1. **Summary of the case**

The denial of access to crucial government support – such as food and employment – in Bhat Banjara Basti arises from the denial of any legal right to residence of the community on the land. The community have still not been granted a legal right to live there despite a 25 year period of residence and numerous letters requesting ownership or even a claim to their land. The government’s denial of land rights has resulted in the community being unable to receive any government support or to register as Below the Poverty Line – despite living in impoverished conditions such as limited access to food, sanitation and healthcare.

Bhat Banjara Basti is under Keru Panchayat which is 7km away. They attend Panchayat meetings but they have limited access to decision-making processes and are unable to challenge the decisions of the Panchayat.

2. **Information related to the affected communities**

   Name: Bhat Banjara Basti

   a. The community is comprised of 55 households with up to 10 residents per household. Bhat Banjara Basti is very close to the National Highway 114. They belong to the Bhat Banjara community which is a Scheduled Caste. They have no legal right to tenure on the land. Due to this lack of right to tenure or ownership of the land – despite residing for 25 years - they are being denied access to public distribution schemes, employment schemes or any government support. They have no access to education as the nearest school is 3km away and access is by national highway 114 which is dangerous for children. The majority of the village live in poverty: they have no access to toilets or sanitation, no government-provided access to water, and no electricity. However, due to their lack of right to land, none of the community has been able to obtain Below the Poverty Line status because of their ‘illegal’ residence. The main occupation of the community is mine work –which takes place in mines which often fail to provide toilets, shade or adequate water supply. The majority of their wages falls below minimum wage.

   b. Number of affected women and girls: approx. 190 girls and women

   c. The group is comprised of households who had previously migrated from rural areas in search of work. The origin of the occupation of this community is in the management of bulls which entailed a migratory lifestyle. However, due to increasingly mechanised agriculture, there is now no demand for this occupation and they are forced to seek alternative work.
3. **Responsible Authorities**

Authorities responsible for the failure to uphold their duties to these communities are:

1. National Government – in particular, Department of Rural. But also including - Department of Women and Child Development, Department of Land Resources, Department of Education, Department of Health

2. Government Ministries – at regional and national level – have failed in their responsibility to effectively monitor the implementation and success of Governmental Department schemes.

3. Government of Rajasthan and District Administration

4. Gram Panchayats (local government)

4. Third Parties

Relevant third parties include the mining companies employing these communities in Rajasthan.

5. **Damages Suffered by Community**

   a. **Right to Land**

The greatest damages to basic human rights in these communities are caused by the availability of land. Due to their lack of land rights, the community are forced to build inadequate housing from requisitioned stone – which they often use without cement – and roofs constructed from polythene which is all they have to protect them from potentially heavy rainfall. (See appendix for evidence)

Despite the fact that the settlers have resided on the land for 25 years, their residence on the land is, according to the Panchayat, illegal. This settlement established itself upon land that is not designated for residence. However, these settlers are an established community and they reside here because previous forced migration and poverty has driven them to settle in the only place that they can access. The main damage suffered by the Bhat Basti is refused access to crucial social services due to land status. The most crucial element to note is that these people have settled on this land for 25 years – and still they are denied any existence. Further damage results from this denial in that they cannot claim any official identity (explored below). The existence of this community is unstable and seemingly invisible. The denial of identity is both psychologically affecting and life-limiting because they cannot access crucial benefits such as food support.

The damages of lack of land rights in this settlement has resulted in unstable living conditions which affects the communities through an inability to construct adequate housing; the constant threat of eviction; their lack of land for alternative livelihood options such as animal husbandry.

The denial of their right to land has resulted in a denial of all their rights as Indian citizens. Damages suffered are extensive and include loss of food and income under government schemes due to their landless status. Furthermore, the psychological impact of denial of
existence is massive; the community has been treated as if they are not human as they do not have the same rights as everyone else.

b. Damage to livelihood

The damages to livelihood opportunities suffered communities, due to the failure of the government and employers to protect them, are extensive. The villagers suffer a loss of access to guaranteed, safe and stable employment due to their inability to access MGNREGA. Despite numerous applications for a ‘job card’, which would entitle them to 100 days paid work under MGNREGA, the Gram Panchayat (local government) have been systematically excluding the community from the scheme by denying them access to the ‘job card’. The Panchayat’s reason for this denial is that the community have no ‘legal’ residence on the land and, therefore, they are not eligible to receive the scheme.

However, this discrimination of the community against their land rights is keeping them trapped in a cycle of poverty from which they have no means of escape. The community is suffering damages arising from current and future loss of income and stable employment under MGREGRA; health problems – including potentially fatal Occupational Lung Diseases - resulting from being forced to work in unregulated stone mines.

Furthermore, the villagers have no knowledge of minimum wage laws. The government has failed to support or implement sufficient minimum wage schemes. Therefore, the community have incurred a loss of potential income which they could have earned working at an adequate wage. Wages are currently, at their highest, 150 rupees per day for women and 200 rupees per day for men. However, many wages fall far under this figure – some to as low as 60 rupees.

c. Right to Food

In Bhat Banjara Basti, the situation in regards to eligibility for Public Distribution System – which provides subsidised grain to poor communities – is appalling. Due to their settlement’s status as ‘illegal’, they are unable to access any support to access food. Households have applied for a ration card numerous times, but receive a reply denying them access to subsidised food. The villagers living in this village cannot even register as BPL because the Panchayat refuses to acknowledge their existence.

Furthermore, despite having over 140 children, there had been no establishment of an ICDS centre to provide adequate nutrition to children due to their invisibility in the eyes of the state. Therefore, children living in this community cannot access any extra nutritional support which is their right under the ICDS scheme whose function is improve the nutritional status of all children.

The potential future damages resulting from the lack of provision to nutritional and food support are the increased likelihood of severe malnutrition and stunting in children which
limits their chances of escaping poverty in later life; the affect upon productivity and income of working adults – for instance, the communities reported decreased productivity in comparison to a healthy adult; and risks of contracting further diseases as a result of weakened immune systems.

a. Right to Healthcare

High rates of Tuberculosis and Silicosis in miners which is untreated; increased in death due to occupational health problems such as TB and silicosis; loss of income due to reduced productivity from ill health.

b. Right to Education

Presently, no children have access to schools. The damages incurred are: loss of future income due to lack of education, decreased nutritional security due to no access to *Midday Meal Scheme*, children working in the mines with their parents.

6. Human Rights and Legal Analysis

Violation of the Right to ‘Adequate Standard of Living’

a. Land Rights

The levels of poverty experienced by the miners in these villages in directly correlated to their lack of access to land. The lack of access of secure land directly affects the ability of the villages to access government support to which they have a human right. The government’s inability to provide access to any legally-defined residence violates the human right to secure living conditions.

Article 25 of the Universal Declaration on Human Rights states the ‘right to a standard of living adequate for health and well-being of himself and his family’ which includes access to housing and necessary social services.\(^1\) This right is further enshrined by the United Nations Committees on Economic, Social and Cultural Rights general comments on the interpretation of the right to an adequate standard to living. The protections set by these comments include entitlement to security of tenancy, housing, land and property restitution, equal and non-discriminatory access to adequate housing.\(^2\)

Much policy framework and development research documents the correlation between poverty and property. As the UN’s Food and Agriculture (FAO) Organisation identifies, ‘rural landlessness is often the best predictor of poverty and hunger’.\(^3\) Landesa argues that ‘property rights are a ‘precondition’ for democracy’.\(^4\) In the cases of these miners’ villages, the lack of any claim to their land weakens their access to democratic participation – in turn weakening the democratic processes of the country. Their lack of access to land further

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\(^4\) [http://iis-db.stanford.edu/docs/578/Hanstad_Landes.pdf](http://iis-db.stanford.edu/docs/578/Hanstad_Landes.pdf)
impoverishes them by denying them access to resources vital for the elimination of hunger. Not only do the communities have very limited influence at local and national level, poverty alleviation efforts bypass them – due to their landless status – which in turn traps them in a cycle of poverty. This cycle of poverty violates the human right to commitment - under Article 11 of the International Covenant on Economic, Social and Economic Rights (ICESCR) - to the right to a continuous improvement of living conditions.

Furthermore, their lack of land rights violates their right to even a secure living. As General Comment 4 on the Right to Adequate Housing states, the right to adequate housing enshrined in the ICESCR and UN Declaration of Human Rights should be interpreted as ‘the right to live in security, peace and dignity’. The denial of any legal right to their land – despite settlements of over 25 years in each case – violates the human right of the communities to live in security and dignity by preventing them from building appropriate housing and sanitation facilities and putting them at high risk of land grabs and displacement. As seen under ‘Damages to Victims’, this failure to protect the basic rights of the communities also puts them at risk of more extreme poverty and malnutrition in the future.

Furthermore, as General Comment 12 on ICESCR refers to on the adequate right to food, access to land includes the possibilities either for feeding oneself directly from productive land or other natural resources – the refusal of land rights restricts both the livelihood alternatives and food options of the communities. There is a notable lack of livestock in the settlements which – considering the prevalence of malnutrition in the area – reduces the access of the communities to options of nutrition and livelihood. In addition to this evidence, the special rapporteur on the right to food believes that “access to land is one of the key elements necessary for eradicating hunger in the world.”

In fact, the denial of right to access secure land and adequate housing, in some cases, is a regressive move which does not just trap communities into a cycle of poverty but also potentially, drive their development backwards. Instead of having access to poverty alleviation efforts from the government, the communities are neglected and their lack of access to secure tenure creates a situation where communities could be worse off in the future – through loss of land reducing their quality of life, and increasing poverty and malnutrition. The failure to provide access to secure tenure not just creates a vicious cycle, but a downward spiral.

b. The Right to Livelihood

The right to livelihood is fundamental to determining the food security of an individual or community. Any threat to livelihood also threatens an individual or communities right to food. The interrelation between economic, social and cultural rights impacts upon the threat of right to food in these communities. The access to livelihood impacts upon the types,
quality and quantity of food that the community are able to purchase. In essence, the ability to access livelihood determines the ability to access adequate food – especially nutrition.

In these villages, the right to livelihood is being extensively violated. In the states duties of the right of the livelihood, it is failing to provide access to adequate, safe and sufficient livelihood. The result of the failure of the state threatens the human dignity of the miners living without access to their rights.

In the case of its obligation to respect, the ‘duty bearer’, the state, has failed to uphold this duty. The victims, the mineworkers, suffered their damages in relation to their right to livelihood due to the failure of the government to observe laws and frameworks of the UN and the ILO and the Indian Constitution. Article 39 of the Indian Constitution guarantees the right of an adequate means to livelihood. This constitutional right of every citizen is underpinned by Article 23 of the UN Declaration of Human Rights recognises the right to work which is that: ‘Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment’. Due to the failure to extend the NREGA programme to the landless, the government has failed to ensure the human right enshrined by the UN of ‘free choice of employment’. In the case of the mineworkers, the duty bearer has failed in legislation to protect these human rights as, by failing to ensure alternative employment, the mineworkers are forced into the only employment option open to them. As addressed before, this work is occupationally hazardous, potentially life-limiting and detrimental to the rights of the workers.

Furthermore, the UN International Covenant of Economic, Social and Cultural Rights states the duty of states to ensure the rights of workers to ‘fair wages’ and ‘a decent living for themselves and their families...’ and ‘safe and healthy working conditions’ (article 7). Currently, the state is failing to create adequate minimum wage laws which protect the workers access to fair wages and with which the workers cannot provide a ‘decent living’ for themselves – including their access to food. Furthermore, the mineworkers are currently working in conditions in which they have no access to basic health and safety practices: they have limited shelter, water, no toilet facilities and no health and safety procedure. The government has not upheld the duty of the government to supervise public agents such as mineworkers in ensuring safe and healthy working conditions.

Under the ILO ‘Employment Policy Convention’ No.122 (ratified by India), the state recognises its duty ‘not to destroy opportunity to earn his or her living’ and to take steps to safeguard the right to employment. In the case of the miners, the state’s failure to protect free and fair employment through the denial of access to of NREGA and inadequate implementation of minimum wage policy which have destroyed potential alternative

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8 [http://indiacd.cc/nic.in/coiweb/welcome.html](http://indiacd.cc/nic.in/coiweb/welcome.html)
9 UNDHR [Link Provided Above]
livelihoods and therefore denied the ‘right to employment’ as defined under the Covenant of Human Rights.

The state has also failed in their obligation to protect mineworkers from the actions of their employers. As previously mentioned there is a failure to create a sufficient minimum wage law protecting workers rights to fair payment. The flouting of the obligation to fulfil has occurred from the systemic failure of the state to implement the policies that it is duty-bound under law to provide. The most important of these is NREGA. In the case of Bhat Banjara Basti, the duty-bearer was in violation of the right to employment through ‘free choice’ through declaring the village ineligible due to land status.

Right to Food

In terms of the Obligation to Respect the law regarding the human right to food, the Constitution of India (1949) lays out, in Article 21, a ‘fundamental right to food’ which includes health and determining factors – including food. Fundamentally, Article 47 of the Indian Constitution identifies the primary duty of the state to ‘raise the standard of nutrition’ and standard of living of its people.

The recognition of the right to food and nutrition as a constitutional right of all citizens is underpinned by human rights legislation at national and international level. The UN’s Food and Agriculture Organisation (FAO) states that ‘if a public institution, either deliberately or through negligence is causing hunger then that is a human rights violation’.

In the case of the mineworkers, the state has failed to uphold its obligation to respect the human right to food and nutrition as defined by its own constitution and international human rights bodies. In the case of Bhat Banjara Basti village, the government’s failure to recognise its citizens’ rights has led to a violation of their constitutional and human rights. Due to their ‘landless’ status, the 55 household in Bhat Banjara Basti lack access to social services – importantly food and nutritional support. The community currently has no access to either ‘Integrated Child Development Services Scheme’ (ICDS) or the ‘Public Distribution Scheme’ (PDS). One of the objectives of the ICDS scheme is to provide nutrition, including supplementary nutrition, to children age 0-6. In Bhat Banjara Basti, the community have no access to ICDS or much knowledge about it. As the children do not attend school, they also cannot access sufficient nutrition though the Midday Meal Scheme in education. Therefore, the children are reliant on the ability of their parents to supply their food. Considering the instability of employment and lack of access to food, the quantity and nutritional value of their food is severely compromised.

Furthermore, there are difficulties in both upholding the state’s obligations regarding Below the Poverty Line (BPL) classifications, as well as the inadequacies of public policy regarding BPL classification, which compound lack of access to food and nutritional schemes under the government. In the case of Bhat Banjara Basti, the failure of the Panchayat to issue any BPL classifications or ration cards to this settlement has denied their right to PDS which

distributes vital food at subsidised prices for poor and BPL families. Under Indian law, the commitment to ‘raise the standard of nutrition’ as defined by the constitution falls short; the result is that the state are causing hunger and malnutrition through its negligence and failure to implement these programmes which guard these communities against food insecurity.

7. History of defence and advocacy by the affected communities

In the case of village two, Bhat Basti, the community have had regular written correspondence with the Panchayat to request a right to settle legally on the land – providing them with security of tenure and access to government resources. They have met with the Sapanch, the district collector, sub-divisional magistrate and the chief minister. To date, these meetings and correspondence have not been successful and their requests are refused.

8. The main claims of the victims:

a. Land Rights
   (i) Access to secure and legal tenure with the right to build adequate housing
   (ii) Land property rights – legal recognition of ownership

b. Access to Government Resources: the right to access Integrated Child Development Services, Public Distribution Services and NREGA.
   (i) Provision of ration cards to all – regardless of land status
   (ii) Access to a job card and NREGA to all – regardless of land status
   (iii) Provision of an ICDS to the Bhat Basti community to ensure adequate maternal and child health and prevent cycles of poverty caused by malnutrition
   (iii) Provision of a school to both communities to ensure access to education and prevent a vicious cycle of poverty
   (iv) Provision of adequate healthcare – including access to diagnosis of occupational health problems and access to free DOTS treatment
   (v) Access to schools for the children in the communities within 1km

f. Protective Public Policy:
   (i) Extension of BPL to all households living in poverty (the entire community)
   (ii) Wider implementation and ensured access to ICDS for all eligible communities
   (iii) Implementation of Minimum Wage
   (vi) Implementation of the National Food Security Bill 2013

Appendix 1: Evidence of Inadequate Living Conditions
Housing built from requisitioned stone.
Example of housing with insufficient roofs – made from polythene.
Appendix 2: Evidence of Repeated requests for government provision
भीम किशोर आर्यनन्द नामको,

हे भीम किशोर आर्यनन्द आजको दिन नेपालको बायबल सम्बन्धित जानकारी दिन।

हे भीम किशोर आर्यनन्द नेपालको बायबल सम्बन्धित जानकारी दिन।