

# The Use of Maximum Available Resources

The background features a vertical purple stripe on the left and a black area on the right with white, branching, vein-like lines. In the center, there is a dark, textured shape resembling a pair of sunglasses. The left lens has a face with two eyes and a mouth. The right lens is empty.

## **Article 2 & Governments' Budgets**

*Under-expenditure resulting from barriers to access and lack of governmental capacity*

# The case in brief

In 2005 the Government of India passed the National Rural Employment Guarantee Act (NREGA), guaranteeing the country's rural poor the right to work and to security of livelihood. The government promised to provide 100 days of unskilled work per year to every poor rural family needing employment. Not only could a person receive paid employment under the National Rural Employment Guarantee Scheme (NREGS), but once they demanded work, they would become eligible for compensation if paid employment were not provided within a 15-day period.

Implementation of NREGS has been plagued by bureaucratic glitches and riddled with corruption. In the first two years of the Scheme only slightly more than half of those registered for the program applied for work, and only 10 percent of those applying were offered the full 100 days promised. As a result of a range of such problems, funds allocated for NREGS were significantly under-spent.

## The NREGS is implemented by the following system of governance

The district level (*zilla parishad*)



The block (20 to 100 villages) level (*janpad panchayat*)



Elected executive bodies of people's representatives at the village level (*gram panchayat*). This council is accountable to the general body of the village, known as the *gram sabha*.

Under NREGS, the *gram panchayat* prepares a list of public works projects fitting the stipulations of the law. Administrative and technical approval for the list comes from the *janpad panchayat*. Together with program officers from the *zilla parishad*, a labor budget is prepared, covering those who might need work during the year. Funds are allocated accordingly.

The village secretary maintains a muster roll of people who work, the materials used and work done. This is submitted each week to the block level for technical evaluation. A payment order or check is subsequently issued to the bank account of the *gram panchayat*, which in turn issues a payment order for the bank to transfer wages into the bank accounts of the individual workers.

## The human rights issue

General Comment 18 (GC 18) of the UN Committee on Economic, Social and Cultural Rights details the Committee's understanding of the right to work. GC 18 says that the right to work means:

- Availability. States parties must have services designed to assist and support individuals to enable them to identify and find available employment;
- Accessibility. This includes a guarantee that access to work will be provided on a non-discriminatory basis. It also means that people have the right to seek and obtain information on the means of gaining access to employment;
- Acceptability and Quality. These two guarantees relate to working conditions, the right to form trade unions and to freely accept work.

The General Comment also says that States that are unwilling to use the maximum of their available resources for the realization of the right to work are in violation of their obligations under article 6 of the International Covenant on Economic, Social and Cultural Rights, guaranteeing the right to work.

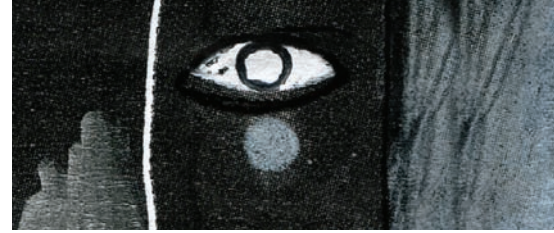


## The human rights argument

Despite the fact that the Indian economy has been growing rapidly in recent years, large sectors of the population still suffer from extreme poverty. Millions of people's right to work is not being realized. When people lack work, they cannot secure the resources necessary to provide essential food, housing, education, health care and other necessary goods and services for themselves and their families.

The Government of India has enacted the National Rural Employment Guarantee Scheme, which, if properly implemented, would make a significant contribution to realizing people's right to work. However, the Indian civil society organization (CSO), Samarthan, has documented numerous problems with implementation of the Scheme, including substantial under-spending of allocated funds, which has resulted in the Scheme's falling far short of its promise of realizing the right to work.

Where a government is failing to fully spend funds allocated for ESC rights-related areas, it is failing to *use the maximum of its available resources* to realize these rights.



## Case study in detail

### Problems with NREGS

Samarthan has monitored implementation of NREGS since the NREGA was enacted. Early on it discovered that:

1. Many poor families had no clear understanding of their entitlements under the Scheme.
2. Many people lacked job cards, without which it was not possible to apply for work under NREGS.
3. Often, people applying for work failed to get a written receipt acknowledging their request. Without it, it was impossible to hold the village secretary accountable.
4. In many places, the village secretary kept people's job cards, making it impossible for them to demand work.

Samarthan also documented that people who had worked received their payment only after considerable delays.

### Awareness-raising within communities

Samarthan developed an ambitious awareness-raising campaign in ten villages

to ensure that people knew about their right to work, knew how to apply for work under NREGS, and got paid for their work. Through youth groups, they:

- held meetings with people in the villages who needed work;
- launched a house-to-house awareness-raising effort;
- developed training materials on the requirements and procedures related to NREGS;
- trained other youth groups, who could then assist people in applying for work; and
- printed and distributed pamphlets to explain NREGS's features.

Moving from house to house, Samarthan distributed job application forms and made them available in grocery stores. They stressed that applicants should get a dated receipt for their application. They assisted people in filing on-line application forms. Once work demands had been filed in a village, Samarthan and the applicants put pressure on the village secretary.

General Comment 18 emphasizes that governments have an obligation "to undertake [...] educational and informational programs to instil public awareness on the right to work." This means that it is not sufficient for a government to simply introduce a program like NREGS. It must ensure that people who need work know about the program, and are provided with detailed, accessible information about the opportunities it offers, who would qualify and how to successfully apply for it. In this case, both the federal and local governments were failing to meet this obligation in adequate ways.





## Developing capacities of village officials

Samarthan, however, also discovered that village secretaries lacked the capacity to plan work projects or to budget for work demands; the federal government had not trained the officials to perform this task. As a result, the planning and budgeting were being undertaken by officers at the district level. This created imbalances and operational problems.

If the implementation of NREGS was to improve, village officials would need to learn how to plan and budget for it. Samarthan helped village officials to identify public works that, according to the law, could be used to respond to job demands. These public works were assembled into a plan, which provided officials with a list of projects readily available to generate employment. This plan received technical and administrative approvals from officials at the block level.

Samarthan also trained the village secretary to prepare and request labor budgets. On the basis of the number of people holding

job cards together with the average number of people reporting for work during the previous year, Samarthan and village officials estimated the likely upcoming demand for work. These estimates were used to calculate the likely cost and finally translate it into a budget number.

Samarthan's willingness to sit down with village officials and work with them to find solutions earned the organization their respect. That respect together with the organization's ties to the communities gave it substantial power in dealing with officials above the village level.

When a government under-spends an ESC rights-related budget, it is failing to comply with its MAR obligation. Sometimes the under-spending may be the result of a lack of capacity by civil servants to properly and fully implement a program. Government must do its utmost to identify where such capacity is lacking and, when it has identified a lack, move quickly to increase the capacity of civil servants/government service providers to do their jobs.

Moreover, a government cannot excuse itself from its human rights obligations simply because a civil society group is willing to undertake a task that is the government's responsibility.

## Improving transparency and accountability

Samarthan has facilitated social audits in over 800 *panchayats*. Community leaders and youth volunteers have been identified as facilitators. Samarthan has developed district-level master trainers to support them, to ensure an effective social audit process. When officials have not wanted to provide NREGS records to the facilitators, online data has been downloaded by Samarthan and provided to them. Facilitators have verified these records directly with NREGS workers and communities.

The social audits have uncovered numerous cases of fake entries of payments, delayed payments to workers, and incomplete investments. These findings have resulted in proactive decisions in *gram sabhas*, in addition of being shared with NREGS officials and policy makers.

The social audit process has generated self-confidence among the villagers, and has proved that the community can influence and monitor delivery of their rights and entitlements.

Sub-national, as well as national, governments are obligated to use the maximum of available resources to realize ESC rights. In this case, all levels of government responsible for implementing NREGS must use the maximum resources available to ensure that people's right to work is guaranteed. A national government has the added obligation of monitoring ESC rights-related programs at the sub-national level to ensure that those governments have the resources and capacity to implement the programs in an effective and efficient manner, and are doing so.

## Media – only when all else fails

Early on Samarthan decided that its main strategies were going to be mobilization and collaboration, not confrontation. In the course of its work the organization has heard countless stories of people wanting to apply for work but being rejected, of altered muster rolls, job cards held back, corruption at project sites, etc. However, Samarthan has only handed stories about these situations to the media when they were failing to get the attention of the government in other ways.

# Questions you might ask yourself or your government about under-expenditures that are a result of barriers to access and/or lack of capacity on the part of governmental officials.

Do specific ministries, departments or agencies (MDAs) regularly under-spend their allocations? If so, which ones, and what are the reasons they do so? Do any sub-national governments regularly under-spend allocations in their budgets? If so, which ones, and why?

Are there specific program areas within MDAs that regularly under-spend? If so, what are the reasons? Are specific program areas of sub-national governments regularly under-spent? If so, which ones? For what reasons?

Is under-spending, whether by the national government or sub-national governments, more consistent in certain areas of the country? In urban or in rural areas? If so, what are the reasons?

Are certain groups of people more negatively affected by under-spending, whether by MDAs or in program areas, than others? If so, which ones and why?

What measures, if any has the government taken to address the problem of under-spending? How has it responded to reports by oversight institutions like the Supreme Audit Institution and questions by the legislature that refer to under-spending in ESC rights-related programs?

When under-spending with regard to ESC rights-related programs has been the result of barriers that have impeded the access of intended beneficiaries to a program, what steps has the government taken to eliminate those barriers?

When under-spending on ESC rights-related programs has been due to the incapacity of government officials—whether at the national or sub-national level—to efficiently implement the programs, what steps has the government taken to bring that capacity up to the necessary level?

When programs in ESC rights-related areas under-spend, what is the procedure for deciding for the roll-over of such funds into the next fiscal year? Are efforts made to protect these funds or are they returned to the Ministry of Finance indiscriminately?

# Samarthan

Established in 1994, Samarthan works in the states of Madhya Pradesh and Chattisgarh in India. The CSO promotes participatory development and governance through direct field action, capacity-building, research, and advocacy. Samarthan has trained both government officials and the public on India's Right to Information Act and has worked to facilitate community participation in development plans. It has worked with local village development committees to improve their capacity to participate in the Madhya Pradesh Rural Livelihood Project and has trained local governing bodies to monitor programs like NREGS. The organization's research activities include analyses of the implementation of the NREGA and the Right to Information Act, as well as assessments of the viability and activities of India's local government system (*Panchayati Raj*). Samarthan works on issue-based partnerships with more than 200 CSOs to demonstrate participatory governance and amplify the voices of the poor, Dalits (scheduled castes), tribal groups, and women in policy-making platforms.

For more information on Samarthan, go to:  
[www.samarthan.org](http://www.samarthan.org)

# The Article 2 Project

This booklet is part of the *Article 2 & Governments' Budgets* handbook. The handbook has been developed by the Article 2 Project, a working group housed first at the Partnership Initiative of the International Budget Partnership (IBP), and then at the Global Movement for Budget Transparency, Accountability and Participation. The project aims to enhance understanding of the implications of article 2 of the ICESCR for how governments should develop their budgets, raise revenue and undertake expenditures. The project encourages the use by civil society and governments of the legal provisions of article 2 to monitor and analyze governments' budgets. Download the complete handbook at:

[www.internationalbudget.org/publications/ESCRArticle2](http://www.internationalbudget.org/publications/ESCRArticle2).

The case study in this booklet is derived from Ramesh Awasthi, "Samarthan's campaign to improve access to the National Rural Employment Guarantee Scheme in India," Albert van Zyl (Coord.), *From Analysis to Impact*, Partnership Initiative Case Study Series, coordinated by IBP, 2011.

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