



## INSTITUTE FOR AGRICULTURE AND TRADE POLICY

February 21, 2010

To: Ms. Catarina de Albuquerque  
Independent Expert on the issue of human rights obligations  
related to access to safe drinking water and sanitation  
ESCR Section, Special Procedures Division UNOG-OHCHR  
Palais des Nations, Geneva  
Switzerland

RE: Response to request for input on the issue of nondiscrimination and the situation of groups experiencing discrimination and how this impacts their access to water and sanitation

Dear Ms. de Albuquerque,

The Institute for Agriculture and Trade Policy (IATP) continues to be extremely grateful for the opportunity to share our views and experiences. We applaud you for taking the issue of non-discrimination on board, providing us an opportunity to present our views in writing on the issue of human rights obligations related to access to safe drinking water and sanitation in the context of rural areas, especially in the case of vulnerable communities.

As you are aware, close to 75 percent of people without access to safe water and sanitation live in rural areas of the world. Their ability to access safe water is first and foremost dependent on the availability of clean water in their local environment. In the absence of this, the state is obliged to ensure that people have access to safe water that is brought to them to help meet their basic needs.

However, in IATP's experience working with communities around the world, we have observed several instances where the state itself is party to policies and practices contributing to water pollution and local water scarcity. Access to safe water for meeting communities' right to water is most often affected by the perceived marginality of the communities. Attached is a case study in which a series of decisions taken by the state government of Tamilnadu over the last few decades—including agricultural and industrial development policies—have resulted in the state's complicity in violation of the right to water of low-caste women in Tamilnadu.

While this is a specific instance, it is not an isolated example. Policies that put a priority on urban and industrial water needs, or water uses that are considered economically efficient, are being promoted around the world at the cost of other water needs such as ecosystem services. The social and cultural values that people place in their community water source are lost in these calculations. The value of ecosystem services is recognized only when a dollar value is put on it. This must change.

IATP believes that the biggest challenge in—and first step toward—ensuring access to safe drinking water and sanitation to all people is in not dismissing some communities as marginal just because they do not fit into the model of economic growth above all else. Every community has a fundamental right to water.

As many developing countries are pursuing the path of rapid industrial development, and as other nations are investing in the industrial and extraction operations in these countries, pristine ecosystems and communities that depend on them for their livelihoods become the first casualties.<sup>1</sup> National and international laws and guidelines regarding states' obligations in protecting community water sources of marginal communities, is the most important area that needs your attention.

Through the attached case study we wish to draw your attention to the following general principles relevant to ensuring that there is no discrimination when it comes to realization of right to water:

- Decisions that impact the quality and quantity of community water sources (including rivers, ponds and wells) should be brought under the ambit of right to water in order to help address the issue of nondiscrimination in the context of rural areas.
- Such decisions are often promoted by the state in the interest of “national” development or employment generation and economic development. Occasionally it is also promoted in the name of environmental protection. In most of these cases an alternate vision that prioritizes the needs of the most vulnerable can help achieve equitable development and realization of right to water for all.

In pursuing this, you may be guided by the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Security*. Section 7 elaborates on guidelines regarding access to resources and assets and asserts: “States should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law and protect the assets that are important for people’s livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, fisheries and livestock without any discrimination.”

On land it says: “Bearing in mind that access to land is central to ensuring adequate access to food, states may consider taking action to enhance and defend the security of land tenure, especially with respect to poor and disadvantaged segments of society. As appropriate, states should consider establishing legal and other mechanisms that advance land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land.”<sup>2</sup> Most importantly for our purpose, on water it suggests: “Governments should strive to improve the efficient use of water resources and promote their allocation among competing users in a way that gives due priority to the satisfaction of basic human needs and balances the requirement of preserving or restoring ecosystems and their functioning with domestic, industrial and agricultural needs, including safeguarding drinking water quality.”<sup>3</sup>

As the attached case study suggests, in the absence of national laws, it becomes imperative that international guidelines and norms are available to help communities protect the assets that are important for people’s livelihoods, and that includes their right to water. It is with this in mind that we request that you consider expanding the definition of the right to water to include not only individual human rights to water for drinking and sanitation, but also community rights to local water resources, and propose the development of guidelines such as the above under the auspices of UNHRC.

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<sup>1</sup> <http://timesofindia.indiatimes.com/india/Two-Orissa-villages-oppose-Posco/articleshow/7498268.cms>.

<sup>2</sup> Ibid, Guideline 7.b.

<sup>3</sup> Ibid, Guideline 7.c.

The Institute for Agriculture and Trade Policy looks forward to working with your office in exploring this possibility further. We look forward to having a productive interaction in our advocacy toward the right to water for meeting the basic needs of people and for ecosystem sustenance.

Thank you,



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## **Sand mining, governance and the right to water in Tamilnadu, India**

Shiney Varghese, IATP

Over the last two decades, with the construction boom, sand mining has become rampant across India. Sand mining in the riverbeds (and on the banks of natural waterways) is a lucrative enterprise and has become one of the biggest threats to the riverine ecosystems of India—especially in the last decade. In Tamilnadu, community members have raised concerns that powerful networks of politicians, miners, contractors, construction companies and government officials help ensure the smooth functioning of illegal sand mining operations. Excessive sand extraction affects the groundwater recharge as the river bedrock does not have water-retention capacity. Sand mining has lowered the water table in many riverine villages. Increased well failures have affected village-level water security: access to water both for domestic use and for food production has suffered in several villages in the region.

Several seasonal rivers bring monsoon waters from Western Ghats to its rain shadow regions in Tamilnadu. As these small rivers flow eastwards, their waters seep down the sandy riverbeds, recharging the aquifers. In a traditional system it is a cyclical process, whereby rivers replenish the limited amount of water drawn out by farmers to supplement rain-fed cultivation. The women of the Sangnapari village in the Tirunelveli district say that until about 25 years ago, water was available at a depth of 20 to 50 feet.<sup>1</sup> However, the water table has been going down after the introduction of motorized pumps and tube wells in the district. Now the bore wells (with side bores) go ten times deeper, between 300 to 500 feet, and yet often fail to find water.

In September and October 2010, I met with women members of both a village-level collective as well as a district-level parent organization, the Vasudevanallur Women's Collective (VMC). The latter is one of 38 district-level village collectives that constitute the Tamilnadu Women's Collective, an organization that works with lower caste—lowest in socio-economic hierarchy—women in the state of Tamilnadu.<sup>2</sup>

Several civil society organizations across India have been working on sand mining, especially focusing on the environmental impacts of sand mining on rivers, creeks and coastal areas. The focus of this submission, however, is to show how, in allowing for indiscriminate sand mining, the state contributes to a violation of the right to water—first, as defined in the general comment (drinking water and sanitation) and second, as defined in several constitutions around the world (adequate water to help realize rights to food and health).<sup>3</sup>

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<sup>1</sup> Personal Interviews with members of Sangnapari Women's Collective, September 29, 2010.

<sup>2</sup> More about the organization and the ways in which they address the issues of marginality through a rights-based approach to food and water security can found in "[Women at the Center of Climate-friendly Approaches to Agriculture and Water Use](#)," recently published by IATP. This submission is partly drawn from the above case study.

<sup>3</sup> In several countries (Ethiopia, Uganda, South Africa, Gambia, Zambia, Congo, Mauritania, Iran, India, Philippines, Nicaragua, Panama, Uruguay, Venezuela, Bolivia, Ecuador, Chile, Belgium and Slovenia), every person is constitutionally guaranteed the right to have access to sufficient food and water. In these countries, right to water is also an indispensable element of other rights, particularly the right to adequate food (or nutrition), the right to health and a clean and/or healthy environment and water conservation. Realization of other human rights such as housing and education may be dependent on realization of specific aspects of the right to water, such as access to drinking water and sanitation. [Source: Human rights guidelines and principles with explicit reference to water (Ref. to Sub-Commission Guidelines for the realization of the Right to Drinking Water and Sanitation) <http://www2.ohchr.org/english/issues/water/ie xpert/standards.htm> (accessed February 2011).



*A dry riverbed lies downstream from the village of Sanganageri where sand mining is an issue.*

Sand mining operations in the upper reaches of the Thamirabarani River, the only perennial river in Tirunelveli district, started about ten years ago. While it has been going on illegally for years, a few years ago the Tamilnadu Government legalized the activity, approving certain sand quarries from where sand could be removed subject to certain rules and regulations. However, lax enforcement of these regulations means that sand is still being removed from non-stipulated locations and far above the limits suggested.

In 2006, the *Environmental and Social Assessment Report (Draft, E1 341 vol. 2) of the River Basins in Tamilnadu* by the Environment Protection Training and Research Institute (EPTRI) reported that sand mining was already causing ground water depletion in most of the river basins studied, including Thamirabarani river, and that it could lead to salt water intrusion in coastal areas. It recommended that sand mining be controlled and regulated.<sup>4</sup>

In many areas along the river, all of the sand in the river bed had been removed and the hard bed, through which water can no longer seep, is exposed. In other areas, the free flow of water is interrupted, and water no longer reaches the lower parts

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<sup>4</sup> Environment Protection Training and Research Institute (EPTRI), *Environmental and Social Assessment for River Basins in Tamil Nadu - IAMWARM Project (Draft Final Report)* Submitted to The Chief Engineer (Plan Formulation), Water Resource Organisation, Public Works Department, Chennai,  
[http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/10/06/000011823\\_20061006110758/Rendered/IN  
DEX/E13410vol.02.txt](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2006/10/06/000011823_20061006110758/Rendered/INDEX/E13410vol.02.txt) (accessed October 2010).

of the river. Sand mining has resulted in lowering the water table even further, and as a result, the villagers no longer have access to an assured water supply for drinking or for agricultural needs. Total sanitation is no longer a reality, despite the presence of physical structures in the village.

In the summer of 2010, the women were driven to desperation and decided to oppose sand mining by camping on the river bed for a week. This brought a temporary respite to sand mining. To ensure that they got the support of the administration, the panchayat (village council) president, a leader in the village-level “sangam” (collective) took up the issue of sand mining with the district collector. She was surprised at the response from the top administrative officer in the district, who perceived sand mining as a necessary activity, meeting a “demand of modernization.”

It appears that the women’s collective members from this village will continue their quest for water security. Shortly after this field study was conducted, it was reported in the national press that “a total of 133 protestors, including [...] 87 women, were arrested at Sanganageri on Wednesday when they prevented sand mining in the Nishabanadhi basin.”<sup>5</sup> The arrested women belong to the village of Sanganageri and are part of the Vasudevanallur Women’s Collective (VWC), one of the 38 member units of the Tamilnadu Women’s Collective.

In this campaign against sand mining the women are led by the panchayat president who has been a long-term member of the village-level women’s collective. She has been in the forefront of efforts to ensure that villages under her jurisdiction had access to drinking water and sanitation coverage. Given that one of the common challenges faced by state-run sanitation programs is that the toilets they build are left unused, as their use is not an easily accepted change in cultural practice, this is no easy feat. However in Samthram’s panchayat, the women members of the collectives were instrumental in ensuring that the community changed its sanitation practices and started actually using the toilets constructed. Samthram was one of the recipients of the national award in 2007, for realizing 100-percent sanitation coverage in her panchayat.<sup>6</sup>

Yet when the panchayat president took up the issue of sand mining with local authorities, which also affected their access to water, the response was not satisfactory. Widespread allegations of corruption in the Tamilnadu state seem to indicate that collusion with illegal operators has effectively resulted in people not being able to exercise their right to water. Undaunted, the women continue to demand that the Tamilnadu government stop indiscriminate sand mining in river basins, and urge the government to take reparatory measures to help realize the right to water obligations that states have in these panchayats where sand has been overly quarried.<sup>7</sup>

While many problems worldwide result from failures of local governance, ensuring fair, local solutions are much harder without effective, accountable and democratic governance systems at regional, national and global levels. Thus, even though members of the women’s collective are active participants in the campaign to stop sand mining, and in the local democratic governance structures, their efforts to realize their right to water have fallen on deaf ears.<sup>8</sup>

This case study focuses on one specific activity, sand mining, that has affected the right to water of rural communities in a short span of time. What is noteworthy is that this was the straw that broke the camel’s back. Ecologically disruptive agricultural practices have already been playing havoc with the water availability of the community, as is demonstrated in

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<sup>5</sup> Staff Reporter, “MLA arrested, released Tirunelveli,” *The Hindu*, October 14, 2010. Available at <http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/article829529.ece> (accessed October 16, 2010).

<sup>6</sup> Government of India, Nirmal Gram Puruskar Informations System, [http://164.100.194.23:8080/NGP2010/Rep\\_AwardedPriYearWise1.jsp?stateinfo=29gp07](http://164.100.194.23:8080/NGP2010/Rep_AwardedPriYearWise1.jsp?stateinfo=29gp07) (accessed November 28, 2010).

<sup>7</sup> The United Nations General Assembly Resolution of July 28, 2010 and the United Nations Human Rights Commission Resolution of September, 2010; both uphold the state’s responsibility in ensuring the right to water. UNGA resolution at [http://www.unesco.org/water/wwap/news/archives/UNDecWaterHR\\_EN.pdf](http://www.unesco.org/water/wwap/news/archives/UNDecWaterHR_EN.pdf) and UNHRC Resolution at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/166/33/PDF/G1016633.pdf?OpenElement> (Both accessed October 2010).

<sup>8</sup> The Women’s Collective has filed several public interest litigations regarding this case but so far it has not been resolved.

the longer paper that is attached to this submission. Ecosystem protection, especially ensuring that water is available for ecosystem sustenance, is central to ensuring the right to water, and thereby the rights to food and to life. This is especially true in the rural context.