

Input FIAN International – First UPR session - INDIA

1) The information provided in the UPR is the outcome of a three year process of capacity building and consultation on the right to food in India. Several civil society organisations participated in this effort to document the right to food scenario in India. (please refer to the FIAN right to food report India)

2) India ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in July 1979 (Art.11). It also ratified all other 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 guarantee the right to food of all Indians.

In 1950, India adopted a very progressive Constitution aimed at ensuring all its citizens social, economic and political justice, equality and dignity. “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, since decades civil society organisations in India 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. (refer to the FIAN right to food report India)

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 protect their access to resources. These include the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, prohibiting wrongful 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).

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”. 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.

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.

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.

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.

Other relevant acts for the right to food in India are the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act 1989), The National Rural Employment Guarantee Act 2005, Right to Information Act (2005) and the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005.

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. 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” and the right to life protected by 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 [...]”. 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.”

To ensure the fulfilment of the right to food, the Supreme Court directed 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 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.

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”. In the following years, it protected the right to water of Dalits against discrimination by the upper castes (Appa Balu Ingale case), the right to water of poor communities affected by a gas disaster (Bhopal case), the right to livelihood of traditional fisher people against the shrimp industry (aquaculture case), and the right to livelihood of scheduled tribes against the acquisition of land by a private company (Samatha case).

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. 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. This will be a step to ensure the rights of the people in India.

3) Despite the Supreme Court decision and efforts of the state to fulfil the right to food of the people, hunger and malnutrition in India persists. 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 in India.

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. 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.

Although held responsible for starvation and deaths occurring the state does not take any responsibility or even acknowledges cases of starvation deaths. Unless firm steps are taken to prevent deaths due to hunger, starvation deaths will continue in the country. 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 the FIAN right to food report India). The most vulnerable to starvation are those excluded from the social welfare programmes and who have no access to any productive resources or income.

4) Other trends that have an adverse impact on the enjoyment of the right to food of the people in India are the change in economic policy in the post liberalisation period of the 1990's and the resultant changes in other sectors like agriculture, mining, and establishment of economic zones and "development projects". The poor people's access to land in rural India has worsened further due to various land acquisition drives of the State.

Acquisition of large tracts of land for mining purposes has seriously impacted the ability of people to access land, forest and food producing resources. Mostly tribal population in India has been evicted or displaced from land for mining since the land they have settled is rich in minerals. Acquisition of land in Jharkhand and Orissa are case in point. Tribals are dispossessed of their land without consultation or participatory processes have been impoverished and now live in rehabilitation camps with no means to earn a livelihood except as daily wage earners. 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.

Displacement for dams (Narmada – Sardar Sarovar Project) has also displaced people who have lost access to food producing resources. Supreme Court decisions to provide land for months prior to displacement have not been implemented.

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 infrastructure and render other support services at a subsidised rate to these industries in SEZ.

Acquiring land without due process and without consultation with the people impacted and without

proper and adequate resettlement is causing severe right to food violation in India. 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). But this is just the beginning and the master plan of expansion of SEZs would require more than 134,000 hectares 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. Experiences from other Economic zones in other countries show that labour laws are not stringent and sometimes not implemented jeopardising the right to feed themselves of the people with any state protection.

Liberalisation process has had an adverse impact on several industries where the workers are facing lack of work, market access and resources and hence starvation. Weavers, Tea garden workers are examples of this trend. In cases where beautification or developmental work of cities is taking place small vendors, street vendors, rickshaw pullers are denied access to areas or sources which were usually feeding them. Workers in the unorganised sector continue to face the threat of discrimination and hunger. Lack of work contract, minimum wages and secure working conditions threaten the right to feed themselves of the workers. Women suffer more in such condition since they are often denied work and also access to minimum wages.

A 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. Land reform in India was never implemented successfully. Regressive steps in land reform policies in recent years are making the access to land to the landless almost impossible. Lack of access to land and food producing resources threatens the people from hunger, malnutrition and even starvation. Societal pressures make it difficult for women to access land and get titles in her name.

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. At times women and girl child have to walk for miles to fetch water for domestic purposes.