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**Promotion and protection of all human rights,  
civil, political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2010]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Asia: Enjoyment of the right to food requires a shift from short-term and discriminatory practices**

The enjoyment of the right to food remains elusive for many across the Asian region. The Asian Legal Resource Centre (ALRC) will concentrate on specific concerns with regard to the right to food in India and Indonesia in this written submission to the Human Rights Council (HRC), although these problems are replicated in many other countries in South and South East Asia in particular.

On 23 December 2009, Shama, a four-year-old boy died of malnutrition and diarrhea in the Indian state of Madhya Pradesh. Shama belonged to the Bhil tribe, Jhabua District, Madhya Pradesh. His father Galia cultivates four acres of farmland, from which they harvested just four bags of maize in 2009. The harvest, depending on depleting rainfall is not sufficient to feed the family of nine. As a result, the family had to migrate to neighboring districts or states, which made them more vulnerable to food insecurity. In the last three months, 43 children including Shama died of malnutrition in three tribal villages in Madhya Pradesh.

Madhya Pradesh is the one of the biggest contributors to neo-natal and child mortality in the world. The mortality rate among children under the age of five in the state's tribal community is far higher than the state and national average. The chance of survival of a tribal child is low, with 71.4% tribal children being malnourished and 82.5% children being anaemic.

India has the highest number of malnourished children in Asia. UNICEF's 2009 report revealed that more than 80% of the cases of child malnutrition and mortality were found in the tribal and low caste community. The actual number may be even higher as the government often denies that children and adults die of malnutrition and starvation.

India's response to cases of hunger has been inappropriate at best, and often negligent. The quantity of food distributed by states has decreased, although the total agricultural product concerning rice or wheat has not. India has failed to address hunger among its tribal communities. On May 8, 2008, before the Committee on economic, social and cultural rights, India underlined that it had adopted a comprehensive legal framework to protect the rights of its tribal population and that it is committed to the fulfilment of the economic, social and cultural rights of its entire people.

However, cases of hunger prove that this is false. Its response and action often come after children die of starvation. Since 2009, the ALRC and its sister organization, the Asian Human Rights Commission (AHRC), have been reporting on the situation of child malnutrition and its causes focusing on four tribal districts – Khandwa, Rewa, Sidhi, and Jhabua in Madhya Pradesh.

Tribes living in dry land or forest areas depend economically on agriculture and natural resources from the forest. Soaring food prices since 2008 and drought for the past few years have been aggravating food insecurity in tribal predominant areas. Traditionally, nutritional needs of tribals were met easily by forest resources. Recently, in the name of forest conservation, tribals are being evicted from their natural habitation, resulting in gross livelihood insecurity and malnutrition among them.

Distress migration is often the only option left for survival, but results in increasing the burden of debt and food uncertainty. For those who stay, lack of nutrition and an unhygienic environment cause malnutrition and other sicknesses to the children. In Jhabua district, only 4.5% of the rural population have access to toilet facilities, while only 1.5% can access water from a pipe–.

Nevertheless, the government statistical tools to determine who is living Below the Poverty Line (BPL) and are thus eligible to food assistance do not take into account the specific agricultural structures of tribal areas. Possessing land is an indicator of living Above the Poverty Line (APL) and therefore prevents small landowners, such as Shama's family, from receiving food assistance.

A new system introduced in 1992-93, called the targeted public food distribution system, is yet to be fully implemented in the country. For instance, 200,000 families in Madhya Pradesh are denied BPL status. The central government has identified only 4.2 million BPL families against the state's claim of 6.5 million in Madhya Pradesh alone. To ensure nutrition and food security, the BPL must be abolished and ration quota must be made universal.

In 2005, the Special Rapporteur on Right to food, following a mission to India, acknowledged that the marginalization of tribal people hampers their access to state institutions, including public programs ensuring food security, which further aggravates their food insecurity. Approximately 50% of children in the tribal areas are not registered at childcare centers, denying them supplementary food grain. This implies that the government does not have accurate data about the number of tribal children suffering from malnutrition and thus cannot design specific policies targeting them.

The system talks about institutional treatment of the malnourished children. However, without infrastructure, facilities and services it is unrealistic to provide institutional healthcare to 6.1 million children. Community based intervention for nutritional care of all children with special attention to malnourished children is required. The Supreme Court has recommended that such children's right to food to be addressed in the proposed National Food Security Act.

Discrimination in access to public health institutions worsens the problem. In its 2008 State of Asia-Pacific Children Report, UNICEF underlined that in India, "*Caste and ethnicity also play key roles in keeping primary health-care services to some populations well below national averages*". Concretely, this implies that although parents try to have their malnourished children treated at public health institutions, they are either denied immediate treatment due to lack of facilities or are discriminated against at the hospital. For example, tribal children have to stay in beds next to the toilets and their mothers are in general not provided with food and water. Furthermore, even at public health institutions, they often have to pay.

In Madhya Pradesh, 67% of the people live below the poverty line and 60% of the children are undernourished while 73.9% of tribal women are anemic. However, the budget for health service accounts for merely 2.4% out of total state budget. One bed is available for every 2,425 persons in hospitals, and more than 1300 out of 5005 doctor posts remain vacant. Although child malnutrition has increased over the last five years, not one Primary Health Centre has been built and 1,659 out of 4,708 medical officer posts remain vacant at the Centers.

The food distribution system also often fails to reach the poor. In its fortieth session in April-May 2008, the Committee on Economic, Social and Cultural Rights expressed concerns about "reports of corruption, inefficiency and discrimination in distribution that hamper access to food, particularly by the disadvantaged and marginalized groups of society" in India. For decades, corruption has prevented the government from identifying the BPL families. While many public servants have been identified as BPL, poor tribal communities have often been excluded. More often than not, food programs have been abused by corrupt officials and politicians.

The social audit system, the only official channel through which the poor can make demands fails to function due to corrupt public servants. Social audit report concerning

Jhabua do not mention the villagers' grievances. They are often either intentionally excluded from the audit, or, if they dare to speak out with the support of human rights defenders, are physically abused or even killed by upper caste civil servants and influential villagers. Denial of freedom of expression and participation is rooted in a caste-controlled society and bureaucracy. The lack of a fair legal system through which victims can seek redress further prevents marginalized communities from enjoying the right to food. Even the National Human Rights Commission has failed to independently investigate right to food violations since 2009.

On June 6, 2008, the UN Special Rapporteur declared that the enjoyment of the right to food "requires that we focus on the most vulnerable segments of the population. It brings into the debate requirements of accountability and participation." In India as is the case elsewhere in Asia, this remains a major challenge concerning the protection and enjoyment of rights.

The government targets higher economic growth and a second green revolution by adopting Genetically Modified (GM) seeds or food. In Orissa, multinational corporations like POSCO are allowed to occupy vast areas of land, depriving tribal villagers of their rights to land and water. In 2005, the Special Rapporteur on the right to food stated that the overrepresentation of tribal people among those displaced because of developmental projects reflects serious discrimination. Such communities' right to food, land and water should be taken into account in designing developmental activities.

Indonesia is another example of governmental passivity when confronted with people starving to death, especially in Papua province. During the first half of 2009, about 113 villagers died of starvation and associated diseases in seven districts in Yahukimo. 55 villagers had also died of starvation in Yahukimo in 2005. The government denied these deaths but provided food and food store facilities in some areas, while arguing that it was difficult to deliver food subsidies to remote affected areas.

The same situation was repeated in 2009. Because of a bad harvest, villagers living in the highlands suffered from a lack of food. While arguing that the areas are difficult to reach, the government has repeatedly delayed the distribution of food and medicine. Langda District, for example, received only 1.4 tons of rice for distribution to 6000 villagers.

In the short term, governments must take all necessary actions to ensure the right to food of all persons. To ensure the enjoyment of the right to food in the long term, States must encourage the empowerment of local communities and help them to develop sustainable food production systems. This cannot be done without combating discrimination and without securing the right to land of indigenous people, notably by guaranteeing against the risk of arbitrary expulsion from land because of industrial projects. Currently, the governments of India and Indonesia have failed to develop such projects and have chosen to focus on short-term hunger-relief assistance.

The ALRC recalls that the right to food cannot be fulfilled without general and comprehensive measures to: fight against corruption; increase the accountability of public institutions, notably those in charge of food distribution; and provide effective legal remedies available to all. Consultative mechanisms should be implemented when decisions that may affect the right to food of certain sectors of the population have to be taken.

In this context the ALRC requests the Council to:

1. Provide means and facilitate processes by which the Rapporteur on the Right to Food can actively engage with States concerning reported patterns of denial of the right to food;

2. Encourage human rights organisations by providing more opportunities for them to interact with states as well as entities within the UN framework in addressing the issue of right to food and denial thereof;
  3. Find means for human rights organisations to be part of interstate, inter-organizational dialogues with a view to have effective participation in policy formulating discussions;
  4. Encourage states to find means through dialogue and partnerships to radically shift from food ration subsidy programmes to food and livelihood guarantee programmes by recognising tribal and ethnic identities;
  5. Develop guidelines for encouraging community based interventions for nutritional care of children, specifically for the treatment of Severely Acute Malnourished children.
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