

**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**

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26<sup>th</sup> September, 2009.

The Registrar  
Supreme Court of India  
New Delhi.

Dear Sir,

We present herewith for the kind consideration of the Supreme Court a set of proposals for establishing a detailed protocol for mandatory state action in the context of drought; and a protocol for state response in the context of starvation. The objective of the drought proposal is to ensure that the emergent drought situation that threaten mass access to food, is anticipated, mitigated and addressed with equity and speed, without consequences of mass food scarcities. The objective of the starvation protocol is to establish processes of investigating starvation that are transparent, reliable and respectful of the dignity of the survivors; and mandatory protocols for intervention for relief, prevention and accountability.

We do this in our capacity as Commissioners in the matter PUCL v. UOI & Ors; Writ Petition (Civil) No. 196 of 2001. We would be grateful for early orders on these proposals, given the conditions of serious drought and threatened starvation deaths in many parts of the country.

Sincerely,

Dr. N. C. Saxena

Harsh Mander

## I. Addressing Drought with Equity

*It is imperative to ensure that the emergent drought situation that threaten mass access to food, is anticipated, mitigated and addressed with equity and speed, without consequences of mass food scarcities.*

For this, past and existing Famine, Drought and Scarcity Codes are not adequate. The following measures may be proposed to state governments, as well as directions sought from the court.

1. Declaration of Scarcity: The declaration of food scarcity must break away from the cumbersome, bureaucratic, opaque and long-drawn out provisions that still can be found in most Codes even today, which result in delays resulting in hunger, distress migration, distress sale of cattle and other assets, and indebtedness have long set in before the State takes any ameliorative measures.

The District Panchayat and District Collector should be authorised to identify drought even before the formal crop assessments, based on low or irregular rainfall, or other signs of distress such as early distress migration, sale of cattle etc.

They should send their report with reasons to the state government. This should be examined by a small inter-ministerial group which also includes also the leader of the opposition, and they should be required to give their decision within 2 weeks of receipt.

2. Public works: After the commencement of NREGA, public works need to be converged with NREGA, rather than creating a separate machinery and set of rules for relief works. However, after the declaration of scarcity in an area, the District Collector should be authorised to raise wages by up to 20 per cent of the minimum wage. Likewise, the limit of 100 days and employment of only one adult per family should be fully waived for the period of the scarcity, and all adults who seek work should be given work under NREGA, in the pattern of scarcity works of the past. There should be a certain proportions of works selected which require less demanding manual labour,

and this should be available to old, disabled and infirm people, as well artisans and weavers. But there should be a strictly enforced ban on children working in any of the sites.

3. PDS, ICDS, MDM and emergency feeding: Likewise, the provisions for gratuitous relief in relief codes should also be converged as far as possible with existing schemes.

a) The Collector and Panchayats at all levels will take special care to ensure that all eligible aged and disabled people, and members of specially vulnerable communities like the designated 'Primitive Tribal Groups' are fully covered by AAY cards, and those who are eligible for pensions also receive this.

b) The entitlement under each of these (subsidised rations and pensions) should also be raised by 50 per cent during the period of scarcity.

c) Adequate food grains should be provided for the ICDS by the central government, as is the practice with the MDM, through the Public Distribution System. This acts a safeguard against rising food grain prices resulting in reduced quantities of feeding in ICDS centers and schools.

d) Provisions for cooking costs must be suitably adjusted to rising food and fuel prices, indexed on a 6 monthly basis to the consumer price index.

e) Emergency feeding should be provided to all aged and infirm people who seek it, in anganwadis/schools. Old and disabled people should be encouraged to join the ICDS/MDMS feeding, in the pattern of Tamil Nadu and Orissa (for KBK districts).

d) Out of school children should be entitled to eat at mid day meals.

e) ICDS food entitlements should be doubled during the period of the scarcity, and hot meals for children in the age group 3 to 6 years provided twice a day instead of once. The timings of the hot meals should be adjusted in ways that expectant and nursing mothers are able to eat at least one of the hot meals, of not both.

f) MDMS should continue during the school vacations.

4. Starvation Deaths: The state government should be vigilant about starvation deaths. Complaints should be investigated within 48 hours, and the District Collector and District Panchayat head should visit the spot personally. They should undertake local

investigations about conditions of grave food denials, and if these are found to prevail, they should institute measures to assist the affected family and local community, according to the protocol prepared by the Commissioners (attached). There should be strict accountability including punishment of officers who fail to respond on time to situations of starvation.

5. Water Scarcity: District administration should undertake a careful and comprehensive mapping of water scarcity villages and immediately make arrangements, both short and medium term. In the short run, it may be necessary to provide safe water through tankers, but drills should be undertaken within two months wherever technically feasible. Safe drinking water may also be assured in all anganwadi centres and schools.
6. Food grain stocking in panchayats: The on-going provisions should be enforced of keeping a rolling stock in each panchayat of 5 quintals of food grain, to be distributed to all families who may be starving. These stocks should be regularly replenished. Also, all job card holders should be free to draw food grain from the PDS shop on credit, against their future employment in NREGA works.
7. Fodder planning: Scarcities tend to hit most hard livestock, and those who depend on these animals for livelihood. Fodder planning and camps should be organized immediately. Arrangements also must be made for feeding and survival support to goats, who are the support of many of the poorest rural residents.

## **II. Protocol on State Response to Starvation**

*The objective of this proposal is to establish processes of investigating starvation that are transparent, reliable and respectful of the dignity of the survivors; and mandatory protocols for intervention for relief, prevention and accountability.*

### ***Definition of Starvation***

It is remarkable that Famine Codes of the past, and contemporary Codes, do not contain an agreed definition of starvation. It is important to begin by defining starvation carefully and rigorously, and yet in ways that are accessible to the lay public.

Hunger may be understood as the denial of adequate food to ensure active and healthy life. If hunger is prolonged to an extent that it threatens survival, or renders the person amenable to succumb because of prolonged food denials to curable ailments, then the person is living with starvation. If these conditions actually lead to death, then this is a starvation death, even though the proximate cause in every case would be a medical failure. But the cause of death is not the medical failure, but the prolonged denial of nutrition that led to a person succumbing to medical conditions which a well fed healthy person would easily be able to combat and survive.

This definitions of starvation and modes of verification in this chapter and its annexures, are derived very substantially from an excellent document ‘Guidelines for Investigating Suspected Starvation Deaths’, prepared by the Jan Swasthya Abhiyan) Hunger Watch Group, based on a consultation organized in Mumbai in 2003<sup>1</sup>.

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<sup>1</sup> This conference was attended by and attended by Veena Shatrughna (Deputy Director, National Institute of Nutrition, Hyderabad), Vandana Prasad (Paediatrician), Narendra Gupta (Prayas), Sunita Abraham (Christian Medical Association of India), Sarojini (SAMA and Convenor of MFC), C. S. Kapse (Professor, Department of Forensic Medicine, D. Y. Patil Medical College), Neeraj Hatekar (Professor, Department of Economics, University of Mumbai), Sanjay Rode (Ph. D. student, Department of Economics, University of Mumbai), Abhay Shukla (Co-ordinator, SATHI Cell, CEHAT), Neelangi

The document points out firstly that 'starvation is ultimately not primarily a technical issue, but is rather related to deep-rooted socio-economic inequities, which require radical and systemic solutions'. It adds that 'while approaching the issue of hunger related deaths, we should start with the basic fact that starvation and malnutrition related deaths are *public health problems requiring community diagnosis*. In this sense they differ from classical "disease related mortality". The diagnosis of a death due to tuberculosis may be approached as an individual diagnosis. But *the diagnosis of a "malnutrition death" cannot be just an individual diagnosis*; we have to document the circumstances prevailing in the family and community along with the individual to reach such a conclusion'.

It adds that the dilemma is deepened because 'generally prevalent "baseline" malnutrition, gradually worsening severe malnutrition and definite starvation merge with each other along a seamless continuum. In a community which is used to barely subsistence intake, three years of drought reduces this further and then some families start eating once a day, a few poorest families eat on alternate days ... where exactly is the dividing line between malnutrition and starvation? When exactly does the situation change from "a chronic problem" to "an alarming situation"?'.

Public officials, the lay public and sometimes even professionals believe that starvation requires no intake of food. This underlies some of the denials when post mortems of the corpses of the deceased show some grains of food, or investigators are able to find some foodgrains in the homes of the person who recently died, and the cause of whose death is being contested. The Hunger Watch group defines starvation as levels of food intake that are unsustainable for the continuance of life itself. In assessing this, one challenge, as already observed, is that 'malnutrition, starvation and starvation deaths seem to lie along a continuum. How is it possible to demarcate one from the other?'

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Nanal, Amita Pitre and Qudsiya (all researchers at CEHAT).

An adult who eats 850 kilocalories of food daily or less may be presumed to be starving. This cut-off is based on research that shows that a person who weighs 50 kilograms, if she or he engage in no physical activity altogether, they require at least 850 kilocalories merely to stay alive, even though they perform no work at all. Thus if it is established that the adult had access to less than 850 kilocalories, then this is not compatible with life itself, and the person is undoubtedly starving<sup>2</sup>.

Another reliable physiological indication of starvation is a BMI (Body Mass Index) of 16 and less. Body Mass Index or the BMI is the ratio of the weight of the adult in kilograms to the square of her height in metres. This is a very good indicator of adult nutritional status as it is age independent. Values of BMI that fall between 20 and 25 are deemed to be normal. On the other hand, significant research finding is that in adults, if BMI is below 19, mortality rates start rising. Mortality rates among adults with BMI below 16 are nearly triple compared to rates for normal adults<sup>3</sup>. Thus in adults a BMI of 16 and less should be used as a cut off point to demarcate starvation from under-nutrition.

The nutritional status of children is easy to derive from the child's weight and age, and most ICS workers are trained in assessing this. NCHS standards for ideal body weights for children, both male and female are available. Classification systems based on these standards enable us to decide from the age of the child and its weight if the child has a normal nutritional status or is either undernourished or overweight. The weight of the child should be compared to the ideal weight for that age mentioned in the NCHS standards. A percentage of up to 80 per cent is deemed normal, 60 to 80 percent is deemed mild to moderately malnourished, and below 60 per cent the situation is severe, below 50 per cent alarming.

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<sup>2</sup> In the word of the hunger watch group (mimeo, 2003), 'Based on a requirement of 0.7 Kcal / kg / hour, a 50 Kg person needs about 850 Kcal per day to maintain oneself at Basal Metabolic Rate, without any physical activity'. Thus any food intake that is sustainedly lower than 850 Kcal per day would be incompatible with life in due course and is an indication of starvation'.

<sup>3</sup> 'Guidelines for Investigating Suspected Starvation Deaths', by the Jan Swasthya Abhiyan) Hunger Watch Group (mimeo, 2003)

***Verifying Starvation***

The duty to investigate and verify complaints of starvation must be shared by public officials, elected representatives, affected people and local communities, and professionals. Each must have clear and well defined roles.

In practice, if large numbers of people die of starvation, it occasionally captures media attention, and there is transient public outrage. Government officials in every part of the country, hotly deny allegations of starvation deaths. Most claim that the deaths result from illness, some even quibble that people were just chronically malnourished, but not starving. Issues of food security and hunger surface briefly in public consciousness, whenever there are media reports on starvation deaths. The brief public outrage that follows such reports lead almost invariably to unseemly wrangles about whether this was indeed a starvation death, with angry denials by officials, post mortems and other evidence being mustered to establish that there was indeed some grain in the stomach of the diseased or available to the family and therefore this does not constitute a starvation death.

Apart from this, even the media and political establishment tend to react only when reports emerge of actual starvation deaths surface; reports of destitution that led to this final collapse fail to stir interest or action. There is in this sense, in both State and non-State circles a certain 'normalisation' of destitution, of conditions in which people are forced to live with starvation. They can expect the State to act or public opinion to be outraged only when people begin to die.

Few people die directly and exclusively of starvation. They live with severe food deficits for long periods, and tend to succumb to diseases that they would have survived if they were well nourished. Official agencies do not recognize these as conditions of starvation, and instead maintain that the deaths were caused by the proximate precipitating factor of infection. We have also seen that starvation does not require absolutely zero food intake, but rather prolonged periods of such low food intake as to be incompatible with survival.

In the aftermath of media complaints of starvation deaths, while analysing deaths due to starvation, the official investigator usually conducts a conventional enquiry in which he or she fires a series of humiliating questions soon after the death has taken place to the victim's. This would only leave scars on the family of the deceased. The usual line of questioning is about whether the individual or family had access to any food at all in the period immediately preceding the death, or whether the death was due to illness or natural causes. There are sometimes post mortems to show even a few grains or wild leaves and tubers on the stomach, to demonstrate spuriously that the death was not due to starvation.

### *Investigating the Living by Public Officials*

The National Human Right Commission in its investigation into alleged starvation deaths in Orissa<sup>4</sup> some important and human principals have been established. First of these is that death is not necessary as evidence of starvation. In the words of Mr. Chaman Lal, former Special Rapporteur of The National Human Rights Commission (NHRC)<sup>5</sup>, 'A person does not have to die to prove that he is starving. This insistence on death as a proof of starvation should be given up. Continuance of a distress situation is enough proof that a person is starving'. We agree that medical post mortem inquiries do not serve much in the process of preventing starvation deaths and in assuring the right to food. Indeed, it hurts and humiliates those families and communities who have lost people painfully to starvation. Citizens, especially the ones who are starving, have a right to dignity. Starvation is also rarely an isolated instance, but reflects instead prolonged denials of adequate nutrition to households, communities, or social categories. Such people are usually very impoverished and dispossessed or destitute.

The discourse around starvation, especially among public officials and the media, should shift in such times from not just those who died, but those who survived but are deeply threatened. They need to recognise starvation to be a condition not just of the dead but also of the living. It

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<sup>4</sup> 'Feedback from Dr. Amrita Rangaswamy on Starvation deaths', Tanushree Sood, CES, Mimeo, 2005.

<sup>5</sup> Personal communication

is crucial to understand and accept that death or mortality is not a pre-condition for proving the condition of starvation. Long-term unaddressed malnutrition and endemic prolonged phases of hunger must be recognised as situations of starvation, and the duty of the state to prevent deaths of persons who are living with starvation.

There are many ways that allegations, complaints and fears of starvation arise. In any such situation, the focus of the investigations by public officials must focus not on the dead, but on the living survivors, and people of the family, class or community who may be similarly threatened. This would ensure that the survivors of the deceased are not traumatised further, and measures for relief and prevention are put in place without delay.

But it is important also to establish the veracity of complaints of starvation deaths. This should be done by processes of community investigations and verbal autopsies by public health officials in collaboration with local people. Both these processes may proceed side by side.

In the event of complaints, through application or verbal, made in the media, by affected people or activists or any other source, local panchayat representatives and revenue official must inform the District Panchayat head and the District Collector immediately, who in turn will inform each other, the local officials, and panchayat functionaries at various levels. They would be debarred from issuing denials, in the absence of investigation by public health functionaries, and instead the effort should be to identify the sources of distress, and respond to mitigating and ending these.

It would be the duty of the District Panchayat head, with the District Collector, the Chief Medical Officer, heads of departments of civil supplies, women and child welfare, social welfare and forests, to personally visit the location expeditiously, and in nay case not later than 48 hours after receiving the complaint or information is received. They should investigate the overall field situation in the family and community: not whether there was a starvation death, but whether the specific family, as well as in that location the local community (such as Musahars) and the social (such as single women) and class (such as

landless workers) categories to which she or he belongs, subsist in conditions of prolonged deprivation of adequate food with dignity, or in continuous uncertainty about the availability of food, or dependence on charity or debt bondage for food. On receiving reports of people living or dying of starvation, may be analysed, by a process described sometimes as verbal autopsy. They should meet the family of the victim, and learn from them about their general food and livelihood situation, and with the neighbourhood, and the local community, tribe, caste, class, gender or age group to which the affected people belong, and the village (or urban settlement) at large.

This public investigation should be conducted in consultation with and seeking the support of the affected people. It may occur in two phases. In phase one, discussions are held with the family of the victim and some neighbourhood families. During these discussions, the victims' families may be asked questions about the food and livelihood conditions and deprivations of the individual and the household, access to food and work, periods of hunger, and so on. The idea is not only to probe death and its causes but only to understand the poverty and destitution faced by the families and by similarly affected people. Attempt should also be made to understand the root cause of poverty such as livelihood crisis, heavy debt, crop failures etc.

In the second phase of investigation, discussions should be carried forward with the other members of the tribe, caste, class, gender or age group to which the affected people belong. During these discussions, questions may be posed about the food and livelihood conditions and deprivations of the class and communities of deprived people, their access to food and work, and periods of hunger. Broader questions regarding functioning of the food and livelihood schemes may be asked, such as (i) is there an operational anganwadi centre running in the village, (ii) is the nearby government school providing midday meals to the children, (iii) does the ration shop provide foodgrains in the right quantity, price and on time, (iv) how many elderly persons in the village obtain social security benefits or pensions from the state and so on. At the same time, the people should be provided enough space to reveal situations on their own. They should not be crowded out by questions from the investigator. It may also

be worth asking if any change has occurred in their way of living over the years. In other words, have the government policies brought about a change in the way of living of the people? There is a need to document the circumstances prevailing in the family and community at large special focus needs to be laid on tribal and backward rural areas. Also there may be cases of starvation of individuals who for one reason or another are without families, or abandoned by their families and excluded from their communities. The investigations should be sensitive to these as well.

These findings should be recorded by the District Panchayat head and District Collector in writing, and their report shared and explained in the local language to affected people and communities, local elected leaders and local officials. The report should contain a clear time bound action plan for intervention.

***State Interventions in Situations of Suspected Starvation:***

Even without awaiting the outcomes of the community investigations to establish starvation deaths, public authorities of the Panchayat and district administration must implement a range immediate measures, as soon as they are convinced that conditions of grave and threatened food and scarcity prevail in a local area of community, which result in people being forced to live in conditions of prolonged under-nutrition and even starvation.

Once it is established that there exist conditions of people of a dispossessed community, class or social category who live with starvation or grave threats to their food and livelihoods security, it is the duty of the State (jointly of the District Panchayat and district administration led by the District Collector) first to provide relief in case of conditions of starvation or long term unaddressed under-nutrition and failure of food schemes to prevent or remedy this. In its current form, 'gratuitous relief' is in the nature of charity. Such an ideology cannot bring about long term and permanent change in the condition of people who are vulnerable to starvation or the system of administration. Thus, such kind of an ideology needs to be

converted into a system of entitlements. In other words, relief needs to be in the form of entitlements and not charity.

If a certain region has been diagnosed as suffering from intense hunger, the state should be alarmed immediately, and be asked to place systems of relief, immediate, short term and the long term.

1. Relief for Family of Deceased: The first immediate relief must be for the affected family itself that has suffered the loss of persons for reasons associated with prolonged deprivation of adequate and assured food with dignity. Some of the measures that may be relevant include:

a) ensuring immediate food availability to the family, free of cost for at least for a period of six months and then continuously on a more permanent basis at highly subsidised rates. This would be by the distribution to them of special AAY cards with the specific provision that they would get their food entitlement without any cost for the initial six months;

b) ensuring early sanction and release of insurance under NFBS, and release of an ad hoc amount of the same amount for all dead as compensation regardless of whether or not they were adult bread earners;

c) identifying in consultation with the survivors in the family, the reasons for livelihoods denial, collapse or insecurities and assisting them to build a secure livelihood through measures like land allotment and restoration in case of alienation;

d) ensuring their coverage of all food and livelihood schemes for which they are eligible such as ICDS, MDM, NREGA and old age, widows and disability pensions;

e) for children, ensuring their admission to SC ST hostels if they choose, so that their education, food and protection is secured;

e) organising psycho-social support through professional and trained lay counsellors to the survivors of the deceased;

and (f) for infants, small children, expectant and nursing mothers, doubling their quota of food entitlements, hospitalisation where necessary, arrangements for nutrition rehabilitation, and health-care including immunization.

**2. Relief for others identified to be similarly threatened:** The next stage of intervention would be for the community, class or social category to which the family of the affected person belongs. This must begin with publicising and opening NREGA works for all those who seek it, within a week of the receipt of the information. The ceiling on 100 days for one member of each family must be relaxed for the affected people for a period of 2 years from the time a situation of starvation is identified. Simultaneously the mid day meal in the school will be extended to all days in the year, and open to all children, even if out of school, and old and disabled people and single women who seek it. The ICDS centre will also provide children of 3 to 6 years hot cooked meals twice a day instead of once, and this will be open also to pregnant and lactating mothers, and single women.

This must be followed with a careful official as well as well publicised affected people's social audit of why they could not access their food rights from the food and livelihood schemes relevant for them. For instance, were their small enrolled and regularly availing of the services of ICDS, and was their decline of nutritional status identified and addressed on time; if not, why not? Were the older children in school, and did they access regular and nutritious mid-day meals? Did they have ration cards, AAY or at least BPL, and did they regular receive the prescribed quota of 35 kilograms of subsidised food grains from the ration shop; if no, again why not? Did all old people receive pensions, and were these distributed at their doorstep on time every month? The same questions would apply to widows and disabled people in states with schemes for pensions for these groups. Did they seek job cards and work, and was this given to them in accordance with their legal entitlements under the NREGA?

From such an enquiry, the reasons for failures of food and livelihood schemes, and the exclusion of these most food vulnerable people from their reach, should be clearly diagnosed.

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The District Panchayat and Collector should clearly fix responsibility at all levels, punish those found guilty, remedy gaps of funds, resources and personnel, and address issues of discrimination and social exclusion. There should then be a time-bound coverage of all affected and threatened people by AAY ration cards, job cards under NREGA, old age, widow and disability pensions, and ICDS services, including nutritional rehabilitation and hospitalisation where found necessary, within a period of one month from the date of initial information. Failures to do so, if they result in further loss of life or deterioration in people's nutritional condition, will be the personal responsibility of the district leaders of the Panchayat and administration.

In the long run, local structural sources of pauperisation will be identified and local solutions developed in consultation with the gram sabha and village panchayat. These may include failures to implement land reforms, tribal land alienation, caste discrimination, micro minor irrigation and watershed development, availability of formal credit for agriculture and artisans, access to forests and choices of agricultural technology and cropping patterns.