

# article

2(3). Each State Party to the present Covenant undertakes:

- a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- c) To ensure that the competent authorities shall enforce such remedies when granted.

of the International Covenant on Civil and Political Rights

## About *article 2*

*article 2* aims at the practical implementation of human rights. In this it recalls article 2 of the International Covenant on Civil and Political Rights (ICCPR), which reads,

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
  - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - (c) To ensure that the competent authorities shall enforce such remedies when granted.

This is a neglected but integral article of the ICCPR. If a state signs up to an international treaty on human rights, it must implement those rights and ensure adequate remedies for persons whose rights have been violated. Mere talk of rights and formal ratification of international agreements has no meaning. Rights are given meaning when they are implemented locally.

Human rights are implemented via institutions of justice: the police, prosecutors and judiciary. If these are not functioning according to the rule of law, human rights cannot be realized. In most Asian countries, these institutions suffer from grave defects. These defects need to be studied carefully, as a means towards strategies for change.

Some persons may misunderstand this as legalism. Those from countries with developed democracies and functioning legal systems especially may be unable to grasp what it means to live in a society where 'institutions of justice' are in fact instruments to deny justice. As persons from such countries guide the global human rights movement, vital problems outside their experience do not receive necessary attention. For people in many countries, international human rights discourse then loses relevance.

After many years of work, the Asian Legal Resource Centre began publishing *article 2* to draw attention to this vital provision in international law, and to raise awareness of the need to implement human rights standards and provide effective remedies at the local level in Asia. Relevant submissions by interested persons and organisations are welcome.

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SPECIAL EDITION:

THE PERMANENT PEOPLE'S TRIBUNAL ON THE  
RIGHT TO FOOD AND THE RULE OF LAW IN ASIA

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# The Permanent People's Tribunal on the Right to Food and the Rule of Law in Asia

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Editorial board, *article 2*

Which is more important: a full stomach or equal protection under the law? Most people would hesitate to answer. It's a false choice that ignores the interdependence of economic and civil rights, which proposes that the hungry will be nourished by law and order, while the well-fed are fortified against dysfunctional courts.

This May 2003, the Asian Legal Resource Centre announced the launch of the Permanent People's Tribunal on the Right to Food and the Rule of Law in Asia. The Tribunal comes at a time when many governments still assert that economic and social rights can be addressed separately from civil and political rights. In fact, no rights are guaranteed without effective laws to secure them and ensure redress for victims. Without equitable and enforceable laws, the product of a farmer's plough is no more secure than the product of a journalist's pen.

This is a short introduction to the anticipated work of the Permanent People's Tribunal on the Right to Food and the Rule of Law in Asia. It is accompanied by a number of other introductory articles in this edition of *article 2*:

- Two items at the launch of the Tribunal are reproduced: a press release by the Asian Legal Resource Centre, and a statement by the Asian Human Rights Commission on ongoing hunger in Burma.
- Two more items link the right to food to civil and political rights. The first is a conceptual outline by Angela Wong. The second is a collection of extracts from reports by the Special Rapporteur on the right to food of the UN Commission on Human Rights.
- Two articles recall the earlier People's Tribunal on Food Scarcity and Militarization in Burma (Myanmar). The first, by the Asian Human Rights Commission, reviews the specific steps that led to the establishment and progress of that Tribunal, and its outcomes. The second, by Chris Cusano, discusses the thinking behind that Tribunal.

- Lastly, two items approach the current situation of food security and military rule in Burma. The first is a general update on conditions in Burma compiled and discussed by Elizabeth Lee. The second consists of the Asian Legal Resource Centre's written and oral statements on food security in Burma to the UN Commission on Human Rights session in 2003.

### **The food-justice nexus**

Equality among human beings can be guaranteed only when the right to food is adequately met. Denial of this right negates a person's very humanity and dignity.

The right to food encompasses every element of human nourishment, including water. Therefore, when speaking of the right to food, one is by implication also speaking of the right to safe, adequate drinking water.

Apart from people in a few industrialized countries, the populations of the world are yet to know even the most rudimentary equality. This is evidenced by the billions of people daily denied access to adequate and safe food and water. Today, a minority of the world population lives with an oversupply of food, while the majority goes hungry and thirsty. Even within 'food insecure' countries, there is a deliberate divide between the elite and the ordinary folk, between the few haves and the many have-nots.

Such inequality affects the organization of all societies, including those in Asia. Authoritarian rule has an explicit link to inequalities relating to food and water. It is not possible for a government to win popular consent until it has satisfied its people's basic nutritional needs. Therefore, societies where large numbers of people are going hungry are inevitably ruled without popular consent and participation, perhaps even by force, and without democracy in spirit or in structure.

Thus the promotion of democracy must be accompanied by legitimate guarantees of the right to food. In a mere formal democracy, where an elite group has retained its traditional power via the facade of elections, the government will be subject to grave crises if it is unable to address the food and water needs of its people.

The above remarks lead this discussion to the rule of law. Equality before law has little meaning when the basic human equality that comes with adequate food and water is denied. In fact, law enforcement agencies often become instruments to suppress aspirations to equality, and in so doing commit gross violation of human rights. The aggressive nature of the police in many countries arises from inequality and efforts to sustain it. This includes inequality in the distribution of food and water. The willingness to ignore or suppress the rule of law goes hand in hand with the willingness to deny basic economic rights.

**“Authoritarian rule has an explicit link to inequalities relating to food and water”**

**“A community that tolerates denial of food and water to its members fails to meet a minimum standard of humanity”**

To maintain inequality in the distribution of food and water requires state-managed violence. Torture is used to keep people hungry. Fear is instilled to deprive people of basic economic rights and retard their capacity to react. Detention and extra-judicial killings become normalized. This denial of the right to food, then, is accompanied by a breakdown in the rule of law.

Therefore the struggle for food and the struggle for justice are one. The fight against torture, illegal detention, extrajudicial killing and other violations of civil and political rights is essential to create and maintain the space necessary to struggle for adequate food and water. This fight is something completely different from what is offered by mere formal democracy and simple proclamations of the rule of law, which if not accompanied by a demonstrated commitment to social justice are nothing more than camouflage for authoritarian rule.

Ensuring the right to food is a duty of the state, but ensuring that the state carry out this obligation is a public duty. A community that tolerates denial of food and water to its members fails to meet a minimum standard of humanity, and as a result the community itself cannot expect to survive. This condition alienates and divides people. It can only be remedied by ending the denial of this right.

It follows that communities, human rights organisations included, must constantly work to

1. Uphold human equality by supporting the principle of adequate food and water for all;
2. Expose inequality arising from inadequate food and water;
3. Introduce short and long term solutions to inequalities in food and water;
4. Ensure performance of state responsibilities in this regard;
5. Reveal the links between authoritarianism and denial of the right to food;
6. Fight against torture, illegal detention, extra-judicial killings, suppression of free expression and national security laws that effectively endorse the denial of civil rights, as a means to ensure adequate food and water; and,
7. Disclaim formal democracy and expose it as a form of authoritarianism under a democratic facade; fight for real participatory democracy that ensures adequate food and water as a matter of legal and enforceable rights.

The Permanent People’s Tribunal on the Right to Food and the Rule of Law in Asia is committed to these tasks.

## The Tribunal

The Permanent People's Tribunal on the Right to Food and the Rule of Law in Asia is the successor to the earlier People's Tribunal on Food Scarcity and Militarization in Burma. That Tribunal, which operated from 1996 to 2000, researched and analyzed the relationship between hunger and military rule in Burma. It found that despite a stated commitment to food security, the government there was inimical to the food needs of its people. It concluded in its *Voice of the Hungry Nation* report (Asian Human Rights Commission, October 1999) that

While other factors such as natural disaster or mere incompetence may contribute to or exacerbate scarcity, none is as pervasive or consistent, none can explain why food is not available to those who produce it, and none can override the state's role in denying the right to food.

Food conditions vary across Asia, and not every part of the region is at present subject to the extent of authoritarian rule that may be found in Burma. Notwithstanding, in every society access to food and clean water is somehow related to a functioning justice system.

The Permanent People's Tribunal on Asia, then, is a natural extension and expansion of the earlier work by the People's Tribunal on Burma. Although its scope has broadened, at its root is an ongoing commitment to food and water rights through investigating and understanding conditions, with a view to proposing effective remedies where violations are uncovered. The Tribunal does not propose to make grand declarations about the right to food. Rather, it seeks to identify particular situations where there are specific structural obstacles to satisfying people's food and water needs, and suggest ways to overcome these.

Importantly, the new Permanent People's Tribunal has adopted a normative starting point to its work, in contrast to the earlier Tribunal, which began from a descriptive position. That approach suited the People's Tribunal on Burma, as it was examining conditions in one country over a limited period of time. By contrast, the new Tribunal is to assess conditions across a vast region for an indefinite period of time. Starting from a normative position, then, has advantages:

- First, it allows for a greater study of the conceptual bases underpinning the mandate: the "right to food" and "rule of law". It will be important for the Tribunal to examine these principles at some length.
- Secondly, it does not presuppose specific conditions to be described and analyzed. This permits the Tribunal to examine any range of situations and to reach appropriate conclusions and make useful suggestions, without being constrained by a dogmatic position.

**“In every society access to food and clean water is somehow related to a functioning justice system ”**

“The Tribunal articulates society’s claim to human rights and highlights the state’s failure to pursue justice”

That a people’s tribunal is the vehicle for this work is also important. As explained by Chris Cusano in the introduction to the *Voice of the Hungry Nation* report,

To convene a Tribunal is to propose how human rights should be perceived, discussed and ultimately achieved. This proposal responds to a basic contradiction: people own their rights, but government is supposed to look after them. This condominium-like division between popular entitlement and state responsibility inevitably means that when the state itself transgresses, people must either wait for government to correct itself or forge their own tools to reveal truth and condemn injustice...

Thus, the Tribunal articulates society’s claim to human rights and highlights the state’s failure to pursue justice. It calls for a more vigorous commitment to protecting human dignity. However, its salient contribution is not decrying abuse, but investigating and explaining which human rights are denied, how and why.

Like the previous People’s Tribunal on Burma, the new Permanent People’s Tribunal has invited a number of eminent persons who are deeply involved in the human rights movements in their respective countries to sit on its panel. As the Tribunal’s work progresses, these persons will be called upon to assess and investigate conditions in the region. The initial panel has four standing members, as follows:

- **Professor Buddhadeb Chaudhuri** is the Dr Ambedkar Chair Professor in Anthropology at the University of Calcutta. He is also the coordinator of the newly introduced International Post-graduate Programme on Human Rights at that university. He has wide connections among civic organizations, extensive experience in different parts of South and Southeast Asia, and has published on a range of topics.
- **Professor Kwak Nohyun** is an Associate Professor of Law at the Korean National Open University, renowned for his work in the fields of human rights law, labour law and social issues in Korea. He was previously a non-standing member of the National Human Rights Commission of Korea. He has played a leading role in the building of an open and democratic society in Korea, for which he has received awards and accolades.
- **Justice H Suresh**, a retired judge from the Bombay High Court, is a leader of the people’s tribunal movement in India. He was a member of the People’s Tribunal on food scarcity and militarization in Burma, and most recently served as a member of the Concerned Citizen’s Tribunal—Gujarat 2002.
- **Professor Mark Tamthai** is the retired director of the Center for Philosophy and Public Policy, at Chulalongkorn University, Thailand. He was a member of the People’s Tribunal on food scarcity and militarization in Burma. He remains deeply involved in conflict resolution work in Thailand.



## **Starting with Burma**

One impetus for the new Tribunal has been the stream of reports coming from Burma indicating that in the period since the previous People's Tribunal completed its work, food conditions in that country have not improved. Indeed, many of these reports suggest a marked deterioration in conditions.

The recommendations of the People's Tribunal too have not been implemented. These included calls on the government of Burma to guarantee the food security of its people, and to the international community to take steps to ensure that this be achieved. While the government has insisted that it does in fact respect the right to food, and does all it can to achieve it, this stated commitment is not borne out by evidence.

Therefore, the new Permanent People's Tribunal, informed by the work of the earlier Tribunal, is beginning where it left off. Elizabeth Lee, a researcher with the new Tribunal secretariat, starts her report on current conditions in Burma with a description of the ongoing daily struggle that millions there have in getting their daily fill of rice. In the last year, villagers have been forced to commit desperate acts: holding up passenger busses to demand food, looting rice warehouses and stealing food from kitchens. Her paper goes on to discuss the recurrent negative effects of the compulsory paddy procurement system in Burma, and the questions raised by recent government announcements that it intends to do away with that system. It also considers other factors inimical to food security in Burma, identified by the earlier Tribunal, which have persisted in the subsequent three years.

## **Conclusion**

A people's tribunal gives voice and structure to people concerned about some breakdown in human security. The Permanent People's Tribunal on the Right To Food and the Rule of Law in Asia will gather evidence, clarify charges, apply available laws and norms in considering the case for wrongdoing, and render results to the public. As it is not of course legally empowered—its members are acting as citizens, not officials—its intention will be to clarify and enunciate the relationship between the right to food and the rule of law in Asia, rather than render a verdict and deliver justice in the conventional sense. However, it is this lack of a conventional framework that is also the Tribunal's great advantage, as it gives its members the freedom to work and propose specific, rather than generic, solutions.

Rampant food scarcity and repression do not exist everywhere. Yet all societies grapple with hunger and equitable distribution of food on some level. And all societies struggle with the defining and creating of the rule of law as a means of governance and conflict resolution. Therefore the Permanent People's Tribunal on Asia, will, in keeping with its predecessor on Burma, stand as a model for addressing economic, social and cultural rights in an innovative and effective manner.

**“ A people's tribunal gives voice and structure to people concerned about some breakdown in human security ”**

## People's Tribunal to study food and justice in Asia

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Asian Legal Resource Centre

**T**he relationship between a full stomach and a functioning judiciary is set to be examined by a new body, the Permanent People's Tribunal on the Right to Food and the Rule of Law in Asia, the Asian Legal Resource Centre announced today.

“There is a direct link between the struggle to ensuring human equality by guaranteeing the right to food, and the establishing of equality before law by ensuring the rule of law,” Basil Fernando, Executive Director of the Asian Legal Resource Centre, said in launching the Tribunal. “Both are struggles to guarantee equality on basic physical and legal terms, and the two are interdependent. The fight against torture, illegal detention, extra-judicial killing and other violations of civil and political rights is essential to create and maintain the space necessary to struggle for adequate food and water.”

In every part of Asia people's access to food and clean water relates in some way to the rule of law. The Permanent People's Tribunal is committed to investigating and understanding this relationship, with a view to proposing effective remedies where violations are uncovered.

The Tribunal comprises a panel of standing members who will investigate and assess the relationship between food and justice in Asia. The initial standing members are: Professor Buddhadeb Chaudhuri, University of Calcutta, India; Professor Kwak Nohyun, Korea Open University, Korea; Justice H Suresh, Bombay High Court (retired); and, Professor Mark Tamthai, formerly of Chulalongkorn University, in Bangkok, Thailand. All of these eminent persons are leaders in the human rights field of their respective countries.

Justice Suresh and Professor Tamthai were also members of the earlier People's Tribunal on Food Scarcity and Militarization in Burma, which examined the nexus between hunger and military

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This press release of 9 May 2003 was issued to coincide with the launch of the Permanent People's Tribunal on the Right to Food and the Rule of Law in Asia.

rule in that country. That People's Tribunal completed its mandate in 2000, after a number of years' work and the release of its comprehensive *Voice of the Hungry Nation* report.

The secretariat of the new Permanent People's Tribunal has begun its work where the previous Tribunal left off: by reviewing conditions in Burma. "In Burma, food is still denied through state-managed violence", reports Elizabeth Lee, a researcher with the secretariat. "Denial of the right to food is the corollary of the non-rule of law. The fight against torture, detention, extrajudicial killings and forced labour is concomitant with the fight to create and maintain the space necessary to struggle for adequate food." The secretariat has sent its assessment to the chairman of the Myanmar Human Rights Committee, Colonel Tin Hlaing, for comment.

The website of the Permanent People's Tribunal on the right to food and rule of law in Asia is at [<http://www.foodjustice.net>]. The website of the earlier People's Tribunal on Burma is at [<http://www.hrschool.org/tribunal>], and the *Voice of the Hungry Nation* (October 1999) can be found at [<http://www.hrschool.org/tribunal/report/index.htm>].

**“ In Burma, food is still denied through state-managed violence ”**

## Hunger still rampant in Burma

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Asian Human Rights Commission

**B**urma is a fertile country with abundant resources. In years gone by it was said that nobody ever starves in Burma. This has long ceased to be the case. Evidence suggests that every day millions of people there go hungry, hundreds of thousands are seriously malnourished, and that some are indeed starving.

This May, with the launch of the Permanent People's Tribunal on the Right to Food and the Rule of Law in Asia, attention has again been brought to the role of the military government in Burma in denying people the right to food. Extensive research by the secretariat of the new Tribunal suggests that conditions there have not improved since the report of the earlier People's Tribunal on Food Scarcity and Militarization in Burma (*Voice of the Hungry Nation*, October 1999).

In 2003, a villager in the east of Burma displaced by army operations feels both hunger and the absurdity of going hungry in this land of plenty. Speaking with embarrassment, he tells a researcher, "We can't even feed our own children. I don't like to say such things... I'm a man, but I can't even feed my children." An historian in the capital suggests that religious ritual won't bring economic and social prosperity, and is promptly blacklisted by the authorities. A farmer in another region failing to supply sufficient rice to the authorities is hospitalized after being tortured by the police.

That police can torture a farmer as punishment for a poor crop speaks to how utterly perverted 'law enforcement' becomes in the hands of an authoritarian government. It also points to the universality of rights. In Burma, where every state directive is aimed ultimately at ensuring the supremacy of the armed forces, food is denied through state-managed violence. Torture is used to obtain rice. Fear is instilled to deprive people of basic economic rights and retard their capacity to react. Denial of the right to food is the corollary of the non-rule of law. The fight against the

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torture of a farmer, the silencing of an historian and the dislocation of a villager is concomitant with the fight to create and maintain the space necessary to struggle for adequate food.

In October 2000, the government of Burma established a human rights committee chaired by the Minister for Home Affairs, Colonel Tin Hlaing. The committee hasn't been heard of much since, despite its ample sub-committees, training programmes conducted by foreign 'experts', and occasional workshops. The Asian Human Rights Commission would be interested to know the position of the committee on the massive violations of economic and social rights in Burma. It would like to ask its chairman what he is doing. Two and a half years of silence are long enough: the credibility of any human rights committee, and its partners, rests on practical monitoring, reporting and preventing of human rights abuse, not least of all, violations of the right to food. So again, what is the committee doing? The people of Burma need to eat today.

**“That police can torture a farmer as punishment for a poor crop speaks to how utterly perverted ‘law enforcement’ becomes under an authoritarian government”**

## The right to food

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Angela Wong, Researcher,  
Asian Legal Resource Centre

On 7 July 2002, 3 out of 5 displaced villagers who were gathering mushrooms in the forest were shot dead by a patrol of SPDC [State Peace and Development Council] troops in the forest 4-5 miles west of Lai-Kha town [Shan State, Burma].

The said 5 villagers were originally from Nawng Mai village in Wan Saang village tract, Lai-Kha township, which had been forcibly relocated to the outskirts of Lai-Kha town in 1996 by the then SLORC [State Law and Order Restoration Council] troops.

On the day of the incident, the villagers went together to gather mushrooms in the forest west of Lai-Kha town. When they were roaming around in the forest, a group of SPDC soldiers appeared from somewhere and called out to them to come to them.

Some of the villagers ran as they heard the soldiers, but 2 of them, Naang Seng Hurng (not her real name) and Lung Taan Lu (not his real name), were so close to the soldiers that they dared not move. The SPDC troops shot at those who ran, killing all of them, although some did not die immediately.

The commander of the troops said to Lung Taan Lu and Naan Seng, "They must be Shan rebels, that was why they ran away from us". Lung Taan Lu then said to the commander, "Had they known it was you 'Bo Gyi' (Commander), they would not have run. They might have thought you were Shan rebels so they ran, because our community leaders always warned us to keep away from them to avoid being kidnapped or forced to join them. That was why they had tried to run".

When the SPDC troops heard that, they let Lung Taan Lu and Naang Seng go, warning them not to tell anyone about the incident, but to say they heard shots of gunfire and ran back to their village. The troops also threatened to come and kill them if they told people that it was SPDC soldiers who shot those villagers dead.

*- A report from the Shan Human Rights Foundation illustrating one of the many cases in which the military government of Burma terrorizes and disrupts civilians from their daily way of life, causing widespread hunger.<sup>1</sup>*

How many people in the world are going hungry today? Estimates vary enormously, from 460 million to 1.1 billion.<sup>2</sup> Irrespective, it is widely recognized that there is enough food in the world to feed everyone. So the question arises, why are people hungry?

Once, Malthus' 'lifeboat theory' had it that the population of the world would inevitably exceed the planet's ability to provide enough food, excluding the effects of war and other disasters. This idea has now been debunked,<sup>3</sup> but hunger has up to now still often been attributed primarily to inadequate food production, and famines due to natural occurrences, such as floods, storms and droughts. By this understanding, hunger is just a case of bad luck: a temporary, natural, unfortunate occurrence, which can generally be addressed by food aid.

**“The way in which a society is organized affects the intensity and impact of famine, or potential famine”**

Amartya Sen, however, has shown that “there is no fixed relation between food and famine”.<sup>4</sup> Sen has studied, among others, the Irish famine of the 1840s, when food was still being exported from famine-stricken areas to England, due to its larger purchasing power. This example illustrates that famines are not caused simply by a decline in the supply of food in a given area; economic factors also play a role. Sen writes:

A famine develops when a sizeable number of people – who often belong to a particular occupation group – lose the economic means of acquiring food. This can result from unemployment, or from a sharp drop in earnings compared with food prices, even when there is no fall in food output or supply.<sup>5</sup>

Famines, in fact, are a social phenomenon.<sup>6</sup> The way in which a society is organized affects the intensity and impact of famine, or potential famine.

Sen considers ideological, political and cultural reasons to be primarily responsible for famine.<sup>7</sup> He points out that economic destitution, political subservience and cultural denigration invariably cause hunger, suggesting that the victims are typically the most vulnerable—people who are already extremely poor and subject to various forms of discrimination.

The UN Special Rapporteur on the right to food has defined it as

“the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.”<sup>9</sup>

The right to food is closely related to the concept of 'food security'.<sup>10</sup> The latter describes a situation in which the right to food has been realized, while the former embodies a legal obligation to this end.

The right to food is upheld by the Universal Declaration of Human Rights and by article 11 of the International Covenant on Economic, Social and Cultural Rights.<sup>11</sup> States who are parties to the Covenant have the obligation to respect, protect, and fulfill the right to food. For Henry Shue this means that states have

1. Duties not to eliminate a person's only available means of subsistence—duties to avoid depriving.

**“When governments respect civil and political rights, people may also voice their concerns and hold leaders accountable for their policies, including those affecting economic, social and cultural rights”**

2. Duties to protect people against deprivation of the only available means of subsistence by other people—duties to protect from deprivation
3. Duties to provide for the subsistence of those unable to provide for their own—duties to aid the deprived.<sup>12</sup>

Objections to the justiciability of these duties have been raised on the spurious grounds that economic, social and cultural rights are not enforceable in the same manner as civil and political rights. However, human rights are both universal and indivisible. Without adequate food, for instance, the victims of human rights violations may be too physically, emotionally and mentally distracted to be able to exercise their civil and political rights. Conversely, when civil and political rights are violated, attempts at redress for violations of economic, social and cultural rights will also prove futile.

On the indivisibility of rights, Sen argues that “no substantial famine has ever occurred in any independent and democratic country with a relatively free press”.<sup>13</sup> There is a clear and unequivocal link between type of governance and famine. When governments respect civil and political rights, people may also voice their concerns and hold leaders accountable for their policies, including those affecting economic, social and cultural rights.

Another objection to the enforceability of the right to food is the distinction between negative and positive obligations. Negative obligations require inaction, and necessarily require few resources—states simply need to avoid infringing on these rights.<sup>14</sup> Civil and political rights have typically been seen in these terms. By contrast, economic, social and cultural rights are understood to be positive obligations, requiring many resources that states may not have available. However, this objection is of less importance when the basic concepts of human rights are understood. Asbjorn Eide writes:

The structure of international society may be such that there are severe limitations for some states in the possibility fully to comply with human rights. This will not be a justification for violating basic integrity rights of the individual, but it may be a reasonable justification for incomplete fulfillment of other rights.<sup>15</sup>

Regardless of a state’s ability to fulfill certain human rights, states shall not actively violate basic rights, including that to food.

Under what circumstances is this likely to happen? Interestingly, one possible scenario is when a country is ‘developing’. A large-scale shift to cash crops, for instance, is aimed primarily at speeding up economic growth and competing in the global economy, not feeding the hungry. Examining policy on export-orientated industries versus policy geared towards domestic food production, Kumar Rupesinghe finds that, “Cash-crop food production for exports would divert resources away from domestic food production and destroy ecological systems.”<sup>16</sup> Increased cash cropping, then, sometimes results in lower levels of food consumption, particularly if export-orientated.



As the anecdotal introduction to this article suggests, however, armed conflict is perhaps the greatest direct threat to the right to food. The Special Rapporteur, in noting that some of the worst violations of this right have occurred at the hands of armies, has added that, “Starvation of civilians as a method of warfare is prohibited in both international and non-international armed conflict”.<sup>17</sup> The use of food as a weapon of warfare not only violates humanitarian law; it violates the most basic of human rights.

“States shall not actively violate basic rights, including that to food”

Governments can prevent famines. They are responsible to not actively violate their people’s economic, social and cultural rights, including the right to food. The international community too, must not do anything that will restrict this right, and is obliged to condemn states that do so.

### End Notes

<sup>1</sup> Shan Human Rights Foundation, ‘SHRF monthly report—October 2002’, [http://www.shanland.org/shrf/MReport%202002/October.htm] (3 May 2003).

<sup>2</sup> Food and Agricultural Organization and World Bank, respectively. From Asbjorn Eide, Wenche Barth Eide, Susantha Goonatilake, Joan Gussow & Omawale, ‘Introduction: The food problematique’, *Food as a human right*, United Nations University, 1984.

<sup>3</sup> Eide et al, ‘Introduction’, pp. v-xi.

<sup>4</sup> Amartya Sen, ‘Nobody need starve’, *Granta*, no. 52, 1995, p. 216.

<sup>5</sup> Sen, ‘Nobody need starve’, p. 215.

<sup>6</sup> Jean Dreze & Amartya Sen, *Hunger and public action*, Clarendon Press, Oxford, 1989, p. 46.

<sup>7</sup> Sen, ‘Nobody need starve’.

<sup>8</sup> Sen, ‘Nobody need starve’, pp. 216–17.

<sup>9</sup> Jean Ziegler, ‘Right to food: Report to the Commission on Human Rights’, E/CN.4/2002/58, 10 January 2002.

<sup>10</sup> Peter N. Prove, ‘Human rights in trade and investment agreements: The legal framework of economic globalization, and the right to food’, [http://www.fiap.org/english-verison /prove.htm] (3 May 2003).

<sup>11</sup> The People’s Tribunal on Food Scarcity and Militarization in Burma, *Voice of the hungry nation*, Asian Human Rights Commission, Hong Kong SAR, October 1999. This is expanded on by Philip Alston in ‘International law and the right to food’, in Eide et al, *Food as a human right*.

<sup>12</sup> Referred to by Philip Alston in ‘International law and the right to food’, in Eide et al, *Food as a human right*, pp. 169–70.

<sup>13</sup> Amartya Sen, ‘Democracy as a universal value’, *Journal of Democracy*, vol. 10, no. 3, 1999, pp. 3–17.

<sup>14</sup> Ziegler, ‘Right to food’.

<sup>15</sup> Asbjorn Eide, ‘The international human rights system’, in Eide et al, *Food as a human right*, p. 160.

<sup>16</sup> Kumar Rupesinghe, ‘Export orientation and the right to food: The case of Sri Lanka’s agricultural promotion zones’, in Eide et al, *Food as a human right*, p. 41.

<sup>17</sup> Ziegler, ‘Right to food’.

# Reports of the Special Rapporteur on the right to food

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Asian Legal Resource Centre

In April 2000, the United Nations Commission on Human Rights appointed a Special Rapporteur to examine the right to food. In his first three reports (2001–2003), Mr Jean Ziegler, who took up the post, spent much of his time establishing the mandate. This article consists of edited extracts from those reports, on the following areas: definition of the right to food; the right to food in international instruments; the right to food in domestic legislation; justiciability of the right to food; the right to food in humanitarian law; water and the right to food; and, violations of the right to food by the Government of Myanmar (Burma). The material is organized thematically, not according to the order in which the Special Rapporteur originally discussed the concepts. It also does not cover every aspect of each concept raised by the Special Rapporteur. Full reports may be found on the UN Commission on Human Rights website, and can be accessed via links in the website of the Permanent People's Tribunal on the Right to Food and the Rule of Law in Asia ([www.foodjustice.net/links](http://www.foodjustice.net/links)).

## Definition of the right to food

(E/CN.4/2001/53, paras 14–21; 26–31; E/CN.4/2002/58, paras 20, 26–27; E/CN.4/2003/54, para. 17)

How is the right to food defined? There are several answers to this question, with minor variations, including the definition derived from the International Covenant on Economic, Social and Cultural Rights and from General Comment No. 12 adopted in May 1999 by the Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the implementation of the Covenant. The definition used in the remainder of this report is as follows: the right to food is the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.

This definition tries to capture the dimension of human suffering that is missing from many formal descriptions of food insecurity: the unbearable, nagging dread that tortures starving persons from the moment they wake up. How, during the day that lies ahead, will they be able to feed their family, provide nourishment for their children and feed themselves? This dread may be even more terrible than the physical suffering and the many aches and diseases that strike an undernourished body.

**“A child suffering from under-nourishment and/or malnutrition in the first years of life will never recover”**

The corollary of the right to food is food security. This is the definition given in the first paragraph of the World Food Summit Plan of Action: “Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.” The parameters for food security vary with age: at birth, babies need 300 calories a day; between the ages of one and two, 1,000 calories a day; by the age of five, children need 1,600 calories a day. To maintain their strength every day, adults need between 2,000 and 2,700 calories, depending on where they live and what kind of work they do.

A distinction should be drawn between two concepts: hunger or undernourishment on the one hand, and malnutrition on the other. Hunger or undernourishment refer to an insufficient supply or, at worst, a complete lack of calories. Malnutrition, on the other hand, is characterized by the lack or shortage in food, which otherwise provides sufficient calories, of micronutrients—chiefly vitamins (organic molecules) and minerals (inorganic molecules). These micronutrients are vital for the functioning of cells and especially of the nervous system. A child may be receiving sufficient calories but if it lacks micronutrients it will suffer from stunted growth, infections and other disabilities. What the United Nations Children’s Fund (UNICEF) calls “hidden hunger” is undernourishment and/or malnutrition between birth and the age of five, and it has disastrous effects: a child suffering from undernourishment and/or malnutrition in the first years of life will never recover. He cannot catch up later and will be disabled for life.

All human beings, regardless of their sex, age, social status and ethnic or religious origin, have the right to food. The existence of this right gives rise to obligations for States. Asbjørn Eide, in his outstanding report on the right to adequate food [*Right to Adequate Food as a Human Right*, United Nations, New York, 1989] sets out three main obligations that can be paraphrased as follows: to respect, protect and fulfil the right to food.

### **Respect**

A State that respects the right to food of the people living in its territory should ensure that every individual has permanent access at all times to sufficient and adequate food, and should refrain from taking measures liable to deprive anyone of such access. An

**“Hunger is not a question of fate; it is manmade”**

example of a practice that violates this right is when a Government at war with part of its own population deprives the part of the population it sees as “hostile” of access to food.

### **Protection**

The second obligation that States must meet is to protect the right to food. Under this obligation, they must ensure that individuals and companies do not deprive people of permanent access to adequate and sufficient food. This second obligation imposes a number of duties on the State, such as the duty to promote production, redistributive taxation and social security or to combat corruption.

### **Fulfilment**

The State’s third obligation is to “fulfil” the right to food. General Comment No. 12 summarizes this obligation as follows:

“... whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) [the right to food] directly” (HRI/GEN/1/Rev.4, p. 60, para. 15).

An appeal by a State for international humanitarian aid, when it is itself unable to guarantee the population’s right to food, comes under this third obligation. States which, through neglect or misplaced national pride, make no such appeal or deliberately delay in making it (as in the case of Ethiopia under the dictatorship of Haile Mengistu in the early 1980s) are violating this obligation.

The three obligations placed on States by virtue of the existence of the right to food also apply to intergovernmental organizations, particularly the United Nations. There can be little doubt that the Security Council, in subjecting the Iraqi people to a harsh economic embargo since 1991, is in clear violation of its obligation to respect the right to food of people in Iraq.

Persistent hunger is neither inevitable, nor acceptable. Hunger is not a question of fate; it is manmade. It is the result either of inaction, or of negative actions that violate the right to food. It is therefore time to take action. It is time to recognize the right to food as a human right and to realize the right to food across the world. The human right to food entails an obligation to ensure that each and every human being on this planet should be free from hunger.

If people believe that we should not let people die from starvation, that we should not let people be mentally and physically retarded by constant malnourishment, then they will believe in the right to food. The right to food is inherent in everyone as a human being. Hunger and malnourishment are not the result of fate, they are the result of human actions. There are always actions that can be taken to prevent hunger, prevent famine, prevent people dying from starvation. So, why do States not take this action? One step that can be taken is to make the right to food a reality. This would make a difference.

### **International instruments on the right to food**

(E/CN.4/2001/53, paras 40, 43–45, 47)

*International Covenant on Economic, Social and Cultural Rights*

This international instrument, which has been ratified by 142 States, deals with the right to food more comprehensively than any other treaty. In article 11, paragraph 1, States parties recognize “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. In paragraph 2 of the same article, they recognize that measures may be needed to guarantee “the fundamental right of everyone to be free from hunger”. States parties shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:

“(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of resources;

“(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

*International Covenant on Civil and Political Rights*

The right to life is enshrined in article 6 of this Covenant, which has been ratified by 145 States. The Human Rights Committee, the body responsible for monitoring implementation of the Covenant, insists that this right should not be interpreted in a restrictive way. On the contrary, the required protection of the right to life obliges States parties to take positive steps in at least two areas, which go much further than the “individual” dimension of the right. In its General Comment No. 6 on article 6, the Committee considers that “States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life” (HRI/GEN/1/Rev.4, p. 85, para. 2). States parties are required to take positive steps “to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics” (ibid., p. 86, para. 5).

*Universal Declaration on the Eradication of Hunger and Malnutrition*

The first World Food Conference was held in Rome in November 1974; on 16 November, it adopted a declaration, in which it solemnly declared that:

“1. Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties. Society today already possesses sufficient resources, organizational ability and technology and hence the competence to achieve this objective. Accordingly, the eradication of hunger is a common objective of all the countries of the international community, especially of the developed countries and others in a position to help.”

“If people believe that we should not let people die from starvation then they will believe in the right to food”

**“ No State has yet passed consistent domestic laws ensuring effective protection of the right to food ”**

The Declaration goes on to say that it is a fundamental responsibility of Governments

“to work together for higher food production and a more equitable and efficient distribution of food between countries and within countries” (para. 2). Moreover, priority should be given to attacking “chronic malnutrition and deficiency diseases among the vulnerable and lower income groups” (para. 2). In sum, “As it is the common responsibility of the entire international community to ensure the availability at all times of adequate world supplies of basic food-stuffs by way of appropriate reserves, including emergency reserves, all countries should cooperate in the establishment of an effective system of world food security ...” (para. 12).

*Convention on the Rights of the Child*

In implementing this instrument, which has been ratified by no less than 191 States, States parties must:

(a) Take appropriate measures to combat disease and malnutrition, including through the provision of nutritious foods and drinking water (art. 24 (2) (c));

(b) Ensure that parents and children are informed about child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation (art. 24 (2) (e));

(c) Recognize the right of every child to a standard of living adequate for the child’s physical development (art. 27 (1)) by providing material assistance with regard to nutrition (art. 27 (3));

(d) Secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child (art. 27 (4)); and

(e) Protect the child from economic exploitation and from performing any work that is likely to be hazardous or interfere with the child’s education, or to be harmful to the child’s health or development (art. 32 (1)).

**The right to food in domestic legislation**

(E/CN.4/2001/53, paras 52–54; 57, 60–61)

Twenty States in the world have Constitutions which, more or less explicitly and in more or less detail, refer to the right to food or a related norm. One of the most explicit norms is the one contained in the Cuban Constitution, which stipulates in its article 8: “ ... by the power of the people and by the will of the people ... no child shall be deprived of schooling, food or housing.” No State, however, has yet passed consistent domestic laws ensuring effective protection of the right to food for its population, and especially the most vulnerable groups, such as women, children and ethnic minorities.

What does effective protection of the individual and collective right to food by domestic law mean? The Committee on Economic, Social and Cultural Rights gives an answer in its General Comment No. 12, in the following terms: “States should consider the adoption

of a framework law as a major instrument in the implementation of the national strategy concerning the right to food. The framework law should include provisions on its purpose; the targets or goals to be achieved and the time-frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for its monitoring, as well as possible recourse procedures. In developing the benchmarks and framework legislation, States parties should actively involve civil society organizations.” (HRI/GEN/1/Rev.4, pp. 62-63, para. 29.)

**“Every right must give rise to a remedy. The right to food, to be effective, is no exception”**

Every right must give rise to a remedy. The right to food, to be effective, is no exception. As stated again in General Comment No. 12:

“Any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition ...

“The incorporation in the domestic legal order of international instruments recognizing the right to food, or recognition of their applicability, can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases. Courts would then be empowered to adjudicate violations of the core content of the right to food by direct reference to obligations under the Covenant.

“Judges and other members of the legal profession are invited to pay greater attention to violations of the right to food in the exercise of their functions.

“States parties should respect and protect the work of human rights advocates and other members of civil society who assist vulnerable groups in the realization of their right to adequate food.” (Ibid., p. 63, paras. 32-35).

What is meant exactly by domestic legislation? General Comment No. 12 refers to the expression “framework law”. The Special Rapporteur believes it would be more realistic to adopt a different approach. Economic, social, cultural and hence nutritional situations tend to be extremely varied and change from one country to another. Trying to adopt a framework law would certainly run into almost insurmountable obstacles. There would be the risk of a framework law falling, either alternately or simultaneously, into several temptations: either it might fail to apprehend or to settle the problems experienced by people in their everyday lives or it might promulgate legislative solutions which are ill-adapted to real social experience, or else it might impose standards which the State would be practically incapable of enforcing.

Much more effective than passing a framework law would be the following approach: the Special Rapporteur would help Governments, institutions and social partners identify social situations, customs and government strategies which prevent the

**“The rights-based approach to food security also adds a new and vital element: accountability”**

full realization of the right to food. In a predominately rural country, the main obstacle might be its system of unequal land rights; in another case, it might be the very low income of part of the population (which might be remedied by redistributive taxation and subsidies for basic foods), etc. Depending on the type of social situation he encountered, the Special Rapporteur might then advocate selected legislative solutions, especially with a view to eliminating economic, social and cultural obstacles in each case to realization of the right to food.

### **Justiciability of the right to food**

(E/CN.4/2002/58, paras 28–47; 50–51; 57, 59–60; 68–69)

The rights-based approach to food security also adds a new and vital element: accountability. States parties to the International Covenant on Economic, Social and Cultural Rights are legally bound to respect, protect and fulfil the right to food. Each Government must be held to account if it does not meet its obligations under international law. However, this will only happen if the justiciability of the right to food is established.

Justiciability is absolutely essential in the fight for the right to food. Why? Because making the right to food justiciable means that people can seek remedy and accountability, if their right to food is violated. If Governments are to be properly held to account for not meeting their obligations under international law, then justiciability of the right to food must be fully established. Accountability requires justiciability. This section reviews the reasons why, in the past, the right to food has not been considered justiciable. For a long time, economic, social and cultural rights have not been considered as justiciable by their very nature, and were not considered equal to civil and political rights. In this section, The Special Rapporteur moves the debate forward, by showing that in fact, the right to food can be understood as justiciable by its very nature. Furthermore, justiciability at the national level is increasingly becoming a reality.

At the regional and international levels, enforcement mechanisms are becoming stronger. Although enforcement mechanisms are still weak at these levels, particularly for economic, social and cultural rights, they do exist and deserve to be stronger. The right to food must become recognized as justiciable and enforcement mechanisms must be made stronger if Governments are to be held to account for violations of the right to food.

Achieving justiciability of the right to food is a prime objective of the Special Rapporteur. So what does justiciability mean? Essentially, justiciable rights are rights that are capable of being adjudicated by a court of law. The victim of a violation shall be able to bring his/her case before the judiciary and look for an effective remedy to the violation that he/she has suffered from a given State. The Committee on Economic, Social and Cultural Rights in its General Comment No. 12 requires that:



“Any person or group who is a victim of a violation of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition ... .”

When the enforcement mechanism is a court of law, then the right is justiciable. At the regional and international levels, so far a victim of a violation of the right to food still cannot bring a case before a judge; therefore the right is not justiciable. However, in these cases, the regional and international bodies do have some enforcement capacities, although these are weaker in the case of economic, social and cultural rights than for civil and political rights. The Special Rapporteur examines below these enforcement capacities and looks at the progress that could and should be made. First economic, social and cultural rights will be discussed, especially the right to food, to challenge the view that these rights are not justiciable by their very nature.

### **The nature of the right to food as a justiciable right**

At the 1993 World Conference on Human Rights, States adopted the Vienna Declaration and Plan of Action in which they agreed that:

“all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

This means that economic, social and cultural rights must be treated as equal in importance to civil and political rights. It also means that they must be considered the same in nature and justiciable. Therefore, the enforcement mechanisms put in place to protect economic, social and cultural rights should be just as strong as the enforcement mechanisms that protect civil and political rights. However, these great words have not yet been translated into reality. There is still a belief that economic, social and cultural rights are very different from civil and political rights, and could never be justiciable or properly enforced.

Part of the reason for this is that while 171 States approved by consensus the Vienna Declaration, some States still have an ideological objection to economic, social and cultural rights. For example, in their rejection of the draft resolution A/56/C.3/L.48 on the right to food at the Third Committee of the General Assembly at its fifty-sixth session, the delegation of the United States of America claimed that the proposal implied that citizens had a right to food and could seek legal remedy if this right were denied by their respective States. This means that the delegation of the United States did not consider that the right to food should be justiciable.

**“Economic, social and cultural rights must be treated as equal in importance to civil and political rights; they must be considered the same in nature and justiciable ”**

**“Under article 2 of the International Covenant on Economic, Social and Cultural Rights States parties agree to take steps to the maximum of their available resources”**

Another part of the reason is objection on conceptual and theoretical grounds. In the cold war period, some Western States thought that the nature of the right to food, like other economic, social and cultural rights, was fundamentally different from civil and political rights. It was argued that economic, social and cultural rights were different, by their very nature, and non-justiciable for four reasons: firstly, the right to food was imprecise; secondly, the right to food was subject to the limit of progressive realization; thirdly, the right to food required resources to be provided; and fourthly, that, in the absence of precise national legislation on the right to food, it was difficult for the judiciary to fill the gap that properly belonged to the legislative branch of the State. All these arguments have been used in the past to suggest that the right to food could not be justiciable.

The main argument was that civil and political rights were effectively “negative obligations”, which means that the State must simply refrain from taking actions that stop people from exercising their civil and political rights. This is seen as inexpensive in terms of resources, as it simply implies that the State should not do something. Economic, social and cultural rights, on the other hand, were viewed as “positive obligations” as they require the State to take positive action to improve the living conditions of people. In this case, positive actions must be taken by Governments, which implies the need for resources. Even when economic, social and cultural rights are laid down in national constitutions, these rights are often considered as “directives” or “guidelines” for Governments, rather than as individual rights that are enforceable in courts. This is because, it is suggested, the judiciary should not have power either to adjudicate the right to food, nor to control policies and resources that are the responsibility of the executive branch of Government. Under article 2 of the International Covenant on Economic, Social and Cultural Rights States parties agree to take steps to the maximum of their available resources, “with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means”. In the past, this wording has generally been interpreted as an evolving programme depending upon the goodwill and resources of States rather than an immediate binding legal obligation, backed by sanction of a court of law.

However, as the Committee on Economic, Social and Cultural Rights has pointed out, to put economic, social and cultural rights beyond the reach of courts is arbitrary and incompatible with the Vienna principle that these rights are indivisible and interdependent. It is also well known that even implementing civil and political rights does in fact imply resources. The costs of setting up and training the police force, the military and the judiciary to implement international human rights law is not insignificant. It is also clear that civil and political rights as justiciable rights have only become clear through legal developments and judicial jurisprudence. Similarly, as action is taken in the courts in the name of economic, social and cultural rights, it will become clearer how these rights can be treated as

justiciable rights. Further, there are several elements that make the right to food more similar to civil and political rights as commonly still understood. The Special Rapporteur wishes to move beyond these past arguments about the non-justiciability and build a different conceptual framework for the right to food.

Firstly, the right to food, and the measures that must be taken, are laid out quite precisely in article 11 of the International Covenant on Economic, Social and Cultural Rights [indicated above]. Secondly, there are certain limits on the application of the concept of progressive realization of the right to food. In accordance with General Comment No. 12,

“... States have a core obligation to take the necessary action to mitigate and alleviate hunger ... even in times of natural or other disasters.”

In addition, General Comment No. 3 provides examples of minimum State obligations of immediate nature and puts some limits on the concept of progressive realization.

Under the right to food, there are three different levels of obligation - the obligations to respect, protect and fulfil the right to food. While the obligations to protect and fulfil the right to food are certainly positive obligations that require positive actions from the State, the obligation to respect is effectively a negative obligation. This means that States must not take any action that interferes with people's access to food - such as, for example, destroying their crops or forcibly displacing them from their land or means of subsistence. As stated in the report to the General Assembly, the obligation to respect the right to food entails limits on the exercise of State power that might threaten people's existing access to food. On the other hand, the obligation to protect requires States to take an active role to prevent non-State actors, including enterprises or individuals, from violating other people's right to food. The obligation to fulfil is also a positive obligation, as Governments must actively seek to identify vulnerable groups and implement policies to ensure these people's access to adequate food and ability to feed themselves. As a last resort, direct assistance may also have to be provided where people are unable to access adequate food for reasons beyond their control.

The obligation to respect, therefore, is a negative obligation. It is little different from the negative obligations implied by civil and political rights, in the sense that it does not require extensive government resources to implement. To conclude, part of the obligations under the right to food—namely, the obligation to respect, the obligation of non-discrimination and the obligation to provide a basic minimum subsistence—should be made immediately effective, since they are not subject to progressive realization. A violation of these obligations regarding the right to food is also very clear, and a judge should be able to adjudicate these rights. Therefore, these basic obligations should be considered justiciable by their very nature.

**“Under the right to food, there are three different levels of obligation: to respect, protect and fulfil ”**

“The idea of progressive realization does not, of itself, necessarily mean that economic, social and cultural rights cannot be justiciable”

Finally, the idea of progressive realization does not, of itself, necessarily mean that economic, social and cultural rights cannot be justiciable. This is the case even for the positive obligations included in the right to food: the right to protect and the right to fulfil the right to food. There is progress in constitutional jurisprudence in a number of countries that is developing the concept that both the progressive realization and the requirements of socio-economic rights can be brought to the competence of judges in a court of law.

#### **Justiciability and enforcement mechanisms**

As noted above, when the enforcement mechanism is a court of law, then the right is justiciable. At the regional and international levels, so far a victim of a violation still cannot bring a case of violation of the right to food before an international tribunal and therefore the right is not properly justiciable. However, the existing regional and international bodies do have some enforcement capacities, although these are weaker in the case of economic, social and cultural rights, than in the case of civil and political rights.

##### *National level*

At the national level, 20 countries in the world have constitutions that more or less explicitly refer to the right to food or a related norm. These form key texts in the protection of the right to food at the national level. One of the most explicit is in the South African Constitution, which stipulates in its section 27: “Everyone has the right to have access to ... sufficient food and water.” However, there are still relatively few countries which have implemented a framework law on the right to food, or broad-ranging national legislation to protect the right to food in a holistic way. Enforcement mechanisms are also weak or non-existent as a consequence of both the fact that national legislation is inadequate and the fact that economic, social and cultural rights are generally not considered to be justiciable, by their very nature. It is therefore not possible to bring a complaint before a court of law. However, there is now very visible progress being made on the justiciability of the right to food. As jurisprudence builds up, it will also become increasingly clear how the right to food can be justiciable. There are already a number of cases of national jurisprudence that show clearly that the right to food and water or other economic, social and cultural rights can be considered justiciable.

##### *Regional level*

At the regional level, there are three key texts which protect the right to food, directly or indirectly. On the European continent, the European Social Charter is the most important instrument. On the American continent, the Protocol of San Salvador, properly named the Additional Protocol to the American Convention of Human Rights, which came into force in the year 2000, recognizes economic, social and cultural rights, including the right to food.

Finally on the African continent, the African Charter on Human and Peoples' Rights recognizes the right to food indirectly, through the right to health.

While the enforcement mechanisms at the regional level are different for each of these three key texts, they are still weak, and the right to food is not justiciable at the regional level because none of these conventions provides for judicial bodies to adjudicate the right to food. However, there are signs of progress in the strengthening of these mechanisms, which is extremely important. The developments on the African continent are far in advance of those in both Europe and America and provide an excellent example in terms of enforcement mechanisms and hopes for justiciability.

*International level*

At the international level, the key text on the right to food is clearly the International Covenant on Economic, Social and Cultural Rights. The monitoring mechanism for the implementation of the right to food is the Committee on Economic, Social and Cultural Rights. The Committee is not a judicial body and its recommendations are not legally binding. This makes the Committee weak as an enforcement mechanism. While its means and methods are very limited, the Committee does excellent work. On becoming parties to the Covenant, Governments are required to report on a regular basis on measures that have been taken to meet their obligations under the Covenant. The Committee has the role of examining these reports. It can then discuss the reports with the State representatives and make its recommendations. However, the effectiveness of the Committee is limited for several reasons. Firstly, many States do not even submit all the periodic reports. Secondly, as stated, the Committee's recommendations are not obligatory. Thirdly, there is no complaints mechanism in force.

As, so far, there is no complaints mechanism, individuals or groups of individuals who are victims of violations cannot bring complaints to the Committee, nor obtain reparation. What is significant about this is that it makes the enforcement of the right to food, and other economic, social and cultural rights, much weaker than the current mechanisms which govern civil and political rights. Individuals can present complaints directly to the Human Rights Committee for violation of their civil and political rights if their State is party to the Optional Protocol to the International Covenant on Civil and Political Rights. But they cannot do the same for a violation of their economic, social and cultural rights. This is completely contrary to the commitments made at Vienna in 1993 relating to the equality between civil and political rights and economic, social and cultural rights.

**“ Absence of complaints mechanisms makes the enforcement of the right to food, and other economic, social and cultural rights, much weaker than the current mechanisms which govern civil and political rights ”**

**“The starvation of civilians as a method of warfare is prohibited in both international and non-international armed conflict”**

### **The right to food in humanitarian law**

(E/CN.4/2002/58, paras 75–77)

#### **Prohibition of starvation of civilians as a method of warfare**

The starvation of civilians as a method of warfare is prohibited in both international and non-international armed conflict. That prohibition is violated not only when denial of access to food causes death, but also when the population suffers hunger because of deprivation of food sources or supplies. The prohibition of starvation is elaborated upon in provisions prohibiting attacks against or destruction of items necessary for the survival of the civilian population, including foodstuffs and drinking water:

“Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.”

Physical destruction includes the destruction of crops by chemical defoliants or the pollution of water reservoirs. Violations would also occur if landmines were to render agricultural areas useless. Under the Rome Statute of the International Criminal Court, intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival is considered a war crime in international armed conflict.

#### **Prohibition of forced displacement**

Forced displacement is prohibited under article 49 of the Fourth Geneva Convention. This article prohibits individual or mass forcible transfers of civilians in situations of occupation, except in cases of necessity for the safety of the population or for imperative military reasons. In such cases, evacuation must be effected in a way that guarantees satisfactory “nutrition”. Similar provisions are made for non-international armed conflict. Unlawful displacement constitutes a war crime under the Rome Statute of the International Criminal Court in both international and non-international armed conflict.

#### **Water and the right to food**

(E/CN.4/2001/53, para. 32; E/CN.4/2003/54, paras 36, 39–42; 46–49)

It is reasonable to believe that the right to food includes not only the right to solid food, but also the right to liquid nourishment and to drinking water. Moreover, the term “food” is not defined in a restrictive sense anywhere in the texts cited (resolutions, treaties, etc.). Could it really refer only to solid food? Should “food” then also include liquid or semi-liquid nourishment and so on? The question is absurd anyway. It is obvious that the right to food must include the consubstantial right to drinking water.

[A] new and very important development occurring at the international level has been a new breakthrough in the legal protection of the right to water. This is the development of a new General Comment No. 15 on the right to water, which will greatly improve the legal framework protecting the right to water by providing the authoritative legal interpretation of the Committee on Economic, Social and Cultural Rights. The Special Rapporteur believes that he has the responsibility to raise awareness of this new development, as water forms part of his mandate on the right to food. The Commission on Human Rights extended the mandate of the Special Rapporteur on the right to food to cover the issue of drinking water: “to pay attention to the issue of drinking water, taking into account the interdependence of this issue and the right to food”.

**“It is obvious that the right to food must include the consubstantial right to drinking water”**

The Special Rapporteur welcomes the initiative of the Committee on Economic, Social and Cultural Rights to establish a new General Comment on the right to water. This General Comment adds a contribution to the interpretation of the legal protection of the right to water, which is already recognized in international human rights law, and also in international humanitarian law and international watercourses law (the law governing the sharing of water between countries). The General Comment clarifies that: “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.” [para. 2]

It also clarifies that the right to water does not mean that free water should be given to everyone. Rather, it implies the obligations to respect, protect and fulfil the right to water. These are defined in the new General Comment as follows: the obligation to respect requires that States parties refrain from interfering, directly or indirectly, with the enjoyment of the right to water.

The General Comment highlights that water is essential for life and emphasizes the fundamental importance of access to “sufficient, safe, and acceptable” drinking water. In recognizing the importance of drinking water to nutrition, the General Comment also highlights how the right to water is inextricably related to the right to food and requires that: “Priority should ... be given the water resources required to prevent starvation and disease.” [para. 6]

### **Violations of the right to food by the Government of Myanmar (Burma)**

(E/CN.4/2001/53, para. 58; E/CN.4/2002/58, para. 106; E/CN.4/2003/54, paras 52–53, 55)

*First report:*

The Commission on Human Rights could be described as the moral conscience of the United Nations system. In its resolution 2000/10, it requests the Special Rapporteur to deal with “the realization of the right to food”. The Special Rapporteur has received information from a number of NGOs reporting particularly

**“Reported malnutrition rates are extremely high in both war-affected areas of eastern Myanmar and peaceful areas”**

blatant cases of violations of the right to food in several countries. After studying these reports, he requested further details and clarifications. He then wrote to the Governments concerned, drawing their attention to the allegations made against them and requesting substantiated replies. The allegations concerned Honduras, Myanmar and Palestine in particular. The Special Rapporteur will be able to report to the Commission once he has received replies from the Governments concerned.

*Second report:*

The Special Rapporteur must also report that he had received allegations in relation to Myanmar. These allegations documented gross violations of the right to food by the Government. They concerned the use of food as a political weapon and method of warfare against insurgents and civilian populations. It was alleged that mass forced displacement and forced relocation of people have threatened food security. For example, according to information received from non-governmental organizations, since March 1996 the military had allegedly relocated by force from over 1,400 villages covering an area of over 7,000 square miles more than 300,000 people, who were ordered at gunpoint to move into strategic relocation sites. Reported malnutrition rates are extremely high in both war-affected areas of eastern Myanmar and peaceful areas, in particular the Karen, Karenni and Shan States, as well as the Delta region. Other alleged violations of humanitarian law included the deliberate destruction by government armed forces of staple crops and confiscation of food from civilians.

*Third report:*

On 4 October 2002, the Special Rapporteur wrote, in a joint letter with the Special Rapporteur on the situation of human rights in Myanmar, to the Government of Myanmar. Allegations were received from non-governmental organizations concerning violations of the right to food. These related to actions that inhibit access to food, including forced relocation of civilian populations, restrictions on freedom of movement, and the persistence of the use of forced labour despite important efforts by the Government to adopt legislation to ban this practice. Allegations also related to reports of the theft and destruction of crops, food stores and livestock by the military. Farmers are also compelled to sell their rice stocks to the Government at levels well below the market price. The Special Rapporteur reminded the Government of its obligations to respect and protect the right to food.



# The People's Tribunal on Food Scarcity and Militarization in Burma (1996–2000)

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Asian Human Rights Commission

The People's Tribunal on Food Scarcity and Militarization in Burma (Myanmar) was created as a public exercise in discovering and assessing evidence of human rights abuses in Burma. Initiated in 1996 through conversations between the Asian Human Rights Commission and the human rights organization Burma Issues, the Tribunal belonged to the people's movement for social change in Burma. It gave victims of injustice the opportunity to reveal their circumstances regardless of the lack of government acknowledgement. Its contribution was to investigate and explain in an orderly and credible way which human rights were denied, how and why.

## Participants

The Tribunal involved human rights workers, experts, and citizens of Burma from at least eight ethnic groups, ten divisions and states, and a variety of socio-economic paths. Three respected figures in Asia's human rights movement sat on the panel: Justice H Suresh of the Bombay High Court (retired); Professor Mark Tamthai, Director of the Center for Philosophy and Public Policy, Faculty of Arts, Chulalongkorn University, Thailand; and, Dr Lao Mong Hay, Executive Director of the Khmer Institute for Democracy.

## Concerns

The Tribunal examined food scarcity and militarization, two social trends greatly affecting the people of Burma. The Tribunal sought to discern whether the right to food had been denied to people in Burma, and if so, whether this denial stemmed from the militarization of Burmese society.

The Tribunal noted that, "The State's obligation to protect the right to food goes beyond providing a morsel of food for every hungry mouth." Certain positive obligations must be performed, it observed, including protecting freedom of choice of livelihood, protecting the people's resource base from encroachers, assisting

**“ Basic economic rights should supersede politics; the right to food could not be compromised ”**

those unable to meet their own food needs and eliminating discriminations hampering access to food. It added that states also must not “indulge in any act of commission or omission which will endanger people’s capacity to produce food and have access to it”. The Tribunal argued that basic economic rights should supersede politics, that the right to food could not be compromised. Finally, although the government in Burma has not signed on to the International Covenant on Economic, Social and Cultural Rights, the Tribunal noted that it is still obliged to respect human rights in accordance with this treaty.

The Tribunal relied on a definition of militarization that suggested a society and government dominated by military values, ideology, and patterns of behaviour. This definition accounts not only for the role of the army itself but also the authoritarianism, oppression, and violence that had become a routine part of government business in Burma.

### **Activities**

After the Tribunal was conceived in 1996, field workers associated with Burma Issues began investigating hunger in Burma. These persons collected information directed towards establishing the relationship between manifest food scarcity and the militarization of society. Aware that much had already been written on Burma, original research for the Tribunal sought quality information rather than large quantities of insubstantial material. Existing literature was also an important secondary source. Case studies and supporting information was focused, comprehensive and well documented, and supported by pertinent analysis.

In January 1999, the voluminous *First Submission to the People’s Tribunal on Food Scarcity and Militarization in Burma* was completed and forwarded to each tribunal member prior to the initial panel meeting. The *First Submission* began with background information before moving to detailed testimonies and field reports of hunger and militarization. It was supported by a package of ancillary materials from other sources.

In April 1999, the panel of the People’s Tribunal convened in Thailand to receive oral testimonies on the relationship between food scarcity and militarization in Burma. Twenty-six witnesses gave depositions, providing a range of testimonies regarding the historical and contemporary links between the right to food and militarization there. The panel adjourned to consider evidence individually and resumed discussions at a meeting held in May, during which the panelists presented their initial conclusions.

On 23 May 1999, the panel notified the government of Burma about the Tribunal’s activities and requested that it provide evidentiary material to support its point of view before the end of June 1999. The government, however, did not officially reply. The panel then handed its findings to the Asian Human Rights Commission, which published the influential *Voice of the Hungry Nation* report in October 1999. The report was also made available on the Tribunal website ([www.hrschool.org/tribunal](http://www.hrschool.org/tribunal)).

## Findings

The Tribunal reviewed evidence and case studies from persons of all walks of life and most major administrative divisions of Burma. The source of hunger, the Tribunal concluded, was

Social rather than natural, rooted in the structure and actions of the state rather than vagaries of land and climate. Our findings show that among state institutions, the people of Burma overwhelmingly accuse the military of denying their right to food.

## Outcomes

Prior to the work of the People's Tribunal, human rights groups working on Burma tended to treat violations of the right to food as a small part of their work. Destruction of food by soldiers, shortages of food among displaced populations and other abuses were dutifully recorded but not made the subject of serious discussion. At the international level, around the time the Tribunal was just beginning its work, the right to food was starting to receive increased attention as a distinct and significant human right, particularly through the 1996 World Food Summit.

The Tribunal's contribution was twofold: it brought the right to food to the attention of the human rights movement of Burma; and, it brought the specific conditions of food scarcity in Burma to the attention of the international community.

The work of the Tribunal broadened the often narrow, partisan or politically motivated approach that many groups have taken on human rights in Burma. Hunger, it was found, has cut its way across communities in Burma without regard to religion, ethnicity, gender, affiliation, or otherwise. Just as the right to food is a universal right, in Burma its denial is universally felt.

Internationally, many agencies began to approach food scarcity in Burma as a distinct problem deserving greater attention. These included non-governmental organizations, which began to report and work on food deprivation and livelihood issues with much greater awareness of the right to food. The Special Rapporteur on Myanmar also highlighted the *Voice of the Hungry Nation*, and devoted a section of his report to food security. The Special Rapporteur on the right to food, a mandate established in 2000, has also raised his concerns with regards to Burma in each of his three reports to date, and has written to the government in conjunction with the Special Rapporteur on Myanmar, but has reportedly received no reply.

Finally, the government of Burma has in recent years propagated more material arguing that the food needs of all its citizens are being satisfied. Growing international attention has obliged it to address this issue in the United Nations, and at home it is using the domestic media to paint a picture of a food-sufficient nation. In so doing, it is by implication acknowledging the problem, although asserting that it does not exist. This intransigence on the part of the government is a cause for concern that has contributed to the Asian Human Rights Commission's ongoing attention to hunger in Burma and its causes.

**“Hunger has cut its way across communities in Burma without regard to religion, ethnicity, gender, affiliation, or otherwise”**

## The making of a people's tribunal

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Chris Cusano, Deputy Director (Venture),  
Ashoka Innovators for the Public

In 1996, the Asian Human Rights Commission and Burma Issues, a human rights organization in Thailand, began working on a research and advocacy program investigating the link between hunger and the pervasive military institutions in Burma, or Myanmar. Over the next four years, the People's Tribunal on Food Scarcity and Militarization in Burma involved scores of people in establishing the nexus between Burma's expanding military and the increasing difficulty with which the average citizen obtained adequate food.

The People's Tribunal, inspired by the robust people's tribunal movement in India, introduced a new method and philosophy to the international human rights movement for Burma. It was avowedly apolitical, as any legal or quasi-legal proceeding must be to retain credibility. It was also regional, in the sense that the Tribunal's members were distinguished members of civil society movements from three of Burma's neighboring countries, Thailand, India, and Cambodia. With the possible exception of Thailand, which shares in many of the social woes perpetuated by ongoing conflict in Burma, very few ties had been made with social-sector activities in other Asian societies. But most importantly, the Tribunal intended to prompt Burma and its supporters to take seriously the problem of food scarcity and to seek solutions without waiting for the dominant political debates to resolve themselves. By setting out to reveal the institutional and structural causes of food scarcity—taxes, economic policy, agricultural planning, military discipline and conduct—the Tribunal sought to suggest specific remedies on which to focus the efforts of government, civil society, and Burma's international supporters.

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Chris Cusano was coordinator of Burma Issues (Thailand), during the time it worked with the Asian Human Rights Commission on the People's Tribunal on Food Scarcity and Militarization in Burma. He is now Deputy Director of the Venture programme with Ashoka Innovators for the Public, and is based in Washington DC.

## Why food?

Hunger is man's first and most tenacious enemy, a primal threat to human security that attacks both the individual and society alike. Hunger taunts the stomach and disturbs the mind. Hunger evicts families from their customary homes and sentences them to new lives as refugees. Hunger divides communities into the fed and the unfed, or the overfed and the malnourished.

Hunger distorts the marketplace. It transforms the humblest sack of rice or beans into a delicacy priced beyond the means of an average wallet. It refutes the farmer's fundamental economic formula: land plus labour plus a modicum of good fortune equals food. Replacing it is a more vicious theorem: labour produces, but neither producing food nor possessing it guarantees that one will eat. For its part, luck abandons the hungry.

Hunger corrodes the machinery of the state. Taxes, flowing ever upward, are paid in paddy. Soldiers receive their wages in paddy, or just as frequently in permission to take what they wish with impunity. Civil servants respond to the call of hunger by appropriating the functions of office to serve their own gnawing pangs—a special fee here, an added service there, the expedition of paperwork, the granting of a permit. It intrudes on the classroom and corrupts the largesse of teachers, transforming a profession of giving into a corps of takers forced by their empty stomachs to accumulate whatever they can from the state and students alike.

Hunger is both highly personal and thoroughly social. It is physiological and economic; emotional and mechanical; simple and complex. Because it is natural, hunger is everywhere a native, capable of appearing in every hamlet and town, but nowhere a citizen to be named, apprehended, and called to account for its crimes and prejudices. Hunger preoccupies its victims with implications—they must find food, take to the road, borrow a cupful of grain, ration their meals, bury their stores, seek a bribe, avoid the taxman, tell lies at the checkpoint, hide their chickens, eat quickly and move on, feed the children first—rather than its origins. And why bother searching for causes, when hunger, our familiar enemy, is simply the absence of food?

## Burma

Throughout the 1990s more and more people in Burma were having trouble getting the food they need to survive from day to day. This nation of farmers had not stopped growing rice, expanding arable lands, pursuing more advanced agricultural technologies or transporting food from place to place. There was no great drought choking the paddy fields, and no mass infestation of pests that stripped rice from its stalks before the harvest. Still, people weren't getting enough to eat.

For years reports had attested to widespread abuses by combatants in Burma's many regional wars and insurgencies. Soldiers were known to destroy and confiscate food, kill livestock, force civilians to leave their farmland, and levy exorbitant and

**“Hunger taunts the stomach and disturbs the mind. Hunger distorts the marketplace. Hunger corrodes the machinery of the state”**

“The universality of food as a topic of inquiry offered an opportunity to engage human rights in its most human terms”

arbitrary fees, “taxes,” and penalties on rural communities payable in both cash and in kind. Moreover, reports of corruption and economic mismanagement were ruining the economies of Burma’s cities and towns, which were generally free from the violence of armed conflict through inflation, wild currency devaluation, shortages of basic goods including food, and a voracious institutional culture of corruption and nepotism. The link between the actions of the state and the people’s difficulty in finding food had been amply documented.

Yet important areas of the topic had not been explored. The policies and practices of government agencies regarding rice-tax, for example, had yet to be approached at the structural, as opposed to anecdotal, level of consideration. When large agricultural projects involving irrigation, population displacements, or multiple cropping failed, many questions remained about how and why these ambitious plans turned fertile ground arid and rendered productive farmers virtually idle. What happens to people when their lands are seized, crops destroyed, food confiscated?

Moreover, a problem so pervasive and universal as hunger presented opportunities to exercise the discipline of human rights documentation and advocacy in ways that were new and untried at the time. With so much documentation amplifying domestic and international calls for democracy and new leadership in Burma, the line between human rights advocacy and political activism was beginning to blur. Maintaining that line and sharpening it were then, and still are, extremely important. Of course there is a natural affinity between decrying abuse by the state and seeking political change. Yet with little hope for “regime change” in sight, and with an ever-worsening set of conditions facing Burmese people, whatever their political views, it made sense to find a central issue that transcended the dominant political question of who should be leading the country. Furthermore, Burma’s conflicts are largely ethnic conflicts, and much of the international discourse on rights in Burma had been phrased in the same ethnic and regional definitions that characterized political opposition movements. The universality of food as a topic of inquiry offered an opportunity to engage human rights in its most human terms, free from political association and therefore exempt from charges of political bias.

### **The People’s Tribunal**

A people’s tribunal gives voice and structure to people concerned about some breakdown in human security. Tribunals—and it should be said here that no two are alike—work on the principles of a legal proceeding. Tribunals gather evidence, clarify charges, apply available laws and norms in considering the case for wrongdoing, and render their results to the public. A people’s tribunal, as the name implies, is not of course legally empowered; its members are acting as citizens, not officials, and their intention is to clarify and enunciate a human rights situation, rather than render a verdict and deliver justice in the conventional sense. For

these reasons, the more prominent, public, and professional a tribunal, the better chance it has to convey a lasting message and impact on society.

The People's Tribunal on Food Scarcity and Militarization in Burma had to withdraw itself from public view, however, during its research and evidentiary phases. Ordinarily, a Tribunal consists of a series of public hearings, held in a known and accessible place, at which people with something to say on the issue make statements. The open format requires some degree of tolerance in the society—freedom of speech, freedom of assembly, and sufficient lack of repression so that those who speak are not in immediate danger of reprisal. These prerequisite conditions did not exist in Burma. The Tribunal's organizers were quite certain that public hearings would neither have compiled evidence or rallied civil society organizations around the issue. As an alternative, preliminary information was gathered and presented to the Tribunal by Burmese human rights workers who themselves were acutely aware of the conditions in the country and among whom many had experienced first hand the pangs of hunger. Then, the organizers created a series of opportunities for the Tribunal panel to meet and interview several dozen people. Most were complainants whose direct testimony illustrated in some way the link between militarization and food scarcity. A few were experts who provided historical background and an overview to humanitarian aid in the civil war zones.

At each point, the work of the Tribunal was participatory and highly sensitive to the needs and interests of the Burmese participants. The interest of the Tribunal was not merely in what it could get from persons coming before it, but also in what it could contribute in exchange. Above all, it was in every respect an exercise and demonstration of solidarity with farmers, teachers, health workers and information collectors struggling to overcome the difficult conditions in their country with dignity and self-respect.

Having collected its evidence behind closed doors, the Tribunal welcomed the opportunity to share it publicly. It did this in three ways. The first was to publish the Tribunal's findings as the *Voice of the Hungry Nation* report. The second was to organize a media event at which members of the Tribunal panel discussed their findings and the Tribunal process. The third and final step was to present the Tribunal's findings at the annual session of the UN Commission on Human Rights in Geneva. In keeping with the aims of the Tribunal, the submission aimed to raise a new issue and engage those who have an interest in the topic but no prior involvement. What the Tribunal found was that there was a ready and interested audience. Just as food is a universal need that cuts through social divisions, food security is a topic that engages economists, diplomats, agricultural planners, humanitarian relief agents, agronomists, and others who have both an interest in the well-being of Burma's people and an institutional mandate to address food issues.

**“At each point, the work of the Tribunal was participatory and highly sensitive to the needs and interests of the Burmese participants ”**

**“All societies grapple with hunger and equitable distribution of food on some level”**

### **What was learnt**

The Tribunal found food scarcity and militarization to be universal issues that were closely linked in Burma. This determination begs the question of where and how hunger and authority may be linked in other settings. Scarcity of food and an oppressive military-run government are particular aspects of the problem in Burma. Rampant food scarcity and repression do not exist everywhere. Yet all societies grapple with hunger and equitable distribution of food on some level. And all societies struggle with the defining and creating the rule of law as a means of governance and conflict resolution. Therefore the People’s Tribunal on food scarcity and militarization in Burma stands as a good model for persons or organizations interesting in pursuing similar issues, or merely interested in adopting the people’s tribunal approach, elsewhere in Asia or beyond.



## **“I can’t even feed my children”: More voices of the hungry nation**

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Elizabeth Lee, Researcher,  
Asian Legal Resource Centre

**I**n 1999, the People’s Tribunal on Food Scarcity and Militarization in Burma published *Voice of the Hungry Nation*, a report that established the nexus between denial of food and military rule in Burma. The government of Burma declined to respond officially to the Tribunal’s findings, although it rebutted suggestions of food shortages in Burma through the state media and international forums.

The three years since the Tribunal completed its work would have been ample time for a government with goodwill and the genuine interests of its people at heart to redress violations of the right to food. However, the government in Burma has not responded favourably. Although it claims to uphold the right to food, conditions in the country have not improved. Some reports suggest that they have deteriorated considerably. The primary reason for this unfortunate condition now, as at the time of the Tribunal report, is the role of the armed forces.

What follows is a general overview of how millions of people in Burma continue to be denied the right to food.<sup>1</sup> It begins with how people throughout the country continue to struggle from day to day for enough food to eat. It then reviews the agricultural policies of the state, including the paddy quota system and plans for its cessation, and the dry season crop programme. It moves on to the litany of abuses attributed to the armed forces that impact directly and indirectly on people’s ability to earn a livelihood and to eat, particularly land confiscation, extortion and arbitrary taxation. It pays special attention to conditions for internally displaced persons and refugees, before assessing the current state of militarization in the country, and its relationship to law. Finally, it turns to prospects for the future.

### **The search for rice**

Rice is the staple food of people in Burma. Everyone lives off it, and millions earn their living from it. From the middle of 2002, however, reports of a domestic rice shortage began to appear.

**“Looting of rice has been widely reported, and even officials have been caught stealing rice and cooking oil from government warehouses”**

Poor weather conditions had damaged the rainy season crop. Despite problems, the government forged ahead with exports, even raising its target.

It is often said that people in Burma can put up with almost any hardship as long as they still have enough rice.<sup>2</sup> In the last year many people in central Burma have come close to, or reached, this breaking point, as reported by Democratic Voice of Burma radio:

The people in Mergui (Beik), Tenasserim Division are running out of staple rice supply and they have to survive by drinking rice porridge. Rice merchants are hoarding their stocks in other villages and rice vendors are only stocking a small amount of rice in their shops and charging people more than the normal price. The people of some quarters in Mergui have to be content with broken rice soup.<sup>3</sup>

The police have promptly arrested anyone found begging for food.<sup>4</sup> But others have turned to more desperate acts. Groups of villagers in central Burma are said to have held up passing busses, demanding not money but food from the passengers; others are said to have raided rice warehouses.<sup>5</sup> Looting of rice has been widely reported, and it is understood that even officials have been caught stealing rice and cooking oil from government warehouses.<sup>6</sup> One person speaking on radio earlier this year described how desperate some have become:

The other day, I chatted with my neighbors in front of our house while my rice was being cooked in the kitchen. When I returned to the kitchen the rice pot was gone. What could I do? I will tell you what is happening in our area. In other areas, rice pots are often stolen. When we didn't face the experience, we knew nothing about it. Now that they have done it to us and we didn't manage to arrest the thief and didn't know who did it. We all talked about it and laughed. The economic hardships make people work hard but they are not able to eat sufficiently. It's worse for houses with many children. Children have to collect plastic in the streets and find jobs. It is worse during the school holidays. Children collect anything that they can sell in the streets.<sup>7</sup>

A few simple sums reveal the truth of these remarks. An unskilled labourer can earn 300 to 400 kyat per day. But to feed a small family costs at least 1000 kyat per day.<sup>8</sup> And this cost is rising rapidly, at present more than doubling annually, as the value of the currency plummets. The result is that many families in once relatively prosperous urban areas are now spending around 70 per cent of their household income on food.<sup>9</sup> Other basic commodities have also doubled or tripled in price annually. As observed by one resident of the capital:

The price of eggs is outrageous these days. A single egg fetches 30-40 kyat these days - not much by international standards, but enough to put them beyond the reach of ordinary Burmese... Only the middle class can afford to eat eggs now.<sup>10</sup>

The resident went on to assert that, “We're on the brink of starvation”—a remarkable statement coming from a member of the urban middle class.

Public protests are rare in Burma, as they inevitably result in arrests and lengthy jail terms. But at least once in the last year a group of protesters gathered in the capital to decry the cost of living. Shouting, "A fall in prices is the people's cause!" the group included two nuns.<sup>11</sup> The nuns have not been heard from since. Meanwhile, more people are going hungry.

**“The problem is that the government needs the rice just as much as the people”**

### **Reaping in the paddy**

The problem is that the government needs the rice just as much as the people. When a conflict arises between these two parties, the government exerts its will by force, and the people suffer as a result. Since 1999, the government has continued to pursue policies of paddy production and acquisition irrespective of the interests of farmers and consumers. Although it has recently announced its intention to scrap the compulsory paddy purchasing system, discussed below, at present this initiative just leads to more questions.

The government needs to feed the army and provide subsidized rice and other basic goods to the civil service and army families. These provisions are a major incentive for persons becoming soldiers, teachers and government clerks. The government also wants to export more rice. To achieve these ends, it has insisted that farmers do multiple cropping, and sell a proportion of their paddy to state agents at prices usually around one third the market rate, but sometimes less. These policies together have continued to have a serious impact on food availability in the country.

Once power for implementing policy under an autocratic regime is invested in the hands of local officials, it is further distorted. Take the following demands, which village authorities accompanied by police made on farmers in one area during 2001:

1. For each basket of paddy that is discolored because of unfavorable weather conditions, the cultivator can either accept a deduction of 150 kyat per basket or pay 400 kyat per discolored basket of paddy (the difference between the prescribed selling price of 350 kyat and 750 kyat, the prescribed cash payment for failure to supply).
2. For the purchase of a common winnowing machine in some villages, cultivators are asked to pay an amount of money at the rate of the price of a basket of paddy while in other villages the price is fixed at the rate of 200 kyat per acre.
3. One *pyi* of paddy per acre is the fixed amount that has to be given free for the township [Peace and Development Council].<sup>12</sup>
4. Compulsory purchase of one videotape, cassette tape and calendar by every cultivator who arrives at the Paddy Purchasing Center to sell his prescribed paddy.
5. Compulsory purchase of insecticides for which deductions are made from the amounts due to the cultivators.<sup>13</sup>

Such maltreatment of farmers has been widely reported. Other ways in which local authorities extract cash and kind from farmers have included:

**“Government officials’ estimates of paddy yield per acre are typically unrealistic, intended to satisfy their superiors rather than reflect reality”**

- Arbitrary surcharges on agricultural bank loans;
- Charges for summer crop irrigation works;
- Provision of subsidized fuel for irrigation pumps only after advance payments;
- Increasing the required weight per basket; and,
- Overcharging for fertilizer and other basic inputs.

Police or soldiers are also understood to have been accompanying local officials more and more often when making their rounds. Farmers unable to fulfill obligations are sometimes arrested on the spot and released only after they have purchased the amount of paddy owed on the open market, at a cost far in excess of the amount they are repaid by the state. In one recent example,

Farmer Naing War was accused of failing to sell the allotted 168 tins of rice to the government. He was taken to Nyaungpin Seik Police Station and beaten up by station administrator, Maung Soe... The farmer was beaten and kicked the whole night by the police and he had to be treated in Moulmein Hospital the next day. After a week he was discharged from the hospital [but] the wounds and pains... are so severe that he is said to be still suffering.<sup>14</sup>

In more remote regions, where farmers have for years been subjected to the vicissitudes of civil war and social instability, it is normal for soldiers and officials to use threats and beatings to extract quota paddy. In fact, it is presumed that these techniques will be used, and officials seeking to use more tactful approaches must specifically instruct soldiers, in the words of one telegraph, “[to] not threaten [farmers] with sticks/guns/knives, and do not scold [them].”<sup>15</sup>

Under any circumstances, government officials’ estimates of paddy yield per acre are typically unrealistic, intended to satisfy their superiors rather than reflect reality. As a result, even farmers bringing in a good harvest may be left with little once the government is through with them. This is especially the case in more remote regions, where the land may be less suited to wet paddy cropping and the farmers have fewer resources and even less support from the government than their counterparts in central regions. A report on conditions in northeastern Shan State is illustrative:

On average, one acre of land in northern Shan State could produce, given the right weather conditions, around 30 baskets of rice. For an ordinary farmer to grow an acre of rice, the following expenses, measured in rice, are needed apart from his own labor:

- (a) 5 baskets of rice for hiring workers to help in planting rice seedlings
- (b) 5 baskets of rice for hiring buffalo
- (c) 5 baskets of rice for buying fertilizers
- (d) 5 baskets of rice for other expenses

Usually only about 5 baskets of unhusked rice per acre are left for the farmer at the end of the harvest, and if he/she has to sell another 4 baskets at a giveaway price, only 1 basket would be left for his own consumption, together with very little money from the selling of the 4 baskets. When something goes wrong and the farmer does not have enough rice to sell to the authorities, he would have to buy from others at the market price and resell at their designated price, which is usually many times lower.<sup>16</sup>

Unfortunately, government policies are indifferent to seasonal realities, and are predicated on what has been planned. A natural disaster is no object. In the face of floods seriously disrupting the 2002 rainy season crop, the response of the state media was telling:

There are also fabrications saying that there were floods along the banks of Chindwin and Ayeyawady rivers in upper Myanmar which have destroyed the rice fields in the region; that the amount of rice flowing into Yangon was decreasing; rice prices were rising in Ayeyawady Division. As many countries are facing over flowing of rivers in the current rainy season, Myanmar is also facing floods in some areas. But the floods in Myanmar have never destroyed any rice warehouses or crops fields. Over 30,000 rice bags are entering Yangon every day. The amount is enough for the city consumption. There is no rice price rise in Ayeyawady Division. So it is clear that the rumours are being spread by the greedy merchants to hike the rice prices.<sup>17</sup>

The government of Burma may be in denial, but people in the cities know that rice prices doubled after the floods, and in some rural areas, tripled. Soldiers accompanied purchasing agents to areas where they are not normally required, in order to ensure that the farmers contribute as usual.<sup>18</sup> In other areas, farmers were told that they would not be permitted to sell any paddy on the open market until they had completed their compulsory sales to the state, and paid off debts for fertilizer.<sup>19</sup> One technique often reported to enforce this directive is the shutting down of private mills by troops. In some places this action has been known to result in short term artificial shortages of rice on the open market, causing prices to triple, treble or even quadruple within a single month.<sup>20</sup>

Even non-farmers have been obliged to contribute paddy to the government coffers. In some cases these are people who have been forcibly relocated and then instructed to plant and work rice so that local authorities may extract the quota, or a fine instead.<sup>21</sup> In Arakan State, in the west of the country, authorities faced with a drastic shortfall in their collection are reported to have set about collecting paddy from land owners not actually harvesting rice, including shrimp and fish farmers, orchard and salt pan owners.<sup>22</sup>

### **A change for the...**

This 24 April 2003, the state-run *New Light of Myanmar* newspaper announced plans to abolish the compulsory paddy procurement system. The full announcement came after a change in policy had been alluded to in earlier reports. Secretary-2 of the ruling council, Lt-Gen. Soe Win, explained that

**“Even non-farmers have been obliged to contribute paddy to the government coffers ”**

**“The problem in Burma is not one of food production, and therefore not a question of expanding the size of landholdings, but one of equitable food distribution ”**

Starting [in the] coming year the government will not buy paddy directly from farmers, and [will instead] adopt a new rice trading policy ensuring free trade of the crop in the interest of the entire peasantry and helping develop the market-oriented economy.<sup>23</sup>

The aims of the new policy have been identified as:

To enable farmers to produce farm goods with might and main supporting the new policy; to enable the consumers to buy rice at reasonable prices with full satisfaction; and to extend export of the surplus rice to earn foreign exchange in accord with the export policy.

The policy shift, while in principle welcomed by many economists and outside observers, suggests more problems than it does solutions.

Firstly, the policy is still directed to the maintenance of military authority over the country, read in the basic principles of the policy as “to maintain the momentum of the rice trading business... in the interest of the State”, and “to support the peace and stability of the State”. The new committee established to oversee the programme is headed by the Secretary-2. Its membership consists of ministers and officials from trading associations.

Secondly, the description of how the new policy will operate is vague, padded with references to numerous committees and subcommittees with various tasks. The leading committee itself will have the ability to “[issue] permission for the creation of rice trading bodies... to introduce rules and regulations concerning rice trade, transportation, milling and storage... dissolve the rice trading bodies unsuitable to continue their functions and to reorganize them... [and] coordinate the process if there occurs any inequality in fixing prices.” About the only thing that is clear from all the above is that the government reserves the right to do as it pleases.

Thirdly, the policy brief indicates that new centres for voluntary purchase of paddy are to be established at local administrative levels across the country. In most cases what this is likely to mean is that the old compulsory purchase centres will simply be reopened under new signboards, as to establish an entirely new network of purchasing centres would be impossible and undesirable. Therefore, the officials and offices of the old system will remain intact. It is not likely that those persons and offices will be able to quickly change their manner of operating, nor convince farmers whom they have ordered around for decades that they are now free to do as they like.

Fourthly, the new system places greater emphasis on the role of “national entrepreneurs”. However, as will be discussed further below, there are grave doubts that these persons—many of whom are the recipients of land that has been confiscated from small landholders for little or no compensation—will genuinely contribute to food security in the country. As was demonstrated by the earlier Tribunal, the problem in Burma is not one of food production, and therefore not a question of expanding the size of landholdings, but one of equitable food distribution.

Fifthly, perhaps the single most important question is that without the compulsory purchasing system, under which it obtained rice at bargain prices, how will the state feed its army and make subsidized rice available to its sizeable civil service? The provision of discounted basic goods to civil servants has been a major incentive for the hundreds of thousands of teachers, clerks, nurses and other junior staff whose monthly salaries are no compensation for the time they spend at work. If the government intends to discard or amend the provision system, it could have enormous consequences for the administration of the state. If it intends to retain it, how will it provide these people with discounted rice when it is supposedly intending to purchase it at the market rate? As for the army, a reduction in rations and further emphasis on self-reliance, a principle discussed further below, is likely to have drastic consequences for civilian populations living in heavily militarized areas of the country, where extortion, forced labour and arbitrary taxation by soldiers are already rampant. The policy description is both brief and vague on this critical point:

The rice trading associations will have to resell rice for specified forces to Myanmar Agricultural Produce Trading at the same price they have purchased. The Myanmar Rice Trading Leading Committee will fix the amount of rice and places to be sent in time... give constant supervision... lay down guidance to extend summer paddy cultivation, increase per acre yield and to render assistance; and ... give supervision to solve the rice trading problems.<sup>24</sup>

This description suggests the possibility of a default compulsory system, as the central committee is to give orders about how much rice is needed, when and where it is to be sent. Faced with such instructions, local authorities will do whatever they must to obtain the required rice. Old habits are hard to break, and under a military regime, all too easy to maintain. One way or another, farmers will continue to be pushed around. Indeed, reports persist that since the state first announced the policy, to date local authorities have continued to demand paddy as in the past.<sup>25</sup>

### **Make rice when the sun shines**

The government has continued to pressure farmers to grow dry season paddy crops, even in areas where there is simply not enough rainfall or irrigation to do so, a policy addressed in some detail by the earlier Tribunal. In addition to the impracticalities of growing such crops in many parts of the country, farmers often cannot afford to pay for the limited fertilizer and machinery provided by the government, and must provide labour to build irrigation canals and other infrastructure, instead of spending that time on their farms. Without overpriced chemical fertilizers and other inputs, however, farmers in many places are simply unable to produce enough crops to make their work viable. The result in the east of the country is a continual outflow of persons from the farms in search of work in Thailand and elsewhere.<sup>26</sup>

**“Without the compulsory purchasing system, how will the state feed its army and make subsidized rice available to its civil service?”**

**“Confiscation and the concomitant food problems faced by farmers and their dependents can also be linked to government policies ostensibly for food security”**

In some remote regions farmers have been ordered to grow new strains of dry season paddy for the local military, even before rainy season crops have been completely harvested.<sup>27</sup> They have lost parts of their rainy season crops, and have had to buy the special variety of rice, often unsuited to local conditions, from the authorities. Such forced purchases of new ‘super strains’ of rice and other cash crops appear to be little more than profiteering by local authorities, as reports indicate they rarely perform according to the inflated expectations that farmers have been given.<sup>28</sup> Sometimes orders have been changed after farmers have already begun preparing land as instructed.<sup>29</sup> In Karenni State, a mountainous region where dry season paddy is untenable due to poor ground conditions and rainfall, farmers ordered to grow it in 2001 suffered insult on injury when the limited water available was all directed to a nearby newly built hydro-electric power plant. Farmers in this region report that since 1998 the construction of a number of such power plants has caused repeated crop failures.<sup>30</sup> Where farmers have been unable to plant the dry season crop they have been ‘fined’ per acre by local administrators, or have faced with threats of land confiscation.<sup>31</sup>

### **Taking over**

In Burma, threats to confiscate land are all too real. Farmers all over the country have lost their fields for failure to meet the paddy quota, plant a dry season crop or otherwise not follow orders. Land confiscation is often arbitrary, but it also has the backing of law. Land regulations have not been altered since the socialist period, and therefore farmers are technically leaseholders on state property. Notification No. 4/78 of 18 September 1978, in particular, stipulates that farmers can lose their land where they fail to meet government requirements for crop production.

Ironically, confiscation and the concomitant food problems faced by farmers and their dependents can also be linked to government policies ostensibly for food security. The Ministry of Agriculture and Irrigation speaks of increasing land under cultivation by ‘national entrepreneurs’.<sup>32</sup> What this often means in practice is not that local officials will open up new unpopulated land for agriculture, but rather that they will push small landholders off their farms to make way for big commercial croppers.<sup>33</sup> In some remote regions these policies seem intended to inflame inter-communal conflict, as farmers pushed off their lands are predominantly ethnic minorities who have resided in the area for generations, whereas those favoured to take over are ethnic Burmans from central parts of the country.

Since 1999, the authorities have confiscated land with increasing frequency. The results include severe curtailment of the right to food, and concomitant growth in internal displacement, forced migration and forced labour. However, many of the reported cases of land confiscation suggest that the main perpetrator has been the army itself, taking over land in remote regions for its own use or as part of anti-insurgent activities. In some cases land has been taken without compensation for construction of



military bases.<sup>34</sup> Elsewhere, it has been taken for army agricultural projects, or to lease back to local people or 'national entrepreneurs' for an easy profit.<sup>35</sup> In some situations, one thing has followed the next: after building a base on confiscated land, army battalions with land in surplus have leased the remainder back to the farmers who had occupied it previously.<sup>36</sup>

Whereas most reports suggest the landholdings confiscated are relatively small, and affecting only a few farmers (although these people sometimes lose everything), in some instances large areas of land have been swallowed up. For instance, reports emerged in early 2003 to indicate that a battalion in eastern Mon State confiscated over 300 acres of farmland in order to secure an important transport junction between Burma and Thailand.<sup>37</sup> Similar reports have come from the western Arakan State, where army units intent upon expanding their agricultural holdings have instructed the Department of Land Affairs to transfer title deeds over hundreds of acres into battalion names.<sup>38</sup> Under any circumstances, villagers who lose their land to the army in Burma have no voice, no avenue for recourse or redress. Where villagers have actually gone so far as to pay the army to return their lands they have reportedly lost both money and land.<sup>39</sup>

**“After building a base on confiscated land, army battalions with land in surplus have leased the remainder back to the farmers who had occupied it previously”**

### **On the move**

The earlier Tribunal noted that among those with the least to eat in Burma are persons who are 'internally displaced.' These persons can be found, broadly, under government control in relocation sites, or hiding in the mountains and jungles. An October 2002 report by a Thai-based aid group estimates that in total more than 2500 villages have been destroyed, relocated or abandoned in relocation programmes affecting 633,000 individuals over the last five years in eastern Burma. It estimated that since 1996 over one million people living in the regions that border Thailand have been displaced.<sup>40</sup> In 2002 also, there has been a marked increase in the frequency of counter-insurgency operations in ethnic minority areas, leading in turn to an increase in the level of internal displacement.<sup>41</sup>

People are typically ordered to go to designated sites by the army as part of anti-insurgent strategies, or to make way for 'development' projects. In these places there is usually little or no water or other resources, nor ways to earn a livelihood. Additionally, people at the sites are constantly preyed upon by troops, and suffer unceasing extortion and demands for labour contributions. They are also readily held accountable for movements of anti-government groups in the vicinity: after clashes, the army in some places comes to relocation sites and demands 'compensation' for losses.<sup>42</sup>

Those who have been relocated within walking distance of their farmlands (sometimes days away) often risk their lives to go back and grow a crop. One person from southern Shan State meeting with a staff member of the Asian Legal Resource Centre (ALRC) this March 2003 remarked that, "When our people leave to their

**“One person describes the life of people in the jungle as, ‘When the army moves to the left, we move to the right’ ”**

farms they bid their relatives goodbye; we don't know if they will be coming back or not.” Villagers who obtain approval to travel back to their farms and are issued passes are also not guaranteed safe passage: they may be accused of being insurgents by patrolling units, interrogated and tortured despite holding documents to attest otherwise.<sup>43</sup>

People at some relocation sites receive small amounts of assistance from international organizations working in Burma, however this assistance is meagre and only likely to lead to increased aid-dependency in the future among people who until only a few years ago were self sufficient. The authorities place intense restrictions on access to relocation sites in most places in order to limit the possibility of investigations by outside agencies.<sup>44</sup>

Villagers residing in areas to where other villagers are relocated also suffer intense difficulties, including extortion and land confiscation such as described above. A special September 2002 report recently received by ALRC indicates that in one village in Tenasserim Division where a relocation centre was established in 1997, over 40 acres of land have since been taken from at least 26 subsistence farmers. Of the 26, nine have themselves been forced into the relocation site, eight have fled to Thailand, eight have fled to elsewhere in Burma and one has died. As for their land holdings, 13 sites now have military outposts, seven are part of the forced relocation centre, and the remainder house two guest houses, one trading post, a clinic and a monastery.

In some regions, the dislocation is massive. Since the end of 1999, for instance, over one quarter of the entire ethnic Wa population – around 126,000 people – has been forcibly resettled from near the China border to the Thai border, on the other side of Shan State. Not only have the Wa themselves been upset by this mass migration, but the communities whose areas they were moved into have lost their land and property as a result.<sup>45</sup> Tenasserim Division, the southern tip of Burma, is another part of the country where a large part of the population has been resettled against its will, sometimes with orders to move within only a few days, and irrespective of heavy rains and other inclement weather conditions.<sup>46</sup> However, having been relocated to these sites, thousands of people have found them untenable and have then fled to the mountains—or, where possible, over the border—to eke out a living in the jungle, or languish in a refugee camp.

Only some of the people hiding in the mountains and jungles, however, have come from the relocation centres. Thousands more have come directly from their villages, fleeing a litany of abuses or simply refusing to go to a relocation site. Others have been moving from place to place for years. Hiding in the jungles and keeping away from the military makes the business of getting enough food to survive a task that consumes every spare minute in the day. One person interviewed in a special report recently received by ALRC describes the life of people in the jungle: “When the army moves to the left, we move to the right.”

Another special report given to ALRC in March this year indicates that between 1 January and 10 February an army offensive in seven townships of northern Karen State dislocated thousands of villagers who were still cultivating their lands. Landmines left behind by the army now make movement extremely precarious, and as a result around 3000 people are starving in the jungles, unable to return to their villages, and equally unable to make their way to Thailand to join the hundreds of thousands of refugees already there. According to one woman interviewed in the jungle by a human rights monitor,

The suffering endured by our people here is very hard. Every village is suffering. The enemy entered our area and tortured us hard, but we couldn't do anything. We fled to the jungle. Some people have run out of paddy and rice. We run to borrow it from other people. If we can borrow it we can eat, but if we can't then we don't eat for two or three days. The [army] people came down and burned all [of] our paddy and rice in our village. We have to suffer hard. We are one of the groups which has had to flee to stay in the jungle.<sup>47</sup>

A few tenacious support groups get small amounts of assistance to people surviving in the jungles. In one report received by ALRC earlier this year, a villager asked about his needs replies, "We need rice... We can't even feed our own children. I don't like to say such things; I'm a man, but I can't even feed my children."

People hiding in the jungle live in fear of being uncovered by the army. Where troops encounter such people they invariably shoot on site, and kill with impunity.<sup>48</sup> Under such circumstances, some flee to neighbouring countries as a last resort, but are not always welcomed. ALRC reported on one such case to the UN Commission on Human Rights this year.<sup>49</sup> In that event, during late 2001, 63 persons comprising 15 families—including many children and the elderly—had fled from a forced relocation site into the jungle, but were located by troops and forced to flee again after one of their members was shot. An elderly woman died along the way to the border of Thailand, and many others were seriously ill and chronically malnourished on their arrival. After a short period, however, the local Thai army division sent the group back into Burma.

Like the above group, most displaced people cross the border as a last resort, coming after years of attempting to survive—a point that was made to the earlier Tribunal by Thailand-based rights advocates. In June 2002, a man from Shan State described his flight into Thailand as follows:

We were relocated from our village about three years ago, because we were accused of helping the resistance. For the first year we had permission to go back to our village to plant rice. The following year we could only do it if we gave half our crop to the Burmese [army]. This year the little bit we could harvest was not enough and we were not allowed to go foraging. We couldn't survive, so we left....<sup>50</sup>

The difficulty for most people coming into Thailand is that if they encounter the Thai army they must prove that they are "fleeing from fighting" to be allowed to stay. This is a false criterion

**“This year the little bit we could harvest was not enough and we were not allowed to go foraging. We couldn't survive, so we left ”**

**“We already know what happens there. But here, even if the police catch us, they just ask for money. I think they won’t beat us up or kill us like in Burma”**

used to effectively deny entry to any person, or to return them as soon as the fighting is said to have ceased, making it “safe” to go back. Although most people coming to Thailand, then, are taking a risk and facing the prospect of arrest as “illegal immigrants,” one person interviewed in March 2002 summed up the alternatives:

If we stay here, we don’t have any ID card[s]. If we go back, it is difficult to earn a living there and not starve. So, who wants to go back? We already know what happens there. But here, even if the police catch us, they just ask for money. I think they won’t beat us up or kill us like in Burma.<sup>51</sup>

In October 2002 *Refugees International* reported on a research trip along the length of the Thai-Burma border that found a continual flow of three to four thousand attempted new arrivals per month, citing food shortages, torture, rape, forced labor, relocation, extortion, and summary executions as reasons for their coming. Many interviewees reportedly said that they only fled to Thailand as a last resort, when they—or someone close to them—were being beaten or raped.

### **The rise of the armed forces and the ‘un-rule of law’**

The previous Tribunal established the nexus between the denial of food and the militarization of state and society. The above reports indicate that the military has continued to embed itself in both the administration of the country and the minds of its people. For one, it is understood that to be successful in Burma, to rise above mere subsistence living, one must have friends and connections in the army.<sup>52</sup> For another thing, the widespread fear of the consequences of opposing the military indicates the extent to which people are resigned to the military’s dominance. People who have suffered under military rule still urge their children to think about government careers that will keep them secure and free from danger.<sup>53</sup>

There is no system of compulsory conscription into Burma’s 350,000-plus strong army, however many methods are used to coerce or encourage new recruits, from simply picking up boys and young men on the street, to offering incentives to village headmen and servicemen who bring in new blood.<sup>54</sup> In addition to those taken into the regular army, villagers are forced to serve in civilian militias. Armed groups across the country—many of them ceasefire groups—continue to make demands for recruits in their areas.<sup>55</sup>

Concomitant to militarization is the lack of an effective legal system. This is what the current UN Special Rapporteur on Myanmar has referred to as the ‘un-rule of law’ in the country.<sup>56</sup> On top of all the abuse heaped on people in Burma is the total lack of effective remedies for wrongs committed against them by the state or its agents. In fact, those who dare to demand justice of some kind are often punished for their impudence.

In civil affairs, ‘justice’ is understood in monetary terms. Police and soldiers have been known to accept healthy bribes from accused persons to drop cases lodged against them, and even

help the person move to another part of the country. A report from Tenasserim Division from earlier this year, for instance, describes the hasty convening of a military tribunal in a remote area to hear a manslaughter case—the guilty party was allowed to go free by paying some money to the officials and family of the victim.<sup>57</sup>

The army operates with greatest impunity in remote parts of the country. In fact, the areas where abuses are the greatest are also those where people have the most difficulty in getting enough food. In these places, as seen, the threat and practice of killing, torture, rape and other abuse by the army is ever present. Together, these seriously inhibit civilians' ability to earn a living. Without such threats and dangers, most villagers in Burma, used to standing on their own feet, would have little difficulty in feeding themselves. Instead, farmers face the prospect of horrific torture simply for doing a day's work; cattle traders are summarily executed and their livestock taken; and women hawking small goods or searching for vegetables for their families risk gang rape at the hands of soldiers.<sup>58</sup> One man who was tortured by soldiers told interviewers in 2002 that

They treated me like an animal, like a dog. They broke my head until blood streamed out. My jaws, cheeks and ribs were broken—the [army] can do what they like—they can kill and rape. We are weaker than they.<sup>59</sup>

The 'un-rule of law' can also be seen in the way the government responded to allegations in 2002 that soldiers had systematically raped large numbers of women in remote areas of Shan State. Responding to the extensively documented allegations, a government statement dismissed them as "too ridiculous".<sup>60</sup> At the local level, the army took measures to ensure that such allegations would not be heard in the future, calling together village and community leaders, and warning them against reporting human rights abuses to investigators or outsiders. Ironically, in at least one place these warnings went to the point of threats that anyone found to have made complaints against the army would be punished with death or having their tongue cut out.<sup>61</sup>

### **The future**

Since the People's Tribunal handed down its report in 1999, although the right to food in Burma has increasingly received international attention, people there continue to go hungry. Many are malnourished, and a few, starving. Whatever the case, these conditions, as noted by the Tribunal in 1999, are not 'natural'. As illustrated in this brief overview, they are the product of a range of actions—and inaction—by the government and armed forces of Burma. Every effort should be made to counter hunger due to natural disaster or other causes outside of human control. Hunger due to the actions of other humans, however, is by its very nature something preventable and immediately stoppable.

The situation in Burma should not be allowed to deteriorate until international organizations are obliged to intervene with convoys of rice, while—absurdly—the same foodstuff continues

**“The situation in Burma should not be allowed to deteriorate until international organizations are obliged to intervene with convoys of rice”**

to be exported or hoarded for military consumption. One group of people providing temporary relief with attempts to offset the systemic actions of another will not ensure the fundamental right to food. The people of Burma do not need a hand out, or for that matter, a leg up. What they need is the army off their back. Instead of seeking to protect its own existence, the government of Myanmar must take active measures to ensure that the right to food is no longer denied.

### End Notes

<sup>1</sup> This is the edited text of a longer article available on the Tribunal website, [<http://www.foodjustice.net/>], under 'updates'. In addition to the topics discussed in this paper, that item pays attention to other human rights concerns in Burma and how they impact on food security, including forced labour and restrictions on trade and travel. For a comprehensive overview of food and agriculture policy in Burma under military rule, readers are advised to see the report of the earlier Tribunal, available online at [<http://www.foodjustice.net/burma/1996-2000tribunal>].

<sup>2</sup> 'Burmese near end of tether as rice supply shrinks and prices rocket', *Financial Times*, 24 October 2002.

<sup>3</sup> 'No rice, no mercy', *Democratic Voice of Burma (DVB)*, 29 October 2002.

<sup>4</sup> 'Rice problem again', *DVB*, 29 October 2002.

<sup>5</sup> Naw Seng, 'Farmers feel the pinch', *Irrawaddy*, 11 December 2002. News archives of *The Irrawaddy* are online at [<http://www.irrawaddy.org/news/archive.html>].

<sup>6</sup> Naw Seng, 'Rice pilfering authorities arrested', *Irrawaddy*, 7 October 2002.

<sup>7</sup> 'Theft of rice pots in Moulmein', *DVB*, 22 March 2003.

<sup>8</sup> 'Farmers in trouble in Meikhtila District', *DVB*, 19 March 2003.

<sup>9</sup> 'Burmese near end of tether as rice supply shrinks and prices rocket'.

<sup>10</sup> 'Generals ignore simmering social unrest', *Irrawaddy*, 2 September 2002.

<sup>11</sup> 'Nuns arrested in protest', *Irrawaddy*, 16 January 2003.

<sup>12</sup> One *pyi* is 0.56 imperial gallons, or 0.26 litres.

<sup>13</sup> 'Farmers forced to sell rice in Tamu, Sagaing Division', *DVB*, 14 January 2003.

<sup>14</sup> 'Farmer tortured in Mon State', *DVB*, 28 March 2003.

<sup>15</sup> 'SPDC army orders to villages in Kyar Inn Seik Gyi Township, Karen State', Federation of Trade Unions—Burma (FTUB), 15 March 2003.

<sup>16</sup> 'Monthly report', Shan Human Rights Foundation (SHRF), June 2001.

<sup>17</sup> 'A regular press meet was held', *New Light of Myanmar*, 4 September 2002.

<sup>18</sup> 'Farmers forced to sell rice in Rangoon Division', *DVB*, 5 January 2003.

<sup>19</sup> 'Monthly human rights situation report, Tenasserim Division', Mergui-Tavoy District Information Department (MTDID), November 2002 & January 2003.

<sup>20</sup> 'Rice price shot up as junta closes down private rice mills', *Narinjara*, 19 February 2003.

- <sup>21</sup> MTDID, January 2003.
- <sup>22</sup> 'Rice collection from non-cultivators of rice: Burmese junta's new tricks to squeeze people dry', *Narinjara*, 6 February 2003.
- <sup>23</sup> 'State ends direct purchase of paddy, adopts new rice trading policy ensuring free trade starting coming year', *New Light Of Myanmar*, 24 April 2003.
- <sup>24</sup> 'Need to launch new policy with patriotism for its success', *New Light Of Myanmar*, 24 April 2003.
- <sup>25</sup> 'Farmers in Pegu Division continue to have to give quota paddy', *Mizzima*, 10 April 2003. 'People still yoked to rice procurement policy', *SHAN*, 30 April 2003.
- <sup>26</sup> 'Burma human rights yearbook 2002', National Coalition Government of the Union of Burma (NCGUB), 2002.
- <sup>27</sup> 'Monthly report', SHRF, January 2003.
- <sup>28</sup> NCGUB, 2002.
- <sup>29</sup> 'Monthly report', SHRF, March 2003.
- <sup>30</sup> 'Displacement in the Karenni context: Part 2', *Burma Issues*, January 2001.
- <sup>31</sup> NCGUB, 2002.
- <sup>32</sup> 'Rural population and farm families', Ministry of Agriculture and Irrigation, Government of the Union of Myanmar, 24 December 2003.
- <sup>33</sup> 'Military government plans to increase area of land under cultivation', *Kwe Kalu*, 31 January 2003.
- <sup>34</sup> NCGUB, 2002.
- <sup>35</sup> Confidential report from Burma Issues, April 2003. *SHRF*, January 2003.
- <sup>36</sup> *SHRF*, January 2003.
- <sup>37</sup> 'Lands confiscated for new battalions', *Mon Forum*, 31 January 2003.
- <sup>38</sup> 'Burmese army grabs huge tracts of civilian land for newer settlement: Design to tip ethnic balance in Arakan State?' *Narinjara*, 5 March 2003.
- <sup>39</sup> Confidential report from Burma Issues. April 2003.
- <sup>40</sup> 'Country report: Burma', *United States' Country Reports*, 2002.
- <sup>41</sup> Veronika Martin & Betsy Apple, 'Burma's internally displaced: No options for a safe haven', *Refugees International*, 10 October 2002.
- <sup>42</sup> 'Monthly human rights situation report, Tenasserim Division', MTDID, March 2003
- <sup>43</sup> MTDID, January 2003.
- <sup>44</sup> Special report on Myitta forced relocation camp, September 2002.
- <sup>45</sup> 'Monthly report', SHRF, January 2002. Therese M. Caouette & Mary E. Pack, 'Pushing past the definitions: Migration from Burma to Thailand', *Refugees International & the Open Society Institute*, December 2002.
- <sup>46</sup> MTDID, March 2003.
- <sup>47</sup> 'The suffering... endured here is very hard', *Burma Courier*, 27 January – 2 February 2002.
- <sup>48</sup> MTDID, January 2003.
- <sup>49</sup> 'IDPs in Myanmar and forced repatriation from Thailand', Asian Legal Resource Centre, E/CN.4/2003/NGO/151, 2003.
- <sup>50</sup> Martin & Apple.
- <sup>51</sup> Martin & Apple.
- <sup>52</sup> 'Cease-fire agreements: Burden or blessing?' *Burma Issues*, April 2002.

<sup>53</sup> Christina Fink, 'Life under military rule: The pressure to conform', *Burma Debate*, Fall 2000.

<sup>54</sup> 'Award for new soldier recruit', *Mon Forum*, January 2003. 'Child soldiers in SPDC army run from the frontline to freedom', *New Era Journal*, May 2003.

<sup>55</sup> MTDID, January & February 2003.

<sup>56</sup> Paulo Sergio Pinheiro, 'Questions of the violation of human rights and fundamental freedoms in any part of the world: Written submission to the Commission on Human Rights by the Special Rapporteur on the situation of human rights in Myanmar', E/CN.4/2003/41, 27 December 2002.

<sup>57</sup> 'If you have a lot of money, there's no need to go to jail', *Kwe Kalu*, 28 February 2003.

<sup>58</sup> SHRF, January & March 2003.

<sup>59</sup> Martin & Apple.

<sup>60</sup> 'Myanmar labels latest rape accusations as "too ridiculous"', *AFP*, 6 April 2003.

<sup>61</sup> SHRF, February 2003.



# Statements to the UN Commission on Human Rights regarding food insecurity in Burma

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Asian Legal Resource Centre

**T**he Asian Legal Resource Centre (ALRC) submitted these statements on food security in Burma (Myanmar) to the 59th session of the UN Commission on Human Rights, held in Geneva during March and April 2003. It submitted the statements under agenda item 10: Economic, social and cultural rights. It also submitted a written statement on internally displaced persons in Burma under agenda item 14(c): Specific groups and individuals: Mass exoduses and displaced persons.<sup>1</sup> Previous years' statements on food scarcity in Burma may also be found on the ALRC website (<http://www.alrc.net>).

## **Written statement: Food scarcity in Myanmar<sup>2</sup>**

1. The right to food of people in the Union of Myanmar continues to be denied by the military government in that country. During the last year the Asian Legal Resource Centre has increasingly received credible and disturbing reports of serious food shortages throughout Myanmar, both directly and indirectly linked to government practices implemented to ensure perpetuation of its undemocratic rule.

2. The Asian Legal Resource Centre has brought these concerns before the Commission over a number of years (most recently at its fifty-eighth session, E/CN.4/2002/NGO/66), subsequent to the October 1999 findings of the People's Tribunal on Food Scarcity and Militarization in Burma. The People's Tribunal had recommended to the Government of Myanmar that it "address widespread food scarcity throughout the country by giving highest priority to food security as a basic human right", in keeping with its commitments under article 25(1) of the Universal Declaration of Human Rights, and article 11 of the International Covenant on Economic, Social and Cultural Rights. Regrettably, the Government has demonstrated unwillingness to alter its policies and practices exacerbating conditions of food insecurity.

3. During the past year the Asian Legal Resource Centre has drawn international attention to the case of Dr Salai Tun Than, as it speaks to both the ongoing agricultural and food crisis in Myanmar, and also to the indivisibility of all rights, be they economic and social or civil and political. At the end of 2001, Dr Salai Tun Than was arrested for a one-man protest against the military regime in front of the Yangon Town Hall. In February he was sentenced to seven years in jail for his moment of resistance. He is now seventy-five years old.

4. Dr Salai Tun Than is no political activist. He is an agricultural scientist with an impeccable record of service to the state and people of Myanmar. He devoted his life to the rural development of his country, serving within state institutions for around forty years, and receiving government awards acknowledging his work. In 1993, after his retirement from civil service, Dr Salai Tun Than established a non-governmental organization for agricultural development in the remote hilly regions of Myanmar. Although its work was highly successful and it attracted the support of international agencies, the organization was not recognized by the government. Instead, its activities were subject to constant interference and its orchards reportedly destroyed by military units engaged in counter-insurgency operations. Dr Salai Tun Than was himself prohibited from personally conducting training programmes. Unable to bear the repression any longer, he was driven to his final solo protest, for which he now sits in Insein Prison.<sup>3</sup>

5. That Dr Salai Tun Than has been sentenced to seven years in prison for what amounts to a protest against his inability to work independently as an agricultural scientist in Myanmar reinforces the validity of the Asian Legal Resource Centre's earlier statements on food security there. His detention exposes the military regime's rhetorical pretensions towards economic and social development as fraudulent. Dr Salai Tun Than spent his life working under the state for the social and economic betterment of the people of Myanmar, yet when he attempted to operate semi-autonomously in regions where his expertise was sorely needed, he became an enemy. Specious statistical indicators of agricultural expansion and economic progress are all made a mockery by the seven-year sentence handed down to this aging agricultural scientist. Dr Salai Tun Than is not the real victim in this case, for he knew well the consequences of his actions before the town hall. Rather, those who now suffer the most are the people with whom he worked and who benefited from his practical commitment to the right to food.

6. Within the past year, other brief protests have been launched before Yangon Town Hall, each inevitably ending with arrests and detention. Most recently, two Buddhist nuns were detained in January 2003 for shouting that, "A fall in prices is the people's cause!" The nuns' demand, for which they will now suffer the same consequences as Dr Salai Tun Than, stems from the rapid escalation of basic commodity prices across the whole of Myanmar

during 2002. Throughout the country, prices have at least doubled over the past year and in many areas more than tripled. Conditions are further expected to deteriorate during the coming year.

7. While the causes for ongoing food insecurity may be partly attributed to poor weather conditions, the Government of Myanmar must bear primary responsibility. The Asian Legal Resource Centre has continued to receive reports of the manifold ways in which it violates the right to food through denial of the right to work, pernicious taxation, confiscation of land and repeated demands for unpaid civilian labour. It prevents or inhibits people from working freely to achieve their food security. Farmers are not permitted to choose when, where and how to cultivate. In areas of armed conflict they are subject to unstable life-threatening conditions that prevent them from using their labour, land and natural resources to earn a living. In other parts of the country, farmers are the victims of policies that place their own wellbeing after the interests of the state. Regardless of economic circumstances, civilian communities are obliged to satisfy demands for goods and services from the military. Meanwhile, the government goes so far as to issue blanket denials of floods and natural disasters and deny responsibility for rising prices, claiming that such reports are fabrications spread by greedy rice merchants to drive up the market value of their product.

8. Paddy farmers, the largest occupational sector of the country, are subject to a compulsory paddy-purchase programme enforced by government agencies nationwide. The quota is based upon the land-holdings of each farmer and without regard to actual production. The implicit tax on paddy—arising when the government buys rice at lower than the market rate—has grown from around 10 per cent in the early 1990s to around 80 per cent during the past year. This rate is still escalating, as in January 2003 farmers around the capital are understood to have been ordered to sell paddy at 350 kyat per basket, when they could receive 1500 kyat for the same amount on the open market. Credible reports from across the country indicate that farmers are facing increasing hardship in meeting the government's demands, but fear arrest if they fail to meet the quota. Whereas the military has been involved in collection of quota paddy in outlying areas for many years, in an apparently unprecedented move the commander of the central Yangon Division has now ordered that platoons of troops accompany government buyers to ensure that the paddy quota be met there also.

9. The recent food shortages have led to an upsurge of social unrest and crime. Reliable reports from across the country, throughout both urban and rural areas, indicate that groups of citizens have attacked and looted warehouses where rice is kept for export. In other cases, starving villagers have reportedly held up passenger buses travelling between urban areas, demanding not cash but food from those on board, and growing numbers of people coming to beg in towns and cities have been arrested in special police operations to suppress rising social discontent. A

wave of food-related violence has also gripped the major cities during the past few months, as people in many areas are reported to be surviving on meagre quantities of rice soup.

10. The Myanmar armed forces continue to be directly responsible for the most severe violations of the right to food. Counter-insurgency operations—especially in remote western and eastern regions—randomly destroy food stocks and crops, relocate civilian communities, and expropriate cash and materials. In some areas military operations directly target rural food supplies and crops without distinction, displace people from villages, scatter them into hills and jungles or force them into relocation sites. Widespread dislocation is resulting in serious and long-term structural food scarcity, not mere seasonal hunger due to occasional military incursions. The Special Rapporteur on the situation of human rights in Myanmar raised these concerns in his oral submission to the fifty-eighth session of the Commission, noting that “the bulk of those allegations appear to be credible indeed, in the face of which I cannot be silent”. The Special Rapporteur on the right to food has also acknowledged reports of food scarcity in Myanmar due to military operations (E/CN.4/2002/58, para. 106).

11. The border regions of western Myanmar are among those that have been worst effected. There, the World Food Programme (WFP) has in recent years intervened to feed over 620,000 people belonging to Muslim communities forcibly repatriated to Myanmar from Bangladesh, with the complicity of the UN High Commissioner for Refugees, since the mid-1990s. According to recent WFP documents, over half of the population in that region “is assessed to be food insecure” (WFP/EB.1/2002/8/6). This statement corresponds with data gathered by Médecins sans Frontières, published in March 2002, that 58 per cent of refugee children still residing in Bangladesh suffer chronic malnutrition.

12. The WFP rationalizes its involvement in northern Rakhine State due to “continued household food insecurity, pressing needs in basic services and modest government commitment”. While the Asian Legal Resource Centre appreciates the WFP’s commitment to food security and its recognition of the food crisis in Myanmar, it cannot help but question the WFP’s understanding of government policies as “well formulated, but... inadequately translated into action”. In fact, it is ridiculous to think and talk in such terms when the food insecurity gripping Myanmar is a direct consequence of the militarist policies and actions of the government there.

13. To talk of partnership with an authoritarian government to address fundamental economic rights first, democratization later is patently absurd. Starvation occurs in countries subject to the whims of dictators, not in relatively free and democratic societies. In the latter, with the advent of a natural disaster or other social crisis the government is obliged to respond and alleviate the needs of its people. In the former, as in Myanmar today, the government is instead obliged to conceal its failures and use any means

available to perpetuate its rule. In Myanmar it is no more possible to talk of protecting economic, social and cultural rights than it is civil and political rights: neither are guaranteed. The right to food, then, is inextricably linked to the advancement of civil and political rights in Myanmar, as it is everywhere.

14. In light of the above, the Asian Legal Resource Centre remains convinced that the Government of Myanmar has failed to fulfill its obligations under international law. Above all other causes, it alone must be held responsible for the pervasive food insecurity that continues to grip the country. Accordingly, the Asian Legal Resource Centre again urgently calls on the Commission, and in particular the Special Rapporteurs on the situation of human rights in Myanmar and the right to food, to

a. Conduct an investigation into the ongoing, man-made food crisis in Myanmar, through existing mandates and mechanisms or through the establishment of a special mechanism.

b. Communicate with the WFP and other UN agencies already actively engaged in addressing food security in Myanmar to recognize and respond to the root causes of the crisis there.

c. Demand the immediate release of Dr Salai Tun Than and other prisoners of conscience who have spoken out against the Government of Myanmar's manifest denial of the right to food.

d. Recognize that as all rights are indivisible, economic and social rights will not be assured in Myanmar until there are guarantees of basic civil and political rights there, and work through all available mechanisms towards that goal.

**Oral statement: Myanmar—Thousands of people are displaced and starving<sup>4</sup>**

What is the connection between white elephants and economic development? This March, a prominent Myanmar historian, Dr Than Tun, said that there isn't any. The Government of Myanmar has now banned him from publishing articles in local magazines.

Dr Than Tun made his observation after the Government of Myanmar captured a number of white elephants, which are considered sacred. State media reported that Myanmar would prosper due to these animals. Dr Than Tun pointed out that this is nonsense. That the government responded so negatively to his common sense speaks to the indivisibility of rights and their ongoing collective violation in Myanmar, which the Asian Legal Resource Centre has again and again drawn to the Commission's attention in its statements on economic, social and cultural rights.

Since presenting the 1999 findings of the People's Tribunal on Food Scarcity and Militarization in Burma (E/CN.4/2000/NGO/61), the Centre has repeatedly demonstrated that the military government is not genuine in its stated aspiration to ensure the food security of people in Myanmar (E/CN.4/2003/NGO/84). A government that sanctions a citizen who dares suggest that white elephants have no effect on economic progress cannot be expected also to take the right to food seriously.

But the right to food in Myanmar is denied by more than mere neglect; it is a matter of principle. In every sense the state in Myanmar rests on the preeminence of the armed forces. As noted by the People's Tribunal in 1999, "Policies [there are] designed at the highest levels to fulfil military needs first without regard to civilian well-being."

It is in the remote parts of Myanmar that the worst abuses of the right to food continue. Within recent weeks, the Asian Legal Resource Centre has spoken with persons travelling in some of these areas. They have told of thousands of people displaced from their lands, some for years, starving in the jungle. One who carried an emaciated child to a Thai town just across the border spoke of the utter shock and disbelief among medical staff at the child's condition.

That someone literally starving to death can be brought to a hospital in a food secure country only a few miles away speaks to the seemingly incongruous conditions that exist in Myanmar. The land is fertile, yet less and less of it is available to ordinary Myanmar civilians. Farmers work, yet are not adequately compensated. Food is produced, yet people go hungry.

These contradictions are not coincidental. Where a government is concerned more with the welfare of white elephants than that of its own people; more with its own survival than the costs incurred by others, such conditions are virtually guaranteed. Sadly, until the government's priorities are changed through the will of the international community, people in Myanmar will continue to have less food than they actually need.

#### **End Notes**

1 Document E/CN.4/2003/NGO/151, available on the ALRC website at [[http://www.alrc.net/mainfile.php/59written\\_item14c/196/](http://www.alrc.net/mainfile.php/59written_item14c/196/)] and the UN website at [[http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2003.NGO.151.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2003.NGO.151.En?Opendocument)].

2 Document E/CN.4/2003/NGO/84, available on the ALRC website at [[http://www.alrc.net/mainfile.php/59written\\_item10/168/](http://www.alrc.net/mainfile.php/59written_item10/168/)] and the UN website at [[http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2003.NGO.84.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2003.NGO.84.En?Opendocument)]

3 At the time of going to print, Dr Salai Tun Than was released from Insein Prison after widespread international lobbying on his behalf. Notwithstanding, the issues arising out of his case raised in ALRC's statement remain pertinent.

4 Mr Ali Saleem of the Asian Legal Resource Centre made this oral intervention to the UN Commission on Human Rights on 7 April 2003. It is available on the ALRC website at [<http://www.alrc.net/mainfile.php/59oral/202/>].

## **The Asian Human Rights Charter on enforcement of rights and the machinery for enforcement ([www.ahrchk.net/charter](http://www.ahrchk.net/charter))**

- 15.1 Many Asian states have guarantees of human rights in their constitutions, and many of them have ratified international instruments on human rights. However, there continues to be a wide gap between rights enshrined in these documents and the abject reality that denies people their rights. Asian states must take urgent action to implement the human rights of their citizens and residents.
- 15.4a The judiciary is a major means for the protection of rights. It has the power to receive complaints of the violation of rights, to hear evidence, and to provide redress for violations, including punishment for violators. The judiciary can only perform this function if the legal system is strong and well-organized. The members of the judiciary should be competent, experienced and have a commitment to human rights, dignity and justice. They should be independent of the legislature and the executive by vesting the power of their appointment in a judicial service commission and by constitutional safeguards of their tenure. Judicial institutions should fairly reflect the character of the different sections of the people by religion, region, gender and social class. This means that there must be a restructuring of the judiciary and the investigative machinery. More women, more under-privileged categories and more of the Pariahs of society must by deliberate State action be lifted out of the mire and instilled in judicial positions with necessary training. Only such a measure will command the confidence of the weaker sector whose human rights are ordinarily ignored in the traditional societies of Asia.
- 15.4.b The legal profession should be independent. Legal aid should be provided for those who are unable to afford the services of lawyers or have access to courts, for the protection of their rights. Rules which unduly restrict access to courts should be reformed to provide a broad access. Social and welfare organizations should be authorised to bring legal action on behalf of individuals and groups who are unable to utilize the courts.
- 15.4c All states should establish Human Rights Commissions and specialized institutions for the protection of rights, particularly of vulnerable members of society. They can provide easy, friendly and inexpensive access to justice for victims of human rights violations. These bodies can supplement the role of the judiciary. They enjoy special advantages: they can help establish standards for the implementation of human rights norms; they can disseminate information about human rights; they can investigate allegations of violation of rights; they can promote conciliation and mediation; and they can seek to enforce human rights through administrative or judicial means. They can act on their own initiative as well on complaints from members of the public.
- 15.4d Civil society institutions can help to enforce rights through the organization of People's Tribunals, which can touch the conscience of the government and the public. The establishment of People's Tribunals emphasizes that the responsibility for the protection of rights is wide, and not a preserve of the state. They are not confined to legal rules in their adjudication and can consequently help to uncover the moral and spiritual foundations of human rights.

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ALRC invites submissions to *article 2* by interested persons and organisations concerned with implementation of human rights standards in the region.

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