

**DR. N. C. SAXENA, COMMISSIONER AND
HARSH MANDER, SPECIAL COMMISSIONER OF THE SUPREME COURT
IN THE CASE: PUCL v. UOI & Ors. WRIT PETITION (Civil) No. 196 of 2001**

To

30 August 2007

The Supreme Court of India

Update on Compliance of orders related to ICDS and Some Further Recommendations

The data of the National Family Health Survey (NFHS) that was released earlier this year shows that there has not been any improvement in child malnutrition. While according to NFHS 2 (1998-9), 47% children under three were underweight, in the NFHS 3 (2004-05) survey it was found that 46% children under three were underweight. Therefore, almost 50% of children in our country remain malnourished. The only programme addressing the care, education, health and nutrition concerns of children under six is the Integrated Child Development Services (ICDS). The Supreme Court has already passed some very significant orders related to the ICDS, especially in relation to its universalisation.

While there has been significant expansion of the ICDS programme since 2001, when the Supreme Court first passed orders related to this scheme, the States are still lagging in implementing all the orders of the Court. Further, recent research has shown that along with expansion; significant quality improvements are also required to ensure that the ICDS scheme is effective in addressing the problem of malnutrition. This note presents the current status of implementation of the ICDS scheme in relation to the orders of the Supreme Court and some of the main recommendations for improving the quality of the programme.

1. UNIVERSALISATION

The Supreme Court in its order dated November 2001 directed governments to ensure that there is an anganwadi centre in every hamlet, where SNP is given to every child under six, every pregnant and lactating mother and every adolescent girl. This was further stated in the order dated 13 December 2006 when the Court directed that at least 14 lakh anganwadi centres must be sanctioned and operationalised by December 2008. The number of anganwadi centres that have been sanctioned by the Government of India until now is 10.5 lakh. Of these 8.4 lakh centres have been operationalised as on 31 March 2007.

Further the Supreme Court in its order dated 09 July 2007 directed that, "The backlog has to be cleared immediately and the centres which have been sanctioned up to September, 2006 shall be made operational and functional by 15th July, 2007 in the case of all States except the State of U.P. where the last date is fixed to be 31st July, 2007. Those centres which have been sanctioned up to January, 2007 shall be made functional by 30.09.2007."

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The table below therefore looks at the status of operationalisation of anganwadi centres that were sanctioned up to September 2006. The 1.2 lakh anganwadi centres that were sanctioned after this period are not looked at here as the deadline for operationalisation of these as set by the Supreme Court is 30 September 2007, and therefore there is still time.

| TABLE: Status of Operationalisation | | | | | |
|--|-------------------------|--|-----------------------------------|---------------------------------|---|
| S.no | State/UT | No. of anganwadi centres sanctioned as on September 2006 (Phase I expansion) | No. of anganwadis operationalised | % of anganwadis operationalised | Source |
| 1 | Andhra Pradesh | 66101 | 61761 | 93.4 | As on March 2007* |
| 2 | Arunachal Pradesh | 3037 | 3037 | 100.0 | |
| 3 | Assam | 32075 | 31796 | 99.1 | As per Affidavit filed in July/Aug 2007 |
| 4 | Bihar | 80528 | 80101 | 99.5 | |
| 5 | Chhattisgarh | 29437 | 28498 | 96.8 | |
| 6 | Goa | 1012 | 1012 | 100.0 | As on March 2007* |
| 7 | Gujarat | 41484 | 40888 | 98.6 | As per Affidavit filed in July/Aug 2007 |
| 8 | Haryana | 16359 | 16359 | 100.0 | |
| 9 | Himachal Pradesh | 18248 | 18248 | 100.0 | |
| 10 | Jammu & Kashmir | 18772 | 17767 | 94.6 | |
| 11 | Jharkhand | 30854 | 30854 | 100.0 | |
| 12 | Karnataka | 51614 | 51478 | 99.7 | |
| 13 | Kerala | 28651 | 27980 | 97.7 | As on March 2007* |
| 14 | Madhya Pradesh | 59324 | 59324 | 100.0 | As per Affidavit filed in July/Aug 2007 |
| 15 | Maharashtra | 74990 | 73996 | 98.7 | |
| 16 | Manipur | 4501 | 4501 | 100.0 | |
| 17 | Meghalaya | 3179 | 3162 | 99.5 | As on March 2007* |
| 18 | Mizoram | 1592 | 1592 | 100.0 | As per Affidavit filed in July/Aug 2007 |
| 19 | Nagaland | 3035 | 2770 | 91.3 | As on March 2007* |
| 20 | Orissa | 37480 | 36527 | 97.5 | |
| 21 | Punjab | 17421 | 17216 | 98.8 | As per Affidavit filed in July/Aug 2007 |
| 22 | Rajasthan | 46862 | 46809 | 99.9 | |
| 23 | Sikkim | 988 | 988 | 100.0 | |
| 24 | Tamil Nadu | 45726 | 45726 | 100.0 | As on March 2007* |
| 25 | Tripura | 6094 | 6122 | 100.5 | As per Affidavit filed in July/Aug 2007 |
| 26 | Uttar Pradesh | 137557 | 137798 | 100.2 | |
| 27 | Uttaranchal | 7792 | 7747 | 99.4 | As on March 2007* |

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| | | | | | |
|----|------------------|-------|-------|-------|---|
| 28 | West Bengal | 74640 | 70230 | 94.1 | As per Affidavit filed in July/Aug 2007 |
| 29 | A & N Islands | 621 | 621 | 100.0 | As on March 2007* |
| 30 | Chandigarh | 329 | 329 | 100.0 | As per Affidavit filed in July/Aug 2007 |
| 31 | Delhi | 4428 | 4425 | 99.9 | As on March 2007* |
| 32 | Dadra & N Haveli | 215 | 138 | 64.2 | |
| 33 | Daman & Diu | 97 | 97 | 100.0 | |
| 34 | Lakshadweep | 74 | 74 | 100.0 | |
| 35 | Pondicherry | 688 | 688 | 100.0 | |

* From Status of ICDS Report, March 2007, Ministry of Women and Child Development, Government of India.

Note: Some states are showing more than 100% operationalisation because these have already started the process of operationalising the anganwadi centres that were sanctioned after September 2006.

As seen in the table above all the states have complied with the orders of the Supreme Court and have almost completed the process of universalisation. This is also the case with the states of Bihar, Orissa, Rajasthan, Himachal Pradesh and Kerala, states to which, notice of contempt was issued by the Supreme Court in the order dated 25 August 2007.

However, the problem now remains at the level of the Government of India, which has to sanction another 3.5 lakh AWCs (up to now 10.5 lakh AWCs have been sanctioned) to comply with the order of the Court (dated 13.12.2006) that at least 14 lakh anganwadi centres must be operationalised by December 2008. **The Government of India must be asked to present to the Supreme Court a detailed roadmap, along with time frame on how it proposes to sanction and operationalise 14 lakh anganwadi centres. It is also important that the Government of India allocate the required amount of funds for the universalisation of ICDS to 14 lakh centres and for all services to be provided to all the eligible beneficiaries.**

2. ANGANWADI ON DEMAND

The Supreme Court in its order dated 13 December 2006 directed that, rural communities and slum dwellers should be entitled to an "Anganwadi on demand" (not later than three months) from the date of demand in cases where a settlement has at least 40 children under six but no Anganwadi. The Government of India in its affidavit filed in the Supreme Court in March 2007 has set out the following procedure for opening an anganwadi centre under this provision:

- "Demand for opening an Anganwadi Centre/Mini Anganwadi Centre should be made by filing an application furnishing the relevant particulars, including details of population, area to

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be covered by the proposed Anganwadi Centre to the District Programme Officer appointed under ICDS Scheme.

- The District Level Programme Officer shall verify the correctness or veracity of the particulars and furnish its comments/recommendations to the State Government and for this purpose, the District Programme Officer shall take the assistance of the block level officers viz. Child Development Project Officer appointed in each block under the Scheme. The comments/recommendations of District Programme Officer shall be sent to the State Government within a specified time frame.
- The State Government, if satisfied, would forward the proposal for sanction to the Central Government within a specified time frame.
- The Central Government on receipt of the recommendation from the State Government and after conducting necessary scrutiny as it deems fit, shall sanction the Anganwadi Centre/ Mini Anganwadi Centre within a stipulated time frame *subject to availability of resources in the budget of a particular year.*” (emphasis added)

The procedure set out above is clearly against the spirit of the order of the Court. Such a bureaucratic and complicated procedure would only delay the process and it would be impossible to set up an anganwadi within the stipulated time frame of three months, even in cases where the demand is genuine.

Further, there can no question of the Government considering the demand “subject to availability of resources” as the orders of the Court clearly state that an anganwadi must be set up within three months in settlements that have at least 40 children. The Government of India may be directed to revise this procedure to ensure that the orders of the Court are implemented in letter and spirit. We suggest that a system be put in place where the demand is submitted to the CDPO who then forwards it to the District/State. The State government must immediately verify the validity of the demand and put an anganwadi in place within three months. For this purpose the Government of India may provide some amount of flexible grants to the state governments. The Court may kindly consider the issue of clear guidelines to clarify this.

3. Supplementary Nutrition Programme (SNP)

The Supreme Court has directed that all children under six, all pregnant and lactating mothers and all adolescent girls must be provided with supplementary nutrition. Provision of supplementary nutrition along with nutrition counselling is one of the most important interventions of the ICDS programme towards prevention and management of malnutrition. For this purpose children in the age group of 6 months to 3 years should be provided supplementary nutrition in the form of take home rations (THRs) as it is difficult for such small children to come to the anganwadi centre everyday. The supplementary nutrition should be nutritious and based on locally procured food. However in the case of children in

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this age group who can come to the centre everyday, they must be provided with hot and mashed food that is appropriate for their age. Currently THRs are in the form of just grain – this is inadequate. An appetising and nutritive menu that is based on locally available foods and is culturally acceptable must be worked out for children less than 3 years. Also, THRs must be combined with nutrition counselling to ensure that they are used for the child rather than distributed amongst the family. Counselling is also necessary for information and support on breastfeeding, complementary feeding, infant care etc.

For children in the age group of 3-6 years, SNP consists of poor, cereal-based items that have little nutritional value. Hot cooked nutritious meals, serving the same broad purposes as the Mid Day Meal Scheme in primary schools should be provided for children in the 3-6 age group. Provision of hot cooked meals in anganwadi centres has many advantages. These include not only nutritional support but also enhancing child attendance, promoting social equity, providing income support to poor households, and acting as a form of nutrition education. Further, children aged 3–5 years who are attending the anganwadi for preschool activities for a period of three hours most certainly require to be fed at least once in that duration to prevent “classroom hunger”¹. Currently states such as Tamil Nadu, Andhra Pradesh (in some projects), Kerala, Chhattisgarh, Himachal Pradesh, Gujarat are providing hot cooked meals to children in the 3 to 6 years age group. This should be expanded to the entire country.

In some states, new ICDS centres are being clubbed with primary schools, if there happens to be a school in the concerned hamlet. This has many advantages: it enables children to attend school, bringing with them younger siblings to be cared for at the ICDS centre, thereby helping enhance enrolment especially among girls. There is also saving in management costs of the hot coked meals, which means more can be spent directly on the food. This may be recommended to all states wherever the primary school is within easy access of the homes so that younger children can access it and where safe space can be made available for younger children so that they can play without interference of older children.

Further the current allocation for supplementary nutrition under the ICDS is too low for it to be able to provide nutritious food. The allocation must be increased to at least Rs. 3 per beneficiary per day for children under 6, pregnant and lactating mothers and adolescent girls (this is the norm for the mid day meal scheme in primary schools). Further the allocation for severely malnourished children should be higher at the rate of Rs. 5 per child per day.

¹ Strategies for Children Under Six, Paper submitted to Planning Commission by Arun Gupta, Biraj Patnaik, Devika Singh, Dipa Sinha, Jean Drèze, Radha Holla, Samir Garg, T. Sundararaman, Vandana Prasad and Veena Shatrugna.

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4. Decentralised Procurements

One of the key components of the ICDS is the supplementary feeding that is provided to children (in the age group 6 months – 6 years), pregnant and nursing mothers and adolescent girls. One of the reasons why the supplementary feeding does not reach the children is the fact that the entire feeding programme over the years had passed into the hands of private contractors who supplied ready to eat food powders that were culturally inappropriate, calorifically inadequate and in many cases never reached the ICDS Centre at all. In view of the vested interests and the rampant corruption in the present system, the Supreme Court of India banned all contactors in the ICDS programme three years back (vide an order dated October 7th, 2004). Yet a large number of states continue to violate the Supreme Court orders despite repeated follow up by the Commissioners with the Government of India and the State Governments.

Further, the spirit of the Supreme Court orders imply the strengthening of the decentralisation for all procurement including that of pre-school and medicine kits and supplementary nutrition. This would also help in checking the large scale corruption and leakages involved in centralised purchases.

We would therefore request that appropriate orders are passed to ensure that all purchases of medicine kits, pre-school kits and supplementary nutrition is completely decentralised.

5. Budgetary provision for 0-6 months

The Supreme Court has, in its order of 13 December 2006, directed that ICDS should cover ALL children for all its services and also the allocation of Rs. 2.00 per child for nutrition for ALL children under- six years of age through the ICDS programme. Children under six months of age are not provided any supplementary nutrition because what these children require is exclusive breastfeeding. According to most recent guidelines (WHO guidelines and National Guidelines for IYCF), breastfeeding must be initiated within one hour of birth and exclusive breastfeeding should continue until six months of age. Studies have shown that exclusive breastfeeding alone provides the nutrition that meets all the infant's requirements in this age group. It has also been shown that this is the only preventive and the best treatment for the major killers during the neonatal period (e.g. diarrhoea, pneumonia and sepsis). Recent studies have shown that starting breastfeeding within one hour of birth can help reduce the risk of neonatal mortality by almost a third. Universal coverage of exclusive breastfeeding upto six months of age can save 13 – 15% of all under five deaths, i.e. more than 3.5 lakh children each year for India.² In India Only 23% of babies are breastfed within one hour of birth, and just about 46 % are exclusively breastfed for the first six months.

² See 'Joint Statement on Infant and Young Child Feeding: Ensuring Optimal Infant Nutrition, Survival and Development' (available at www.bpni.org).

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While breastfeeding seems to be a simple act, it is in fact, very complex. As an act, it is complicated by social and cultural norms and taboos, the position of the woman in the family, the stresses to which the woman is subjected including time burden, the availability of affordable and well-run crèches where she can safely leave her infant while she works, and technical factors like proper position of the baby, problems of the breast, and so on. Awareness campaigns must be directed towards increasing society's support to mothers for exclusive breastfeeding for six months. Mothers need to be given constant support to continue breastfeeding. There should be a support system that allows a home visit twice a week during the first two weeks and once a week later, after birth, to assist and maintain exclusive breastfeeding. A skilled trained person should therefore support mothers in ensuring that early initiation and exclusive breastfeeding is indeed possible.

It is clear that the Rs. 2 allocated to infants of 0-6 months cannot be used for nutritional supplementation. The challenge is to use this money to create the environment where women can successfully practice optimal breastfeeding. This Rs 2 per child born can be used to support and educate women for exclusive breastfeeding, as well as similar provision during pregnancy to prepare women well towards breastfeeding. Currently there is no planned budget for this purpose.³

6. Social Equity

The results of the NFHS-3 show that the malnourished children (under-3) among SC and ST population is much higher than it is among others in the population. It is therefore important that in the process of universalisation of ICDS priority is given to setting up anganwadi centres in SC/ST hamlets ensuring that every SC/St hamlet has an anganwadi centre. In this context the Commissioners have repeatedly written to the states for data on the availability of anganwadi centres in SC/ST hamlets but have received responses from very few. The Supreme Court too in its order dated 13 December 2006 directed all states/UTs to submit affidavits with details of all habitations with a majority of SC/ST households, the availability of AWCs in these habitations, and the plan of action for ensuring that all these habitations have functioning AWCs within two years.

Table: Malnutrition Statistics by Caste/Tribe – India – NFHS 3

| | Scheduled Caste | Scheduled Tribe | Other Backward Classes | Other |
|--|-----------------|-----------------|------------------------|-------|
| Children under 3 years who are stunted (%) | 44.1 | 44.3 | 39.2 | 31.1 |
| Children under 3 years who are wasted (%) | 20.5 | 25.7 | 18.9 | 16.4 |
| Children under 3 years who are underweight (%) | 52.2 | 56.7 | 46.4 | 37.3 |

³ Dr. Arun Gupta's note circulated on "Solution Exchange"

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Recent reports of malnutrition deaths from Mumbai city indicate that malnutrition is as much a problem in cities. Even in a city like Delhi the percent of children under three who are underweight is as high 33% (NFHS-3). This figure would obviously be even higher if only children living in slums are considered. In this context, it is a matter of concern that despite clear orders no clear action has been taken to implement the scheme in slums. To begin with the governments should be directed to present data on the coverage of urban slums under ICDS. Further, in these big cities since there are huge migrant populations, it must be ensured that they have access to the ICDS without having to show documents of residence etc.

7. Restructuring ICDS

The Government of India through the Ministry of Women and Child Development and the Planning Commission is in the process of planning 'reforms' in the ICDS programme to ensure that it is more effective in combating malnutrition. The Commissioners appointed by the Supreme Court must be involved in this process to ensure that whatever the proposed reforms are, they are not in violation of the orders of the Supreme Court on ICDS.

Concluding Recommendations:

In the light of these observations, we advise the Honorable Supreme Court to take the following steps:

1. Direct the Government of India to submit to the Supreme Court a detailed roadmap, with time frames specified, how it proposes to universalise ICDS by sanctioning and operationalising 14 lakh anganwadi centres as directed by the Supreme Court on 13 December 2006.
2. Direct the Government of India to set in place detailed protocols for operationalising anganwadi centres in response to a demand from the community. The protocols should be such that in cases where a demand is made from a settlement that has at least 40 children under six but no Anganwadi an anganwadi is set up within three months as directed by the Supreme Court on 13 December 2006.
3. Direct the Government of India and all States/UTs to provide a freshly cooked and hot mid-day meal to children in the 3 to 6 years age group who attend the anganwadi centre, in lines of the mid-day day meal scheme for primary school children.
4. Direct state governments to consider location of ICDS centres adjacent to primary schools in the hamlets in which such schools are located.
5. In the case of children under six months of age, direct Government of India to allocate the Rs. 2 per child per day that every child is entitled to under the ICDS programme, towards breastfeeding counselling and support.
6. Direct Government of India that any 'reforms' to the ICDS programme should only be brought about in consultation with the Commissioners of the Supreme Court.

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7. Direct Chief Secretaries of all State Governments / UTs and the Government of India to commit to a time-frame within which the decentralisation of the supply of SNP through local community efforts will be made. Further all procurements related to the ICDS, not just supplementary nutrition, but also including pre-school and medicine kits etc. must be decentralized.
8. Direct Chief Secretaries of all State Governments/UTs to submit affidavits to the Supreme Court with details of all habitations with a majority of SC/ST households, the availability of AWCs in these habitations, and the plan of action for ensuring that all these habitations have functioning AWCs.
9. Orders may also be issued to ensure coverage of all children living in slums, all disabled children and all children of migrant workers within the same time frame. The Ministry of Women and Child Development may please be directed to ensure that children of migrant workers and homeless families be extended services under the ICDS with no requirements of any documents.