

**BIRAJ PATNAIK, PRINCIPAL ADVISER, OFFICE OF THE COMMISSIONERS TO THE
SUPREME COURT**

IN THE CASE: PUCL v. UOI & Ors. WRIT PETITION (Civil) No. 196 of 2001

20 February 2012
NFSBComments/1070/StandingCommittee

Joint Secretary
Committee on Food, Consumer Affairs and Public Distribution
Lok Sabha Secretariat
Room No. F 014, 'G' Block
Parliament Library Building
New Delhi 110001

Subject: Suggestions on the National Food Security Bill, 2011 as introduced in the Lok Sabha on 22 December 2011

Dear Sir,

As you are aware, we are monitoring the food and employment schemes of Government of India which fall under the purview of the Supreme Court Commissioners in the case PUCL v. UoI and Others (CWP 196/ 2001).

Please find attached the comments on the National Food Security Bill (introduced in the Lok Sabha on December 2011) from the Office of the Commissioners to the Supreme Court (CP 196/ 2001). Many of the schemes (Mid Day Meals, Integrated Child Development Services, Targeted Public Distribution System etc.) which are part of the NFSA and are covered also by the litigation PUCL v. UoI and others (CWP 196/ 2001).

I am restricting myself in this formal submission to those sections of the Bill which are violative of the spirit of the directions of the Hon'ble Supreme Court. In addition to my formal role, I have associated with the reform of the Public Distribution System in States, most notably, in Chhattisgarh and I am closely associated with the reforms in these schemes in many States.

I would be grateful if you could arrange for my deposition before the Hon'ble Standing on Food, Consumer Affairs and Public Distribution. In case, I am given the opportunity to depose before the Hon'ble Standing Committee, I would like to do so in my individual capacity, in addition to my formal role as Principal Adviser to the Supreme Court Commissioners. This would give me an opportunity to present a critique all the relevant sections of the NFSA with detailed clause wise suggestions on changes that will help the Standing Committee to submit a strengthened version of the Bill to the Government of India.

Please find below my suggestions on the National Food Security Bill (NFSB), to the Hon'ble members of the Parliamentary Standing Committee (vide notification DAVP 31201/11/0036/1112).

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1. The draft bill does not have a clear definition of malnutrition, hunger or starvation. Consequently, the later sections of the Bill have no mechanism for monitoring the starvation deaths. As per the guidelines of the Hon'ble Supreme Court dated Aug., 20 2011, the Supreme Court had directed, that the prevention of 'hunger and starvation' is "one of the prime responsibilities of the Government - whether Central or State"

In other order dated 29th October, 2002 in response to the Court Commissioners report, it directed, *"It is the duty of each States/Union Territories to prevent deaths due to starvation or malnutrition. If the Commissioner reports and it is established to the satisfaction of the Court that starvation death has taken place, the Court may be justified in presuming that its orders have not been implemented and the Chief Secretaries/Administrators of the States/ Union Territories may be held responsible for the same"*.

Our office has devised a protocol for investigating starvation deaths and interventions for relief; prevention and accountability. We request that this protocol should be examined in detail by the Ministry and relevant suggestions incorporated into the NFSA.

(<http://sccommissioners.org/Starvation/investigationprotocol.html>)

2. We suggest that the definition of people living with hunger that should be considered should be "People living with prolonged endemic hunger wherein adults have BMI less than 16 and/or are consuming less than 850 kilocalories".
3. Similarly the definitions used by WHO for malnutrition and severe acute malnutrition which are widely followed should be incorporated in the NFSB.
4. In **Section 5 of Chapter II**, under nutritional needs for children there is mention of infants "for children below the age of six months, exclusive breast feeding shall be promoted". However, there is no provision for these children anywhere else in the bill. The Bill does not have any specific provision to promote exclusive breast-feeding, like nutritional counseling and provision of crèches, which ought to be included if we are to deal comprehensively with malnutrition in the first thousand days of an infant.
5. The draft also does not cover senior citizens which the Hon'ble court has covered in its orders related to NOAPS /Pensions for the senior citizens recognizing them to be amongst the most vulnerable citizens in our country requiring additional support. The provisions for pensions for senior citizens, single women and persons with disability should be brought in the Bill instead of leaving them in the Schedule IV. Since all of these schemes are already operational throughout the country, they can easily be incorporated in the NFSB without any additional fiscal allocation.
6. The draft also makes no mention of the social security cover in form of the Family Benefit Scheme (NFBS) which entitles immediate support to the poor who lose an adult earning member. We would like to remind you that this scheme is also part of the litigation in the Supreme Court.

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7. In Chapter 1, the definition of meal is a hot cooked meal or “ready to eat meal” or take home ration, as prescribed by the Central Government. The words “locally produced” should be inserted in the definition, and ready to eat food should be deleted. The Hon’ble court has explicitly stated and reiterated, through various orders over the past few years, that meals for children to mean locally produced, “hot cooked meals” or take home rations. The Hon’ble court has banned the provision of food from being a source of profit making for contractors/suppliers and has stressed the need for involvement of local communities through self help groups of women. The Honorable Court has on previous occasions dismissed IAs which sought to centralize supply of fortified foods in the form of Ready to Eat Foods. The Honorable Supreme Court also dismissed three petitions (CWP 232, 233 and 234 /2006), Ekta Shakti Foundation v. Govt. of NCT of Delhi has effectively banning the backdoor entry of contractors into the ICDS scheme.
8. Identification of ‘priority households’ as mentioned in the **Section 15 of Chapter VI** of the Draft Bill; shall include those listed in the AAY as suggested by –(i.) the Hon’ble Supreme Court in the order dated ^{2nd} May, 2003 and (ii) second and third expansion list of the Ministry of Consumer Affairs, Food & Public Distribution. The composite list is the following:
- Aged, infirm, disabled, destitute men and women, pregnant and locating women, destitute women
 - widows and other *single women* with no regular support;
- Old persons (aged 60 or above) with no regular support and no assured means of subsistence;
- Households with a disabled adult and assured means of subsistence;
 - Households where due to old age, lack of physical or mental fitness, social customs, need to care for a disabled, or other reasons, no adult member is available to engage in gainful employment outside the house;
 - Primitive tribes;
 - Landless agriculture labourers, marginal farmers, rural artisans/craftsmen, such as potters, tanners, weavers, blacksmiths, carpenters, slum dwellers, and persons earning their livelihood, on daily basis in the informal sector like porters, coolies, rickshaw pullers, hand cart pullers, fruit and flower sellers, snake charmers, rag pickers, cobblers, destitutes and other similar categories irrespective of rural or urban areas.

We would also like to bring to your notice that the matter of the “BPL”/ “priority” households is now sub-judice in the Supreme Court. Till such time that a final decision on this is taken, any mention of targeting of specific percentages of people to be covered within the ambit of the NFSB is not advisable. You may therefore consider removing the Section 30(2) of Chapter X which states that, “The Central Government shall allocate foodgrains in accordance with the number of persons belonging to the priority households and general households identified in each State under section 15.”

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Further, the Joint Statement issued by the Minister of Rural Development and the Depeuty Chairperson of the Planning Commission (attached here as annexure) categorically stated that State wide caps will not be used, and the Planning Commission estimates of poverty, as suggested by the Tendulkar Committee which we set at Rs.26 and Rs.32 of per capita per day consumption would not be used. This Joint-Statement was issued following the public outcry over the minimalist poverty line of the Planning Commission. In a complete turnaround, the NFSA is legislating the state wide poverty caps and is also using the Tendulkar Committee numbers (with 10% added to it, as has been the earlier norm for setting the poverty line). This is completely detrimental to the TPDS and is likely to cripple it in many States where the entitlements today are either universal or near-universal like Tamil Nadu, Chhattisgarh, Orissa and Andhra Pardesh.

9. The Foodgrain Entitlement in the **Schedule I; sub-section (1) Section 3; sub-sections (1) and (4) of Section 30; sub- sections (2) and (3) of Section 32)**: It is 7 kg of foodgrains per person. As per the court orders of 10th January, 2008 the allotment shall be 35 kg for the AAY and BPL, in view of the increase of from 25 kg as per the Nov28, 2001 court order. The individual entitlements can lead to reduction to allocations for households with less than five family members. As per the Planning Commission's affidavit dated 20.9.2011 filed in the Supreme Court, the average requirement is "60.80 kg per month in rural areas and 51.20 kg per month in urban areas". We would therefore request that this section should be amended to 35kgs per household upto a household of five and additional 7 kgs of foodgrains per person for households having more than 5 persons for all general and priority households.

10. The total number of APL and BPL households under the Targeted Distribution System comes to 90% which far exceeds the cap of 75 per cent (Rural) and 50 per cent (Urban) as given in **sub-section (2) of Section 3**

[source: Govt. agenda paper at the Chief Minister's Conference, February 2010 based on 2001 census <http://www.thehindu.com/opinion/lead/article2285546.ece>]

As per the Annual Report 2010-11 of the Ministry of Food & Public Distribution, 'Accordingly, allocations of foodgrains for AAY and BPL categories are made @ 35 kg per family per month to all accepted number of **6.52 crore** families in the country'. The figures for the APL category is 1.44 crore families. Hence no state should be restricted from universalizing the public distribution system adding to the general category from their own resources. The system is shown to have better results in outreach & management then the targeted public distribution system promoted by the central government. Hence, we would request you to remove the last line from section 14.2 Chapter VI, which states that "Provided that no household meeting the exclusion criteria, as prescribed, by the Central Government, shall be included either in priority or general household." This is clearly violative of the principles of federalism in the Constitutional scheme of things. Food is also on the concurrent list and therefore no restrictions can be imposed by the Central Government on States if they wish to expand on the entitlements using their own resources.

11. There is also a need to include clear guidelines on licensing and monitoring of Fair Price Shops (FPS), in the **sub-sections (2) and (3) of Section 32 of Chapter XI** of the draft.

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In order to facilitate the supply of grain, the court orders dated March 2, 2003 shall be taken up: cancel the licenses of the FPS—

- (a) do not keep their shops open throughout the month during the stipulated period*
- (b) fail to provide grain to BPL families strictly at BPL rates and no higher,*
- (c) keep the cards of BPL households with them,*
- (d) make false entries in the BPL cards*
- (e) engage in black-marketing or siphoning away of grains to the open market and hand over such ration shops to such other person/organizations.*

12. In **Schedule II; Section 4(a), sub-sections (1) of Section 5 and Section 6** of the Nutritional standards there is no mention of the nutrition for ‘adolescent girls’ and the calorie and protein norms which are again violates the Supreme Court orders dated November 28th, 2001 and December 13th 2006. We would urge you to include entitlements for adolescent girls in line with the Supreme Court orders.

I would be privileged to make a deposition before the Hon’ble Standing Committee and would be grateful if you could kindly arrange for my deposition before the Committee.

Yours sincerely,



Biraj Patnaik
Principal Adviser