Appendix

The Permanent People’s Tribunal on the Right to Food and the Rule of Law in Asia
-- Asian Legal Resource Centre
http://www.foodjustice.net

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 article 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 that may be found on this website:

Two 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, establishing his mandate. This selection emphasizes the universality of the right to food, its justicability, and its relationship to the right to water.

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 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 and water, 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 food and water, and the acceptance of the conditions such denial creates.

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, 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. 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 of the citizen. 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 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 reach appropriate conclusions and make useful suggestions, without being constrained by a dogmatic position.

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 three 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 Postgraduate Programme on Human Rights at the 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. Furthermore, while the international community has responded to the Tribunal’s call, to date its reaction has remained limited and far short of what could be achieved. In particular, there remains the Tribunal’s important conclusion that as “the Government of Myanmar is largely responsible for food scarcity [it] may be considered guilty of a crime against humanity, punishable under international law”. In establishing the justicability of the right to food, the Special Rapporteur on the right to food of the UN Commission on Human Rights is just now hinting at this eventual possibility.

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 desperate acts: holding up passenger busses to demand food, and looting rice warehouses. In some areas rice pots are literally being stolen from kitchens when the cook turns away. 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 solutions according to the specific situations that they confront.

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 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.
Social Action Litigation

The following is an extract taken from an article by Justice H Suresh, retired Bombay High Court judge, in *article2*, vol.2 no.1, February 2003.

**People’s initiatives and social action litigation**

Where democratic governance fails it is for the people to take the initiative. This becomes imperative where the violations of human rights are significant and have taken place mainly because the state is apathetic. Law is about compromise between conflicting interests. If there is a conflict of interest in a society it is for the state to bring in a suitable law to resolve it and assure peaceful existence and development. Once a law is brought, it is seen primarily as an instrument of the government and state. If the state fails to enforce the law and protect human wellbeing, it does not mean that society has no role to play. Law is as much an instrument of society as it is of government.

It is for the society as a whole—not merely the victims—to take the initiative and address government failures. If a minority group is victimized, redress must come with support from the majority. Without this, a minority group cannot hope to get justice, as law enforcement will remain one-sided. The Dalits, then, cannot be left to fight their battle alone, for the confrontation is so unequal that they could not possibly succeed. The rest of society must come forward to join this struggle.

The concept of public interest litigation rests on an ideal that the state and society are obliged to support such struggles. In the past, the doctrine of *locus standi* held that victims alone should come to court for redress, and no one else on their behalf. This was during an era when private law dominated the legal scene. It was essentially a procedure to vindicate private rights, whether individual or proprietary. However with advent of welfare states, and increased state obligations, it became necessary for the courts to liberalize this doctrine. Now, when the state failed in its obligations towards the poor, weak and marginalized sections of society, the courts could not allow such injustice to continue simply because the persons affected were unable to come to court. Thus the courts gradually changed their position, allowing, in the words of Justice P N Bhagvati (in the *Judges’ Transfer Case* AIR 1982 SC 144) any member of the public to seek a judicial remedy for a legal wrong caused

To a person or to a determinate class of persons, who by reason of poverty, helplessness or disability, or socially or economically disadvantaged position, is unable to approach the court directly.

Justice Bhagvati termed this “representative social action”; it is generally referred to as “social action litigation”. It has also been extended to a situation where an injury to the public is not clearly tangible. If there is a public wrong then there has to be a remedy. Again, in the words of Justice Bhagvati (*Judges’ Transfer Case*),
If no one can maintain an action for redressal of such public wrong or public injury, it would be disastrous for the rule of law, for it would be open to the state or public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it.

In other words, Public Interest Litigation (PIL) is a form of social action litigation related to ensuring that access to justice through the courts is available to all citizens. Access to justice has many barriers, including poverty and ignorance. The concept of public interest litigation addresses these issues through allowing litigation to be brought to the court by an interested person in any cause, as long as it is legitimate.

An example of this is the case filed by the People’s Union for Civil Liberties vs. Union of India & Anor. ¹ This was a case filed by a non-governmental organization against the Indian Government, challenging the central government’s authority for tapping telephones, in which the apex court said that in the absence of specific laws permitting such an act, telephone tapping is not permitted.

In instances of PIL, courts can be moved not only through formal petitions, but even by letters written, whether by convicts as in the case of Sunil Batra,² who addressed the plight of convicts in jails, or from other interested citizens, as in the case of Swami Agnivesh,³ who addressed the rights and living conditions of pavement dwellers.

Social action litigation in India, though it has its limitations, is an effective way of addressing social injustices. Perhaps its most salient feature is that it seeks to awaken the conscience of the people, urging them to initiate means of redress and prevention of future violations.

¹ All India Reporter 1997 Supreme Court, 568
² All India Reporter 1978 Supreme Court, 1675
³ (1984) 3 Supreme Court Cases 161