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Centre for Development and Human Rights, New Delhi, brings out a Bulletin on Rights and Development, addressed to human rights activists in India and abroad, academics and scholars, public servants and political workers, NGOs and interested public. Its purpose is to make the readers aware of some of the developments in the area of human rights and economic, political and social concerns in India in the recent period. It focuses on a few selected issues of major concern in other countries in the world. It has a few short special articles, in this area, and a section on brief analytical features on some of the major developments. There is also a section of commentaries on some important news in this area. Another section provides some reviews of recent books on these subjects.

This Bulletin is prepared by a team of researchers, Ms. Namrata Pathak, Ms Neha Mahal and Ms Selina Thounaojam. The work of the team has been supervised by Dr. Mitu Sengupta, the Bulletin’s Coordinating Editor, Ms. Jayshree Sengupta, Chairperson of CDHR, and a Board of Editorial Advisors consisting of Dr. Pronab Sen (Chief Statistician of India), Prof. Pulin Nayak (Professor of Economics, Delhi School of Economics), Dr. Alakh Sharma (Director, Institute of Human Development), Dr. N.J. Kurian (Director, Council for Social Development), Mr. Ravi Nair (Executive Director, South Asia Human Rights Documentation Centre).

The Bulletin is available on the website of the Centre for Development and Human Rights, www.cdhr.org.in
From the Editor’s Desk

In this current issue of the Rights and Development Bulletin, we focus on violations of human and social rights that occur as a result of various climate conservation policies and eco-friendly practices. It discusses the trade-offs between environmentalist and conservationist concerns and the livelihood and rights of the poor.

We cover climate mitigation policies such as REDD (Reduced emissions from Deforestation and Forest Degradation), which threaten the livelihoods and life-supporting resources of indigenous peoples due to forced evictions from forests and ancestral agricultural lands. The issue of ‘bio-fuels’ has given rise to similar concerns. Thus, we examine the risks involved in large scale plantations of Jatropha, a bio-fuel on which India is pinning the hope of being a green and clean fuel of the future.

Rag pickers in our urban areas quietly perform the work of keeping our cities clean by scavenging tonnes of garbage every day. We discuss their plight and how they can be effectively integrated into our environment conservation efforts of recycling. Wildlife and bio-diversity conservation efforts, like the creation of sanctuaries and Protected Areas, have led to emergence of a new breed of refugees: ‘Conservation Refugees’. We look into what these forest communities endure, as well as how their suffering can be addressed in the future. The phenomenon of eco-friendly tourism or ‘eco-tourism’ is also critically examined.

We also have a guest contribution by Meena Krishnamurthy (Dalhousie University) and Thomas Pogge (Yale University) on the Heath Impact Fund, and the substantial benefits it stands to offer to the poor, who suffer from chronic diseases, but are at the bottom of the pyramid in terms of gaining quality healthcare.

We have commented upon range of issues, such as the undermining of freedom of speech in India (as seen in the case of Arundhati Roy, who is charged with sedition for expressing unpopular views on territorial integrity of Kashmir); the decision of the Central Government to hold caste-based census in 2011; and the completion of ten years of fasting by Irom Sharmila in protest of Armed Forces (Special Powers) Act prevailing in Manipur. We have also covered a recent survey by the Times of India, which shows over-whelming support to Naxals by peoples across 5 Naxal affected states of India. We also have a guest contribution by Reetika Khera, development economist at the Delhi School of Economics, on the drawbacks of implementing Unique Identification Authority of India (UIDAI), in social welfare schemes.

The issue ends, as it will from now onwards, with an article central to the idea of the ‘right to development’ by our founding Chairman and mentor, Dr. Arjun K. Sengupta, who passed away on September 26, 2010 due to complications from prostate cancer.
FEATURES

How Not to Exclude the Poor from Advanced Medicines: A plea for the Health Impact Fund

By Thomas Pogge and Meena Krishnamurthy

On the 6th of September, Arjun Sengupta, Chairman of the Centre for Development and Human Rights, invited us to contribute this essay to the Rights and Development Bulletin. On the 26th of September, we were shocked to learn that he had passed away. He was a noble man and a good friend.

Arjun used his economics training to deepen our understanding of the practical, political implications of social and economic rights and to develop a highly original account of the right to development. He served with distinction in many high-level human-rights-related positions, in India as well as within the UN system. And he spoke out, again and again, for the poor and the marginalized in less developed and affluent countries alike, even when such forthrightness was unpopular and thus personally costly.

Along with many others, we will miss his wisdom, his courage, and his consistent engagement for the most vulnerable people in India and abroad. We will continue his work.

1. The Health Impact Fund

Tuberculosis (TB) is one of the leading infectious diseases causing death in India. In 2004, the WHO estimated that 370,000 people in India died of TB (a mortality rate of 30 per 100,000 persons). Over 70% of these cases occur in the age group of 15–54 years, the years where people are most economically productive. In 2007, the WHO estimated that 9.27 million new cases of TB occurred worldwide. Two million new cases were estimated to have occurred in India, which was the largest incidence among all countries.

While recent philanthropic efforts have improved access to existing drugs in the poorer countries, there is still a lack of investment in the development of new drugs for diseases, such as TB, that primarily afflict those in less developed countries. It is not hard to see why: firms invest in products that can turn a profit and, although the inherent value of their lives is no less than those of the rich, the poor possess little effective market demand.

The Heath Impact Fund is a solution to this problem. It is a pay-for-performance mechanism offering to reward the introduction of a product in proportion to its impact on global health. Firms retain the option to profit from an innovative product through the usual patent-protected high mark-ups. But they gain the new option of registering a new medicine or a new use of a medicine with the HIF, thereby committing themselves to making this product available, during its first 10 years on the market, wherever it is needed at the lowest feasible cost of manufacture and distribution. In exchange, the firm would receive annual HIF rewards based on the health improvements it achieves through its registered product during these ten years. Each reward payment would be part of a large annual pay-out, with each registered product receiving a share equal
to its share of the assessed health impact of all HIF-registered products in the relevant year.

Health impact can be assessed in terms of the number of quality-adjusted life years (QALYs) saved. Taking as a benchmark the pharmaceutical arsenal before a registered medicine was introduced, the HIF would estimate to what extent this medicine has added to the length and quality of human lives. This estimate would be based on data from clinical trials, including pragmatic trials in real-life settings, on tracking randomly selected medicines (identifiable by serial numbers) to their end users, and on statistical analysis of sales data as correlated with data about the global burden of disease. If, for example, all products registered with the HIF were estimated to have saved twenty million QALYs in some given year, a registered product that had saved four million of those QALYs would receive twenty percent of the fund.

Under the proposed reward mechanism, the most lucrative research targets are the diseases that do the most harm. This is where new medicines can have the largest impact on health. The HIF gives firms the motivation to develop medicines that target diseases such as tuberculosis, malaria, and other tropical diseases, which affect large numbers of people.

The HIF might be financed by a broad partnership of countries. This will guarantee that the necessary funds are there to reward firms in the decade following market approval which, in turn, will provide firms with sufficient assurance to register products with the HIF. If governments representing one third of global income agreed to contribute just 0.03 percent of their gross national incomes (3 of every 10,000), the HIF could get started with USD 6 billion annually. This is a reasonable minimum because the high cost of developing new medicines requires large rewards and also because the health impact assessment costs — subject to considerable economies of scale — should not absorb more than about 10 percent of the HIF budget. At this suggested starting point, the HIF could support the development of about two new drugs per year, sustaining a stock of about twenty medicines at any given time.

Much more information about the HIF — including a book as well as many essays and media comments — is freely available at www.healthimpactfund.org.

2. The TRIPS Regime

Diseases such as TB can be treated with a combination of anti-bacterial drugs. Some of the most effective medicines needed to treat these diseases are still under TRIPS-mandated patent protection. “TRIPS” stands for “Trade-Related Aspects of Intellectual Property Rights” and refers to an international agreement, adopted in 1994, which commits all WTO member states to comply with demanding standards for the protection and enforcement of intellectual property rights, including pharmaceutical patents. In the case of new medicines, member states are required to offer pharmaceutical innovators product patents that last at least 20 years from the time a patent application is filed. Unlike the pharmaceutical patents available in India before TRIPS came into force, product patents confer title to the medicine itself,
not merely to the process of making it. Product patents therefore preclude Indian generic manufacturers from selling (as they had done formerly) advanced medicines to poor patients in India and other poor countries. This had previously been permissible as innovators could obtain under Indian law only process patents which confer exclusive rights to a certain way of making a molecule, not to this molecule itself. Indian generic manufacturers thus could legally search out another way of making a patented medicine. They did this very successfully, and competition among them brought down the price of important new medicines to a fraction of what the innovator firm had initially been charging for it. The TRIPS Agreement abolished such retro-engineering of new medicines, thereby closing off an important source of cheap medicines to poor patients and ridding pharmaceutical innovators of an irritant that they described as subversive of their incentives to innovate.

A product patent assures a pharmaceutical company of “market exclusivity” or a “temporary monopoly” which usually lasts for about 10 years beyond market approval. This means that, during the time a medicine is under patent, no one other than the patent owner and its licensees can manufacture or sell it. Market exclusivity allows firms to set the price of their patented medicines at a multiple of manufacturing cost. Such high mark-ups then enable these firms to recover their research and development expenses.

One reason in favour of patents is that they play a useful role in stimulating innovation. In a world without any patents, much of the innovative pharmaceutical research currently undertaken by privately owned firms would not occur. The reason is that such research, even if successful, would tend to result in economic losses to the innovating company. Competitors — unconstrained by patents — would copy or retro-engineer its invention and would then compete the price of the medicine down close to the marginal cost of production, thereby making it impossible for the innovator to recoup its research and development outlays. Since it is better to have the option of buying commercially developed medicines at high prices than to lack this option, a system of patent rewards is better than no rewards at all.

There are important drawbacks to the current patent system however. A central worry is that only a minority of the population of less developed countries can afford to buy patented medicines. The poor simply cannot afford to buy new medicines at monopoly prices. This exclusion from needed medicines is morally significant because poor people in less developed countries constitute about three quarters of the human population and also have so much at stake — often their very survival.

Of course, other companies can manufacture and sell generic versions of a medicine once the relevant patents on this medicine have expired. Generics are typically much less expensive than patented medicines. Since there are no research and development costs to recoup, companies can afford to sell the generics at a much lower cost. And competition typically forces them to do just that, with the result that even poor people in less developed countries can obtain access to generic medicines. In this way, poor people eventually benefit
from innovation. Yet, before a medicine goes generic, many poor people who need it suffer and die because the large patent-protected mark-up puts the needed medicine well beyond their reach.

Moreover, there is a long-standing problem of stimulating the development of new medicines for diseases concentrated among the poor. Pharmaceutical companies have little incentive to develop medicines for such diseases. The costs of researching and developing new medicines are huge and can be recovered only through sales of the product at high prices. But it is hard to sell at high prices meaningful quantities of medicine when those who need it are poor. The diseases of the poor are therefore neglected by pharmaceutical innovators who can make much more money from addressing minor ailments of the affluent (such as male pattern baldness).

Under the current system, poor people’s access to vital medicines is also obstructed by various obstacles other than price, such as lack of local availability of a medicine, lack of available knowledge and information about diseases and their remedies, lack of refrigerators or electricity, and even gross negligence, incompetence and corruption in the health bureaucracy. As an example, consider that many medicines need refrigeration, which is often unavailable or unreliable where medicines are stored. If such a medicine is transported or stored at improper temperatures, it will lose its efficacy. Under the current system, innovators have little reason to address problems like this: their profits depend on achieving sales at high mark-ups, not on achieving therapeutic gains among the poor.

With a HIF-registered medicine, by contrast, the innovator’s incentives are focused solely on health impact. When such a medicine fails to achieve its optimal health impact somewhere, then its innovator is losing money. HIF-registered innovators will therefore seek to collaborate with local health care providers, international agencies, NGOs, and other registrants to provide knowledge, information, expertise, training and funds to help maintain basic health infrastructure wherever they can profitably do so. The HIF would thus draw the great organizational capacities and financial resources of innovator companies into the struggle for global health. As an example of what might result from their involvement, consider the idea of storing heat-sensitive medicines in refrigerators that run off the electricity supply of cell towers (which already have reliable electricity back-ups and are already scattered all over India and other poor countries — see www.tmcnet.com/usubmit/-towers-strength/-2010/09/18/5014240.htm).

Implementation of this idea could bring enormous health gains to India in particular. Pharmaceutical innovator firms would develop and implement wonderful ideas of this sort if they had sufficient incentives to do so.

3. The HIF Relieves Central Failings of the TRIPS Regime

Without any revision of the TRIPS Agreement, the HIF could provide systemic relief for the central failings of the current system.

3.1 High Prices would not exist for HIF-registered medicines. Innovators would typically not even want a higher price, since this would reduce their health
impact rewards by impeding access to their product by most of the world’s population. The HIF counts health benefits to the poorest of patients equally with health benefits to the richest.

3.2 Diseases Concentrated among the Poor, insofar as they contribute substantially to the global disease burden, would no longer be neglected. As already mentioned, the more destructive among them would come to afford some of the most lucrative research opportunities for biotechnology and pharmaceutical companies.

3.3 The Last-Mile Problem would be mitigated because each HIF-registered innovator would have incentives to ensure that patients are fully instructed and properly provisioned so that they make optimal use (dosage, compliance, etc.) of its medicines, which will then, through wide and effective deployment, have their optimal public health impact. Rather than ignore poor countries as unprofitable markets, pharmaceutical companies would, moreover, have incentives to work with one another and with national health ministries, international agencies and NGOs toward improving the health infrastructure of these countries in order to enhance the impact of their HIF-registered medicines there.

4. Other Benefits of the HIF

4.1 Bias toward Maintenance Drugs would be absent from HIF-encouraged research. The HIF would assess each registered medicine’s health impact in terms of reduced mortality and morbidity worldwide—without regard to whether it achieves this reduction through cure, symptom relief, or prevention. This would guide firms’ investment in potential research projects in a way that is also optimal for global public health, namely in terms of the expected global health impact of the new medicine relative to the cost of developing it. The profitability of research projects would be aligned with their cost-effectiveness in terms of global public health.

4.2 Wastefulness would be dramatically lower for HIF-registered products. There would be no deadweight losses from large mark-ups. There would be little costly litigation as generic competitors would lack incentives to compete and innovators would have no incentive to suppress generics (as these would enhance the innovator’s health impact reward). Innovators might therefore often not even bother to obtain, police, and defend patents in many national jurisdictions. To register a medicine with the HIF, innovators need show only once that they have an effective and innovative product.

4.3 Counterfeiting of HIF-registered products would be relatively unattractive. With the genuine item widely available near or even below the marginal cost of production, there is less to be gained from producing and selling fakes.

5. How the Failings of the TRIPS Regime Constitute a Human Rights Violation

The current TRIPS regime is unjust. This claim may seem controversial by presupposing a shared conception of global justice when no such conception is as yet widely endorsed across regions and cultures. Though an international consensus on a conception of global justice is indeed lacking, we do have some
agreement. There is a broad and enduring consensus on certain fundamental human rights as being basic elements of justice and as having a high moral priority. This commitment to human rights is underwritten by the shared beliefs that there are various basic goods essential to a minimally worthwhile human life and that all human beings ought to have secure access to these goods.

Human rights are understood as entailing counterpart duties to respect, protect, and fulfil. Traditionally, duties to respect, so-called negative duties or duties not to actively violate human rights have been considered the weightiest. So understood, human rights constrain how agents — principally governments, but also corporations, military units, rebel groups and other organized collective agents — may treat human beings.

In some cases, human rights are violated by direct action, as when, for example, a government terrorizes political opponents or tortures prisoners. In other cases, violations of human rights are a result of social rules, as when social burdens are persistently imposed on certain minorities by law, or when a government policy systematically deprives some group of its livelihood. In thinking about the appropriate structure of the rules governing the development and distribution of new medicines, human rights violations of the second type are most relevant.

As far as is reasonably possible, social rules should be designed so that the human beings subjected to them have secure access to the essentials necessary to live a minimally worthwhile life. This is what is required by our commitment to human rights. For example, the assertion that there is a human right to a minimally adequate food supply entails that, insofar as it is reasonably possible, social rules must be formulated so that all human beings have secure access to a minimally adequate diet. This assertion does not entail that human beings must have a legal right to a minimally adequate diet. If a state is so organized that its citizens have secure access to food even without a legal right thereto, then, on this picture, this state is fully compliant with the human right.

Something similar holds for international rules as well. As far as is reasonably possible, international rules and treaties must be designed so that they do not violate human rights. The Universal Declaration of Human Rights firmly endorses this conclusion:

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

As we understand this statement, the requirement is that any national and international order must be shaped so that it does not deprive human beings subjected to it of secure access to the objects of their human rights. In a world of sovereign states, it may not be possible to design international institutional arrangements that effectively guarantee secure access. For this reason, it makes sense to require merely that the international order must be such that secure access can be fully realized. The international order must not obstruct the realization of human rights. It must not, for instance, undermine either the capacity or the willingness of national governments fully to realize human
rights. A design of the international order fails to be human-rights compliant insofar as it foreseeably gives rise to an avoidably large number of governments that lack either the means or the motivation to realize human rights.

Under the rules currently governing pharmaceutical development and distribution, most human beings lack secure access to the objects of their human rights. In particular, many of them lack secure access to the medicines they may need. Often, these medicines are known and available, but nonetheless inaccessible to the poor on account of their high prices. There are generic producers willing and able to manufacture these medicines and to sell them at much lower prices. But these firms are legally barred from doing this by patents that governments are issuing in accordance with their obligations under the TRIPS Agreement. This Agreement blocks mutually advantageous sales of life-saving medicines at low prices. By blocking such sales, it causes the deaths of many poor people and deprives many more of a standard of living that is adequate for their health. (The very high mark-ups on patented medicines may render inadequate an income that would be adequate if the needed medicine were available at a lower price.) Rules and policies mandated or constrained by the TRIPS Agreement violate the human rights of poor people worldwide by undermining their secure access to health and survival. In the final analysis responsibility for these violations rest with those who formulate, interpret, and enforce these rules and policies and by those on whose behalf the former are acting.

These considerations highlight a moral duty to support the creation of the HIF (or a suitable substitute). Insofar as the HIF would stimulate the research and development of diseases specific to the poor and the effective distribution of resulting medicines to those who need them, the addition of the HIF as a complement to the TRIPS regime is morally required. Simply put, the HIF would greatly reduce the human rights deficits caused by the current rules governing pharmaceutical innovation.

6. Institutional Reform

Given the discussion so far, two pertinent questions arise: is there another way of encouraging and rewarding pharmaceutical innovation, one that avoids the draw-backs of the existing system? If so, is this alternative at all realistic?

One alternative favoured by many is a return to the national diversity prevailing prior to TRIPS. In that period, most of the poor countries had weak intellectual property protections or none at all. This enabled them to produce or import cheap generic versions of medicines that were under patent and hence much more expensive in affluent countries. India was by far the most important producer of generic versions of patented medicines before 2005, when it granted only process patents that clever generic firms routinely managed to circumvent by inventing new ways of producing the requisite molecules. The pre-TRIPS diversity of national rules better fulfilled the human rights of poor people insofar as it made known medicines much more accessible to them. Facing generic prices, poor
people had a much better chance of obtaining the medicines they needed either with their own money or with the help of family, NGOs, or governmental or intergovernmental organizations.

But the rules before TRIPS also have the drawback that, without effective patent protection in the poorer countries, they provided even weaker incentives than the current regime to innovate against diseases that are specific to poor populations. The TRIPS Agreement and the new patent protections it requires intensify research into many heretofore neglected diseases that are great burdens on the world’s poor. In this regard, a return to the pre-TRIPS world would leave the poor worse off than they are under the present system.

Moreover, such a return is also infeasible. Powerful industries — including not just the pharmaceutical industry, but also software, entertainment, and agribusinesses — have spent large amounts of money lobbying for TRIPS, and they would do so again if TRIPS came under serious attack. Here they would be helped by the fact that, under WTO rules, revisions of TRIPS require unanimity. It is hard to imagine that defenders of TRIPS would find it impossible to persuade even a single WTO member to exercise its veto.

Implementation of the HIF is, in any case, preferable to a return to pre-TRIPS conditions. The HIF is a complement to TRIPS that does not require any changes in the TRIPS Agreement. Maintaining the benefits of this Agreement while correcting its failures, the HIF works with existing patent protections to encourage the research, development, and effective distribution of medicines aimed at treating the diseases of the poor. And innovators are always free to decide, with regard to any of their new products, whether to register with the HIF or not. For these reasons, creation of the HIF is far more realistic than a restoration of the pre-TRIPS diversity, which would presuppose massive unanimous revisions to the TRIPS Agreement.

7. Conclusion

The Indian pharmaceutical industry has adapted with astonishing speed to the implementation of TRIPS. Instead of retro-engineering for generic production important new medicines invented by others, Indian firms are now formidable contestants in the competitive game to develop new medically effective molecules. Unfortunately, these efforts are mostly focused on the medical problems that have received ample attention all along: diseases afflicting the affluent. And unfortunately it will take at least a decade until any medicine introduced as a result of such an effort will be affordable also to the vast majority of Indians and of human beings at large.

Were the HIF to be created, Indian pharmaceutical innovators could sustainably serve humanity much better. They could focus more of their attention on important diseases prevalent in India, diseases that can be studied in India with many patients ready to help through participation in clinical trials. They could register any medicine resulting from such research with the HIF, thereby ensuring that all patients able to benefit from this product will have it available at very low cost from day one. And they could promote the wide and optimal deployment of such a product also among poor patients worldwide, covering the
costs of such promotion efforts from the incremental health impact rewards these efforts would yield.

The HIF would bring human and financial benefits to the world that are vastly greater than its modest cost of $6 billion per annum. No country would benefit more from the HIF’s creation than India. India’s financial contribution would be modest — at present gross national incomes, the European Union would contribute 14 times India’s share. India’s vast population would reap enormous benefits as India is home to many under-researched diseases and has a third of the world’s poor and a correspondingly large proportion of the global burden of disease. And, with its proven inventiveness, India’s pharmaceutical industry is well positioned to capture a large share of the HIF’s annual reward pools. It is morally imperative for all countries to support establishment of the HIF and to agree to bear their fair share of the cost. For India, lending such support would also be exceptionally advantageous. The HIF needs India’s strong voice in the next G-20 meetings: in Seoul, in Paris, and in Mexico City. India’s poor need the Health Impact Fund. And India’s researchers are itching for the opportunity to train their ingenuity upon the diseases that blight the lives of the poor.

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Climate Mitigation Policies- Poor Impact on Forest Communities

By Neha Mahal

Climate change has begun to show its impact on our planet. It is well known that as the intensity of climate change increases, the world’s poor and marginalised, especially forest communities, will be hit hardest due to natural hazards like increased flooding, food scarcity, increased temperature etc. Unfortunately the international policy responses to mitigate the impact of climate change are also unintentionally causing sufferings to them. Mitigation policies on one side aim to diminish the global warming but on the other hand also have their negative impact on the poor and marginal indigenous people.

Many policies designed towards forest carbon conservation, green energy production such as bio fuels and environmental labelling in an effort to control global warming are also exposing the vulnerable and marginal indigenous people to grave risks.

One of the key policies to preserve the environment is REDD (Reduced Emissions from Deforestation and Forest Degradation). Under this, developing countries will receive financial incentives for forest conservation practices and reduced emissions from their forests (www.un-redd.org). The experience so far signifies that such efforts yield few benefits for the poor and rather affects them negatively.

If REDD policies are ill-conceived without taking into account the well being of forest communities, it can
produce perverse outcomes such as land grabbing, displacement, conflict, corruption, and impoverishment.

Holding shifting agriculture, under which natural vegetation are selectively cut by simple tools and logs are burned, so the nutrients are released as ash which dissolves and is washed by rain into the soil as natural fertilizers, wrongly responsible for being one of the reasons of increased carbon emission, some REDD policies try to convert shifting cultivators to off farm workers or settled farmers or provide them with other cash based employment. These measures are likely to wipe out the food security that subsistence farming and hunting and gathering used to provide them thus exposing them to fluctuating commercial food market (Report by Tom Griffiths, ‘Seeing Red'? Forests, climate change Mitigation and the rights of indigenous peoples, Forest Peoples Programme). Neither REDD concept distinguish between permanent and temporary forest loss nor does it recognize that these practices are carbon neutral.

Many tropical countries do not fully recognize the collective and ancestral land rights of forest communities. Hence, they hardly have any legal land titles in their names. At the same time the rural and forest land are becoming more valuable due to the international demands they fulfil of food, timber and of late bio-fuels. Given the lucrative financial incentives REDD policies put on these forest and rural lands, land grabbing by outsiders and commercial interest holders cannot be ruled out. And, the land based conflict can extend even between the rural communities. There is a risk that if equitable benefits of REDD policies are not ensured in rural areas, it can create dispute among communities or households that get the payment and those who are left out because they do not have legal land title or are landless.

If climate change mitigation policies do not take into account these considerations, then it may end up becoming another business wherein carbon will become a commodity which will be sold by developing countries governments to developed countries to offset their carbon emissions.

A study by an independent NGO in Ecuadorian Andes in South America reveals the distressing reality of carbon trade. The communities have ended up being worse off. The voluntary carbon offset plantation project in Ecuador has left negative economic impact on the people there. The people were never informed by the donors about the actual payment they would get. They were only informed about the gross rate per hectare. Cost of planting, monitoring and certification that would be deducted was not mentioned beforehand. Payments were made after long delays for work which was completed on time; they had to suffer economic displacement from communal grazing land after giving up land for the project in good faith believing the inaccurate promise of potential
benefits. In many cases, they have become indebted because they were not paid the promised level of income and had to bear unforeseen costs like replacing failed seedlings from their meagre payments, apart from contract penalties for failure to meet obligations (e.g. due to accidental fire damage to plantations). Such studies clearly point out the discrepancies built in the market based and commercialised nature of international policies to tackle climate change.

Current climate change mitigation efforts reward polluters and target the traditional custodians of our environment.

Agro-energy or bio fuels are also being propagated as another ‘GREEN’ way out to reduce carbon emissions. This coupled with the need to have carbon sinks and system of carbon emissions trading has accelerated the expansion of mono crop plantations such as oil palm plantations in tropical countries. Oil palm industry has resulted into economic benefits for key stakeholders. But, these benefits are built on the serious social and environmental costs borne by indigenous peoples. The natural forests are being converted into mono crop plantations. Loss of forests has a deep impact on indigenous people as it is the basis of their sustenance and is the source of their nourishment, cultures, values and knowledge. Any disturbance in this relationship is bound to cause considerable disorder in the lives of such communities. The expansion of plantations for bio fuels and carbon sinks are increasing the troubles of forest communities who are already tolerating the impact of climate change itself. Converting complex ecosystems into mono crop areas will cause tremendous social and environmental impact on people who depend on forest for all resources to lead their lives. There has been food insecurity, severe health problems like increased malnutrition and increased mortality, increase in sexually transmitted diseases due to increasing prostitution in plantations estate. The forced eviction, prevention of using lands and their ancestral territories have also led to loss of livelihoods, cultures and traditional forest related knowledge.

Lancet magazine’s report on health of indigenous people in Africa points out the direct relationship between indigenous peoples’ health and access to their land and other natural resources. It said that people who have faced loss of land and other resources, owing to logging, farming, and conservation projects, have poorer health than majority populations (Lancet, 2006, Health of Indigenous People in Africa).

The burning of the forests in Indonesia to prepare oil palm plantations is contributing to carbon emissions which was earlier safely stored in the forests. Loss of natural forests not only affects the above ground environment, it also lowers the quality of underground water. This has led to the decline in fish stocks and has affected aquatic biological diversity.

The high environmental and socioeconomic cost that indigenous people and forests areas are bearing violates the foundation of climate change mitigation efforts which aim to decrease global warming and reduce its impact on the indigenous communities which have the smallest or neutral carbon footprints. So far, indigenous people have not been
intrinsically involved in the policy making and the execution which has led to such flawed and key player centric implementation of mitigation efforts. If such policies have to bring about some genuine change, it cannot happen without making use of the traditional knowledge and seeking the agreement of the forest people.

The serious issue of global warming which calls for socially and environmentally sensitive handling has been reduced to money making activity and wealth and land accumulation exercise for some high end elite key players.

Current efforts reward polluters and target the traditional custodians of our environment. Such half-hearted attempts to tackle a serious issue of climate change through carbon forests market, so called green energies and protected areas will only deal with the symptoms. To deal with the underlying causes of global warming, we have to deal with over-consumption, uncontrolled industrialization and reduce energy consumption. Unless we learn to keep our endless and unbridled desires for energy consumption in check, sustainable change will be the last achievable thing in most of these climate change mitigation policies.

Rag-pickers: The silent environmentalists

By Selina Thounaojam

Waste pickers, waste recyclers and small junk dealers, collectively known as the “informal recycling sector,” make up as much as 2% of the urban population in Asia. These are men, women, and children who forage through trash heaps and depend on the revenues derived from selling recovered materials for their livelihoods. Though primarily the responsibility of solid waste management is vested upon several public sector agencies, the rag-pickers are instrumental in segregating the recyclable waste, which they collect into different categories of paper, plastic and metal and then sell to retail scrap traders, who sell it to wholesalers from where it finally reaches the reprocessing industries. Most of them are migrants from rural areas and have received very little education and women constitute a bulk of them. Rough estimates by Chintan, a non-governmental organization (NGO) give the number of waste pickers in Delhi as ranging between 80,000 and 100,000.

The pickers are rarely recognized in the official waste management system and certainly do not have a healthy existence. Their daily activities are not systematic; scavenging around from one locality to another often lead to suspicions. They mostly live either in slums or on footpaths with very poor access to basic amenities. Being unprotected manual workers, they are not recognized and do not enjoy any form of social security or legislative protection. As occupational communities, they are economically marginalised, socially excluded and politically voiceless and disempowered. The services provided by this sector are also poorly understood.
and hence, it is difficult for any other sector (e.g., formal savings sector/banks, insurance) to support it. A big area of concern is the number of health hazards they are exposed to as they rummage through putrefying garbage including toxic medical waste with bare hands. With India expected to have 500 percent more e-waste from old computers in 2020 than in 2007, and 18 times more old mobile phones (July 6, 2010, the Economic Times), the risks posed to those who handle the cast-offs are extremely high. T.K. Joshi, head of the Centre for Occupational and Environmental Health at the Maulana Azad Medical College in New Delhi, studied 250 people working as recyclers and dismantlers over 12 months till October 2009 and found almost all suffered from breathing problems such as asthma and bronchitis. Dangerously high levels -- 10 to 20 times higher than normal -- of lead, mercury and chromium were found in their blood and urine samples, which have a detrimental effect on the respiratory, urinary and digestive systems, besides crippling immunity and causing cancer. Safety gear such as gloves, face masks and ventilation fans are virtually unheard of, and workers -- many of them children -- often have little idea of what they are handling. Unfortunately, there are no estimates of how many people die in India from e-waste poisoning as ill workers generally drift back to their villages when they can no longer earn a living.

However, rag-pickers contribute enormously to the economy in terms of minimising expenses on waste management as well as keeping the environment clean. On an average, Delhi, which has one of the biggest and most vibrant recycling bases in the economy, generates 4000 tonnes of municipal solid waste per day, which consists of about 32% compostable matter. The recyclable components include paper 6.6%, plastics 1.5% and metals 2.5% (Papiya Sarkar, 2003, Social Waste Management in Delhi). Chintan, servicing India’s waste-pickers, found that more than one percent of Delhi’s population is engaged in waste-picking and that they recycle nine percent to 59 percent of all of the waste generated in the city. According to Dr. Bhide of NEERI, the rag pickers lift 720 to 900 tonnes, which is a daily saving of Rs. 6,20,000/- to Rs. 7, 75,000/- to the MCD. Thus rag pickers are ‘green collar workers’ saving Indian cities and the economy crores of rupees, and reducing the stress on natural resources. Although it is critical to the solid waste handling in India, the sector is unable to optimize its work due to lack of awareness and specific skills, as well very poor working conditions and access to basic facilities.

Unfortunately, instead of capitalizing on the environment friendly way of waste segregation, the public view rag-pickers as a nuisance most of the time and their contribution are disregarded. Despite the Indian government affirming the role of the informal sector in emissions abatement in India’s 2008 National Action Plan on Climate Change, different Ministries of the Government of India have discordant voices and on the one hand, municipalities claim to promote recycling but actually subsidise
incineration-based waste-to-energy plants that compete with recycling for input material. Recently, the United Nations also came up with Clean Development Mechanism (CDM), an ambitious climate finance scheme designed to reduce greenhouse gas emissions in developing countries. CDM has led to dozens of giant waste-to-energy incinerators being built to burn municipal rubbish, as well as hundreds of new landfill schemes designed to collect methane gas, which have moved towards displacing waste pickers by denting their entry to dumps (August 6, 2020, The Hindu). This, however, is worsening the environmental situation today as CDM finances private companies which are burning waste, which instead could be recycled and composted. That increases emissions and hurts economically. A report by Respect for Recyclers, documented that the CDM has backed approximately 185 incinerators and landfill gas project s but no recycling projects.

By setting up of co-operatives the rag-pickers could also be trained to do composting and a certain amount from the proceeds of sale could be allotted to them. This will also reduce the occupational health hazards by providing them with better working conditions and also better economic returns. In the process, their contribution towards waste management will be recognized in the society. A policy change by investing climate funds in the informal recycling sector would increase employment and labour conditions while dramatically reducing emissions. The Delhi Government has decided to start an electronic waste management programme in the Capital, which will involve rag-pickers in managing the garbage in the city as a part of the 11th five year plan. It remains to be seen whether the program will be a success along the lines of Karnataka’s e-waste management programme.

**Bio fuel- Fuelling Rural Distress**

By Neha Mahal

The last two centuries have witnessed unprecedented development of mankind. Powered by fossil fuels energy, man’s innovation reached its pinnacle in ushering in the Industrial Revolution, probably the automobile sector and many more fossil fuel guzzling innovations. After enjoying the fruits of these advancements for quite some time, we are now faced with the down side of it. The record use of fossil fuels is contributing to global warming. Also, fast depletion of these non-renewable energy sources has posed another challenge for us- to find their alternative which is sustainable and non-polluting. In the last
decade or so, bio-energy has emerged as the answer to this because of its clean fuel characteristic. India, which is fast moving up the ladder of energy consumption due to its rapidly expanding economy, is also banking on this to reduce its dependence on oil imports which accounts for more than 70% of its needs.

The whole process of jatropha based bio-fuel production revolves around the issue of land which is already a sensitive area in India. In India, land is intrinsically related to the socio-economic well being of billions of people, majority of them being the poor. Any change in land use pattern is bound to have a life altering impact on them not only in direct monetary terms but also in terms of their rights over the land as a community.

Already the negative ancillary impact of jatropha plantation is visible in various places. In the state of Chattisgarh alone, numerous atrocities in the name of jatropha plantation have taken place. Marginal farmers primarily dalit and tribals have reported that their agricultural lands have been forcibly taken away to plant jatropha. Once the crops are planted, no further care is taken of them to ensure good cultivation. This pattern could mean that jatropha plantation is being used as a ploy to take away the possession of land from poor farmers who have cultivated them for generations. According to a report by an activist Devjit Nandi, working in Chattisgarh, in Kanker and Bastar districts of Chattisgarh, at least 355 families of 27 villages were affected and displaced by the forcible planting on their lands amounting to 1733 acres.

Even common property areas are not left out. Out of 13.4 million hectares of land allocated for jatropha plantation includes 3 million hectares forest land and 4 million hectares wastelands. Substantial
portions of these ‘wastelands’ are actually very useful to the neighbourhood communities for whom it acts as grazing lands and provides for subsistence farming. The diversion of such land to sole jatropha plantation would deny these communities a number of easily available benefits. The immediate impact would be a decline in stock of fodder for livestock. This can create an imbalance in the livestock population in the long run. Moreover, it can further worsen the poverty since these shared resources provides for the basic needs of the poor such as food, fuel for cooking, timber to build homes etc.

Hence, when looked from the broader point, it is a violation of human rights and forest dwellers’ rights. The Indian Parliament had passed the scheduled tribe and other Traditional Forest Dwellers (Recognition of Forest Rights) Act in 2005 which gives the forest dwellers a right over the forest land traditionally used by them. By forcibly planting jatropha on such lands, forest dwellers are denied their rightful access to these lands. Such steps only end up aggravating the troubles for these poorer communities pushing them further into poverty.

The tall claims that it can act as an additional income to farmers too seem questionable now. The performance of jatropha in some places does not justify these claims. A research in Andhra fields (by Institute of Environmental Science and Technology, University of Barcelona) of jatropha shows that 90% of the rain fed fields was not getting adequate yields. The irrigated fields reportedly yielded 750 kg/ha. This was the result after the frequency of irrigation in majority of fields was weekly or fortnightly. Roughly 4 kgs of seeds are required for 1 litre of biodiesel. Therefore, 750 kg of seeds would get only around 187 litres of biodiesel. Also, the crop requires fertilizers, regular trimming of leaves as well which further increase the cost and bring down the potential profit margins drastically. Such losses have a deeper impact on marginal farmers than big ones who can perhaps endure them. Therefore, if such arrangements are required even in well maintained big farms, plantations in marginal set-ups cannot be expected to be any better. Dr. V Ranga, former director of oil seed at ICAR, Hyderabad had also said that he had seen 3 year old plants that are not even capable of producing yields of 1 kg/plant. Plants grown on fertile land, rather than bearing bumper yields produce more leaves and become increasingly vulnerable to pests and disease. Therefore, jatropha’s high yield potential is not quite proven yet and cannot justify the vast expanse of land allocated for its production.

To initially make Jatropha plantation more lucrative to farmers, loans and corporate deals through contract farming are easily made available to them. But if the crop fails, the farmers are left in the lurch with the burden of debt looming large over their heads.

On a peculiar note, with either ample or scarce production, jatropha based bio-fuel production will lead to a catch-22 situation for rural communities. In the current scenario, marginal people are losing their resources and lands in futility...
in the name of a crop which is not yielding any good returns. Also in future, if the yield increases, it will lead to more land and scarce resources like water being diverted to jatropha from food crops increasing the likelihood of food scarcity.

Now, the entire perspective behind promoting bio-fuel seems to be debatable. The promise that it can provide added rural income is almost unconvincing in the light of points made above which highlight the high social cost being borne by the communities apart from the soaring cost of production of jatropha. The yield of this crop has also not been sufficient to bank upon as the answer to fuel security and climate change adaptation effort.

According to India’s energy advisor P. Sethi, ‘If 60 million hectares of land is used for energy plantation like jatropha, the commercial bio-energy produced would meet only 29% to 35% of country’s energy needs even after 25 years. And just 2.25 million hectare land under solar cells with 15% conversion efficiency could yield the same energy as 60 million hectares of wood plantation. Only 7 to 8 million hectare of land under solar cells can give India energy independence for the next two decades and a half’ (Report by Devjit Nandi, The jatropha Rampage in Chhattisgarh). With such estimates already in public domain, it is hard to understand what the driving force behind the current euphoria over Jatropha is all about.

Human Displacement and Wildlife Preservation

By Selina Thounaojam

The recent approval by the Union Ministry of Environment and Forests to grant the status of a ‘critical tiger habitat’ to the Biligiriranga Swamy Temple (BRT) sanctuary of Karnataka has become a matter of grave concern for the Soliga tribes, who face imminent relocation as the proposed earmarked 373 sq km includes a part of their habitat (Frontline, December 18-31, 2010). It was another blow for the community that has been experiencing displacement for decades, the most significant being the one in 1974 when BRT was declared a wildlife sanctuary. Thousands of Soligas were evicted from the forests, often with violence, and had to make a difficult transition from shifting agriculture in the ranges to sedentarised cultivation in the peripheral plains.

From a number of about 100 in the early 1970s, when the Wild Life (Protection) Act (WLPA) 1972 was promulgated, India today has 657 Protected Areas (99 national parks, 513 wildlife sanctuaries, 41 conservation reserves and four community reserves) (MoEF 2008), which cover almost 5% of the country’s land area. The steady rise in the number and geographical coverage of PAs (protected areas) in India has been accompanied by a rise in the number of conservation refugees. About 300,000 families were driven away from forests to make way for plantation and wildlife reserves during 2000-2005 (Ghosh, 2006).
The Tiger Task Force (2005) estimated that in the case of Tiger Reserves, 80 villages with 2,904 families and a population of 46,341 had been relocated.

Village displacement from wildlife sanctuaries and national parks has been done with the intent to create strictly protected spaces for biodiversity conservation where minimal human use is allowed. Such inviolate spaces are deemed essential by biologists for sustaining natural biodiversity in large continuous forest habitats. Local communities inside PAs have varying access to natural resources for survival and livelihoods, but often also live in a state of deprivation, poverty and in conflict with PA managers, who usually perceive them as being responsible for the loss of wildlife. They are also sometimes in conflict with wildlife through crop or livestock damage, or human injury and death on the one hand, and retaliatory killings of animals on the other. Thus, voluntary (induced) or forced displacement from PAs has long been seen as a solution to these issues. However, most of the times, the displacement is painful for the forest dwellers economically as well as culturally.

The forced displacement and resettlement of the forest dwellers from protected areas tend to push the marginalised people into poverty trap and affect them culturally as well.

The same strategies in relocation and resettlement may generate vastly different results in different locations, depending on the political and social capital enjoyed by the displaced households. Compensation system is not effective in India and very bureaucratic, often resulting in only a small portion of the claims being paid. Participation of the involved communities in decision making is rarely seen. For instance, the Soliga community was reportedly not even informed of the decision of making BRT sanctuary an inviolate space by either the State Forest Department or the MoEF. Ironically, as recently as in September 2010, almost all Soliga families had received land rights under the Forest Act. The forced displacement and resettlement tend to push the marginalised people into poverty trap. In many cases, free access to survival and livelihood resources such as water, fuel, fodder, medicinal plants, and wild foods, has to be replaced by purchasing these goods in the market, which opens up such communities to serious exploitation.

In the case of land-based rehabilitation, often the new land given is degraded forest land. Fertility of such lands varies from good to very poor, and there could be situations where the land is not even cultivable at the time of the shift. Loss of livestock due to non-availability of grazing grounds is also common. For instance, rehabilitation of the Van Gujjars around Rajaji National Park, Uttarakhand to the plain areas made them lose their livestock and forced them to look for daily jobs for subsistence. The new sites sometimes happen to be areas with problems of water scarcity making cultivation difficult thereby leading to loss of food security and income, as in the case of relocation from Pench National Park, Madhya Pradesh. The induced drastic change in occupation, with little time to adjust and acquire new skills, makes it difficult for these people to settle down. Moreover, relocation can lead to socio-economic conflicts with the local inhabitants at the
new site (Economic and Political Weekly, December 5, 2009).

There have been cases where relocation has been done with agricultural development packages and access to education, electricity, transport and health facilities (as in Bhadra Wildlife Sanctuary, Karnataka) but on the whole, it has been an inefficient process. Creation of national parks without sustainable livelihood alternatives to the displaced forest dwellers are not a sustainable solution in park management policy. Much greater transparency and participation of the concerned families in relocation processes and efficient monitoring and assessment is needed. In the event of a decision to move villages, expert and local inputs are sorely required in preparing relocation plans and a generous package that can help successfully re-establish the livelihoods of the ousted. The concerned families should be aware of the conservation imperatives that require relocation.

However, relocation is not a very sustainable solution as it heavily depends on the finances of the governing bodies and moreover, does not encourage villagers to protect their holdings and coexist with wild animals. An alternative is encouraging co-existence of the forest dwellers and wildlife. The natural features of a particular forest are generally a result of long-standing human interactions with the resources. The forest communities have their own ways of conserving their local biodiversity for economic, ethnic or spiritual reasons. Such conservation practices can be encouraged by making the forest dwellers aware of its importance. In this context, the amendments to the Wildlife Protection Act effected in 2007, and more importantly, the enactment of the Scheduled Tribes and Other Forest Dwellers (Recognition of Rights) Act are welcome moves. Both enactments firmly reinforce the idea that involuntary displacement should be minimised and co-existence options should be explored wherever possible. These legislations also set out in some detail the precise circumstances under which relocation of people from PAs can be undertaken, and reiterate the principle of fair compensation aimed at livelihood restoration. The recent Elephant Task Force 2010 has also recommended building local people’s resilience and knowledge base to learn to live with displaced pachyderms and mitigate human-animal conflict instead of keeping them out of protected areas. However, with controversies regarding ineffectiveness of the Acts already looming, whether a positive outcome will ensue remains to be seen.

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**Ecotourism: The Commodification of Indigenous People?**

**By Namrata Pathak**

The Ministry of Tourism, India, describes Arunachal Pradesh through its Incredible India campaign thus: “India’s Northeast: paradise unexplored. Arunachal Pradesh: A visit to the Apatani tribal home is a must. The Apatanis are one of the most advanced and intriguing of Arunachal’s tribal people. Both men and women tattoo themselves and the women wear great nose plugs made of bamboo and face tattoos”. Not only in India, but throughout the world, photographs accompanying these descriptions promise tourists a glimpse of an alien culture, and people as if these
were commodities displayed for an exhibition.

Ecotourism, which began as a progressive offshoot of the adventure travel business, has been portrayed as a means of promoting sustainable development, conservation and tourism at the same time. It is the fastest growing sector in the tourism industry, worth over $200 billion a year. (Manuela Muhbauer, Impact of Tourism on Host Communities, 2005). The World Conservation Union defines it as, “environmentally responsible travel ...that has low visitor impact and provides for beneficially active socio-economic involvement of local populations”. But questions are being increasingly asked about the purpose they have actually served - the commercial interests of tourism companies or the conservation and livelihood issues of biodiversity and indigenous people associated with them.

Since ecotourism is a highly consumer centred activity, mostly catering to the “alternate lifestyles” of the new middle classes of urbanized societies (I.Munt, Eco-tourism or Ego-tourism?, 1994), the negative implications that these activities have are mostly ignored. Countries (and local communities) in the South, having the majority of ecologically and culturally rich heritage to showcase are particularly vulnerable as these serve as tourist destinations. Exploration of these places by travellers accelerates environmental decay even as luxury hotels and shopping centres in the vicinity of such reserves wipe out plant and wildlife species and ecosystems. From Costa Rica, to Mexico to South East Asia and India, the list of such destruction is endless.

India, which has a total of 650 Protected Areas that include tiger reserves and wildlife sanctuaries, has an estimated 2 million conservation refugees (This is Our Homeland, A collection of essays by Equations, July 2007). Even the National Tourism Policy (NTP) 2002, while signifying the importance of national parks and wildlife sanctuaries, ignores the aspect of eviction of indigenous people from their traditional land due to ecotourism development. Thus, while the Tiger is Kanha National Park’s main tourist attraction, the Tiger Reserve has displaced more than 26 tribal villages (This is Our Homeland, Equations, July 2007). The local tribes are barred from collecting forest produce, the very activity that sustained them. Efforts have been made to settle them elsewhere but without adequate title deeds for their land. Harassment by forest officials is rampant and all this while the reserve serves the interests of eco tourists. The same has been the case with tribes living in the Pench National Park in Madhya Pradesh. The creation of “tourism zones” within the Parks has further revealed the contradiction between the aims of conservation by tourism and the rights of the displaced as it provides legitimacy to the tourism industry while evicting the local indigenous communities.
The most serious impact of ecotourism schemes has been the confiscation of virgin territories such as wildlife sanctuaries for commercialisation. Such activities displace the indigenous population from their ancestral land to make way for tourists, leading to the birth of ‘conservation refugees’.

There are other serious impacts such as changes in behaviour and values, especially among local youths and spread of contagious diseases spreading from mass tourism centres to ecotourism destinations. The Jarawa tribe in Andaman Islands of India is a case in the point. For centuries, this tribe has evaded contact with the mainstream community and has lived a closed existence, free from the lifestyle and diseases that inflict the outsiders. But development and tourism has been changing that, leading to the threat of extinction of this community. Development projects such as a highway through their forests in the 1970s lead to encroachment and exposed them to settlers and poachers. If diseases and sexual exploitation of their women due to contact with outsiders were not enough, tour operators driving through their habitats in the hope of “spotting” members of the tribe, tourists making contact with them despite prohibitions, and luxury tourist resorts near Jarawa reserve signal the beginning of end of these helpless tribe that had not wanted such intrusion and neither had the option to prevent it (www.survialinternational.com).

Ecotourism planners and managers have of late put provisions to “involve local communities” in their projects, but rarely has this been practiced and prior informed consent of the local communities to decide whether a project should be allowed in their area is hardly ever sought. A report of the UNEP/UNDP/World bank in 1993 points out that even the Global Environment Facility (GEF) work does not involve local communities in an effective way, leading to ecotourism ventures as being looked upon as another repressive form of economic development that further undermines the autonomy of the residents by making them dependent on external forces for their own functioning.

A solution to the negative effects of ecotourism is difficult since the ecotourism lobby, has in recent years exercised tremendous financial and political influences over official, academic and NGO circles in developing countries to achieve their goals (Anita Pleumarom, Ecotourism : A New Green Revolution, TWN). While some empowered communities have experimented with locally controlled sustainable tourist activities by themselves and have succeeded, they are in minority. More important in the age of globalization is government initiative towards strict monitoring and controlling the standards of ecotourism. The Indian NTP (National Tourism Policy) 2002, recognises lack of community participation as one of the reasons for increasing conflicts in tourism areas and emphasizes greater community participation and panchayats in ecotourism activities. But neither the NTP, nor the Five Year Plans make reference to caution in areas where indigenous population is going to be affected by such activities and therein lies the indifference that policy makers have towards preventing resources of local communities becoming a recreation ground for tourists.
Demarcating free speech in a Democracy

By CDHR TEAM

"Pity the nation that has to silence its writers for speaking their minds...Pity the nation that needs to jail those who ask for justice while communal killers, mass murderers, corporate scamsters, looters, rapists, and those who prey on the poorest of the poor, roam free". These are the words of Arundhati Roy in response to the controversy stirred by her remarks on Kashmir. In October 2010, Arundhati Roy, a booker prize winner writer and social activist, attended two seminars on the issue of Kashmir where she highlighted her strong and critical stand on the prevailing situation in Kashmir valley. She said that Kashmir was never an integral part of India. The people of Kashmir live under one of the most brutal military occupations in the world.

Right leaning political party BJP and some groups of Kashmiri pundits-who were violently banished from their home state of Kashmir in the 80's by terrorists wanted criminal action to be taken on Arundhati Roy. Initially government was reluctant to file any case against Roy and Geelani. But, the jingoistic and popular mind-set prevailed. An FIR has been lodged against Roy and Geelani and the case is under investigation on the charges of sedition (section 124A), promoting enmity between classes (section 153A), insult intended to provoke breach of peace (section 504), statements, rumours, reports to cause mutiny, create hatred or ill-will between different classes (section 505) have been invoked. Section13 of the Unlawful Activities (Prevention) Act, 1967 which punishes unlawful activity with seven years imprisonment is also slapped against them.

The most serious and debatable of the charges is Sedition. Section 124 A of the Indian Penal Code on sedition says that whoever by written or spoken words, or by signs or visible representations attempts or brings into hatred or contempt or excites disaffection towards the government established by law shall be punishable with life imprisonment. The explanation on the act excludes comments expressing disapproval of the government or administrative measures...
as long as they do not excite hatred, contempt or disaffection.

If we refuse to look beyond our comfort zones and give space to dissenting voices then we only go on to prove the hollowness of the ‘largest democracy of the world’. After all, a country does not become democratic only by carrying out free and fair election every five years. It must cherish the finer nuances of democracy by giving freedom to expressions that push the boundaries of truth in our society and compel us to think beyond our dispositions.

The comments made by Roy should not be termed seditious or anti-national. She had echoed the feelings of the number of people of Kashmir valley. Also, no part of her speech threatens public order as is being said. If someone states an uncomfortable opinion a little louder in public, should that not be respected under freedom of speech in a matured democratic country we claim ourselves to be? Why is it being termed as hatred against the state to utter that Kashmir is not actually a part of India. Even Former Indian Prime Minister Jawaharlal Nehru had maintained that people of Kashmir should ultimately decide for their future through a free and democratic plebiscite. Of late, Chief Minister of Jammu and Kashmir Omar Abdullah had also said that Kashmir had only acceded to and not merged with India. Now, would the people who pressed for criminal charges against Roy also label them anti-national?

The whole controversy shows our narrow minded and unreasonable attitude that criminalizes those who express views which many disagree with. If we refuse to look beyond our comfort zones and give space to dissenting voices then we only go on to prove the hollowness of the ‘largest democracy of the world’. After all, a country does not become democratic only by carrying out free and fair election every five years. It must cherish the finer nuances of democracy by giving freedom to expressions that push the boundaries of truth in our society and compel us to think beyond our dispositions.

The nationalistic colour being given to this controversy tells us about our misplaced notions on patriotism and loyalty for one’s country. Such sentiments are shown not only by displaying the affection and asserting its territorial integrity. Disaffection can also be used to show one’s dedication for the country if it comes from the deep love and sense of pride and demand of justice. This is exactly what Arundhati Roy stood for when she made those comments. In her own words “In the papers some have accused me of giving ‘hate speeches’, of wanting India to break up. On the contrary, what I say comes from love and pride. It comes from not wanting people to be killed, raped, imprisoned or have their fingernails pulled out in order to force them to say they are Indians. It comes from wanting to live in a society that is striving to be a just one.”

It seems we are still a long way from thinking that disaffection against the government may actually be seen as a valuable input for the functioning of the system.
Counting Castes in India

By the CDHR TEAM

Caste system in the Indian society is the albatross around our neck. Neither do we want to recognize its all pervasive presence in our lives nor have we been able to eradicate it from our society. Now, in a step to achieve the latter, Government of India has acknowledged the former.

During the summer session of the parliament, there was a heated debate on whether there should be enumeration of castes as well in the census. After months of cumbersome negotiations with all political parties, a Group of Ministers (GoM) headed by Union Finance Minister Pranab Mukherjee gave their nod to enumeration of castes in a census in 2011.

The last caste based census data was collected in 1931 under the British rule. After India attained independence, constitution makers confined only for collection of such date in respect of Scheduled Castes (SC) and Scheduled Tribes (ST) who are oppressed and needed protection by the government. The collection of all castes data will only complement the existing policy on SC/ST and Other Backward Castes (OBCs). So far, we only know the stand alone populations of these castes. An all caste census will help us know how many other castes exist that may also need government support and also facilitate the revision of benefits to existing scheduled castes/tribes.

In the absence of correct data, the socio economic schemes for persons belonging to OBCs/SC/ST for their empowerment are not reaching the needy. As a result, very large number of population in India is still below poverty line after 63 years of independence and planned growth.

The Caste system has been the reality of Indian society. Even the election tickets are distributed on the basis of caste.

The critics of this census claim that once the results are out every caste will put forward its own set of demands for benefits and reservations which can perpetuate more casteism in our society and spur caste clashes. But, in all these years of our independence, not collecting such data has not eradicated this evil as well. On the contrary, caste census can bring more clarity by helping us understand the change in society and also help in identifying the extent of backwardness. With the authentic and empirical data in hand, the government can put an end to the unreasonable and false demand of many castes which clamour for benefits citing their numerically large populations. Thus, it is necessary to have proper data to tell them what they constitute and what can be the extent of their true share.

The correct data will only help to revise the ongoing schemes to tackle poverty
elimination and bring social justice to backward castes successfully implementing government schemes for backward castes.

Caste system has been the reality of Indian society. Even the election tickets are distributed on the basis of caste. No election debate in media is ever complete without breaking down the electorate statistically in castes and analyzing their impact on election result. If the rough headcount is explicitly done for political gains then why shy away from doing it in an organized way for the social and economic gains of the disadvantaged castes. The so called ‘Lower castes’ have always favoured such enumeration. The opposition generally comes from the higher castes which fear that social policies based on such an exercise can shrink their benefits- which should ideally happen if they have population lesser than the other castes.

The more global and urbane critics say that caste census will hamper the integrity and secularity of our country. In their opinion, in the 21st century, there should be no place for such an exercise. If we continue to refuse taking note of this social reality in such a way then we cannot get rid of this caste menace even after entering 22nd century. We can’t talk about integrity of the society and secularity at the cost of overlooking ground realities in our country.

This is not to say that everything is perfect with caste census. It will create major logistical, administrative and financial hurdles in undertaking such a massive task. This separate caste census will cost around Rupees 2200 crore. While it could have been done without incurring such heavy expenses. If, in the present census questionnaire, the column of SC/ST had been changed to caste, the objective could have been fulfilled without any extra difficulty. Also, this could ensure the correlation with all the other data. Separate collection of caste data will raise difficulty in relating it to demographic and socio-economic indices.

Caste in India is a complicated matter. Clan names and gotra could be used interchangeably by people. Such complex entries are very difficult to comprehend at the level of the enumerator who is only a primary school teacher. Once the caste census takes off next year, it will remain to be seen how this mammoth exercise will overcome such hurdles and achieve its objective.

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**Naxals as Human Rights Offenders?**

*By the CDHR TEAM*

A recent survey (Times of India, September 28, 2010) revealed that 58 percent of those polled in Naxal dominated areas of AP, Chattisgarh, Madhya Pradesh, Maharashtra and Orissa supported Naxals and said that Naxalism had actually been good for their area. In contrast, the report ‘Torture in India’, by Asian Centre for Human Rights states...
that among the armed opposition groups in India, the Maoists are the worst human rights offenders (http://ibnlive.in.com/news/). Manifest in the brutal killing of their targets, whom Maoists often kill by slitting their throat or beheading them, at the authorization of their Jan Adalats or people’s court, the targets are not only police and security personnel but also civilians.

Today, even as the Home Minister and Prime Minister are asserting that Maoists pose the greatest internal security threat to the country, the root cause of this phenomenon where people prefer the Naxals to the State needs to be questioned.

In the last five years Naxals have attacked schools on at least on 48 occasions (www.news.rediff.com). On June 30, 2010, Naxals killed 27 CRPF personnel with severe brutality. (www.deccanherald.com). These acts of violence lend credibility to the opinion that the Naxals who claim to fight for the cause of rights of the local communities against the injustice of the State have not done any better. It needs to be considered why, despite these reports of human rights violations, sometimes on the very people they fight for, are Naxals still being supported even in areas where they have reportedly been wiped out.

One would assume that these acts of violence which is being condemned by the State would also be abhorred by the local communities. But fifty per cent of the respondents felt that such acts by the Naxalites at least forced the government to initiate development work in the area.

The Naxal movement began in 1967 from Naxalbari, a village in West Bengal, after tribal youths tried to take back their land from local landlords and were attacked. But more than 30 years after it was suppressed by the state, the ultra left inspired movement has assumed a new form and has spread to almost 13 states in India.

Land acquisition for ‘development’ has at times led to encroachment on local communities’ land. In the absence of any planned alternative, this deprivation, along with loss of forests, which have been their traditional source of living, has led to many local communities expressing their anguish and frustration with the administration’s apathy by joining the Naxals or sympathizing with them. Poverty, due to lack of development initiatives in the affected states and the exploitation of marginalized groups of dalits and tribal groups, has been so consistent in the last few decades that the administration has ceased to command any respect among the affected communities. Naxals have filled this void, and despite their violent methods, they enjoy more support from the local communities.

Today, even as the Prime Minister Union Home Minister are asserting that Maoists pose the greatest internal security threat to the country, the root cause of this phenomenon where people prefer the Naxals to the State needs to be questioned. Instead of deploying armed forces and police to tackle the so called Naxal menace, the real reasons for the phenomenal growth of this movement and support for it among the local communities needs to be addressed. The socio economic reasons for this have been acknowledged even by the Planning Commission that “increase in extremist activities in many tribal districts can be
linked to issues related to land including alienation of tribal land” (The Statesman, October 13, 2009).

**Armed Forces Special Powers Act – A case of violation of human rights in Manipur**

**By the CDHR TEAM**

Ironically, the Government of India responded to Sharmila’s act of peaceful protest by arresting her several times on charges of attempted suicide under Section 309 of the Indian Penal Code.

This Act goes against the basic nature of human rights. It is untenable to universal human rights standards and international humanitarian laws. It gives the armed forces wide and blanket powers to shoot to kill (sec. 4, a); arrest (sec. 4, c) and search (sec. 4, d) without a warrant in a disturbed area in aid of the civil power. The greatest outrage of the Act is sec. 4(a) - depriving someone of life on mere suspicion in order to maintain public order. The Act further stipulates that an officer of the armed forces may only be prosecuted upon the permission of the central government, a provision that further entrenches the culture of impunity.

On 5 November 2010, Ms. Irom Chanu Sharmila completed ten years of her indefinite hunger strike in Imphal, Manipur. Ironically, the Government of India responded to Sharmila’s act of peaceful protest by arresting her several times on charges of attempted suicide.

AFSPA was enforced in Manipur in 1980, initially intended to be in effect for only 6 months in order to maintain public order in areas deemed to be “disturbed” by the Indian government. However, the AFSPA is still being implemented in Manipur. Where ever AFSPA is in operation, enforced 'disappearances', extra-judicial killings, torture, rape and arbitrary detention have been routinely reported. Despite the impunity provided by the law, the armed forces are not successful in reducing armed insurgency in places where AFSPA is enforced and on the contrary, it has increased. Violence...
committed with impunity by both the state and non-state actors have alienated the people from the state. There are compelling grounds to believe that some armed insurgent groups operate with the support of the state and central security agencies.

Though Sharmila began her marathon fast in protest, the investigation into the Malom massacre has still not yet been completed even after 10 years. When asked about the reaction of the state agencies when Sharmila decided to fast, her brother Singhajit informed that the family members were threatened by the state agencies and were urged to sign in a letter for handing over Sharmila to the family.

The high degree and frequency of violation of human rights in the State is also a cause for alarm. Many have alleged the killings of militants as fake encounters – as killings of innocents who perished either in custody or otherwise, but without legal sanction. Each of these allegations should be transparently investigated and the guilty punished. One such incident was exposed by Tehelka when a local photographer had captured the death of a young man named Chongkham Singhajit in a false encounter by the police in broad daylight in July 2009. Further, there have been charges of using preventive detention laws to curb citizens’ democratic rights to protest and freely express their views.

The people of Manipur have done whatever is humanely possible to register their protest against AFSPA -- naked protest by mothers, self immolation by student leader, mass demonstration, petition to the Supreme Court, complaints to the United Nations etc. Same is the case with peoples of the other North-East states and Jammu and Kashmir. Many well meaning civil society groups and political parties within India as well as human rights groups from abroad have consistently supported this demand. In 2007, the UN Committee on the Elimination of Racial Discrimination unequivocally urged the Government of India to repeal the Act within a year. During her visit to India in March 2009, the High Commissioner for Human Rights herself had urged the Government of India to repeal this Act. Demand for repeal of AFSPA was also raised in the European Parliament on 14 June, 2010.

True that the State is boiling with insurgency, but the state should tackle them through economic development and not a draconian law like AFSPA when everyone is aware that the root cause for the breeding insurgency is the absence of any development, employment opportunities and the prevailing rampant corruption. In a state that already has a feeling of being neglected by the Centre, such measures are only aggravating the crisis and pushing the possibility of return of tranquillity further off the edge.

Not All That Unique

By Reetika Khera,
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(Reprinted with permission from the author)

The Unique Identification Authority of India (UIDAI)’s ambitious plan of issuing a unique biometric-enabled number, innocuously called ‘aadhar’, to every Indian resident has finally begun to generate a debate on citizen-State
relations, privacy, financial implications, and operational practicalities.

What the debate has largely missed so far, however, is the credibility of the UIDAI’s claims in the field of social policy, particularly the National Rural Employment Guarantee Act (NREGA) and Public Distribution System (PDS). Tall claims (“the project possesses the power to eliminate financial exclusion, enhance accessibility, and uplift living standards for the majority poor”) have been made. Scrutinising the UIDAI’s documents reveals their poor understanding of how PDS and NREGA leakages occur and little evidence of creative thinking on plugging them. Instead, one is treated to rhetorical statements peppered with the ‘Aadhaar-enabled’ buzzword.

In the days of cash payments of wages, it was quite easy to embezzle NREGA funds by inflating attendance records and pocketing the difference. In 2008, the government made it mandatory for all NREGA wages to be paid through banks and post offices. The introduction of payments through accounts has made corruption difficult, but three ways of siphoning off money remain — extortion, collusion and fraud. Extortion means that when ‘inflated’ wages are withdrawn by labourers from their account, the middleman turns extortionist and takes a share. Collusion occurs when the labourer and the middleman agree to share the inflated wages credited to the labourer’s account. Fraud means that middlemen open and operate accounts on behalf of labourers and pay them cash. Biometric-enabled UID to authenticate identity can only help to prevent ‘fraud’, but is of little use in preventing collusion or extortion.

Even on the specific issue of eliminating fraud, the UIDAI’s thinking is muddled. “Once each citizen in a job card needs to provide his UID before claiming employment, the potential for ghost or fictitious beneficiaries is eliminated.” Elimination of ghost beneficiaries would be an important contribution, but as the same sentence makes clear, it requires compulsory and universal enrolment. Yet, public statements convey that UID enrolment will be voluntary.

Nilekani speaks of “how having a UID can give automatic benefits” (Indian Express). In practice, there will be automatic exclusion as those who do not enrol will be turned away. We learnt this lesson the hard way in the transition to bank payments. Poorly-equipped and understaffed banks were expected to open millions of NREGA accounts overnight. Labourers began to be denied work — “no account, no work,” they were told. The UIDAI is also poorly informed. “In many areas the wages continue to be paid in the form of cash.” In fact, the transition to bank payments is largely complete (83 per cent NREGA job cardholders have an account). Tamil Nadu is the only ‘area’ where wages continue to be paid in cash (retained for the sake of speed).

Sometimes the UIDAI documents contain plain gibberish. Jumping on the social audits bandwagon, they say: “The village-level social audit committee can be selected after authentication with the UID database. The social audit reports filed by the village-level committees can be authenticated by the biometrics of the committee members and the social audit coordinator.”
Turning to the PDS, the most important contribution of the UID would be to eliminate duplicate cards. But what proportion of cards in circulation are duplicates? The little reliable data on this suggest it is not large: 2 per cent in Tamil Nadu and Chhattisgarh’s computerisation drive to issue hologram-enabled cards eliminated 8 per cent duplicates.

The UIDAI believes that “a key source of leakage identified in the PDS, is subsidised food drawn from the ration shop in the names of eligible families by someone else”. Again, a quick tutorial on PDS leakages might help. There are two major sources of leakage from the PDS: one, diversion of grain, en route to the village ration shop. Dealers then appear helpless saying that they have been issued less by the authorities. Two, dealers undersell (e.g., only 25kg out of the 35kg entitlement) and yet make people testify on official records that they got their full quota. When villagers are disempowered and forced to buy from the same dealer, they feel resigned to being cheated.

The UIDAI recommends that people be freed from the monopoly of dealers, i.e. if he is corrupt, they can go to another. (Finally a usable idea, but alas, an old one.) Conflating the UID with benefits, the UIDAI goes on to make a bogus claim of “portability of benefits” (at least four times in their paper). Portability of benefits requires grappling with operational issues that Aadhaar cannot solve.

Aadhaar is about “inclusivity, the purpose is a better quality of public service delivery, it’s about giving people, who have been denied identity, a chance” (Nilekani, Economic Times). Yet, the UIDAI states: “The NREGA programme can be used to enrol residents into the UID programme” and that the PDS “will provide the necessary impetus for penetration of UID”. If the idea is to use the existing NREGA and PDS database to enrol people, where does ‘inclusivity’ come in? Perhaps the UIDAI needs the PDS and NREGA databases more than these programmes need the UID.

If the UIDAI is serious, it must think about the difficult questions: what if the grain/wages are snatched away after authentication, or if tele-links or hand-held devices break down? What about the costs involved? Illegal fees are routinely charged for ration and job cards — what prevents this from happening while finger-printing? Most importantly, what will Aadhaar add to what can be achieved by computerisation of operations, a reliable MIS, and simpler ‘technologies’ for transparency (e.g., the information walls in Rajasthan)?

If the rhetoric on inclusivity is only a ‘PR’ exercise, what actually drives the UID project? As former Intelligence Bureau chief A.K. Doval candidly said in Tehelka, “It [UID] was intended to wash out the aliens and unauthorised people. But the focus appears to be shifting. Now, it is being projected as more development-oriented, lest it ruffle any feathers.”

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Right Measures
By late Arjun Sengupta
Published in The Asian Age
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In my last column on 17 May 2010, I talked about a paradigm shift in development discourse by the UN Human Rights Council proposals for implementing the right to development. I got many letters asking me to explain different aspects of this new development. I therefore thought that I should spell out in this column the implications for India of this paradigm shift to illustrate these aspects. If the right to development, becomes an international treaty like other civil, political, and economic rights. India would naturally be a party to such international convention. As a part of the treaty obligations each State has to take steps to realize that right and subject itself to international monitoring by a Treaty Body. India would have also to do that, subjected to a legal process of fixing accountability and taking corrective measures.

The right to development as first enunciated in the UN Declaration of 1986 is essentially the right to a process of development when both the outcomes and the process itself, (subjected to the principles of ENPAT, Equality, Non-discrimination, Participation, Accountability and Transparency) are to be regarded as human rights. States have the obligation to realize for its people, the outcomes of that process of development through progressive realization of all human rights and equitable economic growth. These human rights are reflections of certain basic freedoms, such as the right to food as freedom from hunger, right to health as freedom from suffering ill-health, right to education as freedom from ignorance and similarly the civil rights conferring the basic freedoms of social existence. Development then becomes a process of expanding freedom.

All these economic and civil rights have already been recognized by international conventions in the form of treaties. The right to development aims at recognizing the process of development, where these rights and freedoms are realized, as a human right itself. As all these rights cannot be realized immediately they are supposed to be implemented progressively, with a definite roadmap, but with a minimum requirement that no right can be violated during that process. The country will have the freedom to choose certain sets of rights as the core of their development objective. For example, India may choose the right to food, health and education and decent standard of living for all that would eradicate poverty as the core of its development outcomes. Some other countries including industrialized nations may consider the right to health and the right to social security as their essential development goals in the current situation, including the right to employment, where everybody will have the opportunity to secure gainful employment. There is no unique development goal and the countries have the freedom to formulate their development objectives through a consensual process. But once these goals have been specified and are recognized as human right, they have to be incorporated in domestic laws fixing responsibility of implementing the rights with specific policies, for specific agents. The right to development then becomes a
proper legal right, like all other civil and economic rights.

The goals may be different but the methods of their implementation would be the same, following three steps. First, the authorities will have to formulate detail plans of action to realize those rights in a time bound manner. Second, specific agents of the authorities, at the level of national, state or local governments, or identifiable individuals, have to be given specific tasks derived from those plans of action. Third, mechanisms have to be created to monitor and review how these agents are fulfilling their obligations and if they fail what action should be taken to reprimand them and introduce corrective measures. Every right has to be related to obligations of the authorities and their plans of action would be essentially to formulate the policies clearly laying down the accountability of the agents.

For India, if it becomes a part of an international convention on the right to development, it would imply, first formulating a plan of implementing the core development outcomes, whether for example elimination of poverty, ensuring universal food security and providing basic education to all, attributing specific responsibilities to specific agents. It must also then set up mechanisms of monitoring and social auditing of these responsibilities which would be subjects of legal obligation and justiciable in the courts of law or by empowered committees and international Treaty Bodies. For example, to ensure right to food authorities must first determine the amount of food that has to be procured and distributed who will procure and distribute them through appropriate mechanisms, setting them to monitor review and reprimand failures.

Being subjected to monitoring by international Treaty Bodies would not compromise national sovereignty which is fully recognized in all international treaties. This will only mean that governments’ actions will be subjected to peer pressure to explain policy failures in credible terms to all concerned. The real accountability would be in domestic laws and procedures of social auditing and dispute settlements. For that reason the States have to formulate realistic policies in time bound manner by all the social agents. In other words, the emphasis will shift entirely to appropriate methods of implementing each of the right subjecting it to a verifiable and justiciable process of implementing specific policies.

The most interesting part of this process is identifying policies to implement equitable growth to be carried out at different levels of governance, national, state or local, by accountable agents. Growth is instrumental to realizing development goals and equitable growth is instrumental to realizing human rights for all with equity and non-discrimination. Being a part of international convention would mean that the international community would accept the obligation of cooperation with the country concerned, such as India to remove international bottlenecks of trade, debts and finance, as well as the international arrangements of patent rights, climate change policies or any difficulty that can be removed by international cooperation. A mechanism has to be established to monitor these international obligations, where international treaty body can play a very significant role. For example, if a
severe food shortage upsets food security, then the international community would be obliged to provide food assistance procuring them for surplus countries.

In effect, this will make the right to development as a right to appropriate and implementable development policies that would result in equitable growth and realize identifiable core development goals. The national agents, the state authorities and corporate who have the power to influence the course of events will be primarily responsible for implementing such development policies. But they will be backed up by the international community, of different governments and international agencies, who will take on the obligations of cooperating with the state authorities in removing all obstacles of realizing development. The Treaty Bodies would ensure the effectiveness of such international cooperation.

The Centre for Development and Human Rights (CDHR) is, a research organisation based in New Delhi and is dedicated to bringing theoretical clarity to the concept of Right to Development by integrating the academic disciplines of law, economics, international co-operation and philosophy.

The Centre is involved in:
- Raising national and international awareness that the Right to Development is a human right.
- Networking with NGOs working on various aspects of development and human rights.
- Examining implications of integrating a human rights perspective into existing development programmes.
- Undertaking research both independently and in collaboration with other institutions.
- Publishing monographs, reports and papers on development, public policy and human rights.
- Organising seminars and workshops on aspects of development, public policy and human rights.

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