjustment programmes, India has taken a measured approach to withdrawing the State from the economy and has long maintained the world's largest food-based safety net, the Public Food Distribution System. The 1990s, however, saw a shift in the PDS away from a universal system to a targeted system in 1997, with the central aim of reducing the overall size and cost of the food distribution system. However, this did not work well, given that reduced sales of subsidized food under the Targeted PDS,²⁷ combined with increased procurement by the Government,²⁸ swelled national foodstocks, and led to huge increases in the costs of stocking food.²⁹ This "created the appalling paradox of huge excess stocks of foodgrain held with the FCI, adding to costs and therefore to the losses, and therefore leading to a substantially higher food subsidy, even as problems of hunger and malnutrition among the poor became more acute".³⁰

16. In the year 2000 the press reported on people dying from starvation, especially in the drought-stricken regions of Rajasthan, while food rotted in the government storage facilities. Reports suggested that food was being thrown into the sea or exported internationally at highly subsidized prices to reduce storage costs rather than being distributed to the hungry and starving. With growing public outrage at the paradox of starvation amidst overflowing foodstocks, this led to a ground-breaking public interest litigation being launched by People's Union for Civil Liberties (PUCL) against the Government before India's Supreme Court. PUCL petition argued that the right to food was part of the right to life of all Indian citizens and demanded that the country's food stocks be used without delay to prevent hunger and starvation. Interim orders

of the Supreme Court ordered assistance be extended to those at risk of starvation. It ordered the full implementation of all the food-based schemes across India (see details below). This landmark case has brought the issue of the right to food as a human right back into public debate.

II. LEGAL FRAMEWORK FOR THE RIGHT TO FOOD IN INDIA

A. International obligations

17. India is party to the International Covenant on Economic, Social and Cultural Rights, the main international instrument protecting the right to food, although it has still to submit a report to the Committee on Economic, Social and Cultural Rights (overdue by 15 years). India has ratified all international treaties relevant to the right to food, including the International Covenant on Civil and Political Rights (art. 6), the Convention on the Rights of the Child (arts. 24 and 27) and the Convention on the Elimination of All Forms of Discrimination against Women (arts. 12 and 14). This means that, under its international commitments, the Government of India is obliged to ensure the right to food of all Indians.

18. The right to food is the right to be able to feed oneself through physical and economic access to food.³¹ Participation, accountability, access to information and access to effective remedies must be ensured at all levels of the implementation of the right to food. The Government of India has the obligation to respect, protect and fulfil the right to food without any discrimination.³² The obligation to respect means that the Government should not take actions that arbitrarily deprive people of their right to food. The obligation to protect means that the Government should enforce appropriate laws to prevent third parties, including powerful people and corporations, from violating the right to food of others. Finally, the obligation to fulfil (facilitate and provide) means that the Government should take positive steps to identify vulnerable groups and implement appropriate policies/programmes to ensure their access to adequate food and water by facilitating their ability to feed themselves. As a last resort, the Government is required to provide adequate food and water to those who cannot feed themselves for reasons beyond their own control. To fulfil the right to food, the Government must use the maximum of its available resources and in every circumstance it must ensure the minimum essential level required to be free from hunger.

B. Domestic constitutional and legislative framework

19. In 1950, three years after independence, India adopted a progressive Constitution aimed at securing all its citizens social, economic and political justice, equality and dignity. The Constitution prohibits discrimination and recognizes all human rights. Civil and political rights are recognized as directly justiciable fundamental rights, and economic, social and cultural rights are defined as directive principles of State policy. Article 47 of the Constitution states that: "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."

20. Although the right to food is not directly justiciable, its inclusion in the directive principles of State policy serves to guide interpretation of fundamental rights, including the right to life protected by article 21.³³ For the Supreme Court, "(the) right to life guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care

and shelter”³⁴ and the right to life protected by article 21 includes the right to water³⁵ 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 (...)”.³⁶ The State has a constitutional obligation to take steps to ensure a dignified life to all individuals.

21. The Constitution provides special protection for women and children (art. 39 (f)) as well as for scheduled castes and scheduled tribes (art. 46), prohibits discrimination, including in the use of public sources of water (art. 15.2 (b)), and abolishes untouchability (art. 17). Many laws protect access to resources, including the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which prohibits wrongful occupation, 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 of land or interference with the enjoyment of rights over any land, premises or water (3.1.v). The new amendments to the Hindu Succession Act, 1956, increase the protection of women’s right to ownership and inheritance. Various State laws have also been adopted to abolish the feudal system and provide land for the most vulnerable (notably Land Ceiling Acts). However, de facto discrimination remains widespread in India.

22. In 2005, two important new laws regarding the right to food were adopted by the Indian Parliament. The Right to Information Bill guarantees the right to information to all citizens and recognizes many correlative obligations at all levels of government, which should improve transparency and accountability. The passing of the National Rural Employment Guarantee Act recognizes employment as a matter of right for the first time. It entitles anyone to be employed on public works within 15 days as unskilled manual labour at the statutory minimum wage, although this is restricted to rural areas and to a maximum of 100 days of work per household per year.

23. Under India’s complex federal system, both the Union and state governments have responsibilities regarding the right to food. In general the Union Government is responsible for elaborating, monitoring and financing programmes to ensure access to food and water, while state governments are responsible for implementation. State governments also legislate on irrigation, agricultural land tenure, ceiling, transfer and on the minimum wage. In some areas, independent tribal authorities have important powers. In Scheduled Areas, tribal advisory councils must be consulted on any issue related to the Scheduled Tribes, and in Tribal Areas, tribal district councils have important autonomy in the allotment, occupation or use of the land, the management of forests (other than reserved forests) and the inheritance of property. At the local level, municipalities and *panchayats* (self-governments) are responsible for the supply of drinking water. *Panchayats*, in which seats are reserved for the Scheduled Castes, Scheduled Tribes and for women, have increasing power over land acquisition since the Panchayats (Scheduled Areas) Act, 1996, and in the management of the food-based schemes since recent directions were delivered by the Supreme Court.³⁷

C. Access to justice and human rights institutions

24. All victims of violations of the right to food should have access to effective remedies, including access to justice to claim their right. India provides one of the best examples in the world in terms of the justiciability of economic, social and cultural rights, with the right to life interpreted extensively by the Supreme Court to include the right to food. Under the

Constitution, public-interest litigation is permitted to protect the basic human rights of the most vulnerable, which explains why so many social movements have sought appropriate remedies before the Supreme Court. In 2001, the PUCL approached the Supreme Court on behalf of starving people. Their 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.³⁸

25. To ensure the fulfilment of the right to food, the Supreme Court directed that all destitute people be identified and included in existing food-based schemes and directed state governments to implement fully all these schemes, including the Targeted Public Distribution Scheme (TPDS), the Antyodaya Anna Yojana (AAY), the Integrated Child Development Scheme (ICDS), the Mid-Day Meals Scheme (MDMS). 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 subsidized 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 default in compliance with the orders. These directions 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.

26. The 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 in this case have transformed the policy choices of the Government into enforceable, justiciable rights of the people. Although this relates primarily to the obligation to fulfil the right to food, the Court has also made judgements that are related to the obligations to respect and to protect the right to food. It has, for example, protected the right to water of Dalits against discrimination by the upper castes,³⁹ the right to livelihood of traditional fisherpeople against the shrimp industry (*Aquaculture case*),⁴⁰ and the right to livelihood of scheduled tribes against the acquisition of land by a private company (*Samatha case*).⁴¹ For the Supreme Court, “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”.⁴² It is now essential that small farmers who are arbitrarily evicted from their land, or women or members of the Scheduled Castes or Scheduled Tribes who are deprived of their access to productive resources, should have the same access to justice before the Supreme Court.

27. Despite these advances in the justiciability of the right to food, 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. 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. One way of improving this situation would be 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.

28. The need to establish independent monitoring mechanisms is essential. In India, the National Human Rights Commission (NHRC) has been established under the Protection of Human Rights Act, 1993, in accordance with the Paris Principles⁴³ and 15 States have their own human rights commission. Their mandate includes the promotion and protection of all human rights, including the right to food. The National Commission for Minorities, the National Commission for Women and the Scheduled Castes and Scheduled Tribes Commission also address the specific needs of the most vulnerable. The Special Rapporteur welcomes the work of the NHRC on the right to food, particularly in one specific case, in Orissa in 1996, when a Commission's inquiry concluded that 17 deaths were attributable to malnutrition and hunger. The Commission continues to monitor the situation today. The Special Rapporteur strongly encourages the NHRC and the 15 state commissions to initiate other inquiries on complaints of alleged starvation or malnutrition deaths. The Special Rapporteur also recommends that a National Commission for Children be established to protect their specific needs.

III. POLICY FRAMEWORK FOR THE RIGHT TO FOOD

A. Government policies and institutions

29. A wide range of policies and programmes are in place to address food insecurity and malnutrition, mostly elaborated and financed by the central Government and implemented by state governments, although these programmes have not been explicitly articulated around India's obligations towards the right to food.

30. Since independence, India's policies and programmes have focused on increasing both the national *availability* of food as well as the physical and economic *access* to food, although the *adequacy* of food has been a less central focus. The drive for national food self-sufficiency in rice and wheat production aimed to increase national food availability, eliminate the risks of famine and chronic food shortages and reduce dependency on food imports and food aid (particularly after India suffered when food aid was slow in coming in the 1970s as punishment for India's critical stance on the war in Viet Nam).⁴⁴ Food self-sufficiency was achieved with public investment in agriculture and rural infrastructure and the introduction of Green Revolution technologies, quadrupling wheat and rice production from 50 million metric tonnes to well over 200 million tonnes in less than 50 years. Today, as India begins to liberalize the agricultural sector, there remains a strong preference for maintaining a certain level of food self-sufficiency, driven partly by the Government of India's awareness that national demand is so large that it could not be met by international markets along with the recognition that two thirds of the population still rely on agriculture for employment.⁴⁵ However, it is recognized that the drive for national food self-sufficiency has produced uneven progress, with production concentrated in irrigated, better quality lands of large farmers in the Punjab, Haryana and western Uttar Pradesh but bypassing small farmers in the rain-fed agricultural areas of central and eastern India.⁴⁶ Therefore, although food availability increased at the national level, this has

not translated into household food security. There is therefore a need for greater investment in smallholder production in less developed areas to promote simultaneously food availability and access to food.⁴⁷

31. Efforts to improve *access* to food at the household level have focused on generating economic growth and employment as well as on the provision of a food-based social safety net, including PDS, the largest food distribution programme in the world. In many respects, PDS is a colossal achievement: it has been successful in eliminating famine and in quadrupling foodgrain production. It involves the Food Corporation of India buying foodgrains in the surplus states (offering minimum support prices for rice and wheat), transporting it to 15,000 government *godowns* (storage facilities) in deficit states, and distributing the foodgrains through over half a million “fair-price shops”, where families are entitled to buy a fixed amount of rice and wheat at subsidized prices. Conceived as a universal scheme, the Government of India shifted to a Targeted Public Food Distribution System in 1997. Under the targeted system, the poorest families (below-poverty-line households) are entitled to buy a fixed amount of foodgrain at highly subsidized prices, whereas less poor (above-poverty-line households) can buy a specified amount at prices closer to the market price. State governments are responsible, with the participation of the local authorities, *Panchayati Raj*, for identifying the households that fall below the poverty line (rather than this being defined at the central level by the central Government). The Special Rapporteur found problems in practice with below-poverty-line lists still not finalized and not always listing the poorest in the villages. The very poorest households are also entitled to the Antyodaya Anna Yojana Scheme (AAY), under which they have access to 35 kg of foodgrain per month (since 2002) at highly subsidized prices.

32. Although PDS has been successful in averting famine, it is beset by pervasive corruption. Union Government officials estimated for the Special Rapporteur that approximately 36 per cent of the foodgrains distributed were diverted onto the black market. PDS works best in the states of Kerala and Tamil Nadu, where it is accepted that the transparency and accountability of local government officials were much higher. Nonetheless, there are many problems across India and the Special Rapporteur found problems of overcharging, irregular opening hours of fair price shops, many of the poorest people not having ration cards, as well as people being so poor that they could not even afford the subsidized prices.⁴⁸ More broadly, however, even though the PDS has been successful in averting famine it has not managed to address chronic undernourishment, largely because it simply does not distribute enough food. PDS entitlements meet only 10-30 per cent of individual food needs and in 1997, with the shift to a targeted system, the entitlement changed to a *family* entitlement of 10 kg of rice or wheat per household per month, equivalent to only 18 per cent of recommended daily intake (assuming a five-member family). This entitlement was increased to 35 kg in 2002. It is also widely recognized that PDS has not always reached the poorest people in the poorest states and has tended to be biased towards the better-off living in urban areas. However, the shift away from a universal scheme towards a targeted scheme appears to have made PDS less effective. Its impact in addressing chronic hunger, undernourishment and malnutrition has not been helped by the continued focus on production rather than consumption, including monitoring “off-take”, rather than human in-take. Speaking to local officials, the Special Rapporteur found a tendency to deny that any starvation deaths occurred, with reported deaths generally blamed on unrelated diseases such as measles.

33. Large-scale food-for-work programmes managed by central and state governments such as the Sampoorna Grameen Rozgar Yojana (SGRY) programme, focus on ensuring guaranteed

employment for a specified number of days during the lean agricultural season when work for agricultural labourers is scarce. The dual aim is to provide food security through employment (paid partly in foodgrains, partly in cash), and to build common assets such as roads. Although well designed, the Special Rapporteur found that there remain problems. The implementation of these programmes varies across states, as work is not always guaranteed for 100 days (studies show that most workers are only granted work for 7-21 days) and there have been reports of corruption and concerns that the schemes are not always well targeted towards people from scheduled castes and scheduled tribes.

34. The Integrated Child Development Services Programmes (ICDS) is one of the largest programmes in the world aiming to provide integrated nutrition, health and early child development services for children from 0-6 years, under the responsibility of the Department of Women and Child Development. The Special Rapporteur observed the operation of *Anganwadi* Centres in rural villages, where he saw how check-ups on children's nutritional status were carried out to monitor severe and acute malnourishment, with food and nutritional supplements given to mothers of children identified as malnourished. According to the State government officials with whom the Special Rapporteur spoke, the ICDS has contributed to enormous progress in improving child nutrition and reducing child mortality. However, he noted that there seemed to be a tendency to overstate progress in monitoring levels of malnutrition, as progress appeared to be extremely rapid but did not seem to accord with the national statistical surveys. Some other problems were drawn to his attention, including the lack of storage facilities for food, occasional diversion of supplies by staff and lack of availability of the right quantities of food at the centres at the appropriate time as well as the financial constraints of state governments that have limited the nutritional supplements available for the ICDS.⁴⁹ Predominantly distributing rice and wheat, even the ICDS does not sufficiently promote nutrition as well as food security.

35. The Mid-Day Meals Scheme aims to provide meals to schoolchildren under the responsibility of the Department of Education as well as the Ministry of Rural Development and the Ministry of Urban Affairs and Employment, and is implemented by the state governments. The dual aim is to ensure nourishment of children and encourage school attendance. Central government provides the foodgrains and state governments are expected to meet the costs of non-food expenses including cooking, transport and delivery of foodgrain to schools as well as arranging for cooking, serving and supplying micronutrients. Under a new order from the Supreme Court, schools were required to serve cooked rice and *dal* (lentils) or vegetables to primary school children from January 2002, although this order has not been equally implemented across the different states. The Special Rapporteur is also concerned by reports that, in the Mid-Day Meals Scheme, parents of upper-caste children have protested against women of scheduled castes or tribes being employed to cook or serve meals.

36. In terms of more broadly addressing the discrimination against tribal peoples and scheduled castes, a number of special programmes have been established by the Ministry of Social Justice and the Ministry of Empowerment and Tribal Affairs. These have included the Village Grain Bank Scheme, initiated in 1997, which aims to prevent starvation deaths of tribal people living in remote areas, especially those who are not reached by PDS. Affirmative action programmes have also aimed to increase access to education and employment for scheduled castes and scheduled tribes, although social discrimination persists. Although land reform

schemes have been carried out in a number of states to distribute government lands to scheduled castes and tribal peoples, lack of political will has brought many of these initiatives to a halt, and in some states, such as Madhya Pradesh, the feudalistic *zamindari* system persists. Many people that have been granted lands have been forcibly evicted by higher castes with impunity. Loss of access to productive resources, such as forest tribal peoples being excluded from forests or shrimp-farmers displacing smallholder farmers, means that there is a lack of judicial and administrative protection for access to productive resources for the poorest.

37. In relation to addressing food security problems arising from the loss of livelihoods from development-induced displacement, a National Policy on Relief and Rehabilitation of Project Affected Families was instituted in 2004, with the Tenth Plan making a commitment to ensure resettlement and rehabilitation, including gender-sensitive programmes that ensure that women have legal rights to land and that women's livelihood and food security activities are recognized in the context of rehabilitation. However, this does not seem to have been fully implemented in practice.

B. Non-governmental organizations and associations

38. India has a vibrant and strong civil society and the role of civil society action in addressing hunger and poverty has been well recognized. Numerous projects initiated by civil society have had important impacts on the fight against hunger and malnutrition and the fight for the rights of the most vulnerable in different regions across India. Over the last decade, the NGO FoodFirst Information and Action Network (FIAN) has been very involved in promoting the right to food and denouncing violations in different regions of India. Additionally, a wide range of national organizations are working on many issues related to food security and human rights. The NGO Antenna has worked to improve micronutrient deficiencies through low-cost investment in spirulina, which is used as a nutritional supplement. More recently the Right to Food Campaign, a coalition of different organizations, has started to work together after the success of the public-interest litigation brought by the PUCL, using legal strategies as well as broader social mobilization strategies to call for public action to fight starvation and chronic hunger. The Right to Food Campaign has held public hearings in Orissa, Madhya Pradesh, Jharkand, Maharashtra, Rajasthan as well as Delhi, bringing government officials to hear personal testimonies of people living in communities suffering from hunger, and has also served a monitoring role in trying to ensure the implementation of Supreme Court orders under the PUCL case. The Campaign also uses the 2005 Right to Information Act to challenge corruption, demanding that information on entitlements and ration cards be made publicly available. The Campaign also demands that employment and working conditions are seen as part of the right to food, and have had success with the passing of the national Employment Guarantee Act.

IV. MAIN FINDINGS AND CONCERNS

A. Progressive realization of the right to food

39. Despite the progress made in the progressive realization of the right to food in India since independence, the Special Rapporteur is concerned that there are signs of regression, particularly amongst the poorest. In monitoring progress towards the Millennium Development Goals (MDGs), the Planning Commission has noted that India was not currently on track to achieve the goals set in relation to malnutrition and undernourishment. According to government statistics,

levels of undernourishment fell from 62.2 to 53 per cent between 1990 and 2000, and the proportion of stunting in children fell from 54.8 per cent to 47 per cent, but this was not fast enough to reach the Goals. The Food and Agriculture Organization has also recorded that much of the progress made in the early 1990s was lost in the late 1990s, with the number of victims of hunger increasing by 18 million people in the second half of the decade.⁵⁰ The Special Rapporteur is also concerned by the fall of foodgrain availability to 152 kg per capita, 23 kg less than in the early 1990s,⁵¹ and by the decline in calorie consumption.⁵² As pointed out by Utsa Patnaik, burgeoning foodstocks do not necessarily reflect “overproduction”, but rather “underconsumption”. With real agricultural wages declining, food prices and unemployment rising, there are signs of increasing food insecurity.

40. The Government is required to spend the maximum of available resources on ensuring the right to food but spending is falling, given pressures to reduce simultaneously public investment in agriculture and public spending on safety-nets. Investment in rural development has already fallen from 14.5 per cent of GDP before 1990 to less than 6 per cent of GDP, but investment in rural development and smallholder is essential to fight poverty and improve the right to food.⁵³ Spending on the Public Food Distribution System averaged 0.5 per cent of GDP before 1997,⁵⁴ increasing to 1.1 per cent of GDP,⁵⁵ but this was a result of storage costs after the shift to the targeted system, which suggests that the universal system was more cost-efficient.

B. Violations of the right to food

41. The Special Rapporteur was concerned that he received a large number of reports of alleged violations of the right to food.

Starvation deaths

42. Reports of more than 250 starvation or malnutrition deaths in the last two years in the States of Rajasthan, Jharkhand, Bihar, Madhya Pradesh and West Bengal were presented to the Special Rapporteur at the Judicial Colloquium on the Right to Food.⁵⁶ In its fifth report to the Supreme Court, Commissioner Dr. Saxena reported on hundreds of alleged hunger-related deaths in the same states and in Chattisgarh, Uttar Pradesh, Orissa, Karnataka, Andhra Pradesh, Assam, Kerala and Maharastra. The Special Rapporteur received many other reports on alleged starvation or malnutrition deaths, including by FIAN,⁵⁷ the Asian Human Rights Commission and Manabadhikar Suraksha Mancha.⁵⁸ In Orissa, when he visited villages, he received testimonies by women who had lost their children to hunger and malnutrition. As Chief Justice of the Uttar Pradesh High Court, A.W. Ray, said in his conclusion of the Judicial Colloquium on the Right to Food, “in a country where there is plenty of food, every child, woman and man dying from hunger is assassinated”.

Discrimination against the Scheduled Castes and the Scheduled Tribes

43. Most of the victims of starvation are women and children, members of the Scheduled Tribes and Scheduled Castes, with their deaths mainly due to discrimination in access to food or productive resources, evictions or the lack of implementation of the food-based schemes. Despite an extensive legal framework prohibiting discrimination and untouchability, discrimination persists, particularly in rural areas.⁵⁹ In Madhya Pradesh and Orissa, the Special Rapporteur observed that access to village water wells is still not allowed for Dalits and

that even if members of the Scheduled Castes or Scheduled Tribes were granted lands, higher castes often take the land away. Reports were also received that in Uttar Pradesh and Uttaranchal, Dalit families were forcibly evicted from their land by upper castes, and sometimes forced to work for them.⁶⁰ In Harinagar, Kashipur, it is reported that 154 Dalit families have been forcibly evicted from their land and remain landless to this day despite a decision by the Supreme Court in their favour in 1996.⁶¹ As former Chief Justice R. Mishra said in a meeting with the Special Rapporteur, “low-caste people receive the land, but the upper caste enjoys it”. These are crimes punishable by imprisonment and fine under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, but the law is not enforced.⁶²

Obligation to respect: displacements or evictions by the State, without adequate resettlement and rehabilitation

44. The Special Rapporteur received numerous complaints about forced displacements of communities as a consequence of State development projects without adequate resettlement and rehabilitation. The case of the Narmada Dam is of particular concern, as despite clear directions by the Supreme Court in 2000,⁶³ thousands of affected people are still not adequately resettled and rehabilitated. It is alleged that today 11,000 families in Madhya Pradesh, 1,500 families in Maharashtra and 200 families in Gujarat are still to be rehabilitated, although their villages have already been submerged.⁶⁴ In Hazaribagh, Jharkhand, a state coal-mining project allegedly led to involuntary resettlements of thousands of people and the destruction of their sources of livelihood without adequate rehabilitation and compensation.⁶⁵ As provided by law, national and State policies and Supreme Court orders, every affected family should be adequately resettled and rehabilitated and the “land for land” principle respected. The Special Rapporteur received many complaints from tribal communities who lost their means of livelihood when evicted from the forest as a consequence of the implementation of the Forest Act, 1980.

Obligation to protect: lack of protection against the activities of private companies

45. In Orissa, the Special Rapporteur received complaints about the alleged impact of mining activities on the right to food of tribal communities in Kashipur⁶⁶ and Lanjigarh.⁶⁷ It is reported that tribal communities have been forcibly evicted from their land to allow private mining activities, in violation of the Constitution and despite clear directions by the Supreme Court from 1997 that the lands in scheduled areas cannot be leased out to non-tribals or to companies.⁶⁸ In Bhopal, the Special Rapporteur met with the Government of Madhya Pradesh and representatives of the people affected by the Union Carbide gas disaster of 1984, in which 7,000 people died in the first days and 15,000 people died in the following years.⁶⁹ Today, 20 years after the tragedy, water wells in the area are contaminated and, despite clear directions by the Supreme Court in May 2004, the water requirements are still not met.⁷⁰ The Special Rapporteur has also received complaints alleging that the uncontrolled water extraction by Coca Cola in the states of Kerala and Tamil Nadu was causing a severe shortage of water for the local population.⁷¹ Impact assessment studies and prior consultation of the affected communities must always be conducted before any licence is granted to a private company, and in case of violations of the right to food, land or water, all victims must be adequately resettled, rehabilitated and compensated.

Obligation to fulfil: lack of implementation of the food-based schemes

46. In each of his reports, Commissioner Dr. Saxena points to the lack of implementation of the food-based schemes in most of the states. In May 2003 the Supreme Court concluded that the states of Bihar, Jharkhand and Uttar Pradesh had not even begun to implement its directions for supply of cooked Mid-Day Meals.⁷² Still today in Arunachal Pradesh, Assam, Manipur, severely malnourished children were not covered by the programme. In this district, many of the most vulnerable persons have not been granted ration cards. The Supreme Court recognized these schemes as legal entitlements to all beneficiaries, including those living in tribal villages or illegal slums, which means that their non-implementation amounts to a violation of the right to food.

V. CONCLUSIONS AND RECOMMENDATIONS

47. **The Special Rapporteur is encouraged by the commitment of the Government of India and by the vision of the Indian State in ensuring food security. He welcomes the work of the Supreme Court, which is an example to the world in advancing understanding of the justiciability of the human right to food. He also welcomes the adoption by the Government of the Rural Employment Guarantee Act and the entitlements enshrined in food-based programmes. However, he is concerned that India still has the largest number of permanently and chronically undernourished people and one of the highest rates of child malnutrition in the world, and that hunger and malnutrition have been increasing since the second half of the 1990s.**

48. **The Special Rapporteur makes the following specific recommendations:**

(a) **The right to food is a human right and an essential part of the right to life. Even as substantial progress is being achieved in ensuring food security, monitoring of the severity of chronic undernourishment and malnutrition and accountability for starvation or malnutrition deaths must be instituted, including by the national and state human rights commissions and the local *panchayat* bodies. As suggested by the Supreme Court, independent Public Service Commissions could contribute to this monitoring. All public administration officers should be trained with respect to human rights and the right to food;**⁷³

(b) **A framework law with a national strategy for the implementation of the right to food should be instituted, in accordance with Committee on Economic, Social and Cultural Rights general comment No. 12 on the right to food. This should establish benchmarks and indicators for the investment of the right to food;**

(c) **All Union and state governments must follow and implement all orders and judgements of the Supreme Court. Non-implementation of the food-based schemes enshrined as entitlements amounts to a violation of the right to food. In the case of Bhopal, the state authorities should ensure a regular supply of adequate safe water for all affected communities. Access to justice, including to the Supreme Court for victims of violations of the obligations to respect, protect and fulfil the right to food must be ensured;**

(d) The human rights courts and the special courts required under the Protection of Human Rights Act, 1993, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, should be established in all states with a mandate that protects their independence and includes the right to food;

(e) All Indians should be treated equally before the law. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, should be fully implemented, and atrocities committed should be prosecuted and brought to justice;

(f) Land and agrarian reform should be implemented to strengthen smallholder agricultural livelihoods. Existing agrarian reform legislation should not be undermined to serve the interests of large landholdings of landlords and agribusiness;

(g) The Land Acquisition Act should be amended, or new legislation adopted, to recognize a justiciable right to resettlement and rehabilitation for all displaced or evicted persons, including those without formal land titles and including women;⁷⁴

(h) Minimum wage legislation and the Employment Guarantee Act should be fully enforced. Decisive action must be taken against widespread evasion, particularly for agricultural labour and the informal sector. The minimum wage should be indexed to the cost of a basic food basket, which must be sufficient to purchase the minimum daily calorie requirement;

(i) The Right to Information Act should be respected in relation to all programmes, including making publicly available all information on entitlements. This should include eligibility criteria under the Public Food Distribution System at the level of the fair price shops. Corruption must be challenged at all levels of the system and all public officials and shop licensees held accountable for any diversion of resources;

(j) Dams, mining and infrastructure projects must not be implemented if this entails displacement and irreversible destruction of people's livelihoods. Such projects should only be carried out with the consent of communities and on the condition that due legal process, proper resettlement, rehabilitation (under the "land for land" principle) and compensation to all victims is guaranteed;

(k) A national early-warning system should be established that records starvation deaths to generate emergency response and improve accountability. Proper methods of documenting starvation and malnutrition-related deaths should be developed with the participation of the civil society;

(l) PDS must be strengthened to ensure that it reaches all those in need and that the prices do not make it impossible for the poor to buy the subsidized rations. Cash transfers could also be introduced to improve access to food. In the context of a more market-oriented economy, programmes and social transfers must remain in place to prevent starvation deaths and continue investment in the right to food. Such programmes must be implemented as a matter of right and not as benevolence and must be subject to review by the courts;

(m) Implementation of all food-based schemes must be improved by incorporating the human rights principles of non-discrimination, participation, transparency and accountability. Monitoring of all food-based programmes, including PDS, must include monitoring of impacts on malnutrition and undernourishment;

(n) Food security programmes should include elements to ensure nutritional security and to address micronutrient deficiencies. National initiatives for fortification of salt and flour should be complemented by low-cost local initiatives, including promoting small-scale horticulture production and supplementary food being distributed to children and women under ICDS and the Mid-Day Meals Scheme;

(o) Food security programmes must also place more emphasis on protecting and promoting sustainable livelihoods. Public investment in smallholder agriculture is essential, given that two thirds of the population still depends on agriculture, and employment is currently only being generated in the high-tech sector that will not be able to absorb all those left unemployed, if public investment in agriculture is abandoned;

(p) Finally, the Special Rapporteur believes that greater liberalization of trade in basic staple foods should not be pursued as long as subsidies in the developed countries keep international prices at artificially low levels, otherwise India will suffer from competition from dumped agricultural products that will undermine its own production, especially of rice and wheat.

Notes

¹ WFP, 2001, *Enabling Development: Food assistance in South Asia*, p. 61.

² Farrington, J., and Saxena, N.C., *Food Insecurity in India*, at: http://www.odi.org.uk/publications/working_papers/wp231/wp231_annex1_India.pdf.

³ Sharma, A., 2000, "Realisation of Rights of the Indian Child: Measures for Implementation of the CRC", PRAYAS Journal, Vol. II, No. 1.

⁴ UNDP, *Human Development Report 2005*.

⁵ FAO, *State of World Food Insecurity 2004*, p. 22.

⁶ World Bank, 2005, *World Development Indicators*.

⁷ FAO, 2004.

⁸ Government of India, Planning Commission 2005, "Progress towards achieving the MDGs in India", p. 146.

⁹ FAO, 2004.

¹⁰ Jha, S., Deininger, D.U., *Public Expenditure on Food and Nutrition Security Programs in India: Are They Meeting the Challenge?*, 2003, p. 2.

- ¹¹ FAO, 2004, p. 12. Planning Commission, 2005, p. 194.
- ¹² Deaton, A. and Drèze J., "Poverty and Inequality in India: A re-examination", *Economic and Political Weekly*, 7 September 2002, p. 3745.
- ¹³ Poverty in India is officially measured in terms of monthly per capita expenditure of Rs 49 in rural areas and Rs 57 in urban areas at 1973 all-India prices, which could then buy an energy consumption of 2,400 calories/day in rural areas and 2,100 calories/day in urban areas.
- ¹⁴ Farrington and Saxena, op. cit.
- ¹⁵ National Sample Survey data cited in Gosh, J., *Trade Liberalization in Agriculture: An Examination of Impact and Policy Strategies with Special Reference to India*, 2005, p. 14.
- ¹⁶ ActionAid, *Teabreak* <http://www.actionaid.org.uk/wps/content/documents/teabreakreport.pdf>.
- ¹⁷ Farrington and Saxena.
- ¹⁸ Human Rights Watch, 1996.
- ¹⁹ Planning Commission, 2005, *Mid-Term Appraisal of 10th Five-year Plan*.
- ²⁰ Mander, Harsh/Hemadri, Ravi and Nagaraj, Vijay, 1999, *Dams, Displacement, Policy and Law in India*.
- ²¹ MSSRF and WFP, 2004, *Atlas of the Sustainability of Food Security*, p. 130.
- ²² ActionAid, 2005, "Unilever And Child Labour In Hybrid Cottonseed Production In Andhra Pradesh".
- ²³ Farrington and Saxena.
- ²⁴ Chakravarty, S. and Dand, S., 2005, *Food insecurity in India*, p. 3.
- ²⁵ Swaminathan et al, *National Food Security Summit*, 2004, p. 15.
- ²⁶ Ibid.
- ²⁷ Declining from over 19 million tonnes 1996/97 to 12 million tonnes in 2000/01.
- ²⁸ Increasing from 21 million tonnes to 58 million tonnes by the end of 2001.
- ²⁹ Sharma, 2004, p. 276.
- ³⁰ Gosh, 2005, p. 10.
- ³¹ Committee on Economic, Social and Cultural Rights, general comment No. 12.
- ³² General comment No. 12.

³³ “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

³⁴ Supreme Court (SC), *Chameli Singh & Others v. State of Uttar Pradesh*, 1996.

³⁵ SC, *Narmada Bachao Andolan v. Union of India*, 2000.

³⁶ SC, *Francis Coralie Mullin v. Union Territory of Delhi and Others*, 1981.

³⁷ SC, *People’s Union for Civil Liberties v. Union of India & Ors*, 2001.

³⁸ SC, *People’s*, op. cit.

³⁹ SC, *State of Karnataka v. Appa Balu Ingale*, 1993.

⁴⁰ SC, *S. Jagannath v. Union of India*, 1996.

⁴¹ SC, *Samatha v. State of Andhra Pradesh*, 1997.

⁴² SC, *Olga Tellis*, op. cit.

⁴³ General Assembly resolution 48/134.

⁴⁴ Sharma P., “Agricultural policy reform for poverty alleviation: some current issues” in *WFP 2004*, p. 274.

⁴⁵ WFP, 2001, p. 65.

⁴⁶ WFP, 2001, p. 63.

⁴⁷ Gustafson, D., “Building a hunger-free India from the ground up: The importance of smallholder agriculture for poverty reduction and food security” in Swaminathan et al., 2004.

⁴⁸ Saxena, N.C., “Reorganizing policies and delivery for alleviating hunger and malnutrition” in Swaminathan et al., 2004, p. 413-4.

⁴⁹ Government of India, Planning Commission, 2004.

⁵⁰ FAO, 2004, p. 6.

⁵¹ MSSRF and WFP, 2004, p. 170.

⁵² Planning Commission, 2005, p. 194.

⁵³ Patnaik, “The Republic of Hunger”, in Human Rights Law Network, *Right to Food*, p. 483.

⁵⁴ Planning Commission, 2005.

⁵⁵ Jha and Deininger, 2003.

⁵⁶ Human Rights Law Network, *Judicial Colloquium on the Right to Food*.

- ⁵⁷ FIAN - Andhra Pradesh, *List of Hunger and Starvation Deaths for “Public Hearing on Hunger”*.
- ⁵⁸ Asian Human Rights Commission, Manabadhikar Suraksha Mancha, *People’s tribunal on starvation in Jalangi, West Bengal*.
- ⁵⁹ Agrawal, G., Gonsalves, C., *Dalits and the law*, 2005.
- ⁶⁰ FIAN, *Report on cases of violations of the right to food in Uttar Pradesh*, 2005.
- ⁶¹ Ibid.
- ⁶² NHRC, *Report on Prevention of Atrocities Against Scheduled Castes*, 2004.
- ⁶³ SC, *Narmada*, op. cit.
- ⁶⁴ Report of the Indian People’s Tribunal on Environment and Human Rights, 2005.
http://www.narmada.org/IPT_Report.pdf.
- ⁶⁵ FIAN, *Update on the Enjoyment of the Right to Food and Water in India*, December 2004.
- ⁶⁶ Agragamee, *Right to Food, Right to Life: The Implications of the UAIL Project for Local Tribal Communities in Kashipur Block of Rayagada District in Orissa*.
- ⁶⁷ Niyamgiri, *Indigenous People’s Struggle for Food and Livelihood, Lanjigarh, Orissa*.
- ⁶⁸ Supreme Court, *Samatha*.
- ⁶⁹ Amnesty International, *Clouds of Injustice. Bhopal Disaster 20 years On*, 2004.
- ⁷⁰ Amnesty International, op. cit.
- ⁷¹ FIAN, *Update*.
- ⁷² SC, *People’s*, op. cit.
- ⁷³ Ibid.
- ⁷⁴ NHRC, *Annual Report 2002-2003*.
