# Report of the Central Employment Guarantee Council's "Working Group on Wages"

## August 2010

# Acknowledgements

The Working Group on Wages is most grateful to Dr. Joseph Abraham and Professor K. Hanumantha Rao (National Institute of Rural Development, Hyderabad) for facilitating the meetings of the Working Group and the preparation of this report; to the Institute for Human Development (New Delhi), the Tribal Research Institute (Ranchi), and the V.V. Giri National Labour Institute (New Delhi) for hosting the meetings; to the National Institute of Rural Development (Hyderabad) for logistic support; to Mr. K.K. Soan (Deputy Commissioner Ranchi) for local hospitality in Ranchi; to Christian Oldiges and Siddhartha Gupta for help with the analysis of NREGA wage data; to Akansha Batra for editorial assistance; and to Surabhi Chopra, Indira Jaising, Brinda Karat, Kamala Sankaran, Abhijit Sen, and Siddhartha, among others, for helpful advice and suggestions.

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## 1 Introduction

The Working Group on Wages was constituted under the auspices of the Central Employment Guarantee Council to examine a set of questions related to wage policy for the National Rural Employment Guarantee Act (NREGA). The Terms of Reference of the Working Group are given in **Annexure 1**. The list of members and contributors is given in **Annexure 2**.

The Terms of Reference (treated by the Working Group as a broad "roadmap") fall under five broad headings, but some received more attention than others. The Working Group was particularly concerned about a few issues that need to be urgently addressed. These include (1) the general disarray of NREGA wage policy (see below); (2) the steady decline in the real value of NREGA wages, as prices increase without any corresponding increase in money wages; and (3) the lack of timeliness in wage payments.

The Working Group held three meetings: in New Delhi on 3 May 2010, in Ranchi on 22 May 2010, and in New Delhi on 29 June 2010. Further consultations also took place by email. This report presents the main conclusions and recommendations of the Working Group. Some issues, however, remain unresolved or at best partially resolved – including crucial issues such as the reconciliation of NREGA with the Minimum Wages Act (see Section 4 below). It is strongly suggested that follow-up work be initiated, through this Working Group or otherwise, to address these issues in greater detail.

## 2 Background: The Crisis of Wage Policy

The Working Group felt that it was important to begin by acknowledging the current "crisis of wage policy". In many ways, this crisis goes back to a notification dated 1 January 2009 of the Ministry of Rural Development, whereby Section 6(1) of the Act was "activated". But the crisis also reflects deeper ambiguities related to the fixation of NREGA wages.

This crisis is best appreciated from the point of view of NREGA workers. The key idea of NREGA is to give workers enforceable entitlements. Consider however the following:

1. The wages of NREGA workers are falling in real terms month after month, as prices increase while wages have effectively been capped at Rs 100 per day.
2. There is no clarity as to how wages are to be determined, no specific process to revise them from time to time, and no guarantee that NREGA workers will earn the statutory minimum wage, let alone a living wage.
3. In many states, NREGA workers are already earning less than the statutory minimum wage, due either to under-payment of wages, or simply to the fact that the "Rs 100 per day" norm is below the state's minimum wage.
4. NREGA workers are entitled to payment within 15 days, but reports of rampant and prolonged delays are pouring in from all over the country.
5. NREGA workers are entitled to compensation ("as per the provisions of the Payment of Wages Act 1936") in the event of a delay in payment. However, with one or two exceptions, this has never happened.

Last but not least, very little has been done to address this crisis, or even acknowledge and discuss it. Resolving these issues is likely to require considerable work, consultations with state governments, and possibly, amendments of the law. The Working Group, for its part, made an attempt to clarify the main issues and make some preliminary recommendations.

## 3 Three Emergency Recommendations

At its first meeting, held in New Delhi on 3 May 2010, the Working Group unanimously decided to make three "emergency recommendations" on NREGA wage policy. These emergency recommendations were finalized at the second meeting, on 22 May 2010, and communicated to the Secretary, Ministry of Rural Development the next day. No response has been received so far.

The emergency recommendations (as sent earlier to the Ministry of Rural Development, with explanatory footnotes added) are as follows:

(A) Indexing of NREGA wages: Paying a real wage of (at least) Rs 100 per day is a long-standing promise of the UPA-2 government. It was made, inter alia, in the Finance Minister's Budget Speech on 6 July 2009: "We are committed to providing a real wage of Rs 100 a day as an entitlement under the NREGA".[1] But instead, NREGA wages have effectively been frozen at Rs 100 per day in nominal terms (i.e. without any periodic adjustments for inflation). With prices increasing by leaps and bounds, especially food prices, this freeze is eroding the real value of NREGA wages month after month. The erosion of real wages

[1] Note: The term "real wage" is well-defined in economics. It refers to the purchasing power of wages at constant prices, i.e. adjusted for inflation.

threatens to undermine the entire programme, and in any case, it is a gross injustice to NREGA workers, all the more so when millions of them are struggling to survive under severe drought conditions.

Meanwhile, we understand that the Ministry has appointed a "task force" (chaired by Dr. Pronab Sen) to examine the possibility of creating a separate price index for NREGA workers.[2] This is a misguided initiative. As pointed out by several members of the Central Employment Guarantee Council at its last meeting (on 22 February 2010), a suitable price index already exists: the Consumer Price Index for Agricultural Labourers (CPIAL). The Working Group unanimously felt that this price index is adequate for the purpose of indexing NREGA wages, and that there is no need to devise a separate price index for NREGA workers. Aside from being unnecessary, this would lead to further delays in the process of indexing (an informal communication from Dr. Pronab Sen suggests that it may take up to a year to devise and compute a separate index).

Our considered recommendation is as follows:

> **R1. NREGA wages should be immediately indexed to the price level, using the Consumer Price Index for Agricultural Labourers (CPIAL), with 1 April 2009 as the "base", so that the real value of the wage is at least Rs 100 per day at April 2009 prices. As long as NREGA wage rates are set by the Central Government, they should be promptly revised upwards every six months – or at most every twelve months - in line with the CPIAL. (States that had wages notified at more than Rs 100/day at the time of the 1 January 2009 notification should have their wages indexed with their notified wage as a base.)**

(B) Compliance with Minimum Wages Act: The working group is also very concerned about the implicit "overriding" of the Minimum Wages Act 1948 involved in switching from Section 6(2) to Section 6(1) of NREGA, as a basis for setting wage rates. The relevant sections of NREGA are as follows:[3]

> *6.(1) Notwithstanding anything contained in the Minimum Wages Act, 1948, the Central Government may, by notification, specify the wage rate for the purposes of this Act:*

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[2] We learnt later from Dr. Pronab Sen that he had declined the invitation to chair this task force, as he felt that the issue should be dealt with by this Working Group. Further, Dr. Sen concurred with the view that the existing Consumer Price Index for Agricultural Labourers (CPIAL) would be adequate for the purpose of indexing NREGA wages. He suggested, however, that the "base" of this Index might be updated, so that it better reflects current consumption patterns.

[3] These sections of NREGA must be read in conjunction with Section 22, which states that "the Central Government shall meet the cost of… the amount required for payment of wages for unskilled manual work under the Scheme".

*Provided that different rates of wages may be specified for different areas:*

*Provided further that the wage rate specified from time to time under any such notification shall not be at a rate less than sixty rupees per day.*

*(2) Until such time as a wage rate is fixed by the Central Government in respect of any area in a State, the minimum wage fixed by the State Government under section 3 of the Minimum Wages Act, 1948 for agricultural labourers, shall be considered as the wage rate applicable to that area.*

Until January 2009, Section 6(2) was the basis of NREGA policy - state governments were setting minimum wages for NREGA. On 1 January 2009, however, the Central Government issued a notification that effectively "froze" the NREGA wages state-wise. Later, state governments were allowed to raise the NREGA wage up to Rs 100 per day (if it was below that on 1 January 2009). This new policy effectively activates Section 6(1) of the Act, which involves a potential if not actual overriding the Minimum Wages Act. Indeed, it would be illegal for any state government to pay NREGA workers anything less than the minimum wage for the relevant occupation. And it is the prerogative of state governments (not the Central Government) to set minimum wages. The Central Government's commitment, for its part, does not go beyond Rs 100 per day. An unacceptable situation is thereby arising where NREGA workers in some states are being paid less than the statutory minimum wage. There is, thus, a potential conflict between the current wage policy and the Minimum Wages Act. This potential conflict needs to be resolved at the earliest, by amending NREGA if need be, but in the meantime, what is of paramount importance is to avoid any actual overriding of the Minimum Wages Act, so that the sanctity of this Act (affirmed by the Supreme Court) is respected. In short, our recommendation is as follows:

**R2. NREGA policy must be consistent with the Minimum Wages Act. In no circumstances should this Act be overridden.**

(C) Shorter work hours: A third urgent concern is the prolongation of NREGA working hours from "seven hours" (the initial formulation, under Para 8(1) of Schedule I) to "nine hours" (the new formulation, as per notification of 14 January 2008, amending Para 8(1) of Schedule I).[4] Considering the exacting nature of NREGA work, and the fact that many NREGA workers are undernourished, this new provision is unfair and unnecessary, even if the said nine hours including one hour of rest, as was subsequently clarified by the Ministry of Rural Development. We recommend a return to the initial formulation:

**R3. Para 8(1) of Schedule I of NREGA ("The Schedule of Rates of wages for various unskilled labourers should be so fixed that an adult person working for**

[4] It was later clarified by the Ministry of Rural Development that "nine hours" included an hour of rest.

**nine hours would normally earn a wage equal to the wage rate") should be amended so that the words "nine hours" are replaced with "seven hours".**

# 4 Fixation of Wages

The Working Group was extremely concerned about the absence of a coherent wage policy for NREGA. Some background to this issue has already been given in the preceding section. As explained earlier, there was a "switch" from Section 6(2) to Section 6(1) of NREGA in January 2009, and subsequently, NREGA wages were effectively frozen at Rs 100/day. This leads to a highly unacceptable situation where (1) the Minimum Wages Act (MWA) is being overridden, and (2) NREGA workers have no legal protection against the arbitrary decline in real wages as prices increase. Effectively, NREGA workers enjoy no minimum wage protection at all.

This situation is the result of an explicit attempt to "delink NREGA from minimum wages" (by activating Section 6(1)), as Hon'ble Minister for Rural Development Dr. C.P. Joshi put it to the Central Employment Guarantee Council on several occasions. This policy, too, is unacceptable: there must be a minimum wage for NREGA workers, consistent with the Minimum Wages Act.

In fact, the switch to Section 6(1) appears to be illegal, in so far as the protection workers enjoy under the Minimum Wages Act is inalienable. According to expert legal opinion from Ms. Indira Jaising, Additional Solicitor General, *overriding the Minimum Wages Act under Section 6(1) would be unconstitutional* (see legal opinion in **Annexure 3**).

It is worth noting that this "switch" to Section 6(1) was made against the undivided advice of the Central Employment Guarantee Council. The issue was indeed deliberated at some length at a special meeting of the Council held in June 2008.[5] Most of the members strongly advised against the proposed switch, and no member (except for the Chairperson) supported it.

Incidentally, judging from the deliberations of that meeting (and the background note circulated by the Ministry of Rural Development in advance), it appears that the main justification for this switch to Section 6(1) was an alleged problem – or potential problem - of "wage inflation". The argument was that, since NREGA wages are fully paid by the Central

[5] We are bemused to learn, from a note circulated to the Central Employment Guarantee Council in advance of that meeting ("Note on Fixation of a Central Wage Rate under NREGA"), that the "formal opinion of the Legislative Department" to the Ministry of Rural Development, at that time, was that "it is obligatory on the Central Government to notify central wage rate under Section 6(i) of the Act".

Government (under Section 22 of NREGA), state governments may be tempted to raise minimum wages without any restraint. In this connection, it is worth noting that the growth of NREGA wages has actually been quite modest during the three years that preceded the January 2009 notification – see Tables 1 and 2. At the all-India level, the growth rate of NREGA wages in real terms (after deflating with the CPIAL) was lower than the growth rate of per-capita GDP before the said notification, and turned *negative* after that. There was, thus, no serious basis for the fear of "wage inflation", even if substantial increases in real wages did occur in a few specific states (notably Rajasthan and Uttar Pradesh).

With this background, the Working Group essentially discussed three possible ways out of the current impasse:

**Option 1 ("State Minimum Wages")**: Revert to Section 6(2), i.e. pay minimum wages as set by State Governments (for agricultural labourers) under the Minimum Wages Act.

**Option 2 ("Rational Central Norm")**: Under this option, NREGA wages would continue to be fixed by the Central Government under Section 6(1), but (i) the central norm(s) would be indexed to the price level, and (ii) the central norm(s) would be based on a well-defined tripartite process (involving the Central Government, State Governments and representatives of workers' organizations) consistent with the spirit of the Minimum Wages Act.

**Option 3 ("Compromise Option")**: The Central Government would pay up to a national norm (indexed to the price level), fixed through a clear tripartite process. NREGA workers would earn the state minimum wage. And State Governments would pay the difference, if any. This formula would require an amendment of Sections 6 and 22 of NREGA.

Option 1 (reverting to Section 6(2)) is the simplest way out of the current impasse. Since the current situation is unacceptable, and possibly also illegal (see **Annexure 3**), the Working Group felt that the Central Government should *immediately revert to Section 6(2)*, as an emergency measure, until such time as a sustainable and legally tenable alternative option is found.

Whether Option 1 is the best course of action on a longer-term basis is not so clear. Possible objections include the risk of "wage inflation" (such as it may be), lack of equity across states (better-off states, with higher wages, would get more from the Central Government), and some possible arbitrariness in wage setting. The danger of wage inflation is perhaps not so serious, in the light of recent experience (see above), and also considering that there are "restraints" on arbitrary increases in minimum wages at the state level – including the countervailing influence of some farmers' organisations, and the fact that state governments

have to pay the minimum wage for work done under their own Departments. An issue remains about the possible lack of equity and rationality in the emerging pattern of minimum wages across states. Much depends on the process of minimum wage fixation at the state level.

The question remains whether there is any alternative to Option 1. The main problem with Option 2 ("Rational Central Norm") is to reconcile it with the Minimum Wages Act. If state-specific minimum wages are not to be undermined, then the central norm would have to be no lower than the highest minimum wage among all states, which sounds impractical. Alternatively, different norms could be set for different states or regions, all of them consistent with the state minimum wages. But this would not be very different from Option 1.

Option 3 ("Compromise Option") attempts to reconcile the idea of a minimum central norm (a "national floor wage") and compliance with state minimum wages: state governments would simply pay the difference, if any. From a common-sense point of view, this formula is quite attractive. However, it is doubtful whether it can be "imposed" on the states, bearing in mind the principles of fiscal federalism.[6] Thus, implementing Option 3 would require the cooperation of the state governments. Even if their consent can be secured, Sections 6 and 22 of NREGA would need to be amended for this Option to be permissible under the Act.

This is as far as the Working Group was able to go on this matter. Further thought, debate and advice are urgently required to resolve this complex issue. Meanwhile, we reiterate our recommendation that the Central Government should immediately revert to Section 6(2), to avert a crisis (including, possibly, legal complications). Along with this, it should urgently initiate a process of thorough examination of possible alternative longer-term wage policies for NREGA, consistent with the Minimum Wages Act. The longer the government waits, the more difficult it will be to resolve these issues.

## 5 Indexation of Wages

This item of the Terms of Reference has already been dealt. As explained earlier, our main recommendation is that NREGA wages should be immediately indexed to the Consumer Price Index for Agricultural Labourers, with 1 April 2009 as the base.

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[6] There is a view that this can actually be done, under Articles 256 and 258 of the Constitution. Further legal advice on this matter would be helpful.

# 6 Schedule of Rates

The NREGA allows for time-rate payment of wages as well as piece-rate payment. When workers work on a piece-rate basis, they are supposed to be paid according to the "Schedule of Rates". Further, Section 8 of Schedule I of the Act states:

> *The schedule of rates of wages for unskilled labourers shall be so fixed that a person working for seven hours would normally earn a wage equal to the wage rate.*[7]

The Working Group made an effort to collect Schedules of Rates from different states, so that they may be compared and assessed. We are sorry to report that this proved extremely difficult – the search was unsuccessful in most cases. It is only in a few cases of states directly represented on the Working Group that we were able to secure a copy of the Schedule of Rates. This inaccessibility and lack of transparency in Schedules of Rates is an important issue in its own right.

The Government of Uttar Pradesh (not generally known for exemplary implementation of NREGA) set a useful example by preparing a "pocket" edition of the Schedule of Rates – a small flyer with a reader-friendly version of the Schedule of Rates in the local language. Other states would do well to prepare similar material, and also to display their Schedules of Rates on the web.

Due to the non-availability of Schedules of Rates, the Working Group did not go into this issue in much detail. Nevertheless, a few broad recommendations were formulated, as follows.

## *Gender-specific Schedules of Rates*

The Working Group noted that some states have gender-specific Schedules of Rates, with different rates for men and women. In West Bengal, for instance, the daily norm for digging in "loose and soft soil to be excavated by spade" is 99 cft for men and 85 cft for women. There was no unanimity as to whether this was a desirable practice. On the one hand, it seems useful from the point of view of gender equity, considering that rural women are particularly exposed to undernourishment and ill health. On the other hand, the distinction may lead to some complication in record-keeping, particularly when men and women work in mixed "teams". Some members also pointed out that very little is actually known about productivity

[7] In this formulation, "wage rate" refers to the wage fixed under Section 6 of the Act. Note also that the length of the work day (seven hour) was later modified – see third "emergency recommendation".

differences between men and women. It was felt that while there was (to the best of our knowledge) nothing illegal or objectionable about gender-specific Schedules of Rates, it should be left to the states to decide whether they wish to introduce this practice.

*Separate Schedules of Rates for NREGA*

There was a brief discussion of the issue as to whether separate Schedules of Rates for NREGA should be allowed. The Working Group is not aware of any legal or other barriers in this regard. Since NREGA work tends to be of a distinct type, and to be performed by a distinct category of workers, there is a case for allowing separate Schedules of Rates.[8]

# 7 Timely Payment

The Working Group is deeply concerned about a wave of reports of prolonged delays in NREGA wage payments from all over the country. To the best of our knowledge, only a few states (including Andhra Pradesh and Tamil Nadu) are anywhere near routine payment of NREGA wages within fifteen days. In other states, delays of several months are common. In some cases, the delays persist for years, or worse, workers are not paid at all as the relevant records are not available.[9] This is a serious violation of workers' basic entitlements under the law.

Further, there is no evidence of this problem having been taken seriously by the Ministry of Rural Development. The primary responsibility for timely payments lies with the state governments. However, the Central Government can also play an important role in facilitating the timely payment of wages, in so far as it sets many important parameters of the implementation of NREGA. The Central Government should also take great care not to exacerbate the delays, e.g. by setting excessively complicated rules for the release of funds or imposing unnecessary conditionalities that may stand in the way of a smooth flow of funds.

As far as a diagnosis of the causes of these delays is concerned, we can do little better than to reproduce here a recent article by Dr. Reetika Khera on this issue (see **Annexure 4**). Briefly, the article points out that there are quite a few steps in the payment process: submission of Muster Roll, work measurement, preparation of Payment Order, issuing of cheque, crediting of workers' accounts, to mention a few. At every step, there is a possibility of "foot-dragging"

[8] One member also suggested that a provision should be made for adjustment in the NREGA Schedule of Rates when the temperature crosses pre-specified limits (of heat or cold).

[9] Extreme cases of this nature were encountered, for instance, in Khunti and Latehar Districts of Jharkhand. Some of them have already been referred to the Ministry of Rural Development.

on the part of responsible functionaries. Further, it appears that foot-dragging has intensified after the transition to wage payments through banks and post offices (instead of cash payments), because of the reduced possibility of "inducements". This may well be the real reason why delays have apparently shot up after the introduction of bank payments – rather than the frequently-cited but somewhat exaggerated problem of delays in banking procedures.

Aside from the overarching problem of foot-dragging, another important cause of delays (in some states at least) is the lack of technical staff for work measurement. On this, the Working Group felt that the best way forward was accelerated transition to the system of "trained mates", with mates performing some of the tasks otherwise expected of technical staff. In fact, ideally no piece-rate work should be done without adequate measurement arrangements being in place: imposing piece-rate without a guarantee of timely measurement would be a violation of workers' basic entitlements under the Act.

Turning to remedial action, the Working Group felt that the most important step was due recognition of the problem and a determination to put an end to foot-dragging. A few specific recommendations are presented below.

### *Tracking of Delays*

One reason for the persistence of delays in wage payments, and lack of remedial action, is that the delays are largely "invisible". Until recently, they did not show up at all in the Monitoring and Information System (MIS). There has been some improvement in this respect in recent months, with payment dates being included in the MIS. This can be of great help in tracking the extent of delays in different areas. However, the helpfulness of MIS tracking in reducing the delays depends a great deal on the authenticity and timeliness of this information.

There are reasons for concern in this regard. For instance, evidence was found of systematic tampering with dates in some districts, to hide the delays. To illustrate, in Lakhanpur Block (Surguja District), it was found that the data entry operators had been trained to "adjust" the dates to ensure that the delays are hidden. In some districts, MIS data are entered with a lag of several months, so that they are of little use in ensuring payment within 15 days.

Thus, further vigilance and improvements are required to ensure that work and payment dates are accurately entered in the MIS, in a timely manner.

### *Remedial Measures*

1. Every state must have clear timelines for each step of the wage payment process (as in Andhra Pradesh and Tamil Nadu), and fix responsibility for each step. The implementation of these timelines must be regularly reviewed.

2. Mates must be responsible for entering attendance details in the Job Card at the end of the week, so that workers have a proof of having worked (otherwise it can be very hard for them to claim their wages later). Job Cards should be designed accordingly.

3. Mates should make (and record) initial measurements, and if the measurements are not verified by technical personnel (Junior Engineer, Technical Assistant, etc.) within 15 days, payment should be made based on mate's measurements, or even attendance (as per Muster Rolls) if need be. Along with this, action should be taken against the responsible technical personnel.

4. The possibility of immediate "interim payments" at the end of the week (e.g. 50% or even 80% of the wages), based on mate's measurements or attendance, with the "balance" being paid later (after measurements are finalised), should also be considered.

5. The minimum mate:workers ratio should be raised from 1:50[10] to 1:25, to help mates with the effective accomplishment of their duties, including maintenance of Muster Rolls, Job Card entries and work measurement.

6. Wage slips must be distributed in public within 15 days, and follow all the transparency norms applicable earlier to cash payments (distribution in a public space, reading of Muster Rolls, updating of job cards, signing of receipts, etc.). Responsibility must be fixed for this. The possibility of "account payee cheques" may also be considered, as a variant of the "wage slip" system, provided that there is a facility for immediate withdrawal of wages at the bank/post office.

7. Every state must ensure that Programme Officers have up to date information on wages due at all times, and that this information is displayed on a special board at their office (aside from being entered in the MIS).

8. All states should have well-designed, numbered "Payment Order" forms, so that payment orders are smoothly and transparently prepared from the Muster Rolls. As far as possible, payment orders should be computer-generated from the Muster Rolls.

[10] Government of India (2008), page 31.

*Further Interventions*

Ineffective flow of funds is one of the major reasons for delays in wage payments. The funding arrangements don't seem to be in tune with the requirements of NREGA. Hence:

9. Arrangements for the flow of funds should be urgently reviewed by a separate expert group. All unnecessary barriers to the smooth flow of funds, including excessively complicated "planning" procedures and superfluous conditionalities, should be removed.[11]

Having said this, the most important remedial measure is the routine payment of compensation for delays in wage payments. This is the subject of the next Section.

# 8 Compensation for Delays

The Working Group unanimously felt that it was very important to activate Section 30 of Schedule II of the Act, whereby workers are entitled to compensation "as per the provisions of the Payment of Wages Act 1936" in the event of any delay in payment. It is a matter of deep concern that, with one or two exceptions (notably in Khunti District, Jharkhand), compensation has never been paid so far, even when the delays "show" in the official records. Realising the right to compensation is essential to ensure that delays "pinch" the government, and not just the workers.

The Working Group also felt that it was important for the government to acknowledge (and act on) its duty to compensate, pro-actively, without waiting for the courts to order compensation. The expression "as per the provisions of the Payment of Wages Act 1936" should be interpreted to mean that the compensation entitlements under NREGA are based on the norms set in that Act (on this see **Annexure 5**), <u>not</u> that compensation has to be claimed <u>under</u> the Payment of Wages Act, through the courts.

Further, aside from accepting the general responsibility of paying compensation (without waiting for court orders), the government should pro-actively pay compensation without even waiting for an application from the concerned workers. Ideally, there should be automatic,

[11] It was felt in particular that there was much scope for simplification of the planning process, as spelt out in the Operational Guidelines. The cumbersome nature of the planning process contributes to delays in wage payments, in so far as any failure to comply with the requirements can be invoked to delay the flow of funds.

full payment of compensation "as per the provisions of the Payment of Wages Act 1936)" (i.e. Rs 1,500 to Rs 3,000 per worker) as soon as there is any delay in payment. With the rapid computerization of wage payments, this is within the realm of possibility. Indeed, several states (including Andhra Pradesh and Chhattisgarh) are already generating automatic, computerized Payment Orders from the Muster Roll data entered in the MIS. There is no great difficulty, in principle, in adding an automatic compensation component to the wage payments, as and when applicable.

Given the endemic nature of the delays, full and automatic compensation at Payment of Wages Act (PWA) rates would be very costly – compensation could easily cost more than the wage payments themselves. But at the very least, some compensation should be paid pro-actively and automatically, along with clear acceptance of the duty to pay compensation at PWA rates whenever workers apply for it.

To sum up, the Working Group recommends the following system of "graduated compensation" (paid by state governments) with three different "levels":[12]

1. **Automatic compensation**: Wherever wage payments are computerized, they should include an automatic compensation component. The rate of compensation should be moderate to begin with, but rise sharply as the delays increase, so that there is a strong incentive to avoid long delays.
2. **Duty to compensate**: Whenever workers apply for compensation, and the delays "show" in official records (e.g. Muster Rolls and Payment Orders), compensation should promptly be paid as per the provisions of the Payment of Wages Act, without requiring the workers to go to court.
3. **Legal recourse**: As a last resort, workers always have the option of enforcing their legal right to compensation, by application to the competent authority (e.g. Assistant Labour Commissioner), or through the courts if need be.

In addition to this, it was also suggested that "interest" should automatically be paid on delayed wages, not as "compensation" (this would be highly inadequate) but as a matter of routine banking practice, aimed at preserving the real value of payments. Even this modest step would create an important incentive for governments to pay on time, at least in states

[12] It was pointed that, in cases where the Central Government is responsible for delays in wage payments (e.g. because funds are not released on time), it may not be fair to expect the state government to pay compensation. After much deliberation, it was suggested that in such cases, the state government could claim reimbursement of the compensation amounts from the Central Government. This, however, may require the creation of a National Ombudsman for NREGA, in case there is any dispute. This institution would, in any case, be quite useful, for the general purpose of arbitration in the event of any dispute (not necessarily related to wage payments) between the Central Government and state governments in the context of NREGA.

where the volume of payments is relatively large.

For any of this to happen, it is important for the Central and state governments to issue detailed orders on this matter, spelling out specific norms and procedures for the payment of compensation on a routine basis. The Working Group felt that it could be made the duty of the District Programme Coordinators to pay compensation under "level 2" above, at PWA rates (independent powers to sanction compensation could also be given to the NREGA Ombudsman at the district level). Automatic compensation under level 1 could be initiated in states where the computerization of records has reached an adequately advanced stage.

Another requirement of routine compensation is the creation of compensation funds. This could be done at the district level, if compensation is to be sanctioned by the District Programme Coordinator. In fact, the ambit of these funds could be broadened – they could also be used to pay unemployment allowance (where applicable), compensation for accidents, etc. Indeed, all these provisions are "dormant" at the moment. The creation of compensation funds, along with the requisite instructions, would help to activate them.[13]

Last but not least, taking a longer view, the Working Group felt that the payment of compensation under NREGA should not depend on cross-reference to a separate Act (the Payment of Wages Act) that was framed in a very different context. It would be best for compensation norms and procedures to be explicitly specified in NREGA itself. This would require an amendment of Schedule II, Section 30 of NREGA.

# 9 Financial Inclusion

Due to limited expertise on this issue, the Working Group did not attempt to formulate detailed recommendations on financial inclusion. The deliberations on this were limited to a few general observations and recommendations.

The Working Group felt that the transition to wage payments through banks and post offices (POs) had been a step forward in many ways, notably by enabling millions of people to open bank or post office accounts (something they would have found difficult to do earlier), and by making it much hard for corrupt middlemen to embezzle wage funds. However, the transition was too rushed, and caused much chaos in its initial stage.[14] Even today, there are serious problems associated with the system of wage payments through banks and post offices. These

[13] One member suggested that interest earned by the state governments on NREGA funds could be allocated to worker compensation funds. This suggestion seems worth pursuing.

[14] For further discussion, see Vanaik and Siddhartha (2008) and Adhikari and Bhatia (2010).

include:

1. Major inconvenience (including much spending of time and money in making frequent journeys to the bank/PO) for NREGA workers, in cases where there is no bank or post office within reasonable distance.

2. Work overload in banks and post offices, exacerbating the delays and inconvenience.

3. Poor maintenance of bank/PO passbooks, making it difficult for workers to keep track of their wages, and for social auditors to verify the payment details.

4. Poor record-keeping. For instance, many states still lack well-designed "Payment Orders" (sometimes Payment Orders are designed by hand on the spot).

5. The system of "wage slips", recommended in the NREGA Operational Guidelines, is non-functional (if it has been introduced at all) in many states.

It is also important to acknowledge that the payment of wages through banks and post offices is not a fool-proof protection against fraud. In areas with exploitative social relations, it is not uncommon for corrupt middlemen to control the bank/PO accounts of NREGA workers and use them to siphon off wage funds.[15] Even when NREGA workers operate their own accounts, bribes are sometimes extracted from them by bank or (especially) post office employees. While there is some evidence that NREGA workers are rapidly learning to avoid this sort of exploitation, the problem is far from resolved. Further, the entire system remains vulnerable to collusive arrangements whereby middlemen siphon off NREGA wage funds from bank accounts in collusion with workers, or fictitious workers. It is very important not to over-rely on bank/PO wage payments to avoid corruption, and to consolidate (or revive) other transparency safeguards such as the transparency of Muster Rolls, maintenance of Job Cards, activation of Vigilance Committees, social audits, etc.

Thus, much work remains to be done to consolidate and streamline the entire system of wage payments through banks and post offices. It is also important not to "disrupt" this consolidation phase through hasty introduction of new arrangements (see below). Among other steps required to streamline the system are:

1. Awareness drives to ensure that NREGA workers understand the system and are able to operate their own accounts without being exploited.

[15] For an illustration, see Drèze and Khera (2008).

2. Improved record-keeping, e.g. use of well-designed Payment Orders.

3. Accelerated transition to computerized generation of Payment Orders and Wage Slips from the Muster Rolls.

4. Capacity building (including computerization) in banks, and particularly in post offices, especially in remote areas.

5. Activation of the "wage slips" system in all states.

Aside from these general points, a few specific recommendations were formulated by the Working Group:

1. The Reserve Bank of India's "Know Your Customer" (KYC) guidelines should be strictly implemented and monitored when it comes to bank payments of NREGA wages – including prompt issue of passbooks and updating of passbook when wages are disbursed.

2. The possibility of paying a provisional commission of (say) 0.5% to Post Offices on NREGA wage payments, to help them upgrade their infrastructure, should be considered. However, it was felt that further advice on this was required.

3. The NREGA Guidelines should clearly indicate that separate individual accounts for men and women (and not joint accounts) should be the norm.

4. Until such time as the system of wage payments through banks and post offices is thoroughly streamlined, NREGA workers should be paid an "extra day" of wages every two weeks, to compensate them for the time and money spent in collecting their wages from banks or post offices.

*Caveat on the "Business Correspondent" Model*

It was noted that the Ministry of Rural Development seemed to rely heavily on, and place high hopes in, the "business correspondent model" as a means of reducing delays in wage payments. On this, the Working Group felt it important to express a word of caution, for the following reasons:

1. The business correspondent model may be valuable in its own right (especially in areas with poor banking and post-office facilities), but it is unlikely to be a "solution"

to the problem of delays in wage payments. This "solution" is based on the assumption that the main problem is the remoteness of banks and post offices from people's homes. There is no evidence, however, that this is the main issue.

2. The business correspondent model is still at an early experimental stage, even in states (such as Andhra Pradesh) that are best prepared for it.

3. While the business correspondent model may help to fight corruption, it is itself vulnerable to certain forms of corruption, such as extraction of "commissions" from gullible workers by unscrupulous correspondents.

This is not to dismiss the possible value of the business correspondent model. However, it is important to avoid hasty introduction of untested models as well as over-reliance on them to reduce delays or corruption.

Similar caution is required with related innovations such as the use of smart cards, biometric identification, etc., to facilitate wage payments. Some of these innovations are likely to be very valuable in due course, but they require careful experimentation, and one must always guard against undue reliance on them as well as against hasty transitions to new arrangements that may not be adequately tested. The hasty "switch" to bank (and post office) payments in mid-2008, which caused havoc for several months, was a sobering experience in this regard. Its lessons should not be forgotten.

## 10 Unresolved Issues

Before concluding, we place on record two sets of issues that were intermittently discussed by the Working Group but remained largely "unresolved" and call for further deliberation.

1. *"Fair and equitable wages"*: According to the Terms of Reference, the Working Group was expected to shed light on this issue. Annexure 3 includes a brief discussion of the distinctions between "minimum wage", "fair wage" and "living wage". However, the Working Group's deliberations were largely confined to the first step - guaranteed minimum wages. One way of ensuring that the determination of minimum wages for NREGA includes considerations of fairness and equity is to require that it be based on a transparent tripartite process, as discussed in Section 3.

(a) *Measurement-related issues*: Work measurement under the piece-rate system raises a range of issues that were not part of the Working Group's terms of reference, but were

nevertheless difficult to separate from our main concerns, e.g. for guaranteed minimum wages and timely wage payments. Some of these issues are as follows: (a) Interpretation and enforcement of minimum wages under the piece-rate system; (b) Implications of Section 6 of Schedule I of NREGA ("Under no circumstances shall the labourers be paid less than the wage rate")[16] under the piece-rate system; (c) Abuses of power on the part of Junior Engineers and other technical staff; (d) Reconciliation of mate's measurements with engineer's measurements; (e) Challenges of timely payment under the piece-rate system. Some Working Group members felt that the piece-rate system itself is objectionable as long as these issues are unresolved.

[16] In this sentence, "wage rate" should be understood as it is defined in the Act, i.e. as the wage rate determined under Section 6 of NREGA.

# 11 Summary of Recommendations

The main recommendations are summarized below, starting with the three "emergency recommendations" discussed in Section 3, followed by thematic recommendations under each heading of the Terms of References.

**Emergency Recommendations**

**R1.** NREGA wages should be immediately indexed to the price level, using the Consumer Price Index for Agricultural Labourers (CPIAL), with 1 April 2009 as the "base", so that the real value of the wage is at least Rs 100 per day at April 2009 prices. As long as NREGA wage rates are set by the Central Government, they should be promptly revised upwards every six months – or at most every twelve months - in line with the CPIAL. (States that had wages notified at more than Rs 100/day at the time of the 1 January 2009 notification should have their wages indexed with their notified wage as a base.)

**R2.** NREGA policy must be consistent with the Minimum Wages Act. In no circumstances should this Act be overridden.

**R3.** Para 8(1) of Schedule I of NREGA ("The Schedule of Rates of wages for various unskilled labourers should be so fixed that an adult person working for nine hours would normally earn a wage equal to the wage rate") should be amended so that the words "nine hours" are replaced with "seven hours".

**Thematic Recommendations**

**(i) Indexing methods for arriving at a real wage of Rs. 100**

**R4.** NREGA wages should be immediately indexed to the CPIAL, with 1 April 2009 as the "base" (see first "emergency recommendation").

**(ii) Schedule of Rates and Work Time Motion Studies**

**R5.** Reader-friendly summaries of the Schedule of Rates should be prepared in all states and widely disseminated.

**R6.** The Schedules of Rates of different states (all states) should be conveniently available on their NREGA websites.

**R7.** A comparative study of all SoRs should be undertaken at the earliest.

**R8.** Separate Schedules of Rates for NREGA (distinct from those used, say, by line departments) should be allowed.

**(iii) Timely wage disbursements and institutional/agency ( administrative and financial) responsibilities towards this end.**

**R9.** Every state must have clear timelines for each step of the wage payment process (as in Andhra Pradesh and Tamil Nadu), and fix responsibility for each step. The implementation of these timelines must be regularly reviewed.

**R10.** The authenticity and timeliness of MIS data on delays in wage payments must be rigorously monitored. No "adjustments" in the work dates or work payment dates should be tolerated.

**R11.** Mates must be responsible for entering attendance details in the Job Card at the end of the week, so that workers have a proof of having worked (otherwise it can be very hard for them to claim their wages later). Job Cards should be designed accordingly.

**R12.** Mates should make (and record) initial measurements, and if the measurements are not verified by technical personnel (Junior Engineer, Technical Assistant, etc.) within 15 days, payment should be made based on mate's measurements, or even attendance (as per Muster Rolls) if need be. Along with this, action should be taken against the responsible technical personnel.

**R13.** The possibility of immediate "interim payments" at the end of the week (e.g. 50% or even 80% of the wages), based on mate's measurements or attendance, with the "balance" being paid later (after measurements are made), should also be considered.

**R14.** The minimum mate:workers ratio should be raised from 1:50 to 1:25, to help mates with the effective accomplishment of their duties, including maintenance of Muster Rolls, Job Card entries and work measurement.

**R15.** Wage slips must be distributed in public within 15 days, and follow all the transparency norms applicable earlier to cash payments (distribution in a public space,

reading of Muster Rolls, updating of job cards, signing of receipts, etc.). Responsibility must be fixed for this. The possibility of "account payee cheques" may also be considered, as a variant of the "wage slip" system, provided that there is a facility for immediate withdrawal of wages at the bank/post office.

**R16.** Every state must ensure that Programme Officers have up to date information on wages due at all times, and that this information is displayed on a special board at their office (aside from being entered in the MIS).

**R17.** All states should have well-designed, numbered "Payment Order" forms, so that payment orders are smoothly and transparently prepared from the Muster Rolls. As far as possible, payment orders should be computer-generated from the Muster Rolls.

**R18.** Arrangements for the flow of funds should be urgently reviewed by a separate expert group. All unnecessary barriers to the smooth flow of funds, including excessively complicated "planning" procedures and superfluous conditionalities, should be removed.

**(iv) Compensation for delayed payments**

**R19.** State governments should immediately notify the "competent authority" for payment of compensation under the Payment of Wages Act, in cases where this has not been done already.

**R20.** Every state should create "NREGA workers' compensation funds" (preferably at the District level), for payment of compensation in the event of delays in wage payments, and also for payment of unemployment allowance, compensation for accident, etc.

**R21.** Every state should put in place specific, mandatory procedures for pro-active payment of compensation in the event of delays in wage payments. Generally, powers to sanction compensation should be given to the District Programme Coordinator, and also to the District NREGA Ombudsman.

**R22.** Compensation for delays should be payable in three different ways:

1. **Automatic compensation**: Wherever wage payments are computerized, they should include an automatic compensation component. The rate of compensation should be moderate to begin with, but rise sharply as the delays

increase, so that there is a strong incentive to avoid long delays.

2. **Duty to compensate**: Whenever workers apply for compensation, and the delays "show" in official records (e.g. Muster Rolls and Payment Orders), compensation should promptly be paid as per the provisions of the Payment of Wages Act, without requiring the workers to go to court.
3. **Legal recourse**: As a last resort, workers always have the option of enforcing their legal right to compensation, by application to the competent authority (e.g. Assistant Labour Commissioner), or through the courts if need be.

**R23.** Interest should automatically be paid on delayed wages, not as "compensation" but as a matter of routine banking practice, aimed at preserving the real value of payments.

**R24.** Section 30 of Schedule II of NREGA should be amended, so that the norms and procedures for compensation of NREGA workers in the event of delays in wage payments are "sui generis", instead of depending on the Payment of Wages Act for this purpose.

**R25.** Aside from paying compensation, there should be strict sanctions (including, at the very least, a penalty of Rs 1,000 under Section 25 of NREGA, and also penal proceedings if necessary) against persons responsible for delays in wage payments, whenever responsibility can be fixed. There should also be an automatic penalty on the Programme Officer, who has an overarching responsibility for the timely payment of wages under Section 15(5)(c) of the Act.

### (v) Financial inclusion

**R26.** The Reserve Bank of India's "Know Your Customer" (KYC) guidelines should be strictly implemented and monitored when it comes to bank payments of NREGA wages – including prompt issue of passbooks and updating of passbook when wages are disbursed.

**R27.** The possibility of paying a provisional commission of (say) 0.5% to Post Offices on NREGA wage payments, to help them upgrade their infrastructure, should be considered. However, it was felt that further advice on this was required.

**R28.** The NREGA Guidelines should clearly indicate that separate individual accounts for men and women (and not joint accounts) should be the norm.

**R29.** Until such time as the system of wage payments through banks and post offices is thoroughly streamlined, NREGA workers should be paid an "extra day" of wages every two weeks, to compensate them for the time and money spent in collecting their wages from banks or post offices.

**R30.** Caution should be exercised in switching to new payment systems and technologies such as the Business Correspondent model, use of biometrics, smart cards, etc. New arrangements should be introduced gradually, starting with areas that are in a better state of preparedness, and after thorough testing and evaluation of the proposed arrangements.

**(vi) Other recommendations (last but not least!)**

**R31.** The Central Government should urgently initiate a process of further examination of possible alternative wage policies for NREGA, consistent with the Minimum Wages Act.

**R32.** Meanwhile, the Central Government should immediately revert to Section 6(2) (instead of Section 6(1)) of NREGA as a basis for the fixation of wages.

# 12 Concluding Remarks

We end by reiterating our deep concern about the "crisis of wage policy", and related problems connected with the payment of NREGA wages, especially the persistence of endemic delays in wage payments. We hope that this report has helped to clarify the issues, and to identify possible action points. However, it should be considered as a beginning, and not the end, of a thorough review of these matters. A great deal of further work is required to resolve the current crisis, and to ensure that the entitlements of NREGA workers are adequately protected. Perhaps there is a temptation to "stay the course" and hope for the best. But as mentioned earlier, the longer the government waits, the more difficult it will be to resolve these issues.

## TABLE 1
## NREGA: Average Wage Cost per Day

| State | Average Wage Cost per Day (Rs) | | | | Annual growth rate (%)[a] | | | |
|---|---|---|---|---|---|---|---|---|
| | 2006-7 | 2007-8 | 2008-9 | 2009-10 | 2006-7 to 2008-9 | | 2006-7 to 2009-10 | |
| | | | | | Money wages | Real wages | Money wages | Real wages |
| Andhra Pradesh | 86.0 | 83.0 | 82.5 | 92.0 | -2.1 | -10.5 | 2.0 | -7.8 |
| Assam | 66.4 | 73.3 | 77.1 | 87.0 | 7.4 | -1.0 | 8.5 | -1.1 |
| Bihar | 70.1 | 79.9 | 85.1 | 97.5 | 9.6 | 1.2 | 10.5 | 0.8 |
| Chhattisgarh | 62.4 | 68.4 | 85 | 82.2 | 15.5 | 7.0 | 10.4 | 0.7 |
| Gujarat | 55.5 | 64.2 | 67.7 | 89.3 | 9.9 | 1.5 | 15.0 | 5.0 |
| Haryana | 96.5 | 124.2 | 119.7 | 151.0 | 10.7 | 2.3 | 13.0 | 3.3 |
| Himachal Pradesh | 68.8 | 75.4 | 74.1 | 109.5 | 3.7 | -4.7 | 14.0 | 4.0 |
| Karnataka | 66.5 | 72.3 | 81.0 | 89.1 | 9.8 | 1.3 | 9.9 | 0.2 |
| Kerala | 120.8 | 117.5 | 120.0 | 128.7 | -0.3 | -8.7 | 2.0 | -7.6 |
| Madhya Pradesh | 59.1 | 63.5 | 73.2 | 83.7 | 10.6 | 2.1 | 12.0 | 2.1 |
| Maharashtra | 103.7 | 89.7 | 74.7 | 94.2 | -16.4 | -24.8 | -4.7 | -14.4 |
| Orissa | 52.7 | 77.0 | 69.3 | 106.0 | 13.6 | 5.1 | 19.8 | 10.1 |
| Punjab | 94.0 | 101.3 | 110.6 | 123.5 | 8.1 | -0.3 | 9.0 | -0.6 |
| Rajasthan | 50.7 | 58.6 | 88.3 | 87.4 | 27.6 | 19.2 | 20.4 | 10.6 |
| Tamil Nadu | 80.0 | 77.3 | 79.7 | 71.6 | -0.2 | -8.6 | -3.0 | -12.7 |
| Uttar Pradesh | 56.1 | 92.6 | 103.1 | 99.5 | 30.3 | 21.9 | 18.2 | 8.5 |
| Uttarakhand | 72.4 | 73.8 | 84.6 | 99.0 | 7.7 | -0.7 | 10.7 | 0.1 |
| West Bengal | 70.0 | 79.0 | 78.2 | 90.3 | 5.5 | -2.9 | 7.5 | -2.1 |
| INDIA[b] | 63.4 | 74.2 | 84.3 | 90.2 | 14.2 | 5.8 | 11.8 | 2.1 |

[a] Based on semi-log regression of wage rate on time. "Real wages" are based on deflating money wages with the all-India CPIAL.

[b] Weighted average of state figures (with total person-days of NREGA employment as weights).

Source: Calculated from official ("Monthly Progress Reports") data posted at www.nrega.nic.in; "wage cost per day" refers NREGA expenditure on unskilled labour.

**TABLE 2**
**Summary: All-India Figures**

| | 2006-7 | 2007-8 | 2008-9 | 2009-10 |
|---|---|---|---|---|
| Average wage cost per day at current prices (Rs) | 63.4 | 74.2 | 84.3 | 90.2 |
| Growth rate over previous year (%) | - | 17.0 | 13.6 | 7.0 |
| CPIAL (base 1986-7)[a] | 380 | 409 | 450 | 505[b] |
| CPIAL (base 2006-7) | 100.0 | 107.6 | 118.4 | 133.9 |
| Average wage cost per day at 2006-7 prices (Rs) | 63.4 | 68.9 | 71.2 | 67.4 |
| Growth rate over previous year (%) | - | 8.7 | 3.3 | -5.5 |
| Growth rate of real per-capita GDP over previous year[c] (%) | 7.9 | 8.1 | 3.7 | 5.3 |

[a] Source: *Economic Survey 2009-10*. Unweighted average of months for each year.

[b] Unweighted average of months from April to December.

[c] Per capita GDP at 2004-05 prices (*Economic Survey 2009-10*, Table 1.3, page 5).

Source: Calculated from Table 1 and *Economic Survey 2009-10* data.

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# Annexure 1: Terms of Reference*

**A: Issues to be addressed**

(vii) Indexing methods for arriving at a real wage of Rs. 100

(viii) Schedule of Rates and Work Time Motion Studies

(ix) Timely wage disbursements and institutional/agency ( administrative and financial) responsibilities towards this end.

(x) Compensation for delayed payments

(xi) Financial inclusion

**B. Measures identified should aim at**

(i) Ensuring conformity to Mahatma Gandhi NREGA and Operational Guidelines
(ii) Fair and equitable wages
(iii) Wage payment within 15 days, else compensation
(iv)Better use of ICT
(v) Transparency in processes

* Extract from Order No. J-11011/2/2010-MGNREGA of the Ministry of Rural Development, dated 4 March 2010 (available at www.nrega.nic.in).

# Annexure 2: List of Members and Contributors

## 1. Members of the Working Group[17]

Jean Drèze (Allahabad University) [Chairperson]

Nikhil Dey (Mazdoor Kisan Shakti Sangathan)

Annie Raja (National Federeation of Indian Women)

M.M. Rehman (V.V. Giri National Labour Institute, NOIDA)

S.M. Vijayanand (Principal Secretary, LSG Department, Government of Kerala; representative from Government of Kerala)

Sanjiv Kumar (Commissioner, Rural Development, Government of Uttar Pradesh; representative from Government of Uttar Pradesh)

Sekher Sengupta (Joint Secretary, Panchayath & RD, Government of West Bengal; representative from Government of West Bengal)

Harcharan Singh (Deputy Director General, Ministry of Labour, New Delhi; representative from Ministry of Labour)

## 2. Special Invitees

First meeting: Dr. Ashok Pankaj (Institute for Human Development, New Delhi); Ms. Rukmini Tankha (Institute for Human Development); Dr. Joseph Abraham (National Institute of Rural Development).

Second meeting: Dr. Reetika Khera (Indian Statistical Institute); Prof. B.T. Kaul (Faculty of Law, Delhi University); Dr. Kingshuk Sarkar (National Institute of Rural Development); Dr. Joseph Abraham (National Institute of Rural Development).

Third meeting: Siddhartha (National Judicial Academy, Bhopal); Prof. B.T. Kaul (Faculty of Law, Delhi University); Dr. Joseph Abraham (National Institute of Rural Development).

## 3. Special Advisors

Dr. Kamala Sankaran (Faculty of Law, Delhi University).

Ms. Indira Jaising (Additional Solicitor General).

Ms. Surabhi Chopra (eminent Lawyer).

[17] No nomination was received from the Ministry of Statistics and Programme Implementation.

# Annexure 3: NREGA and the Minimum Wages Act (Legal Opinion)

We sought a legal opinion from Ms. Indira Jaising, Additional Solicitor General, on the validity of Section 6(1), the permissibility of overriding the Minimum Wages Act, and related matters. Her legal opinion, received on 9 July 2010, is reproduced below without change:

1. My opinion has been asked on the question, what should be the wages paid to the workers who are given guaranteed work under the National Rural Employment Guarantee Act, 2005 (hereinafter called, 'The Act' for short). In order to answer the question it is necessary to glance at the objects and reasons of the Act. In brief the object is to provide:

    a) minimum days of employment

    b) secure waged employment

    c) enhancing livelihood security to the poor.

2. The question that has arisen for consideration is what should be the rate of wages paid by the Central Government to such guaranteed work. The matter is governed by section 6 of the Act.

> **6. Wage rate**.—(1) Notwithstanding anything contained in the Minimum Wages Act, 1948, the Central Government may, by notification, specify the wage rate for the purposes of this Act :
>
> Provided that different rates of wages may be specified for different areas :
>
> Provided further that the wage rate specified from time to time under any such notification shall not be at a rate less than sixty rupees per day.
>
> (2) Until such time as a wage rate is fixed by the Central Government in respect of any area in a State, the minimum wage fixed by the State Government under Section 3 of the Minimum Wages Act, 1948 for agricultural labourers, shall be considered as the wage rate applicable to that area.

3. The said section provides for two distinct methods for fixing the wages. Sub Section

(1) of section 6 empowers the Central Government to notify the wage rate. This power is given notwithstanding anything contained in the Minimum Wages Act, 1948. At the first glance, this may lead to the impression that the wage noted under subsection (1) above may or may not be a minimum wage fixed under the Minimum Wages Act. However, on closer examination, this view may not be correct as will be, hereinafter, discussed.

4. The second method of determination of the wages is under sub-section (2) to the effect that until such time as a wage rate is fixed by the Central Government in respect of any area in a State, the minimum wage fixed by the State Government under Section 3 of the Minimum Wages Act, 1948 (11 of 1948) for agricultural labourers, shall be considered as the wage rate applicable to that area.

5. After the enactment of the law, the wages were paid at the rate of minimum wage as fixed by the State Government under Section 3 of the Minimum Wages Act, 1948 (11 of 1948) for agricultural labourers. It may be noted that minimum wages vary from state to state. The highest rate appears to be in Kerala. Delhi Government has also fixed the minimum wage rate of Rs. 203 for unskilled agricultural workman, Rs. 225 for semi-skilled agricultural workman and Rs. 245 for skilled agricultural workman with effect from 1.2.2010.

6. Presently, wages have been notified under sub-section (1) of section 6 of the Act to be Rs. 100 per day. The effect of this fixation is that the minimum wages under sub-section (2) of Section 6 will cease to apply and all the workmen under the National Rural Employment Guarantee Act, 2005 will be paid only Rs. 100 per day.

7. My opinion has been sought on the question whether this fixation of wage is lawful and constitutional. Reliance is placed upon the expression "Notwithstanding anything contained in the Minimum Wages Act, 1948" to fix a rate that is almost half of the minimum wage under sub section (2) of Section 6.

8. In order the answer the question, it is necessary to examine the very concept of minimum wage. From as far back in 1947, it has been recognized that minimum wage is a need based and should ensure the minimum needs of the workman. Minimum wages are distinguished from fair and living wages. Whereas minimum wages are meant to provide for bare subsistence, 'living wages' represent a standard of living and not merely bare physical subsistence for living (recommendation of Committee on fair wages).

9. In Kamani Metals and Alloys v. Their workmen (1967) II LLJ 55 SC it was observed:

> "Broadly speaking, the first principle is that there is a minimum wage which, in any event must be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity. The second principle is that wages must be fair, that is to say, sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to the workmen but not at a rate exceeding his wage earning capacity in the class of establishment to which he belongs. A fair wage is thus related to the earning capacity and the workload. It must, however, be realised that "fair wage" is not "living wage" by which is meant a wage which is sufficient to provide not only the essentials above mentioned but a fair measure of frugal comfort with an ability to provide for old age and evil days. Fair wage lies between the minimum wage, which must be paid in any event, and the living wage, which is the goal."

10. Article 23 of the Constitution of India reads as under:

> **23. Prohibition of traffic in human beings and forced labour.**—(1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
>
> (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

11. In People's Union for Democratic Rights Vs. Union of India (1982) 3 SCC 235, the question was whether workmen employed by the Union of India on wages lower than the minimum wages could be said to be forced labour. While deciding the issue the court held:

> "It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration, which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is

paid less than what he is entitled under law to receive. What Article 23 prohibits is 'forced labour' that is labour or service which a person is forced to provide and 'force' which would make such labour or service 'forced labour' may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force', it would we 'forced labour'. Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour.' There is no reason why the word 'forced' should be read in a narrow and restricted manner so as to be confined only to physical or legal 'force' particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and every one shall have the right to work, to education and to adequate means of livelihood."

12. It is, therefore, clear that the minimum wages are the lowest possible wage at which a workman can be employed by any employer private or public. I may mention that the word 'employment' must not mean employment of a formal nature under the contract of employment but has reference to the performance of services as labour for a given wage, whether on a daily basis or on a casual basis or on a contractual basis (as in the contract labour) or under any scheme relating to unemployment relief or any relief work like a famine related work.

13. In Sanjit Roy Vs. State of Rajasthan (1983) 1 SCC 525, Justice Bhagwati relying on People's Union for Democratic Rights Vs. Union of India (1982) 3 SCC 235 it was held:

"I must, therefore hold consistently with this decision that where a person provides

labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the meaning of the words 'forced labour' and attracts the condemnation of Article 23. Every person who provides labour or service to another is entitled at the least to the minimum wage and if anything less than the minimum wage is paid to him, he can complain of violation of his fundamental right under Article 23 and ask the Court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated.

If this be the correct position in law, it is difficult to see how the constitutional validity of the Exemption Act in so far as it excludes the applicability of the Minimum wages Act 1948 to the workmen employed in famine relief works can be sustained. Article 23, as pointed out above, mandates that no person shall be required or permitted to provide labour or service to another on payment of anything less than the minimum wage and if the Exemption Act, by excluding the applicability of the Minimum Wages Act 1948, provides that minimum wage may not be paid to a workman employed in any famine relief work, it would be clearly violative of Article 23."

14. Sub-section (1) of Section 6 needs to be considered in the light of these decisions. So read, it should be clear that the expression "Notwithstanding anything contained in the Minimum Wages Act, 1948" cannot permit the Central Government to fix a wage below the minimum wage in the state in question for to do so would be a clear violation of Article 23 of the Constitution of India. Even otherwise, both the subsections must be read harmoniously with each other. Both the subsections cover the same field, namely, payment of wages for employment under the Act.

15. While it is clear that sub-section (2) mandates the payment of the minimum wages fixed by the Central Government at the rate of the minimum wages fixed by the State Government. Although, on a bare reading, it appears that both the subsections operate in a mutually exclusive field and subsection (2) will cease to operate once subsection (1) comes into play. However, the fixation of rate of wage by the Central Government cannot be oblivious of the benchmark prescribed under subsection (2) of Section 6 of the Act. The rate at which wages are to be paid under subsection (1) can only be analogous to the rate at which wages are fixed under sub-section 2. The work given to be performed whether paid for under either subsection is identical. The Central Government cannot be left with the arbitrary choice of deciding whether to pay under sub-section (2) or to pay under subsection (1) of section 6. Regardless of the subsection under which wage is fixed, there must be a parity in the quantum of payment under both the abovesaid sub-sections.

16. Hence, in my opinion, the fact that the payment is made with the object of providing guaranteed work to the unemployed is irrelevant to the question what should be the rate at which wages are to be paid. In other words, a possible argument that since the person seeking employment was unemployed and the payment is a measure of social welfare cannot justify payment of wages below minimum wage.

17. Capacity to pay is not relevant while fixing minimum wages. So long as the employment is the "waged employment" as quoted in the statement of objects and reasons of the Act wage has to be paid at the rate of minimum wages. It is irrelevant, whether such employment is in a relief work, under National Rural Employment Guarantee Act, casual work, contract work. It is equally irrelevant whether the payment is made monthly, weekly or daily. It is equally irrelevant whether rate is a time rate or piece rate. The non obstante clause in subsection (1) of section 6 by itself will not enable the Central Government to fix a wage at a rate lower than what is provided under the Minimum Wages Act. The payment of wage below minimum wage would amount to forced labour.

## Annexure 4: On Delays in Wage Payments

In connection with the issue of delays in NREGA wage payments (see particularly Section 7), we reproduce below the full text of an insightful article by Dr. Reetika Khera (Indian Statistical Institute, New Delhi), published in *Frontline* on 21 May 2010:

### Wages of Delay

When the National Rural Employment Guarantee Act was enacted in 2005, it was celebrated as a "people's act". It was an act that focussed on labourers' rights - to employment, minimum wages and timely payments. Besides the involvement of people's groups in its drafting, the transparency provisions therein and so on earned the NREGA this tag.

For over a year now, serious delays in the payment of NREGA wages have been recorded across the country. Apart from violating the law (the act stipulates that wages be paid within 15 days of work being done), delays cause great hardship to NREGA labourers. When wages are delayed, they are forced to resort to lower-paid or exploitative employment, and even distress migration. The delays have diminished the interest of labourers in the Act, so much so that this people's act faces the danger of those very people turning against the NREGA.

For instance, in May 2009, labourers in Khunti (Jharkhand) who had not been paid for up to six months, insisted on earlier dues being cleared before taking on more NREGA work. More recently in February 2010, in Banswara (south Rajasthan), I noticed that the highway to Gujarat was dotted with migrant labourers. One of them was Amro Jitra Garasiya (Satra Khuta Panchayat), who had not been paid for afforestation work done exactly 12 months ago! Now, he said, he was not sure if he would be paid at all. He did not want to "risk" NREGA work any more.

Such complaints - lack of work, delays in payments and labourers turning against NREGA - have been pouring in from several states, including Chhattisgarh, Gujarat, Jharkhand, Madhya Pradesh, Rajasthan, Uttar Pradesh and West Bengal. This note is based on field visits to these states.

**Fallout of payments through banks and post offices?**

What has caused these delays? In 2008, the Centre had directed that all NREGA wages be

paid through banks and post offices. This move was motivated by the need to separate the implementing agency from the payment agency. This separation, it was hoped, would end the embezzlement of NREGA wages. The administration is quick to blame banks and post offices for the delays. Government officials often claim that they do their work in a timely manner, but that banks and post offices are unable to cope with the volume of payments.

It is true that the transition from cash to payments through accounts created a "jam", as banks and post offices were overburdened with the opening of thousands of accounts in each branch. In the case of banks, that initial hurdle seems to have been largely overcome, though the opening of accounts remains incomplete. Where the account opening process is complete and banks are computerized, they are able to cope with NREGA payments reasonably efficiently. Generally, banks do not take more than 2-3 days to credit wages into the accounts of labourers after they receive the cheque from the administration.

The case of post offices is different. Take, for instance, Surguja District (Chattisgarh) where they rely on post offices because there are hardly any rural banks. In one Block, the post office had only one employee who was responsible for opening and operating thousands of NREGA accounts. All the work is done manually, as there are no computers. In addition, the post master complained that account opening formalities remained incomplete because he did not have enough passbooks (its supply had been delayed by the district for months)! Similar problems have been reported wherever post offices are being used for NREGA payments, including Rajasthan and Jharkhand.

**Sources of delays**

There are, however, several steps in the wage payment process. Once work is complete, Muster Rolls (MRs) have to be submitted to the implementing agency. The next step is the measurement of work, since most states pay wages on the basis of work done, not on attendance alone ("daily wage"). After this payment orders (POs), listing the labourers and the wages due to them, are prepared. These payments have to be sanctioned by concerned officials (e.g. Block Development Officer, sarpanch, junior engineer, etc.). Then, the cheques and payment orders are sent to the bank or post office so that wages can be credited into the accounts of individual labourers. Delays are creeping in at some, or all, of those steps.

On tracking the payment process, one finds that there are several other sources of delays. Often the delay occurs *before* the cheques reach the bank/post office. After the POs have been generated, the signatures of the sanctioning authority take time. An important reason behind this foot-dragging is that the separation of the payment and implementing agency has made embezzling NREGA wages very difficult. Even if the implementing agency inflates

measurements and attendance on MRs, they can no longer embezzle that money as it goes directly into the accounts of the labourers. In order to cheat, they would either have to collude with labourers, or illegally operate the labourer's bank accounts, or forcibly extract wages from labourers after they withdraw the money. This "loss" seems to have affected the motivation of concerned officials. This is *indirect* way in which payments through accounts has led to delays.

In the present system, where payments are made on the basis of measurements rather than attendance alone, the Junior Engineer (JE) exercises a lot of power. Attendance has to be reconciled with measurement before payments are processed. Though the law requires it, in many states, MRs are not maintained at the worksite. Notable exceptions are Andhra Pradesh, Rajasthan and Tamil Nadu. In other states, the practice that has evolved is to maintain "kachha" attendance and measurement records, which are faired out later on official MRs, after the JE approves informal measurements maintained by the worksite supervisors.

However, delays have also emerged in Rajasthan where strict enforcement of transparency measures had had a noticeable impact on reducing corruption, at least in the labour expenditure. If the loss of opportunities for embezzling wages were the only cause of delays, then bank payments would not have affected Rajasthan. Here, it seems that apart from post offices causing delays, another issue is the scale of employment. During the peak season, up to 2000 workers are known to report for work. When all workers show up for payments at the bank or post office, even computerized banks find it hard to cope with the crowds.

"Flow of funds" is another important source of delays. This is especially true in states like Bihar, Jharkhand and Karnataka. It is not clear is whether this is due to poor planning by the district administration (e.g., delaying demand for funds, low standards of record-keeping) and/or due to Centre-State politics whereby funds are withheld or delayed by the Centre (e.g., incomplete reports being submitted by the state, frequent changes in the norms for release of funds). Recently in Bihar, I was told that funds are transferred just before the close of the financial year. This shows up as a large opening balance and becomes an excuse for holding up further release.

Record-keeping requirements of the NREGA also put a strain on the system. After the MRs, the POs have to be generated. Many states do not use a printed format for the POs. NREGA staff, often already overstretched and untrained, prepare these formats manually (including wasting their time drawing rows and columns) each week, slowing things down and also leading to errors. Ideally, this process should be computerized. At the very least printed formats should be provided.

Finally, it is worth mentioning that distance, though an *inconvenience*, has rarely been mentioned as the source of delay. Therefore, the ministry's technological solution of a "business correspondent model" (whereby an intermediary will withdraw wages from the bank or post office and deliver wages at the doorstep of labourers) cannot go very far in dealing with delays. The use of the biometrics machine (used in AP post offices) can help in cases where the volume is very high. However, wherever this model is introduced, adequate safeguards must be put in place to ensure that business correspondents do not demand an "informal fee" from labourers in exchange for the service they provide.

**What can be done about these delays?**

No significant delays have been reported in Andhra Pradesh and Tamil Nadu though the scale of NREGA employment is substantial. In Andhra Pradesh, computerization of the payment process has helped to ensure timely payments. One reason for timely payments in Tamil Nadu is that it continues to pay wages in cash in spite of the Central government's order on payments through accounts. The state has done this as it was felt that the transition to payments through accounts would cause labourers a lot of inconvenience. What other lessons can we learn from these states?

Both states have streamlined the process of wage payments, by putting in place a weekly schedule. There is a deadline for each step in the payment process (submission of MRs, measurement, sanctioning of payments, disbursal of wages). This weekly schedule is accompanied with intensive monitoring, e.g., MIS tracking of which step in the process has been delayed and setting up alerts to deal with them. Apart from this, both states have appointed additional staff, especially technical staff, to ensure timely measurement of NREGA works. Each person involved in the payment process seems to be aware of the schedule and faces pressure to meet deadlines. For instance, in Dindigul District (Tamil Nadu), the data entry operator in Shanarpatti Block told me that if the NREGA website (www.nrega.nic.in) reports any delays in wage payments for Tamil Nadu, it had to be on account of a data entry error. "In all of Tamil Nadu, wages are paid on Tuesdays", he confidently declared. This suggests the need for a transparent system to track the payment process and to fix responsibility for delays at each step.

Going beyond Andhra Pradesh and Tamil Nadu, it is essential to go back to the basics, including the maintenance of MRs at the worksite and regular updating of job cards, so that labourers have official evidence of the dates on which work was done. The present "dual record-keeping" system (whereby "kachha" records are faired out only after measurements are passed by the JE), makes it vulnerable to delays and corruption.

Strict measures must be taken to ensure greater accountability of the implementing bodies towards labourers. There are provisions in the NREGA that can be activated. For instance, the penalty clause (Section 25, NREGA) which allows for a fine of up to Rs. 1000 when any officer fails to do his/her duty should apply automatically in cases of delays that exceed 15 days. This measure would go a long way in ensuring accountability of officials. In places where payments are being held up due to delays in measurement by the JE, states could consider paying labourers on daily wage basis (at least as a short term measure until adequate staff is appointed).

Further, Schedule II of the NREGA mandates that labourers be compensated for delays in accordance with the provisions of the Payment of Wages Act, 1936. As far as we are aware, this has been used only once when 265 workers were paid Rs. 2000 as compensation in Khunti District, Jharkhand in May 2009. (There is some evidence that there has been some improvement in Khunti where wages are now paid within one month.)

Other longer term measures would include upgrading post offices, increasing staff in rural post offices, providing stationery and computerized facilities so that they are better equipped to deal with the workload.

For a government that believes that NREGA played an important role in its re-election in 2009, such delays cannot be ignored. Indeed, when the Prime Minister, Dr. Manmohan Singh and UPA Chairperson, Ms Sonia Gandhi spoke at this year's NREGA Sammelan on 2 February, they noted that delays in payments presented one of the most serious challenges in the implementation of NREGA. The Ministry of Rural Development should focus on the electoral promises made in the Congress manifesto where it "pledges at least 100 days of work at a real wage of Rs 100 a day for everyone as an entitlement under the NREGA.". These two promises assume greater importance for labourers in a year of drought and spiralling food inflation. To the extent that the Congress is interested in cashing in on votes through the NREGA, this is where its efforts should be directed. The Ministry, however, seems to believe that measures such as prefixing "Mahatma Gandhi" to the name of the Act and constructing "Bharat Nirman Rajiv Gandhi Sewa Kendras" under NREGA, would consolidate its vote-catching potential. The disconnect in the Ministry's understanding regarding the priorities under NREGA and that of labourers is likely to boomerang.

# Annexure 5: Provisions of the Payment of Wages Act[18]

NREGA 2005, on delays in wage payments: Section 3, sub-section 3: "Save as otherwise provided in this Act, the ***disbursement of daily wages shall be made on a weekly basis or in any case not later than a fortnight*** after the date on which such work was done."

Schedule II, Rule 30: "In case the ***payment of wages is not made within the period specified*** under the Scheme, the labourers shall be ***entitled to receive payment of compensation*** as per the provisions of the Payment of Wages Act, 1936 (4 of 1936)."

POWA, 2005: Under Section 15(3) of the Act, the authority (which includes the Labour Court, Assistant Labour Commissioner, etc) dealing with a complaint can take the following steps:

- Direct the payment of wages that are pending.

- ***Pay compensation not exceeding Rs. 3000 and not less than Rs.1500.*** Note that compensation can be ordered even if the pending wages are paid before the authority deals with the application, but if the pending wages are paid before the application is disposed, the maximum compensation is Rs. 2000. (Amount increased by the Payment of Wages (Amendment) Act, 2005.)

Applications have to resolved within 3 months of the application being made, provided that the period of three months may be extended if both parties to the dispute agree for a genuine reasons to be recorded by the authority that the time period should be extended to dispose of the application in a just manner.

[18] Contributed by Surabhi Chopra (eminent Lawyer).

The relevant sections under the National Rural Employment Guarantee Act (NREGA), 2005 are Section 3, sub-section 3 which states that “Save as otherwise provided in this Act, the disbursement of daily wages shall be made on a weekly basis or in any case not later than a fortnight after the date on which such work was done” and Schedule II, Rule 30: “In case the payment of wages is not made within the period specified under the Scheme, the labourers shall be entitled to receive payment of compensation as per the provisions of the Payment of Wages Act, 1936 (4 of 1936).”

The Payment of Wages Act, 1936 was amended in 2005. As per Section 15 of the Payment of Wages (Amendment) Act, 2005, the following are relevant: one, the competent authority can direct the payment of wages; two, the amount of the compensation is between Rs. 1,500 and Rs 3,000. Compensation can be claimed even if the wages have been paid at the time of hearing the matter, though in such cases, the maximum claim will be Rs. 2,000; three, all claims must be settled within three months of the matter being registered with the authority. Finally, the "authority" could be any one of the following: any Commissioner for Workmen's Compensation, the presiding officer of a Labour Court, Regional or Assistant Labour Commissioner (ALC), any officer of the State Government not below the rank of the ALC and with two years experience, any officer with experience as a Judge of a Civil Court or a Judicial Magistrate.