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**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.

[31 May 2007]

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

India - Widespread corruption in the Public Food Distribution System causing starvation deaths

The Prime Minister of India in his foreword in the 'Report to The People' dated May 22, 2007, claims: *"In this 60th year of independence, the country should have the satisfaction of recording for the fifth year in a succession a rate of economic growth of over 8.5%."*¹ The Asian Legal Resource Centre (ALRC) however is not sure whether the estimated over 200 million Indians who are presently suffering from malnourishment, and the many more million who have done so during past decades, will be satisfied with this growth.

The country's overwhelming population is often given as an excuse to justify poverty and starvation in India.² This theory is applicable only if the State itself is poor and has no means to procure enough food for its people. India is not poor, even though 70% of Indians are. India's projected defense budget for 2007-08 is 24 billion US\$ and it plans to spend further on its weapons upgrade programme.³ Defense spending of such proportions in a country where a section of the population equivalent to 2/3rd the size of that of the United States is undernourished or suffering from malnourishment, is difficult to stomach. The United Nations Special Rapporteur on the Right to Food has highlighted this contradiction of priorities in his report following his mission to India in 2005.⁴

India is a country of contradictions. A country that has a projected 9% development index performs worse than some Sub-Saharan countries with regard to addressing starvation and malnourishment within its territory. The National Minimum Programme promulgated by the Government of India in 2004 speaks about the Rural Employment Guarantee programme, which is also reflected in India's voluntary pledge to the United Nations Human Rights Council.⁵ However, millions of Indians in rural villages are not benefiting from this programme and remain unemployed. The programme is not properly implemented and in places where there are possibilities of implementation and thus employment, recruitment to the programme is based on caste bias and nepotism.

Poverty and resultant starvation in India is not limited to the lower caste, although they suffer the most. The lower caste forms only about 20% of the Indian population, whereas starvation and malnourishment affect about 53% of its entire population. Starvation and malnourishment are the direct result of the failing administrative system in India. A malfunctioning administrative system has a direct bearing upon the living conditions of the poor. For example, for the distribution of food to targeted population the government has established the Public Food Distribution System (PDS). However, the management of this system suffers from corruption – particularly black marketing, caste prejudices and the utter failure of various local governments.

The targeted PDS was introduced in India in 1997. The shift from a universal PDS to a targeted PDS was performed with the intention of avoiding the misuse and wastage of subsidised food materials. However, owing to a lack of proper screening methods and

¹ Report to The People 2004-2007, Government of India

² P N Mari Bhat: Contribution of Fertility Decline to Poverty Reduction in Rural India

³ Statistical Outline of India: Tata Services

⁴ Report of the Special Rapporteur on The Right to Food: E/CN.4/2006/44/Add.2; 20 March 2006

⁵ Note Verbal dated 1 December 2006 from the Permanent Mission of India to the United Nations addressed to the Secretariat of the Human Rights Council

transparency in the procedure, the PDS is still a failure in India. For example, the licensing procedure for running a PDS shop is plagued by corruption. Licenses are awarded by the respective state governments and the authority to issue them is delegated to the district administrations, which are notoriously corrupt.

To receive subsidised food a family is required to possess a ration card, which also serves the purpose of determining the family's financial status. This process involves obtaining certificates from the village-head and officers at the district administration. While the village-heads often refuse to issue such certificates, district administration officials demand bribes. The ALRC has documented several cases where the refusal of the village-heads to issue certificates to the poor is the part of a larger plan; to prevent the poor, particularly those from the lower castes, from accessing government welfare schemes such as the PDS shop. This is because the longer the people remain poor and near starvation, the easier it is for the village-head to continue subjecting them to bonded labour.

The continuation of caste-based discrimination is yet another factor that perpetuates poverty and deprivation of food, as was briefly mentioned in the Special Rapporteur's report.⁶ 60 years after independence, the prevention of caste-based discrimination remains on paper rather than being enforced in practice. Due to this, caste-based discrimination is widely practiced and discrimination prevents the lower castes from accessing food. Additionally, the lower castes are deprived of landed property and those who have titles to particular pieces of land are frequently prevented from actual possession by local feudal lords.

In addition to this, large-scale land holding still continues in various States, including States that have enacted the land ceiling laws. Holdings of large extents of land (by individuals or families) deprive the poor from having arable lands of their own. However, the poor can still benefit from such large-scale cultivation, by being employed by the landlord, although in reality this tends to be for much less pay than that stipulated in the Minimum Wages Act. However, when landlords find that agriculture is not profitable for various reasons and sell off their land to property developers, the most affected are the poor landless communities, as this often results in the starvation of the agricultural labourers who depended upon such large-scale cultivations.

In addition to poverty caused by human interference, large-scale poverty exists in remote regions of the country. One such example is the Murshidabad district of West Bengal. This district shares a border with Bangladesh. Land erosion by the river Padma has rendered large numbers of persons landless. Those who could afford to, left well in advance, but the poor had to stay until their land was taken by the river. This situation is exploited by cross-border smugglers based in the state who employ the poor to smuggle articles across the border to Bangladesh.

The smuggling involves crossing the river at night, which often claims peoples' lives, while others are shot and killed by the Border Security Force stationed along the Indian border. Ironically, a major portion of the smuggling involves food – grains collected from PDS shops are smuggled across the border to be sold on the black market. The West Bengal State Government considers the people living along the international border in

⁶ Report of the Special Rapporteur on The Right to Food: E/CN.4/2006/44/Add.2; 20 March 2006, p. 6

Murshidabad as being illegal immigrants from Bangladesh and does nothing for their welfare.

The situation of hundreds of families in the Jalangi block of Murshidabad involves grave cases of exploitation, starvation and malnourishment, many of which have been documented by the ALRC's sister origination, the Asian Human Rights Commission,⁷ and which has also been mentioned by the Special Rapporteur. The state and central government schemes remain highly ineffective and are totally failing the starving population in Jalangi. However, the government of India has not taken any credible action regarding this issue.

The government of India has formulated and is executing several welfare programmes intended to prevent starvation and malnourishment in India. While proper planning and implementation of these programmes are necessary, what has been mostly ignored is the poor state of functioning of the PDS. The system itself, as claimed by the government, covers only 16% of the total population.⁸ The actual number of households using the PDS is around 91 million, significantly less than the 160 million being claimed by the government. 78% of these persons are trying to make use of the system - 26% are from urban areas while 52% are rural households.⁹ Of these 91 million households an alarming 61% claim that the PDS is plagued by corruption and 49% claim that corruption has increased in the past year.¹⁰ The PDS is viewed as the most corrupt institution in India.

Such corruption exists in the PDS due to the failed criminal justice system in India. Illegal dealing with rationed articles is a crime in India.¹¹ A crime registered under the relevant domestic law must be tried in a special court constituted in each state. However several states are yet to establish such a court, meaning that cases registered under the law in those states will have to wait for years to be decided through the regular courts. Additionally, states most frequently withdraws from prosecutions related to cases registered under the Essential Commodities Act as compared with other prosecutions. This shows not only the tolerance that various state governments exhibit towards corruption within the PDS, but also the influence of the licensees upon the government.

Even though the Rapporteur expresses his concerns about corruption in the PDS, there are no concrete proposals suggested by the Rapporteur in his report to address this issue. To achieve any improvement in addressing the food security in India, there must be a multifaceted approach to the issue focusing on: the implementation of welfare schemes; increasing the existing network of the PDS within the country; and taking effective steps to prevent corruption within the PDS.

The prevention of corruption within the PDS cannot happen in a vacuum. It will require equipping the criminal justice mechanism in India to specifically address this problem. In addition to an increase in the number of special courts to try offenses related to the distribution of rationed food articles, a separate and independent mechanism must be constituted to investigate such cases. This must be independent from the local police since

⁷ For further information please see www.ahrchk.net/ua

⁸ Corruption in PDS : Business Out of Poverty; Economics and Politics: Wall Street Journal 1 May 2007

⁹ Ibid

¹⁰ Transparency International : India Corruption Study 2005

¹¹ Essential Commodities Act, 1955

the latter is itself corrupt and will therefore fail to effectively investigate crimes related to food distribution. There is also a need to change domestic law, in particular the Essential Commodities Act, 1955.

As a country that has a surplus of food, it is a pity that in India, food that is distributed to the poor does not reach them, but is either spoiled and lost or sold on the black market. To change this, there are no quick-fixes. However, the prevention of corruption within the PDS is a critical starting point. The specifics of this are often ignored or overlooked in favour of various other issues.

In this context, the Asian Legal Resource Centre requests the Human Rights Council to:

1. Recommend that the Government of India take immediate steps to prevent widespread corruption within the PDS – these steps must include the establishment of independent and separate mechanisms to investigate cases of corruption in the PDS. This mechanism must be independent from the local police, as the latter is corrupt and therefore inefficient in investigating corruption. This requires a change in the existing domestic law – The Essential Commodities Act, 1955, and the government of India must be urged to make such changes and facilitate this process;
2. Request the UN Special Rapporteur on the Right to Food to further study the specifics of corruption within India's PDS system, so that the Rapporteur can help the government to address this issue more effectively;
3. Request the Government of India to urge its state governments to set-up the required number of special courts to deal with cases of corruption within the PDS;
4. Urge the Government of India to expand a functioning PDS network within the country, so that it covers not only the 16% currently being covered, but covers all persons in need of food security assistance.
5. Request various UN bodies such as the UNDP and the FAO to assist the Government of India in addressing the issue of hunger and starvation in India, particularly through proper and vigorous implementation of development programmes in the country.
6. To further request the Government of India to immediately implement the recommendations made by the UN Rapporteur on Right to Food in his report - E/CN.4/2006/44/Add.2 - and to make necessary policy changes required to address this situation.
