REPORT ON
Sardar Sarovar Project,
Canals of Indira Sagar & Omkareshwar
and Jobat Dam Project

PANEL:
Justice (Retd.) A.P. Shah
Devinder Sharma
Prof. Jaya Sagade

June 2010
Indian Independent People’s Tribunal

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and Jobat Dam Project

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(Retired Chief Justice, Delhi And Madras High Court)

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June, 2010
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<tr>
<td>AIBP</td>
<td>Accelerated Irrigation Benefit Programme</td>
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<td>AIR</td>
<td>All India Reporter</td>
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<td>ATR</td>
<td>Action Taken Report</td>
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<td>BWL</td>
<td>Back Water Level</td>
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<td>CAD</td>
<td>Command Area Development</td>
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<td>CAG</td>
<td>Comptroller and Auditor General of India</td>
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<td>CAF</td>
<td>Compensatory Afforestation</td>
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<td>CAT</td>
<td>Catchment Area Treatment</td>
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<td>CAD-WM</td>
<td>Command Area Development and Water Management</td>
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<td>CWC</td>
<td>Central Water Commission</td>
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<td>CoI Act</td>
<td>Commissions of Inquiry Act, 1952</td>
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<td>CAF</td>
<td>Canal – Affected Family</td>
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<td>ESG</td>
<td>Environment Sub Group of NCA</td>
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<td>FDCM</td>
<td>Forest Development Corporation of Maharashtra</td>
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<td>FRL</td>
<td>Full Reservoir Level</td>
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<td>GoMP</td>
<td>Government of Madhya Pradesh</td>
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<td>GoM</td>
<td>Government of Maharashtra</td>
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<td>GoG</td>
<td>Government of Gujarat</td>
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<td>Grievance Redressal Authority</td>
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<td>High Level Group</td>
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<td>ISP</td>
<td>Indira Sagar Project</td>
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<td>IPT</td>
<td>Indian / Independent People’s Tribunal</td>
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<td>LAQ Act</td>
<td>Land Acquisition Act, 1894</td>
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<td>MoEF</td>
<td>Ministry of Environment and Forests</td>
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<td>MoWR</td>
<td>Ministry of Water Resources</td>
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<td>MPHC</td>
<td>Madhya Pradesh High Court</td>
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<td>MWL</td>
<td>Maximum Water Level</td>
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<td>MAF</td>
<td>Million Acre Feet</td>
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<td>Narmada Bachao Andolan</td>
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<td>Narmada Control Authority</td>
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<td>Narmada Sagar Project (ISP)</td>
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<td>NVDA</td>
<td>Narmada Valley Development Authority</td>
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<td>Narmada Water Disputes Tribunal Award</td>
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<td>Narmada Water Scheme, 1980</td>
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<td>OSP</td>
<td>Omkareshwar Project</td>
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<td>Oversight Group (Shunglu Committee)</td>
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<td>PAF/PAP</td>
<td>Project Affected Person</td>
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<td>PESA</td>
<td>Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996</td>
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<td>PWD</td>
<td>Public Works Department</td>
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<td>R&amp;R Sub Group</td>
<td>Resettlement and Rehabilitation Sub Group of NCA</td>
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<td>RTI</td>
<td>Right to Information</td>
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<td>RCNCA</td>
<td>Review Committee, Narmada Control Authority</td>
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<td>SRP</td>
<td>Special Rehabilitation Package</td>
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<td>SSP</td>
<td>Sardar Sarovar Project</td>
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<td>SSNNL</td>
<td>Sardar Sarovar Narmada Nigam Limited</td>
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<tr>
<td>SCC</td>
<td>Supreme Court Cases</td>
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<td>UoI</td>
<td>Union of India</td>
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<td>WCD</td>
<td>World Commission on Dams</td>
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Introductory Note to the People's Tribunal

The Sardar Sarovar Dam, undertaken on the river Narmada which was slated to benefit four states of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan, has, over the past two and a half decades become one of the most widely questioned and extensively-debated projects in the country and across continents, not just from the angle of the techno-economic viability of such large-scale river valley projects, but also on the plank of the enormous social, environmental, financial, cultural and human costs that have to be paid, over generations.

Alongside, the mass non-violent struggle by the agriculturist, adivasi, fishing and other nature-based communities in the Narmada valley has also sparked off and sustained an intense political debate in the country, at the core of which are critical questions such as: whether displacement & environment impacts caused by gigantic dams such as SSP are justifiable? Whether projects with such wide ramifications can be pushed through without the informed participation of local communities at every stage of the Project? Whether it is lawful and acceptable for the State to displace tens of thousands of rural and tribal people in the name of development without prior and lawful rehabilitation and whether at all it is possible to minimize displacement and environmental damage and, therefore, necessary and expedient to explore local and ecologically sustainable alternatives to harness natural resources, instead of pushing giant and unviable projects.

As these questions remain pertinent to this day, there has arisen a situation of increased seriousness in the valley in the past few months, with fast-paced political developments to complete the Project by taking the dam to its final height of 138.68 mts, involving an authority no less than the Prime Minister and the Planning Commission of India. The people's struggle in the valley, spearheaded by the Narmada Bachao Andolan has however strongly criticized and challenged this decision making process calling it illegal and unjustifiable, since today, there is overwhelming evidence from both official and non-official sources that there has been gross non-compliance of various conditions with regard to the rehabilitation of the two-lakh population in the valley as also the environmental safeguard measures. The Project's achievements vis-à-vis expected benefits have come under stark criticism by Gujarat-based research institutes as well as the State Assembly, with claims that only 10% of the benefits having accrued, while the costs have multiplied ten-fold.

The Independent People's Tribunal was thus constituted to examine and assess the legality and justifiability of taking the Sardar Sarovar Project ahead, without a serious review and due and faithful compliance of law, policy and the Court's judgements. The Tribunal was also required to look into and make its observations on the issue of whether the canal-network of Indira Sagar and Omkareshwar canals should be reviewed to exclude the irrigated river-bank villages, minimize displacement and save the best of agricultural land and opine as to whether land acquisition
and excavation of canals proceed any further without the full plans, complete data and guaranteeing full rehabilitation?

On the other hand, Narmada issues and the movement, its facts & analysis, vision & strategies, are still being questioned by certain sections of the society and branded as not only unrealistic but anti-progress. The spreading concern & movements over issues of displacement & destruction of livelihoods and environmental degradation have thus become of paramount importance in determining the future development paradigm & policies, especially in the sectors of land, water, forests & minerals.

It was to assess the reality and the ground level situation and take stock of the legal and human rights violations in this ongoing saga of en-masse displacement that a two-day visit and Independent People’s Tribunal (IPT) in the Sardar Sarovar Project (SSP) affected region in Narmada valley was organized. Led by Hon’ble Justice (Retd.) A.P. Shah (Retired Chief Justice, Delhi and Madras High Court), Dr. Devinder Sharma (International Researcher and Agriculture Policy Analyst) and Prof. Jaya Sagade (Faculty, Indian Law Society, Law College, Pune), the Panel visited about a dozen villages, and spoke to hundreds of people during the two days they spent in the valley.

Though, it could not have been possible for the Tribunal to make a full-fledged assessment of all the aspects of the Project, during the short two-day period of visit to the valley and the Public Hearing, the Tribunal has been able to peruse through some of the significant legal documents and Court Orders, official reports, correspondence, newspaper reports and a large number of representations from the people. Moreover, the Tribunal’s visit to about a dozen villages in the ‘submergence zone' of the valley buzzing with life and activity was a telling testimony of the ground reality which is being presented with 180 degree differences by parties to the debate & controversy.

It was unfortunate, yet revealing that none of the government officials were available either to comment or counter the people’s passionate voices, though the IPT Secretariat sent across advance invites to the officials of both NCA and NVDA. This once again, re-affirms people’s position that neither does the State have answers to their questions nor land to offer in rehabilitation.

While the people’s struggle goes on in the valley, asserting their fully legal and human right to life, livelihood and rehabilitation in an ecologically sustainable framework, we hope this Report by the panel of eminent citizens will bring out the truth with the legal framework, human rights and policy mandate not only for those in the valley but all concerned citizens of India. This would be a strong basis for the people as well as the State agencies in their efforts & engagements towards resolution of issues.

Deepika D’ Souza
Shubra Pachauri
IPT Secretariat
EXECUTIVE SUMMARY

Part – I: Sardar Sarovar Project:

Sardar Sarovar Project has been mired in controversy ever since its inception, not just on the plank of the technical feasibility but also due to the enormous social, environmental, financial, cultural and human costs that have to be paid, over generations. An intense people’s moment in the valley has, in its 3 decades old existence, which runs parallel to the project work, raised and continues to ask serious questions on the large scale displacement of people from their communities and livelihoods and the magnitude of environmental damage that the Project would cause. These questions have become even more relevant in today’s context when the dam is sought to be taken to its full height of 138.68mts, despite considerable evidence of non-compliance on various conditions in the clearances, laws and judgements.

The Tribunal was thus constituted to assess the situation of the costs and benefits of the Dam at the present height and undertake an objective evaluation of the compliance on the rehabilitation and environmental measures within the framework of the Narmada Water Disputes Tribunal Award, law, rehabilitation policy and Court’s judgments. Amongst other things, the Tribunal was also requested to opine on whether there is any basis in law and policy for raising the height of the SSP dam beyond the present height of 122 mts and whether any moves to further the construction of the dam at this stage would comply with the pari-passu principle and ensure full, fair and prior rehabilitation, to be consistent with law and policy.

Subsequent to a detailed perusal of the essential official and non-official documents pertaining to the Project, particularly the clearances, policies, judgements of the Hon’ble Supreme Court and High Courts, the relevant international conventions and the Report of the World Commission on Dams, and an assessment of the situation of the affected and to-be affected villages in the valley coupled with an appraisal of the testimonies we heard during the Public Hearing and the hundreds of written submissions / representations we have received, we have found serious lacuna in the overall time-bound planning and proper execution of various components of the Project (as directed by NWDTA), which has derailed the entire situation of benefits attainment, rehabilitation process and implementation of the environmental safeguard measures.

It is clearly established that the Governments of Madhya Pradesh (GoMP), Maharashtra (GoM) and Gujarat (GoG) have violated the right to life, livelihood and rehabilitation of thousands of oustees of the Sardar Sarovar Project, guaranteed by the Constitution and re-affirmed by numerous international conventions ratified by India by causing illegal and unjustifiable displacement of adivasis and other farmers, fisher people etc. prior to lawful rehabilitation. There has also been gross and repeated violation of various binding clauses of the Narmada Water
Disputes Tribunal Award, Rehabilitation policy, Master Plans and Action Plans and numerous judgements of the Supreme Court.

It is unacceptable that while there are many thousand families in the Narmada valley living to this date, with full community life and agrarian activity even below the BWL of 122 mts, NCA’s Annual Report (2008-2009) falsely shows that there are 0 families to be rehabilitated. This is not just a grave error, carried forward from the NVDA but in fact a contempt of the Court, the people and the Constitution itself.

It is amply established that the land bank of GoMP is mostly unfit and unsuitable for cultivation or occupied by old encroachers and PAFs in M.P. have not accepted this land provided ex parte, thus proving the failure of the purported rehabilitation. The abysmal conditions of basic civic amenities at many R&R sites and the situation of the PAPs who have returned back to M.P. from Gujarat shows that R&R is not as rosy as it appears on paper.

We are also convinced that the menace of massive corruption in the entire rehabilitation process today is primarily due to the negligent and non-diligent attitude of the State in addressing the issue with requisite seriousness at the right time. The casual attitude of the State towards the vice of corruption, has also violated the right to rehabilitation and right to life of the PAFs, while no strict action has been taken against the guilty officers and middlemen. On the other hand, the Special Rehabilitation Package has proved to be a total failure, since it has only bred enormous corruption, while not leading to the rehabilitation of the PAFs with agricultural land. There has also been a total failure to ensure alternative livelihood to thousands of landless labourers, shopkeepers, fish workers, potters etc and the cash compensation has only bred more corruption, in violation of the Policy.

On the other hand, the Narmada Control Authority and the Grievance Redressal Authorities have failed in their duty to monitor and ensure faithful compliance with all the stipulations in the NWDTA, policies, plans and Court’s judgements. NCA has particularly failed in checking the veracity of Action Taken Reports submitted by the State Governments which have been making false and exaggerated claims of ‘substantial compliance’

In the light of our findings, we, therefore, strongly appeal to the Prime Minister, as the highest executive decision-making authority to immediately call for a complete review of the Sardar Sarovar Project, to be undertaken by a High Level Committee on the basis of the clearances issued by various authorities and with inputs from various Ministries, authorities, official and non-official agencies, the NBA, eminent citizens and independent experts. The Committee, along with all concerned officials and Sub-Groups must visit the valley to assess the true situation. Until such a review is completed, there must be no further construction related activity on the dam and canals, there should not be any submergence beyond whatever has occurred and no further clearance of any investments under AIBP or any other Central Scheme and funds cleared in the past 6 months must be put on hold until completion of the review, considering the escalation of costs and the repercussions of the same.

Amongst other things, we also recommend that the three states of M.P., Gujarat and Maharashtra and particularly Madhya Pradesh must, with a definite time frame, ensure agricultural land, along with rehabilitation villages to all the adivasis who have already faced submergence and where submergence is impending and also to all farmers who have not accepted the Special Rehabilitation Package (SRP) or have not been able to purchase land even after obtaining the 1st instalment of SRP. Allotment of land to eligible balance PAFs in the three states, by giving priority to purchase of land from private sellers must be taken up. We call upon the Government of Madhya Pradesh to scrap the SRP forthwith and tackle corruption effectively. A quick and definite decision and compliance as per law and policy must be taken to ensure that the rights of all categories of displaced including the landless, fish workers, potters etc. are guaranteed
alternative livelihood and all entitlements under the R&R policy.

The Tribunal expresses deep concern for the thousands of adivasis, dalits, widowed and single women, fish workers, potters who stand a risk of serious destitution and deprivation, if their rehabilitation is not undertaken in a time-bound and expeditious manner and hopes the State and Central Governments will fulfill their constitutional and legal responsibility to the fullest, before taking any measures that would inflict further harm or injustice on these sections of these sections of the population, shaking their very faith in the possibility of ecological and social sensitivity and sustainability in the democratic structures of governance.

Part – II: Canals of Indira Sagar and Omkareshwar

The Tribunal was also required to assess the rationale and justifiability of the huge canals of Indira Sagar and Omkareshwar Projects in the irrigated river bank villages of the fertile belt of the Nimad region and recommend on the status of environmental planning and compliance and rehabilitation of the affected families. The basic issues and questions with regard to the canals in these areas are:

a) Large scale acquisition of land and excavation for the canals in the already well-irrigated river bank villages, which are also in the submergence area of Sardar Sarovar and Maheshwar dams.

b) Lack of adequate and approved planning of canal network, applying relevant criteria and undertaking the necessary environmental safeguard measures, through command area development, without which the canals would not yield the promised benefits, but instead prove counter-productive.

c) Questionable land acquisition processes through force and deceit and imposition of the urgency clause.

d) Non-application of the Rehabilitation Policy and non-provision of the entitlements therein to the families losing lands for the canals.

e) Non-implementation of PESA Act and project-work undertaken without the free, prior and informed consent of many Gram Sabhas in the scheduled area.

The Tribunal members visited the villages Pandhania in Dharampuri Tehsil of Dhar district (where the Omkareshwar canals are being constructed) and the adivasi village Mandil in Rajpur Tehsil, Badwani district (where the Indira Sagar canals are being constructed), met hundreds of people and noted serious issues of loss of land and livelihood, flaws and illegalities in the land acquisition process, imposition of urgency clause, environmental impacts such as water-logging, no prior consultation etc. The Tribunal also noted with deep anxiety the manner in which the contractors were ‘calling the shots’ in almost every aspect of the canal work.

We find that bringing in the canals in the Sardar Sarovar and Maheshwar dam affected villages is unnecessary and will cause further displacement. It was revealing when people pointed out the falsity in the Government’s claims, using its own documents. For instance, while the GoMP’s Detailed Project Report (DPR) of ISP and OSP showed that 29,843 ha and 22,132 hectares was already irrigated in 1982-83, the State is quoting much less figure before the Court today to justify the canals. We were told that 80% to 100% of the land in the river-bank villages are irrigated by lifting from pumps and pipelines on Narmada and Maan rivers along with bores, bore wells, open wells and tanks. The failure of the Government to comprehend the ground realities is leading to destruction of such productive lands in the garb of irrigation and deprivation of the only source of livelihood for thousands of agriculturist families. All this has to be reflected into canal planning which would otherwise be outdated and much of it would be a colossal waste, we feel.

It was considering the state of non-readiness and other issues of non-compliance, such as no adequate environmental and rehabilitation measures that the M.P. High Court directed a stay on the canal acquisition and construction work since July 2009 and extended it in its Judgement of November 2009. When the GoMP challenged the judgment before the Supreme Court, after some hearings, the apex Court, directed a partial and temporary vacation of the stay and stated that the work can go on 'for the time being', but directed that the same shall be subject to Dr. Pandey Committee’s approval of the CAD Plans within 6 weeks and thereupon a decision to be taken by the MoEF within 4 weeks.

We have noted the clear findings by the Pandey Committee that final and complete command area development plans as required
by the stipulations in the clearances are not yet in place for both ISP and OSP. Similarly, the Tribunal also records its concern that there is still no finality and certainty of the magnitude of land required for the entire canal network of both dams nor is the final figure of the families who would be displaced/affected by the two Projects. The fact that this is not done till date shows and confirms the abject lack of seriousness and concern, both for the thousands of families as well as the irrigated agricultural land.

It is also notable that in spite of severe non-compliance, MoEF and monitoring authorities never took strict action against the states, despite being empowered by the clearance itself. It was only in 2009 that the Ministry wrote to the Madhya Pradesh Government, with no response from the latter. The Tribunal finds effective monitoring by MoEF, NCA and other authorities is very necessary, particularly in the light of the poor and delayed compliance by the project authorities.

We also looked into certain documents that showed the dismal macro picture of virtually no canal-based irrigation despite the country having spent over Rs 1,30,000 crores on major and Medium Irrigation Projects in the last two decades and understood that sheer neglect of planning has resulted in huge losses to the State and also destroyed large tracts of land.

When a few thousand families are to be affected and lose thousands of hectares of their irrigated agricultural land, which is their only source of livelihood, their rehabilitation becomes the constitutional and legal obligation of the State and it cannot extricate itself from this responsibility. Rejecting the stand taken by the GoMP that the canal-affected oustees are beneficiaries and therefore, ‘need no rehabilitation’ the Supreme Court accepted the reality that since many of the adivasis and farmers would face hardships due to the canals cutting through their fields, they must be entitled to land-based rehabilitation. In our opinion, ideally and reasonably, the right to land-based rehabilitation of all the CAFs, losing 25% or more land must be recognized and accepted and GoMP is clearly estopped from contending that the canal-oustees are not entitled to the benefits of the R&R Policy.

The Tribunal also notes that on the issue so the applicability of the PESA Act, the High Court has not considered some important aspects and the PESA Act must be reconciled with the Land Acquisition Act, 1894 in order to ensure that the Gram Sabhas in the scheduled adivasi areas are consulted before any developmental activity is undertaken in their area. Considering the larger context in this and many other cases, we feel that the problem of the adivasis in the scheduled areas who are facing imminent threat and deprivation of their livelihoods is miserable and unjustifiable and is certainly violation of accepted standards of human rights.

In the overall context, we find it just and expedient that, any further permission for the canal work should be on the basis of the Report by the Devender Pandey Committee, which has already given its clear finding and we now feel that MoEF must halt the work, at least, until revised CAD Plans are submitted to the satisfaction of the Pandey Committee, within the framework of the clearances issued to the Project and guidelines laid down by the central authorities, before further harm is done to agriculture.

The hurriedness to push forth the land acquisition, engineering and construction related activities in the present state of non-readiness, when the entire plan is not in place nor is it approved, is certainly neither advisable or beneficial to the people and the State, we observe. The State must instead make genuine efforts to save the best agricultural land by revisiting the network land, the command area and the alignments.

Part – III: Rehabilitation Concerns Of Jobat-Dam-Affected

Amongst the adivasis from Alirajpur district who had deposed before the Tribunal, were also those who have been affected by the Jobat Dam Project or the Chandrashekhar Pariyojana, alleging legal and human rights violations and raising serious issues with regard to rehabilitation of a few thousand project-affected and environmental non-compliance. Many of the adivasis from the 13 villages of Machaliya, Umda, Waskal, Choti Khattali, Badi Khattali, Bheeti, Palasda, Sindhi, Bagdi, Bhanpura, Indravan, Masni and Dawadi have either lost their lands, houses or properties, such as wells, hand pumps and trees, much of it without acquisition as per law and have not been given adequate compensation and rehabilitation as per
the Madhya Pradesh Rehabilitation Policy for Narmada Oustees, 1989 and the environmental clearance of 1983, which mandated a clear time-bound rehabilitation master plan.

In their complaints to us, people alleged that the land acquisition for Jobat was carried out using misinformation, force, deceit and intimidation i.e. in violation of the accepted human rights standards and without following the PESA Act. An atmosphere of fear was created during the acquisition process and the affected were never even informed of their right to rehabilitation by officials of the NVDA. There were other illegalities such as irrigated land falsely shown as unirrigated land and meager compensation paid for the land and also for pipelines, tube-wells, wells, rich variety of trees etc.

People also pointed out that due to faulty surveys, more land than stated has actually been submerged and there may be further submergence. Names of eligible families, adult sons and unmarried daughters have been left out of the list of PAFs and the names of ineligible persons has crept in, obviously due to corruption. Many lands and houses have also become marooned and are facing acute difficulties, particularly during the monsoon period. Ill-planned canals are also causing water logging and salinization in the nearby villages and also increasing the risk of vector-borne diseases such as malaria. The Collector’s survey in 2008 reaffirmed all these flaws, but action has not yet been taken to address these flaws. It was reported to us that neither NVDA nor GRA, Bhopal (Jobat), are yet to satisfactorily address these concerns or initiate corrective actions, in spite of repeated complaints made by the PAFs. GRA, though it has claimed can only address individual grievances, has not done anything effectively, people have told us.

The Tribunal notes with concern the widespread complaint that the Land Acquisition and Rehabilitation officials, straight away negotiate with the PAFs only in terms of cash compensation, without informing them of their legal right to rehabilitation and the authorities made no honest attempt to identify lands for the rehabilitation of the oustees. The only time land was shown at some villages in Dhar district, it turned out to be uncultivable and encroached and had to be rejected by the PAFs. Cash grant offered to the adivasi oustees has not ensured that all PAFs have been able to purchase land. Even those who have could, have not been able to purchase equivalent to what they have lost or 5 acres, minimum that they are entitled to. Consequently, many people switched over to wage-labour for the sake of eking out their livelihood.

One main aspect we would wish to highlight is the poor monitoring by the sanctioning authorities over the years. In particular, the, MoEF’s role to ensure that the conditions in the clearances are complied with, in a time-bound manner has not happened. This is an issue of concern since the NVDA, which has already proved its callousness, corruption and casual approach with regard to the rehabilitation of the adivasi PAFs in the case of other Projects, would have scant regard for law and policy, if there is no monitoring agency or constant supervisory process at the central level.

Neither land, nor livelihood, nor appropriate compensation, nor house plots, nor rehabilitation sites have been ensured to the PAFs, in full measure, as per their entitlements. There are also serious concerns of non-compliance with regard to environmental measures such as the compensatory afforestation, fisheries etc. The MoEF Expert Committee had infact blacklisted Jobat for the violations in 1995, but there was hardly any monitoring thereafter. Over all these years, MoEF could have, but failed to monitor effectively, leading NVDA to displace such a large number of families without rehabilitation affecting their right to life.

We would also like to state that the Narmada Control Authority has powers and authority under the Narmada Water Scheme, 1980 to monitor and ensure faithful compliance of the terms and conditions of all Narmada Projects, which includes Jobat. MoEF and NCA, we are told, are yet to take a clear position and undertake, even if belated, effective monitoring of the Project, particularly with regard to the issue of rehabilitation of the Jobat oustees.

In the light of the facts, submissions and testimonies, we are compelled to conclude that there has been considerable lack of diligence in the overall compliance with the clearance conditions and the scrupulous monitoring of the Jobat Project, with focus on the rehabilitation of the thousands of oustees remains a distant reality, even now.

We, therefore, wish to recommend that all the project-affected, including adult sons and unmarried daughters must be fully compensated and rehabilitated with agricultural land, house plot, with rehabilitation villages, provision of
alternative livelihood as per the clearance, NWDT norms and R&R Policy. GoMP must undertake a full-fledged survey in all 13 villages to ensure all PAFs get all their entitlements and properties not acquired or compensated, are compensated. MoEF and NCA must undertake a serious review of the true status of compliance of all conditions in the clearance granted and the rehabilitation of the oustees and continue further monitoring in an effective way. NVDA and GRA must seriously and speedily resolve all grievances of the oustees. Strict action, as per law must be taken against any persecution of the adivasis or corruption in the R&R process.
REPORT OF THE TRIBUNAL

Constitution of the Tribunal

This three-member Tribunal has been constituted to investigate, amongst other the issue of large scale displacement of the population affected by the various dams and canals being built on the Narmada river, without completing the land and livelihood-based rehabilitation and the serious non-compliance with the environmental measures.

Relevant documents, including the Terms of Reference were provided in advance to the Tribunal members for a prior appreciation and assessment of the various issues involved. The visits to various villages in the affected areas took place on the 2nd of June, 2010 and the public hearing in the valley took place at Badwani on 3rd of June, 2010.

Terms Of Reference of the Tribunal

1. How far is the massive displacement by the Sardar Sarovar Project and the Indira Sagar, Omkareshwar canals justifiable in the context of their performance appraisal and experience till date?

2. Whether the rehabilitation of the Sardar Sarovar and Jobat dam-affected and Indira Sagar, Omkareshwar canal-affected is taking place within the framework of the Narmada Water Disputes Tribunal Award, law, rehabilitation policy and Court’s judgments? To what extent has land and livelihood-based rehabilitation been ensured to the project oustees?

3. What is the level of compliance on the environmental safeguard measures of the SSP and the ISP-OSP Canals and Jobat Dam vis-à-vis the conditional clearances granted; impacts of non-compliance on the environment, the legal violations involved and action by the central authorities on the findings of the Reports of the Devender Pandey Expert Committee (2009 & 2010)?

4. What is the actual status and reality of the massive corruption of crores of rupees that has crept into the rehabilitation process and are the measures being taken to address the same adequate?

5. What, if any, is the basis in law and policy for raising the height of the SSP dam beyond the present height of 122 mts? Whether any moves to further the construction of the dam at this stage would comply with the pari-passu compliance on the mandatory clearance conditions and ensure full, fair and prior rehabilitation, to be consistent with law, policy and Supreme Court judgements?

6. What is the present status of the costs and benefits of the Sardar Sarovar Project and does it necessitate any review of the Project? Can the construction of dam (and canals) proceed beyond the present stage and with what pre-requisites?

7. Have there been any serious violations of the legal and human rights of the project-affected people, over the years and what legal redress must be provided to them and what is the legal and moral responsibility of the project and monitoring authorities?
8. What should be the next steps on the part of the Government, Planning Authorities, sanctioning Authorities & Monitoring authorities in the context of these mega projects?

The Tribunal has considered the issues regarding the rehabilitation and environmental impacts of SSP, in the wider context of costs and benefits, the latter based on the secondary data and documents including research reports. It has looked into the displacement & environmental impacts also of ISP & OSP Canals and Jobat Dam Project along with the related issues with a rights-based approach. This Award is accordingly trifurcated into three major sections, with corresponding conclusions and recommendations within each section.

Part I: Sardar Sarovar Project:
Displacement, Rehabilitation, Environmental Aspects and Cost Benefit Analysis

Part II: Indira Sagar and Omakreshwar Canals:
Planning & Execution, Environmental Impacts, Rehabilitation of Oustees Etc.

Part III: Jobat Dam in Narmada Valley Project: Rehabilitation Concerns of the Project – Affected
PART – I

Sardar Sarovar: Issues, violations and the way forward
Will it lead to a human tragedy or development with justice?

I. INTRODUCTORY ISSUES ON SSP

(a) Background of Dams on Narmada:

Narmada is the fifth longest river in the South Asian Peninsula and is a lifeline to millions of people in the states through which she flows. The Narmada Valley Development Project is a grand river valley scheme comprising of 30 large dams, 135 medium dams and over 3,000 small dams over the Narmada river. Though many of these dams are fully constructed, filling of reservoirs has been stayed in the cases of some large dams like Indira Sagar (earlier called Narmada Sagar Project) and Omkareshwar Project by the Madhya Pradesh High Court due to non-completion and non-compliance of the rehabilitation and environmental works by the project authorities. The High Court judgments are before the Apex Court for further review.

Sardar Sarovar Project:

All these dams are in Madhya Pradesh, except the Sardar Sarovar (SSP) which is being built in Gujarat. Sardar Sarovar Project (SSP) is the second largest among these 30 large dams on Narmada and its canal network is supposed to be the largest in the world, extending up to 75,000 kms. The SSP is a multipurpose project with the proposed benefits of providing irrigation, power and drinking water. The dam is slated to benefit 4 States of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan, with Gujarat deriving maximum of its water benefits.

Ever since its inception, the Project has been mired in severe controversy for the enormous costs that have accompanied it, almost defeating the claim of benefits; Costs – not just financial, but environmental, social and cultural, leading to irreparable loss. The final height i.e. full reservoir level of the SSP is 138.68 mts while the dam stands at a height of 122.92 mts today, after having already submerged large tracts of agricultural land with crop diversity in the adivasi regions of Madhya Pradesh, Maharashtra and Gujarat as also the homes of hundreds of adivasis. At its final height, the SSP shall submerge almost 40,000 hectares of land (including 13,800 hectares of forest) and thousands of houses, in 245 villages with one township in the three states of Gujarat, Maharashtra and Madhya Pradesh and displace a population of 2,50,000 (51,000 affected families as per latest official estimate) due to submergence.

(b) Genesis of the Project: Narmada Water Disputes Tribunal Award

The issue of sharing of waters of the Narmada river was a long-standing bone of contention between the three riparian states of Madhya Pradesh, Maharashtra and Gujarat. On 5th April 1961, the then Prime Minister Jawaharlal
Nehru inaugurated the Broach Irrigation and Power Project at Navagam in Gujarat, which was to later become the Sardar Sarovar Project. Despite many meetings held between the representatives of the concerned State Governments, to break the deadlock the same did not lead to a mutually agreed solution.

By July 1968, Gujarat petitioned for the appointment of a Tribunal to adjudicate the conflicts over the Narmada under the Inter State Water Disputes Act (1956). This led to the appointment of the Narmada Water Disputes Tribunal that was to adjudicate on the issue of apportionment of the waters of Narmada and the sharing of costs and benefits. It is not a widely known fact that that the opposition to Sardar Sarovar Project was first initiated by Government of Madhya Pradesh itself in 1960s, which continued till 1979 before the Narmada Water Disputes Tribunal. GoMP also was engaged in agitations involving all the political parties as part of its efforts to get the dam work stopped, since the state would have to face enormous impacts, if the project gets through. Government of Maharashtra too opposed the project in its proposed form since both the states had then taken a position against huge costs & little benefits coming their way.

Despite the magnitude of the social and environmental impacts of a project, as huge as the SSP, the Tribunal (NWDT) was more in the nature of an engineering adjudicatory body and did not go into the primary investigations on ecological and rehabilitation related aspects. All the depositions before it were only by technical members, engineers and advocates of the concerned states. To conclude from the itinerary, the Tribunal hardly visited the project-affected areas, the rich agricultural and horticultural belt to be submerged and the human habitations in the hills and plains. It is also seen that the Tribunal has not addressed the concerns of the adivasi and riparian communities nor has it fully dealt with the environmental aspects of such a massive Project.

Finally, in 1979, the Award of the Narmada Water Disputes Tribunal was pronounced, which resolved the long-standing disagreement between the four states of Madhya Pradesh, Gujarat, Maharashtra and Rajasthan. The Award laid out the parameters for implementation of environmental safeguard measures and resettlement and rehabilitation of the oustees. The Award also envisaged the establishment of a statutory body called the Narmada Control Authority, which was to ensure and monitor implementation of the Award in letter and spirit. The Final Order and Decision of the Award came after review which was a result of agitation & demand. To sum up, the main aspects / clauses of the Final Order and Decision of the Award were on:

- **Clause III**: Apportionment of the utilisable quantum of Narmada Waters & the benefits.
- **Clause XI**: Directions regarding Submergence, Land Acquisition and provision, process for rehabilitation of displaced persons.
- **Clause VIII**: Sharing of Costs and allocation of Benefits between the Party States.
- **Clause VII**: Determination of the Final Height of the dam: Full Reservoir Level and Maximum Water Level of SSP.
- **Clause XIV**: Setting Up of Interstate Machinery i.e. Narmada Control Authority for Implementing the Decision of the Tribunal.

(a) Significant Clauses in NWDTA on R&R of the Project-Oustees:

- **Clause IV(6)(ii)**: “In no event shall any areas in Madhya Pradesh and Maharashtra be submerged under the Sardar Sarovar unless all payment of compensation, expenses and costs as aforesaid is made for acquisition of land and properties and arrangements are made for the rehabilitation of the oustees therefrom in accordance with these directions and intimated to the oustees.”

- **Clause IV(7)**: “Every displaced family from whom more than 25% of its land holding is acquired shall be entitled to and be allotted irrigable land to the extent of land acquired from it subject to the prescribed ceiling in the state concerned and a minimum of 2 hectares (5 acres) per family, the irrigation facilities being provided by the State in whose territory the allotted land is situated : This land shall be transferred to the oustee family if it agrees to take it”.

- **Clause IV(2) (iii)**: “The three States by mutual consultation shall determine within two years of the decision of the Tribunal, the number
and general location of rehabilitation villages required to be established by Gujarat in its own territory. Madhya Pradesh and Maharashtra shall intimate to Gujarat the number of such villages to be established in Madhya Pradesh and Maharashtra and for which Gujarat would be required to make payments to Madhya Pradesh and Maharashtra respectively”.

Clause V(2)(iv): “Gujarat shall acquire and make available a year in advance of the submergence before each successive stage, irrigable lands and house sites for rehabilitation of the oustees from Madhya Pradesh and Maharashtra who are willing to migrate to Gujarat. Gujarat shall in the first instance offer to rehabilitate the oustees in its own territory”

(2) STRUCTURE OF THE MONITORING AND IMPLEMENTATION AGENCIES FOR SSP: PLETHORA OF AUTHORITIES: PAUCITY OF COMPLIANCE

Since the pronouncement of the Tribunal’s Award, a plethora of authorities have been constituted in the three states for planning, executing and monitoring the construction of the Sardar Sarovar Project and ensuring that all the measures with regard to rehabilitation of the project affected communities and implementation of environmental safeguards are carried out according to the necessary time-schedule for yielding the benefits and mitigating the impacts.

However, it is seen that, over the years, enormous expenditure has gone into constituting and sustaining each of these authorities. Yet serious questions are raised regarding achieving the promised benefits at the promised height or with regard to ensuring the rehabilitation of the oustees and carrying out the environmental works – as well as completion of environmental works.

A Flow Chart depicting the various authorities, in a hierarchical order is ANNEXURE – I

(a) Machinery for implementing the NWDTA:

The NWDT put in place three levels of authorities to oversee, advise and monitor enforcement of its Award.

a) Narmada Control Authority: The NCA was envisaged to be an inter-State, administrative authority for the purpose of co-ordination and securing compliance with the provisions of the Award and implementation of the decision and directions of the Narmada Water Disputes Tribunal.

b) Review Committee of Narmada Control Authority: The Review Committee is chaired by the Union Minister of Water Resources and has the Chief Ministers of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan as its members. RCNCA has the power to review decisions of the NCA and its decision shall be final and binding on all the States.

c) Sardar Sarovar Construction Advisory Committee: The SSCAC is an authority to oversee the various construction-related activities of the SSP and make recommendations to the state governments. The recommendations of the Committee shall normally be accepted by the State Governments concerned. In the event of any disagreement, the matter shall be referred to the Review Committee whose decision shall be final and binding on all the concerned States.

(b) Narmada Control Authority: Statutory Monitoring Agency

The Narmada Control Authority is an inter-State, administrative authority constituted by the NWDT in order to ensure that all the provisions and orders of its Award are duly complied with by the state governments. The Authority was primarily an engineering body, comprising of Technical Members, but with two posts of Director (Environment) and Director (Rehabilitation and Impact Assessment) that were created much later.

Among other functions, the Authority is charged with the power and is under a duty to do all things necessary, sufficient and expedient for the implementation of the Orders with respect to the sharing of costs & benefits but also compensation, rehabilitation and settlement of oustees. The Authority also has the power to issue appropriate directions to the states whenever necessary for timely and full compliance of the Orders of the Tribunal in the matter of acquisition of lands and properties likely to be submerged under the Sardar Sarovar Project and in the matter of compensation and rehabilitation of oustees there under.

The decisions of the Authority on all matters of compensation and rehabilitation shall be final and binding on the four party States. The
Review Committee may suo motu or on the application of any party State review any decision of the Authority. In urgent cases the Chairman of the Review Committee may, on the application of the party State, grant stay of any order of the Authority pending final decision on review.

(c) NCA empowered: Narmada Water Scheme, 1980 and 1987:

The Narmada Water Scheme, 1980 promulgated under Inter-State Water Disputes Act, 1956 and in pursuance of the NWDTA by the Ministry of Irrigation, Govt. of India on 10-09-1980 re-affirmed the role and powers of the Narmada Control Authority as an inter-state monitoring body for the dams and projects on the Narmada river and also stipulated its constitution in considerable detail.

The Ministry of Water Resources, Govt. of India issued another Notification on 3rd June 1987, amending the Narmada Water Scheme and expanding the powers of the NCA with a river-basin approach. According to the amended Scheme, “The role of the Authority will mainly comprise of overall coordination and direction of the implementation of all the projects including the engineering works, the environmental protection measures and the rehabilitation programmes, and to ensure the faithful compliance of the terms and conditions stipulated by the Central Government at the time of the clearance of the aforesaid projects”.

The second Notification was at the time of the Project being granted environmental clearance by the Ministry of Environment and Forests (MoEF) as mandated by the Environment Protection Act, 1986, guided by the River Valley Guidelines, 1985 and related authority and responsibility invested in the MoEF. The role of the Narmada Control Authority was also made very clear in Clause XIV (Sub-clause 8) of the Award and was subsequently strengthened by the Scheme.

Various letters emerging out of the Prime Minister's Office at the time of granting of clearance, that were later placed before Supreme Court during 1999-2000 clearly indicate that a strong body called Narmada Management Authority with adequate teeth and powers, inter alia to stop engineering and other works, if the progress on environmental management is not satisfactory and pari passu with the engineering works was also envisaged as absolutely necessary.

(d) Sub-Groups of Narmada Control Authority:

For the purpose of disposing the duties it has been charged with, in an effective manner, the NCA was further re-constituted during the time of granting environmental clearance to the SSP. Three sub groups, one each on environment, rehabilitation and hydrology, were formed with separate members to oversee implementation of the Award.

i. Environment Sub Group: Chaired by the Secretary, Ministry of Environment and Forests, the Environment Sub Group (ESG) is required to monitor the timely planning and implementation of all the environmental safeguard measures as stipulated in the statutory clearance to the SSP granted in 1987. In its Judgement of 2000, the Supreme Court directed that the ESG will consider and give environment clearance before any further construction beyond 90 meters. The apex Court also directed that the ESG must continue to monitor and ensure that all steps are taken not only to protect but to restore and improve the environment.

ii. Resettlement and Rehabilitation Sub Group: Chaired by the Secretary, Ministry of Social Justice and Empowerment, the R & R Sub Group is mandated, among other things, to monitor all aspects pertaining to land acquisition and compliance of the resettlement and rehabilitation measures for the Project oustees preceding impact on their properties & resources. It reviews the Reports of the state agencies on the R&R of the PAFs. The Supreme Court’s directive of 2000 clearly stated that further raising of the height will be only pari passu with the implementation of the relief and rehabilitation measures and on clearance by the R&R Sub-group, after consulting the Grievances Redressal Authorities.

Hydrology Sub Group: Chaired by the Executive Member, NCA, the Hydrology Sub – Group is responsible, among other things, to take adequate steps to plan and address all the hydrology related concerns in the Narmada river basin.
3) TIMELINE OF CONSTRUCTION OF SARDAR SAROVAR PROJECT

<table>
<thead>
<tr>
<th>Timeline</th>
<th>Stage of Dam Construction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1979</td>
<td>Narmada Water Disputes Tribunal Award pronounced - Work starts at the Sardar Sarovar Dam site at Navagam</td>
</tr>
<tr>
<td>1983 – 1987</td>
<td>Union Ministry of Environment and Forests stops the dam work for four years due to state of non-readiness</td>
</tr>
<tr>
<td>1988</td>
<td>Dam work resumes – Height reaches a level of 53 mts</td>
</tr>
<tr>
<td>1993</td>
<td>Dam work continues - Height reaches a level of 69 mts (World Bank withdraws funding to SSP and a Five Member Committee was appointed by Union Water Resources Minister to review SSP, but the Report was not allowed to be made public)</td>
</tr>
<tr>
<td>1994-95</td>
<td>Dam built upto 80 mts</td>
</tr>
<tr>
<td>Jan 1995</td>
<td>Madhya Pradesh Legislative Assembly passes a resolution and halts construction work of SSP.</td>
</tr>
<tr>
<td>1994</td>
<td>NBA approaches Supreme Court on the grounds of serious social and environmental violations and overall costs of the Projects</td>
</tr>
<tr>
<td>May 1995 – 1999</td>
<td>Supreme Court stays the work on the SSP for more than 4 years. Hearing continues</td>
</tr>
<tr>
<td>1999</td>
<td>Dam taken to a height of 85 mts</td>
</tr>
<tr>
<td>2000</td>
<td>Construction of 3 mts hump permitted</td>
</tr>
<tr>
<td>Oct 18th, 2000</td>
<td>Supreme Court delivers judgement – Dam height cleared immediately upto 90 mts and construction upto 138.68 mts permitted with condition of pari passu compliance of rehabilitation and environmental measures.</td>
</tr>
<tr>
<td>2002</td>
<td>Dam height raised upto 95 mts</td>
</tr>
<tr>
<td>2003-2004</td>
<td>SSP height raised upto 100 mts</td>
</tr>
<tr>
<td>2004-2005</td>
<td>SSP height raised upto 110 mts</td>
</tr>
<tr>
<td>8th March, 2006</td>
<td>NCA permits height to be raised upto 122.62 mts</td>
</tr>
<tr>
<td>April 2006</td>
<td>SSP height raised upto 122.62 mts.</td>
</tr>
<tr>
<td>1st April 2010</td>
<td>Environment Sub Group (ESG) of Narmada Control Authority (NCA) grants conditional clearance to raise the height of SSP to FRL 138.68 mts subject to assurance by Central Water Commission that there shall be no additional submergence. This clearance is not yet final and the R&amp;R Sub Group has also not yet cleared raising height beyond 138.68 mts</td>
</tr>
</tbody>
</table>

4) LACK OF ACCOUNTABILITY ON PUBLIC FINANCE EXPENDITURE

The huge project such as Sardar Sarovar, classified as a major dam, needs to be planned with the ultimate financial cost and reviewing the costs and benefits to calculate the benefit-cost ratio as well as financial rate of return and needs to be cleared by the Planning Commission of India. The requirement of the B-C ratio to be 1.5:1 is mandatory and the criterion for sanctioning investment. The original estimate of Sardar Sarovar Project was about 4,200 crores at the time of declaration of NWDTA and the same was taken as the basis for calculating the B-C ratio through a private agency, The Tata Economic Consultancy services (1983). This itself got changed by the time the Planning Commission gave its clearance for investment which was as late as in 1988, presuming the cost to be 6406 crores. Just as the total number of families to be affected by the Sardar Sarovar Project was grossly under-estimated by the Narmada Water Disputes Tribunal, the cumulative financial requirements of the Project were also greatly undervalued. A perusal of relevant extracts from the various appraisal reports, performance reviews and audits by the Office of the Comptroller and Auditor General of India over the past one and a half decade or so amply shows that the original estimate was an under-valuation and how the cost over runs of the Project have been a result of lack of honesty and efficiency in planning and management of the resources at the various levels of the project implementation.

The following tabulation throws quick light on the rising costs of the SPP over the years.
<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Original Cost Estimate of SSP (1983)</strong></td>
<td>Rs. 4,200 crores (at B:C ratio 1.39/1.84)</td>
</tr>
<tr>
<td><strong>Cost at which the Planning Commission cleared the SSP</strong></td>
<td>Rs. 6,406 crores</td>
</tr>
<tr>
<td><strong>Cost estimated by NBA in 1994 and submitted to the Supreme Court</strong></td>
<td>Rs. 44,000 crores</td>
</tr>
<tr>
<td><strong>Costs as estimated by the Working Group on Water Resources for the XI Five – Year Plan (in 2007)</strong></td>
<td>Rs. 45,000 crores</td>
</tr>
<tr>
<td><strong>Expected Rise in Costs (as estimated by Planning Commission by 2012)</strong></td>
<td>Upto Rs. 70,000 crores (2012 estimate)</td>
</tr>
<tr>
<td><strong>Central Govt. assistance to SSP</strong></td>
<td>Rs. 5,000 crores under Accelerated Irrigation Benefit Programme (highest to any project in India) before 2006. An additional Rs. 7,000 crore rupees is being planned to be allocated now.</td>
</tr>
<tr>
<td><strong>Expenses already incurred</strong></td>
<td>Rs. 30,000 crores</td>
</tr>
<tr>
<td><strong>Promised additional fund (March 2010)</strong></td>
<td>Rs. 11,000 crores (Rs. 6777 crores for canals and Rs. 4,000 crores for command area works). This is without any assessment of the costs and benefits and despite grave legal violations on environmental and rehabilitation issues. (See further chapter)</td>
</tr>
<tr>
<td><strong>Revised Investment clearance by the Planning Commission (May 2010)</strong></td>
<td>Rs. 39,240 crores (Including amount of Rs. 7000 crores reportedly sanctioned for canal irrigation)</td>
</tr>
<tr>
<td><strong>Estimated Year of Completion</strong></td>
<td>2016</td>
</tr>
</tbody>
</table>

The cost of the Project today is almost ten times the original estimate of Rs. 4,200 crores and the Planning Commission, without even reviewing or appraising its performance on the basis of the thousands of crores already granted and ignoring the scathing reports by the Comptroller and Auditor General of misutilization of funds has cleared investment of Rs. 39,240 crores recently. This clearance itself is adhoc since the Commission’s own Working Group on Water Resources estimates the final cost to be Rs. 70,000 crores by 2012 (Report on the Working Group of Water Resources for the XI Five Year Plan, 2007-2010, December 2006, New Delhi). It is worth noting that the latest investment clearance by the planning commission has put forth a condition which is much publicized, that the project should be completed by 2016. It is thus obvious that the final cost which will go much beyond 70,000 crores will again require further clearance soon after.

**Projected benefits at the Full Reservoir Level of 138.68 mts:**

- **Total capacity:** 9.5 MAF (million acre feet) with 17% of waters of Indira Sagar / Narmada Sagar supplied. Without ISP releases, the SSP’s capacity is 4.5 MAF only
- **Promised irrigation:** 17.92 lakh ha land in Gujarat and 73,000 ha of land in Rajasthan
- **Share in Irrigation Waters:** 91% for Gujarat and 9% for Rajasthan
- **Power generation capacity:** 1450 MW Firm power – 435 MW → 50 MW

**Dismal Benefits Scenario: A Case for Serious Review**

Over the past 30 years, the Government of Gujarat and the civil society invested enormous financial and human resources in the construction of one single dam - Sardar Sarovar. However, despite all that has been invested –financial investments by Gujarat and Government of India and the investments by the people of Narmada valley – their agricultural land, forests, village communities, culture – the claimed benefits are still far from attained, leaving people on either side high and dry.
• **Share in Power:** 27% for Maharashtra; 56% for Madhya Pradesh and 17% for Gujarat

b) **A Glance at benefits attained at the present dam-height of 122 mts:**

- Latest CAG Audit Report for Gujarat (Commercial) states that as on March 31, 2009, only about 20% of the canal network has been built, while 80% remains to be laid. The components that lag behind are Branch Canals (43.98%) Distributaries (71.31%), Minors (75.26%) and Sub Minors (83.76%).

- According to assembly debates and newspaper reports, even 30 years after the Project work began, more than 66,000 kms long canal network remains to be constructed because farmers in Gujarat have been opposing to give 30,000 hectares of land for the long canal network. In Kutch, not even 1% of the canal network has been built. (News published in Times of India, Gandhinagar Edition dated 12th September 2009)

- Even as per the latest Socio-Economic Review for Gujarat there has not been more than 2.53 lakh hectares of irrigation at the present dam height (while the claim was 8 lakh hectares at this height).

- Inspite of the pondage attained by submerging adivasis’ lands, forests, and communities, the Union Water Resources Ministry has stated under RTI that not more than 7-10% of the available water is being utilized by Gujarat. (An assessment of the RTI Reply provided by SSNNL, Gandhinagar, dt. 12-05-2008 and News Report in Hindustan Times, Mumbai Edition dated May 28, 2008)

- Going against the original plan of providing water to Kutch and Saurashtra, water from the SSP reservoir is being diverted to cities such as Gandhinagar and Ahmedabad and to industries in these and other cities at very cheap prices or worse still, some industries are not even paying for the same. This was also revealed by Gujarat itself under RTI. (News Reports in Express India dated May 14 and Jun 20th 2008, Vadodara Edition)

- While supply of water for drinking and domestic use fell from the original allocation of 0.86 MAF to 0.06 MAF, excess allocation to industrial units increased from 0.20 MAF to a whopping 1.0 MAF. In many cases, the industries are not even paying back the water charges. Even where water supply exists, it is quite erratic and uncertain. (TISS Report on Performance and development Effectiveness of SSP, August 2008 and CAG Audit Report on Gujarat (Commercial) for the year ending March 31, 2006 (At Page 19))

- The people of Kutch, through the Kutch Jal Sankat Nivaran Samiti have moved the apex court, demanding their due share of water, feeling a sense of betrayal by successive governments. (News report in Express India, June 21, 2008, Bhuj Edition) Their demand for a separate state is also located amidst this reality of broken promises. It is also learnt that the Kutchis are slowly returning back to their traditional ways of micro-level water harvesting and conservation. (Report by Rohini Nilekani on visit to Kutch dated 2nd July, 2009)

- The investors in the bonds of SSNNL have approached the Securities Exchange Board of India (SEBI), High Court of Mumbai and the Supreme Court in large numbers, seeking redress against the arbitrary and premature redemption of the bonds, owing to the financial unviability of the SSP. The same has also been severally criticized by the SEBI (Letter from the Director (Law), SEBI to the Managing Director, SSNNL dt. 02-09-2009), and the Board itself has approached the Supreme Court, challenging this action by the SSNNL.

- The performance of the SSP on various aspects has come under sharp criticism in many Reports of the CAG which has also pointed out that the massive funds granted under the Accelerated Irrigation Benefit Programme has been in an irregular manner, without the Planning Commission revising the cost-estimates of the Project. (CAG Performance Review Audit of AIBP allocation to SSP – 2004). Relevant extracts from the CAG’s Audit Reports on the performance of SSP, along with a few comments by the Tribunal is ANNEXURE - II

5) CLEARANCES TO THE SARDAR SAROVAR PROJECT:

a) **Environmental Clearance (24th June 1987)**
Sardar Sarovar and Indira Sagar Projects (upstream major dam on Narmada) received joint clearance from the environmental angle by the Ministry of Environment and Forests. As per the clearance, the state governments were required to submit detailed plans on various aspects such as Rehabilitation master plan; phased catchment area treatment scheme, Compensatory afforestation plan; Command area development, Survey of flora and fauna; Carrying capacity of surrounding area, Seismicity and Health aspects by December 1989.

Since the Narmada Control Authority (NCA) was already strengthened by then, by virtue of the 1987 Notification, the clearance stipulated that the NCA will ensure that environmental safeguard measures are planned and implemented pari passu with the progress of work on projects and that the detailed surveys/studies assured will be carried out as per the schedule proposed and the Ministry be periodically informed of the same.

b) Planning Commission Clearance (5th October 1988)

The Planning Commission's clearance given for Rs. 6406 crores reiterated the conditions already stipulated in the environmental and forest diversion clearance. The clearance mandated that the State should draw up a detailed time schedule for completion within five years, the investigation, detailed survey, planning and working out the detailed cost estimates for micro-level network system for the balance area of the total command. Mindful of the past experience that the micro-level network is always neglected resulting in poor benefits despite huge investments, the clearance also specifically directed the State to draw up a segment-wise implementation schedule, for completion of canal network.

c) Forest Diversion Clearance (8th September 1987):

The Forest clearance for the SSP, given under the Forest Conservation Act, 1980 permitted Gujarat, Madhya Pradesh and Maharashtra to divert 4,165.9 ha, 2,731 ha and 6,488.84 ha of forest land respectively for the Project. The clearance laid down a stipulation that the state governments will raise compensatory afforestation in double the degraded forest lands also in the project impact areas in addition to the afforestation on equivalent non-forest land and will have to submit a scheme for this by 30th of November, 1987.

6) STATUS OF COMPLIANCE: ENVIRONMENTAL PROTECTIVE MEASURES:

Numerous meetings of the Environmental Sub Group of NCA have made critical comments on the slow and unsatisfactory pace with which the compliance on environmental measures is progressing, which certainly means that the pari passu principle, which is a binding stipulation, as per the clearances and the Supreme Court's judgments is being violated. The Environmental Sub Group had, in fact, as early as in January 2005 taken a decision that there shall be no irrigation from the Sardar Sarovar Project and the Secretary, MoEF also wrote a letter in 2007 to the Secretary, Ministry of Water Resources, requesting the Ministry not to fund the irrigation component of SSP anymore since the progress on compliance with the key aspects of command area development has been neglected. (See Minutes of 41st Meeting of ESG-NCA of January 2005 and Letter by Secretary, MoEF to Secretary, MoWR dated 05-11-07 requesting that no additional fund for irrigation be granted to SSP until there is compliance on CAD measures)

The history of environmental non-compliance of the Sardar Sarovar project is quite long and we have relied on the judgement of the Supreme Court in 2000 and the latest Report by the Devender Pandey Committee to form an assessment of the status of conformity with the eco-legal stipulations. We have perused through the two significant Interim Reports of Dr. Devender Pandey Committee of Experts (February 2009 and 2010) appointed by the MoEF in July 2008, with a mandate to assess all the studies/surveys and safeguard measures of the Sardar Sarovar and Indira Sagar Projects from the environmental angle. After a preliminary evaluation and interaction with the people, we agree with the Committee's reasoned conclusion that there has been serious non-compliance on various environmental safeguard and compensatory measures such as Catchment Area Treatment, Compensatory Afforestation, Command Area Development, Flora fauna and carrying capacity of upstream areas and Health Aspects, all of which were pre-conditional to raising the dam height. The rejection of the NCA's revised back water levels by the Pandey Committee, underlining serious technical and legal violations is a cause of concern, since finalization of BWLs must be an urgent task, which in fact ought to have been done by now. The cumulative BWL impact cannot be...
assessed even now, since all the drains and tributaries have not yet been surveyed, as accepted by NCA itself. We have also been able to refer to a number of submissions to our Tribunal by the NBA showing, through field evidence and analysis as to how there has been poor compliance in various areas of environmental works.

In the overall scenario of poor compliance, this Tribunal notes that the Committee’s recommendation that there should be no further reservoir filling and construction, until all the environmental measures are made pari passu is both legal and in the interest of the natural environment. We have learnt that the MoEF has issued a Notification and appointed yet another High Level Advisory Committee on 28-04-2010 for ascertaining pari passu compliance on environmental measures of the SSP under the chairmanship of Y.K. Alagh with somewhat similar Terms of Reference, but additionally to ensure compliance on the environmental action by concerned states. While the Ministry and the Environment Sub Group have legitimate powers to appointment committees for the tasks entrusted to them and required for in-depth investigation, we feel that that, first and foremost on the basis of the objective and clear recommendation of the Pandey Committee, the MoEF must take appropriate action under the Environment Protection Act. The NCA-ESG should play a role of perfect monitoring, ensuring no legal violation occurs.

In the context of such non-compliance, the Tribunal is surprised as to how a revised investment clearance could have been granted in such a scenario! It is only logical and legal that any further funding or permission for construction-related activity of the Project should be determined in the light of this situation of sky-rocketing costs, unattained benefits, misutilization of funds already allocated and critique by the central authorities and Ministries, as well as expert committees appointed by various Ministries.

7) DISPLACEMENT AND SUBMERGENCE:

The Narmada valley has been home to a large number of communities, whose entire life-system and livelihood depends on the river and the rich natural ecology. While each of the large river valley Projects on the Narmada has caused massive submergence of thousands of acres of good forest land and resulted in unjust submergence of the houses and fertile lands of the people, particularly the adivasis, with a claim that such destruction is inevitable for ‘development’ somewhere, when the claims are nowhere near truth, the voice and wisdom of the people in the valley is only intensifying, questioning the rationale and need for any further displacement and submergence, beyond what has already been irretrievably lost or rather destroyed.

Even as on date, we are told there are anywhere 1,50,000 families living under the present height (121.92 mts) and upto 2,00,000 people in the hilly and plain areas of the valley in the three states of Madhya Pradesh, Maharashtra and Gujarat who face the risk of submergence, if the height of the dam is increased to 138.68 mts. Where will all the thousands of adivasis, farmers, fisher people, boats men, labourers, artisans, traders living in the village communities and township, densely populated with houses, shops government buildings, many temples, ghats, masjids, prosperous agriculture and horticulture since generations go, if the dam is pushed ahead without completing prior rehabilitation is a question that looms large over the valley.
a) Scale of Displacement: Figures of Rehabilitation at a glance

<table>
<thead>
<tr>
<th>Families to be affected by SSP as per NWDTA</th>
<th>6417 families</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Number of affected families at full height of SSP (NCA’s website)</td>
<td>51,447 families in 3 states</td>
</tr>
<tr>
<td>Families claimed to be resettled and rehabilitated</td>
<td>All</td>
</tr>
<tr>
<td>Families remaining to be resettled and rehabilitated as per NCA Annual Report (2008-09)</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Families remaining to be resettled and rehabilitated (as per people’s assessment)</th>
<th>38,000 families in plains of M.P.</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than 3000 adivasi families in the already affected villages of Gujarat, Maharashtra and M.P.</td>
<td></td>
</tr>
<tr>
<td>10,500 - 11,000 families (at R&amp;R sites in Gujarat and Maharashtra)</td>
<td></td>
</tr>
<tr>
<td>More than 800 adivasi PAFs in Madhya Pradesh</td>
<td></td>
</tr>
<tr>
<td>8,000 hectares in Nimad (M.P.) *</td>
<td></td>
</tr>
<tr>
<td>(Including land for those who have not accepted cash in lieu of land and who were cheated in fake registries / purchases and who have received half of SRP package)</td>
<td></td>
</tr>
<tr>
<td>5,000 hectares in Maharashtra</td>
<td></td>
</tr>
<tr>
<td>(*including PAFs who are in the valley and those shifted to R&amp;R sites but not allotted land)</td>
<td></td>
</tr>
</tbody>
</table>

b) Life in the Narmada Valley today:
Observations during visit to villages in the Submergence area and issues raised by villagers

Even before one goes into the multitude of policy provisions and Courts’ judgements that assure adequate R&R to the SSP PAFs, it is necessary to have a brief look at the life in the Narmada, as we ourselves witnessed in village after village and then understand what has been the scale of violations and what lies ahead to be destroyed.

Before we proceed to record our observation during our visit to the various villages in the Narmada valley affected by the Sardar Sarovar Project, we wish to state at the very outset that our Tribunal was shocked to note as to how the Narmada Control Authority (NCA) and the Narmada Valley Development Authority (NVDA) have stated that there are 0 families who are to be rehabilitated, when in fact, in every village, hundreds of people not only welcomed us, but demonstrated to us the full community life, with the houses in various mohullas, schools, panchayat bhavans, temples, masjids, agricultural fields, trees etc and narrated not just their individual complaints but the overall situation and problems with adequate analysis.

Status of SSP-affected villages in Nimad:
Rehabilitation Claims Unfounded

Anjnad Town: Our entry into the Sardar Sarovar submergence affected villages began at Anjnad township, at the R&R site of Chhota Barda where we first met a group of men, women and children coming from the farming and fishing communities of village Segawa, Chhota Badra, Segawa, Kasravad, Piplod. They spoke to us about the gulf in the claims of rehabilitation and their actual status of land entitlements, housing and livelihood. Here, we were introduced to some of the main concerns in the R&R of the project-affected families including rampant corruption. Amongst those who met us were also a group of anguished fish workers whose livelihood has
been affected due to the Sardar Sarovar dam and in spite of policy, no alternative of fisheries is offered to them. A visually challenged PAF, Motiya S/o Damaji & others complained of their house plots reallocated to the rich by corrupt and casteist officials.

**Pipri village:** It was in Pipri that we saw the first glimpse of rural life in the Nimad region, with the agriculturist community in full swing. Pipri is one of the main original villages in the Nimad region where there are people, entitled to land, but not have not been ensured land-based rehabilitation. In its latest Annual Report, the Narmada Control Authority (NCA) has shown thousands of such families in similar villages as also in the adivasi areas as ‘rehabilitated’ on paper and balance families to be rehabilitated as ‘0’. People expressed their thick and inalienable relation with land, agriculture and their mother river and also pain regarding shattering off the same, not just economic but cultural loss.

Shantabehan and Sajanbehan, affected from 90 mts narrated to us the history of legal and human rights violations at Pipri village and asserted with grit that they would not part with their lands – which have been their only source of livelihood for generations together. People also brought out issue of flawed surveys which they said was against the NWDTA and also rejected by Shunglu Committee (2006). The experience with police force but no dialogue on their genuine questions over years depicted the undemocratic way in which people were treated and at critical points even repressed.

The women also told us that no meaningful development works have been undertaken in the submergence villages since they are to be ‘affected anyway’. The farmers, we observed, were keen to discuss wider issues such as inequity and GM crops raised by farming communities. We later travelled on the state highway from Madhya Pradesh to Gujarat which has been discarded and no repairs carried out 10-15 years ago, while the new highway came up only few years ago.

**Pipri R&R Site:** It was revealing to see the Resettlement site for the Pipri village, which was just 2-3 km away from the original village. The contrast between the two was striking! Even 7-8 years after it has been established, not even a handful of families have shifted to the R&R site till date. The Pipri R&R site has no adequate facilities for water, drainage etc. Community structures like the Panchayat Bhavan are built but of very little use, since people have not moved out of the original village. The quality of construction works exhibit corruption or misuse of funds, as told to us by the people.

**Pichhodi Village:** In the adivasi village of Pichhodi, more than a hundred women and men gathered around us and narrated the manner in which that they were betrayed again and again by the Government even after they approached the Supreme Court and got order in favour of land based rehabilitation. Picchodi has about 200 PAFs affected at 110 mts and 600 other PAFs who are not yet rehabilitated with land and livelihood. Almost 150 PF’s houses are left out of the official list. The villagers vented their anger that the Madhya Pradesh Government has miserably and deliberately failed in purchasing and providing cultivable, irrigable and suitable agricultural land (with house plots) to the PAFs who have been affected from 90 mts. This, they said, is in gross violation of the judgements of the Supreme Court, including the judgement of 2005 in the Narmada case and 2005 judgment in Pichhodi and Jalsindhi case.

In 2005, the Supreme Court categorically directed GoMP to identify and allot agricultural land to the PAFs, but till date the process of private land purchase for R&R has not been taken forward. After all these years, the villagers of Pichhodi have not got the required land as was to be allotted to them and as per ATR, only *ex parte* land has been allotted to them from the land bank, which is of poor quality. We also heard the issues of fisherwomen and men who asserted their right to fish without any contractualization. They also sought compensation for the riverbed cultivations, already lost, thus beating their income.

**Rajghat village:** *(Kukra)*

Prominently known as Rajghat, since this is one of the places where the remains of Gandhiji are located, Kukra is a village on the bank of Narmada in Badwani tehsil and district. The whole village faces the risk of submergence at the present dam height of 122 mts. However, there are still a large number of families who have not received one or more of the rehabilitation entitlements such as house plot, grant for construction of house, grant for purchase of productive assets to establish alternative livelihood etc. There are others in
the in the village who have been left out of the list of PAFs.

Here we met a group of PAFs, some as old as 70 years Gopalbaba who is yet to receive alternative agricultural land and livelihood. Tens of villagers, as told by Kanak Singh Sarpanch, had received land in Gujarat but to no avail and owing to the problems faced with Government refusing to exchange land, they had to return back. Names of villages in different districts where too people had to return back from Gujarat were narrated to us. Some of these were: Jangarva, Bhavati, Korai in District Badwani and Anjanwara, Bhitada, Amba in Alirajpur district. The whole village is shown as rehabilitated in the ATR list, we were told, to our amazement. The R&R site for Kukra, people complained is only a mockery of what exists in the Tribunal Award and R&R Policy. The large number of written representations we received from Kukra the next day, only seems to re-affirm this grievance.

Chikhalda village:

Later in the evening, the Tribunal visited the river-bank village of Chikalda, which is situated in the Kukshi Tehsil of Dhar district with a population of about 700 families. Some houses and walls in this village fell apart in 1994 waters during monsoon floods, we learnt. As we walked through the streets of the fish workers, boatmen, milk men with the 'Mashaal Juloos', hundreds of people who stand affected at the dam-height of 95 mts, onwards, demonstrated to us that rehabilitation, as per law and Policy is far from complete. Fish workers like Nanibai and Madubhai Machuwara swarmed us, pleading that fishing, which is their only source of livelihood, be protected, at any cost.

People also pointed out as to how corruption has crept into the entire R&R process in almost every village, with at least 2,000 fake registries unearthed and crores of rupees wasted due to corruption in allotment of house plots and livelihood grants and payment of compensation to ineligible persona and properties etc. One glaring example of corruption in the village was of 13 cheques of compensation grant being issued in the name of one Jayesh Bhagwan. The plight of the R&R site was also described bringing out a picture of almost total lack of amenities.

We listened in silence as Bhagirath of Chikalda questioned, "When people are punished for even a single comment on any judge or judgement, how and why is the State, which has been committing gross contempt of the Supreme Court’ judgements not punished? Are the Courts not concerned about contempt of their judgments when the state bulldozes the rights of thousands and thousands of marginalized people?"

Halt at villages Khaparkheda, Kadmal, Nisarpur:

Our Tribunal received a similar response in villages such as Khaparkheda, Kadmal, Nisarpur etc. where also the people complained that the M.P. Government is ready to submerge their lands and houses without providing alternative agricultural land and completing their rehabilitation, which is totally against the Narmada Tribunal Award. We could see the densely populated villages with cement and concrete houses which are threatened of submergence at 122 meters i.e. even in this monsoon which sent a shiver through our spine.

Villagers like 70 year old Hirdarambhai losing four hectares of best agricultural and, told us that he has not obtained alternative cultivable land as per entitlement. While his case, pending with the GRA was sent to and ‘disposed off by the NVDA’, which is actually a party before the GRA, the latter, instead of re-looking into the case, has treated it as an ‘appeal’, which is clearly against the established policy and Supreme Court’s Judgements. We were also informed of a new and questionable practice of the GoMP in village Khaparkheda whereby the Panchayat was dissolved through an illegal method called ‘Pariseeman’, (merger of Panchayats) falsely claiming that all the people in the village are rehabilitated! This was opposed by the people and the panchayat with the help of NBA and got cancelled.

The cases of PAFs awaiting land-based rehabilitation in village Kadmal was also similar. Here, many old encroachers (prior to 1987) entitled to land are also not yet granted right to rehabilitation. Though there was paucity of time to halt for long at village Nisarpur, as we rode slowly in the night, through the thoroughfare, we could see the full community (like a township with 3,000 houses) life in this big village full of pucca houses, temples, shops, market, government buildings etc. Nisarpur also has an R&R site, but not more than 150 houses are built and only a handful of families have moved out, we were informed. Many people complained to us that the quality of works at the R&R sites were very unsatisfactory, although the sites looked large...
in area and gracious. The entire issue of quality of civic amenities is before Justice Jha Commission of Inquiry. Nisarpur has an R&R site along 2 with 3 villages (including Kothada and Karondia) but not more than 150 houses are there.

Representatives of potters, fish workers, landless labourers, traders asserting their right to livelihood-based rehabilitation as per law, policy and SC judgements also met us on the way.

**Night Halt at Village Bhavaria:**

Though, it was not possible to meet the villagers of Bhavaria late into the night when we reached the place, we were however introduced to some of the issues in the village by a group of leading farmers. As elsewhere, here also no agricultural land has been offered to the affected and eligible PAFs but for the ex-party allotments. We were surprised to note that in the case of one well-off farmer PAF, Mohan Patidar, the agricultural land offered to his family in village Talwada (District Dhar), actually houses an entire colony since few decades.

We were also informed that no Proper survey has been done in Bhavaria for identifying the Tapu (marooned) lands. This is true for many other villages in Madhya Pradesh. While there has been some response by the Maharashtra Government on this issue, Madhya Pradesh has taken no initiative in this regard. Corruption worth a few crores has been unearthed in Bhavaria through the production of fake documents for obtaining livelihood grant and ex-gratia payment. GoMP, we were told, has not taken any action in this regard. Thus there are many landless PAFs who have not been able to establish ‘alternative livelihood’ which is a violation of the states policy, endorsed by SC’s judgements and NVDA’s own Action Plans, approved by NCA and submitted to the Supreme Court in early 90s.

In virtually every village we visited throughout the day, people, led by the women, questioned with anger and pain, “We are agriculturist and nature-based communities. A few thousand rupees cannot feed our families and sustain our livelihood for a lifetime nor can it kill our entire-river valley culture. When the State cannot give us land and livelihood, it has no right to displace and submerge us”. We wound up the visit for the day, keenly looking forward to the hearing at Badwani the next day.

**c) Hearing the Project-Affected at Badwani: Broad Spectrum of Issues Raised**

As we began the Public hearing in Badwani, amidst the presence of a thousand and more people affected by the Sardar Sarovar and Jobat Projects and the Indira Sagar and Omkareshwar canals, we could get a glimpse of all the communities, in fact the entire gamut of the rural and adivasi population in the region that are raising questions about the Projects and their impacts. Since, it might not be possible to reproduce within this Report the testimonies of all the PAFs who deposed before us, we have decided to briefly list out the profiles of the participating project-affected communities that were present in the Public Hearing and some of the key issues flagged off by them:

- **Hill-dwelling Adivasis** from villages in Alirajpur (Alirajpur district, M.P) and Bhadal (Badwani district, M.P) who reside in the Vindhya mountain ranges. They have lost most their good cultivable lands and some sloppy lands since 1994 but have not been guaranteed land and livelihood based rehabilitation. None of them have accepted cash compensation till date and are asserting their right to agricultural land with rehabilitation villages and civic amenities as per the NWDTA, R&R Policy and Supreme Court’s Judgements. They asserted their right to jal, jungle and jameen and spoke with anguish about the atrocities committed upon them.

- **Adivasi-farmers in the plain regions** of Nimad such as those in villages Pichhodi, Bhilkheda, Amlali, Avalda who also have a right to agricultural land, but are still awaiting complete rehabilitation in terms of the Narmada Award, R&R Policy and the judgements of the Supreme Court. Despite the Court’s direction and some process of private land purchase initiated, the same was shelved and none of them have yet got land, except ex parte allotments of uncultivable lands with distant house plots.

- **Other Agriculturists from plains** - Farmers of Nimad who have a right to agricultural land, but have not yet been ensured the same. Many of them have infant been entangled in the fake land registries and betrayed by the state government due to the massive corruption of crores of rupees. There are at least 1424 such farmers who have been duped in the fake registries and have not been able to purchase land after receiving the first
instalment of SRP. There are hundreds of PAFs, even in the plain areas who have not accepted cash entitlements, yet their rightful land is not provided.

- **Fish workers** whose principal source of livelihood is fishing in the river. The fish-catch has been badly affected due to the reservoir and their river-bed cultivation and land on the bank has submerged, for which they have not yet been compensated or given alternative land. Fish workers are yet to be granted clear legal rights to fish in the dam reservoir. Many villages have proposed fishermen’s co-operatives but the same are awaiting registration. The High Powered Committee, under the Secretary, Department of Fisheries (Ministry of Agriculture) is yet to take a decision on the rights of fish workers, while in the case of other reservoirs such as ISP and OSP which were given out to private contractors, going against the demand of the fish workers, organized into co-operatives, but the same is stayed by High Court of M.P.

- **Riverbed cultivators** are generally from the fishing community, but also cultivate water-melons and vegetables in the river-bed. We were also informed by river-bed cultivators from Chikalda, Dantwada (where lease was upto 2016 exists, but cultivation has submerged without any compensation) and Piplover (where land has been auctioned since decades) that submergence of their lands is unjust and against the Award.

- **Boatsmen** whose main source of livelihood is ferrying people through Narmada, seek compensation for the river-ghats submerged and assert right of way and right to land on river bank to harness the boats. They were represented through their federal organizations spread over various districts and various dam affected areas beyond Sardar Sarovar who submitted to us detailed memoranda with documents in Modi language since the period of Akbar. Their memos and rally over years have not received any response from State.

- **Potters** whose only source of livelihood is making earthen utensils and bricks in the brick-kilns on the river bank. They depend on the river-bank land for the same and the increase in reservoir level has severely affected their livelihood as well. They need the river bank land to carry on their livelihood.

- **Landless agricultural labourers and other workers** who work mostly on the agricultural fields, but also small traders, shopkeepers etc. who are entitled to compensatory grants for purchase of productive assets to establish alternative livelihoods, house plots, grants for construction of house etc. as per state policy and action plan submitted to SC. But many of them have not been informed and have not obtained one or more of the grants and alternative livelihood has not been established in most cases. S.S. Jha Commission is inquiring into the issue of livelihood grants while few thousand landless are cheated.

- **Old Encroachers** who have been cultivating government land and living in the villages for many years, some even prior to 1987 and are thus entitled to revenue land titles and thereby, 2 hectares of agricultural land as per the Rehabilitation policy, but have not yet obtained the same. Their lands should have been regularized and alternative lands provided, but this has not yet happened and there are hundreds of such PAFs in many villages such as Rabadiya S/o Malsing and Sohan S/o Harliya, belonging to the Mankar community in villages Segawa, Kadmal etc. who have neither been compensated, not given alternative lands.

- **Canal-affected adivasis and farmers**: Thousands of hectares of prime agricultural land which is to the only source of livelihood is to be destroyed for the laying the canal networks of Indira Sagar and Omkareshwar projects in the already irrigated villages on the bank of Narmada. Many of these villages are in fact situated within the submergence area of the Sardar Sarovar Project. Without adequate and approved command area plans and faulty land acquisition processes with violation of basic rights such as application of urgency clause and non-application of R&R Policy, the canals are to wreak havoc, farmers told us with details and explained to us about the High Court’s judgement and Supreme Court’s interim orders.

- **Marooned-land affected**: The issue of villages that will be rendered marooned (tapu) with water encircling or become physically isolated and socially unviable has not been adequately addressed by GoMP. The potential threat exists in many other big and small villages such as Eklera, Khaparkheda, Jalsidhi, Malangaon, Karondiya, Borkhed, Kakrana, Khudar Faliya and in Bhavaria, where the farmers personally apprised us of the same. NVDA is only identifying house sites and not agricultural land for the affected.
• **PAFs losing land for R&R sites:**
  Many villagers are losing lands for the R&R sites of the Sardar Sarovar and other Narmada Projects that make them equally ‘affected’, but despite a clear definition in the R&R policy, the entitlements in the Policy are not being extended to them, leaving them in a state of deprivation and discrimination. Their case is not taken up by any authority and is not represented in Court as well.

• **Adivasis from Maharashtra:**
  The issues of at least 1,500 adivasi PAFs from Maharashtra yet to obtain agricultural land, which process is pending before the state authorities was brought to our notice. Need to immediately check the rampant corruption in land purchases and provide land to the tapu-affected was also brought out. The adivasis also spoke about the wider development issues of displacement of communities dependent on the natural resources, the kind of prosperity that their communities live with as against the popular notion, which fulfilled their basis needs and they did not have to migrate.

• **PAFs from Vasahats of Gujarat:**
  There are at least a few hundred PAFs in Gujarat (from Gujarat, Maharashtra and M.P.) who have reportedly been given bad quality land also house plots that gets water-logged every monsoon, thus forcing them to switch over to labour work. The need is to immediately exchange all such land for cultivable and good land. The Members were also given a detailed Report of a Public Hearing by eminent researchers and activists from Gujarat on the issues of the PAFs at the vasahats. The facilities at many Vasahats as well needs to be further improved. The lands of adivasis in and around the villages of Kevadia that was acquired for the dam-colony is now being used or tourism, museum and religious organization instead of being returned back to adivasi owners, which is being strongly questioned. A full-fledged Report on the issue of the colony and tourism affected in Kevadia (Equations Report, Bangalore) was also submitted to us.

• **Jobat-dam affected:**
  At least 6,000-7,000 adivasis affected by the Jobat Dam Project in 13 villages of Alirajpur district who have either lost their lands, houses or properties, such as wells, hand pumps and trees, much of it without acquisition as per law are seeking immediate rehabilitation and effective monitoring by MoEF & NCA of their R&R process. We have been given a number of official documents by the people’s organization and detailed memoranda.

A summary of testimonies by some PAFs from these various categories of project-affected is ANNEXURE - III

8. LEGAL ENTITLEMENTS OF THE SARDAR SAROVAR PROJECT OUSTEES:

In the context of various developmental projects undertaken across India, the Sardar Sarovar project is uniquely placed, owing to the mandatory entitlements of rehabilitation that are to be provided to affected families. The Narmada Water Disputes Tribunal Award, the R&R policies, the various judgments of the Hon’ble Supreme Court in 1991, 2000, 2002 and 2005 and Action Plans of the respective States unambiguously lay out the entitlements of the project-affected persons and mandates the manner in which R&R is to be carried out by the concerned state governments. A plain reading of the provisions in Award, Policy and Plans each and every eligible project affected family (PAF) must receive the following in terms of entitlements as detailed below.

a) Narmada Water Disputes Tribunal Award:

The Narmada Tribunal Award contains detailed directions with regard to acquisition of land and properties, provision of agricultural land, house plots and civic amenities for the resettlement and rehabilitation of the affected families. Some of the relevant clauses are:

- Acquisition of properties coming under submergence and compensation for the same.
- Making available a year in advance of submergence, rehabilitation villages having cultivable/irrigable land and house sites [Sub-clause IV (2)(i) and (iv)].
- These rehabilitation villages must also have all civic amenities including Primary school (3 rooms) for every 100 families, Panchayat ghar for every 500 families, Dispensary for every 500 families, Seedstore for every 500 families, Children’s park for every 500 families, Village pond for every 500 families, Drinking water well for every 50 families, Roads, etc. [Sub-clause IV(3)(c)].
- Allotment of house site i.e. a plot of land measuring 60’ x 90’, free of cost, to every oustee family [Sub-clause IV(3)(c)10] and cultivable and irrigable agricultural lands to all eligible PAFs (those losing more than 25% of...
agricultural land and adult sons), in rehabilitation villages [Sub-clause IV(7)].

- Completion of rehabilitation at least six months before submergence with respect to homestead, substitution of agricultural property and such other arrangements as contemplated under the rehabilitation scheme.
- Shifting of PAFs to the rehabilitation villages at least six months before submergence, having the option of occupying their properties coming under submergence without being required to pay anything for such occupation [Sub Clause V (3)(iii)]. This implies that the PAFs should have vacated their property in the original village and already begun living in the rehabilitation village six months before submergence i.e. at least their house must be ready at the rehabilitation village.
- The compensation for houses and land under the Land Acquisition Act and alternative livelihood, as entitled should have been obtained. Payment of Ex-gratia amount, rehabilitation grant, subsistence allowance and all other due grants must have been completed.

In no event shall any area be submerged unless all payment of compensation, expenses and costs is made for acquisition of land and properties and arrangements are made for the rehabilitation of PAFs and intimated to them [Sub Clause IV (6)(ii)].

b) NCA’s Master Plan for R&R of SSP Oustees:

As per the NWDTA, the Narmada Control Authority (NCA) is charged with the responsibility to ensure that the concerned states carry out the rehabilitation of all PAFs in full compliance. According to NCA’s Master Plan for Resettlement & Rehabilitation (R&R) of the Sardar Sarovar (Narmada) Project Oustees, which has also been submitted to the Supreme Court, a PAP is treated to have been resettled if the following activities have been completed for his family:

- Compensation for land and properties going under submergence if any, has been paid.
- Agricultural land and house plots have been allotted at the relocation site of his choice as per NWDTA provisions and state policies. House plot and financial assistance to acquire productive assets or purchase land provided to landless PAFs including major son in Madhya Pradesh.
- Alternative livelihood through a special grant through an officially registered Trust with family-wise separate planning.
- Free transport has been availed of by him, to shift materials or cash compensation in lieu of, has been received by him.
- Ex-gratia payment, rehabilitation grant, subsistence allowance, development assistance for pucca plinth, house, etc as per respective state packages have been paid or partly paid.
- Ration card has been issued to him at the relocation site.
- Education, drinking water, medical facilities, etc have been provided.
- Irrigation facilities/ vocational training provided.”

c) R&R Policy for Oustees of Narmada Projects (M.P.)

The Madhya Pradesh Rehabilitation Policy for Oustees of the Narmada Projects is one of the most progressive policies in the country on the subject, which was an outcome of extensive discussions at various levels with the officers of various Ministries and Departments of the Central and State Government, officials of the World Bank, MPs, MLAs and NGOs. Suggestions from these various sources were put together by the Committee of Secretaries and the Policy was promulgated in 1989. The Policy re-affirmed many of the provisions in the NWDTA, significant among which is the guarantee that every PAF losing more than 25% of the land for any project-related activity is entitled to land-based rehabilitation, with a minimum of 5 acres of cultivable and irrigable land. Some of its stated objectives include:

- The aim of the State Government is that all displaced families would, after their relocation and resettlement, improve, or at least, regain their previous standard of living within a reasonable time.
- Land-holders without titles would be treated at par with titled landholders for the purpose of payments of compensation or amount that is equivalent to compensation.
- No differential treatment will be given to families displaced from revenue or forest lands.
- Proper compensation will be paid for agricultural lands, abadi plots and property of the oustees and appropriate payment will be taken for the lands allotted at the new places from the oustees.
• Special care would be taken of Scheduled Caste and Tribe families and small and marginal farmers

• Where affected families lived together as a social unit, the same will be maintained as far as possible in the new place of relocation, and the displaced persons will be resettled as per their preferences in the command or around the submergence area.

• Sufficient civic amenities and physical and social infrastructure will be made available in the new settlements.

• While resettling families entitled for allotment of land, it would be ensured that viable units of land are given.

• Landless agricultural and non-agriculturist families would be assisted in rehabilitation at the new places by giving grant-in-aid in the initial period and self and wage employment opportunities.

• “The Rehabilitation Policy would be so implemented that middlemen and profiteers would get eliminated”.

Building upon the NWDT A, the Policy also guaranteed a range of civic amenities at every R&R site, such as:

1. Drinking water /tube-well with trough.
2. Link and Approach roads and gutters.
3. Electricity
4. Dispensary
5. Primary School
6. Panchayat Bhavan-cum-Community Hall.
7. Play-ground /Children’s park.
8. Cattle Shed.
9. Religious Place of worship
10. Threshing ground.
11. Seed store
12. Tree Platform
13. Cremation and burial ground
14. Pond, wherever it can be constructed
15. Social amenities for each municipal town, viz. water supply, underground drains, sanitary arrangements, landless leveling, etc.
16. Any other facility such as middle school which was existing in the affected village and
17. Earmarking of pasture land and its improvement

A document of considerable significance, the Tribunal feels, is the Action Plan of the Narmada Valley Development Authority, based on the provision of the Rehabilitation Policy, wherein it formulated elaborate schemes for the resettlement and rehabilitation of various categories of the project-affected oustees. The document is relevant since this was presented before the Supreme Court and formed part of the basis upon which the Court visualized preparedness by the NVDA to complete the rehabilitation of the oustees in a satisfactory and time-bound manner.

It is, however, pertinent to note that there was no data on alternative agricultural land sites either in the NVDA Action Plan, 1993, or NCA Master Plan, 1995 or the NVDA Action Plan, 2000, after the Supreme Court’s Judgement. NCA’s plan only incorporated and compiled the state plans. Further, while the land records should be corrected and updated before land acquisition, but the same has not been done since years, we were told and due to this hundreds of PAFs have been unfairly left out and denied R&R entitlements. The following extracts from the Action Plan are relevant:

• “The main objective of the plan for resettlement and rehabilitation of the oustees are to ensure that the oustees shall promptly after their displacement improve or at least regain the standard of living they were enjoying prior to their displacement”.

• “The plan for resettlement and rehabilitation of the oustees shall ensure adequate participation by the oustees.

• “Each landless oustee shall be rehabilitated in the agricultural or non-agricultural sector as the case may be and shall be entitled to stable means of livelihood in accordance with the objectives set forth hereinbefore”.

• “In no case shall cash payments be made in substitution for actual rehabilitation”.

e) Judgements of the Supreme Court

After 6 years of prolonged hearing on the various social and environmental issues and overall costs of the SSP, the Supreme Court delivered a judgment on 18 October 2000 in Narmada Bachao Andolan versus Union of India and Others [2000(10) SCC 664] upholding that relief and rehabilitation measures as well as the environmental protective measures are integral to the right to life guaranteed by Article 21 of the Constitution and will have to be pari passu with the dam work. The Judgement endorses the provisions in the NWDTA and directing that the States/authorities to ensure implementation of the Award by providing minimum 2 hectares of irrigable, cultivable land to the affected oustees and rehabilitating them.
at a fully developed rehabilitation sites with all civic amenities. The judgement also stated that the state governments are bound to comply with the directions issued by the NCA from time to time, on all matters pertaining to R&R of the oustees.

In the earlier case of B.D. Sharma v. Union of India 1992 Supp (3) SCC 93, the Hon’ble Supreme Court delivered a judgement on 9-08-1991 which endorsed the NWDTA, whereby it directed that “Rehabilitation should be so done that at least six months before area is likely to be submerged, rehabilitation should be complete and should be in respect of homestead substitution of agricultural property and such other arrangements which are contemplated under the rehabilitation scheme”

In its Interim Order dated 09-09-2002 in the ongoing W.P. (Civil) No. 328 / 2002 the Supreme Court, reposing full faith in the Grievance Redressal Authority stated, “The Grievance Redressal Authority having been put in place, there is no reason for this Court to interfere. As far as the dispute raised in this petition is concerned, that is over and final with the earlier decision of this Court. In case an oustees or a person affected by the Project has any grievance, it is open to him to approach the Grievance Redressal Authority. It is also contended that land for land has not been given. If there is any person so aggrieved or has a justifiable grievance, it is open to that person to approach the Grievance Redressal Authority, failing which this Court. It is made clear that full assistance will be rendered by the Narmada Control Authority as well as the State Governments to the Grievance Redressal Authority in the discharge of their respective functions”

In its subsequent judgement in Narmada Bachao Andolan versus Union of India and Others 2005(4) SCC 32, the Hon’ble Supreme Court delivered yet another judgment on 15th March, 2005, whereby it upheld the Narmada Award and reiterated that land-based rehabilitation of PAFs, along with provision of house sites with requisite amenities must be completed one year before submergence. The judgement admitted the entitlement of minimum 2 hectares of cultivable, irrigable and suitable agricultural land to all major sons and unmarried daughters of landholder PAFs. The judgement also rejected the artificial distinction between ‘temporarily’ and ‘permanently’ affected PAFs and directed the state governments to ensure full and prior rehabilitation of all the oustees.

9. ENCASHMENTS OF R&R BENEFITS: DEVIATION FROM THE NWDTA’S PROVISIONS.

a) Special Rehabilitation Grant (SRG): (since November 2001)

The first attempt towards encashment of the land entitlement in the NWDTA began in November 2001 when the Madhya Pradesh Government introduced the ‘Special Rehabilitation Grant’ (SRG) as a substitute for the agricultural land it was to offer to replace the land acquired / submerged by the SSP. Essentially, the SRG was an ‘offer’ to the PAFs to surrender their legal entitlement to alternative land, by opting for cash to “purchase” the land. We would like to record here that that this first change itself was untenable on legal grounds, since the Supreme Court’s judgement of 2000 had ruled out any amendment” of NWDTA till the passage of 45 years from the date of the Award (i.e. until 2024).

It is pertinent to note that in the same month when the SRP was introduced, the Chairperson of the Social Justice Ministry observed in the 63rd Meeting of NCA that the ‘land for land policy must be strictly followed as per the NWDTA’ and any amendment should be put forth before the Law Ministry to verify its admissibility before the Court. In September 2004, NVDA, once again took a unilateral decision to dilute its responsibility on providing house plots to PAFs with civic amenities at R&R sites as per NWDTA’s rehabilitation clauses by declaring cash compensation of Rs.50,000, as if to lure the people. Reportedly, PAFs were also pressurized not to accept more than one house plot, while NWDTA and Supreme Court direct the State to provide all PAFs house plots with all civic amenities.

b) Special Rehabilitation Package (SRP): (June 2005)

In the light of the judgement of the Supreme Court of 15th March, 2005, the Chairman of the Review Committee of the Narmada Control Authority, in a meeting of the Committee a week later, ordered suspension of the ‘Special Rehabilitation Grant’ (SRG) until the situation is reviewed. However, within a span of 3 months, i.e. in June 2005, GoMP brought back the cash-based scheme by amending the Special Rehabilitation Grant and converting it into ‘Special Rehabilitation Package’ (SRP), stipulating that the PAFs will buy irrigated land for themselves from the given amount.
This is a clear deviation from the NWDTA and the Supreme Court judgments, which lay the onus of acquiring and allotting cultivable and irrigable land on the State Government. It would be germane to go back to the wisdom of the Supreme Court, when in 2000, it stated:

"In the past, there was no definite policy for rehabilitation of displaced persons associated with the river valley projects in India. There were certain project specific programmes for implementation under the provisions of Land Acquisition Act, 1894 used to be given to the project affected families. This payment in cash did not result in satisfactory resettlement of the displaced persons, the requirement of relief and rehabilitation of PAFs in the case of Sardar Sarovar Project was considered by the Narmada Water Disputes Tribunal and the decision and final order of the Tribunal given in 1979 contains detailed directions in regard to acquisition of land and properties, provision of land, house plots and civic amenities for the resettlement and rehabilitation of the affected families. The resettlement has thus emerged and developed along with Sardar Sarovar Project".

The unilateral change of the Award by the GoM in disregard of the decision by the RCNCA and the GRA (M.P.)'s inappropriate endorsement of the same has come in for sharp criticism from various quarters. In its 62nd meeting held on 12 September 2005, the R&R Sub-Group held SRP as violative of the NWDTA's rehabilitation clauses and stated that all eligible PAFs are to be allotted land and in case GoM differs with NCA’s directions, it needed to take it up with NCA again. It is also pertinent to point out that the GoM was bound to comply with the directions of NCA and withdraw the SRP since NWDTA emphatically states that the State Governments are bound to comply with the directions of the NCA (Chapter IX, Clause XIV, Sub–Clause 8 (3) (v) and Sub–Clause 13 of NWDTA) –

As expected, over the years, this encashment, far from ensuring the land-based rehabilitation of the project affected has opened up a Pandora’s Box of corruption, misappropriation and irregularities through fake registrations and fake livelihood grants, as the Hon’ble High Court of Madhya Pradesh itself concluded, leading to the appointment of a Judicial Commission of Inquiry to inquire into the entire scam.

c) Challenge to SRP: Eminent Persons’s Intervention in the Supreme Court

In 2006, a group of ten eminent persons including Dr. Upendra Baxi (Former Vice Chancellor, Delhi University and senior lawyer); Shri L.C. Jain (Former Member, Planning Commission), Shri Ramaswamy Iyer (Former Secretary, Water Resources Ministry), Dr. B.D. Sharma (Former Chairperson, SC & ST Commission), Swami Agnivesh, Aruna Roy and Harsh Mander, (renowned social activists), Kamla Bhasin (noted women’s rights activist), Shri Kuldip Nayyar and Dr. Suhas Borker (veteran media persons) filed a separate writ petition in the Supreme Court with regard to the gross non-compliance on the rehabilitation of the Sardar Sarovar oustees. Their petition particularly challenged the process of encashment of the rehabilitation entitlements provided under the NWDTA and the R&R Policy.

The petition of these eminent persons notes with concern that the Special Rehabilitation Package, a cash-based scheme has diluted and violated the guarantee of providing land to the eligible oustees as mandated by the NWDTA and the Supreme Court's own judgements and has resulted in a web of enormous corruption. This matter, we are told is to come up for final hearing, along with a batch of various other writ petitions on the rights of the SSP oustees, starting September 2010.

d) Group of Ministers Visit to Narmada Valley in 2006: Report exposed R&R on paper

Once again, at the height of the controversy over the SSP in March-April 2006, when Gujarat and Madhya Pradesh were pushing for a further increase in the dam height and NBA seriously challenged the same, alleging severe non-compliance on the rehabilitation of the thousands of already affected oustees and undertook an indefinite fast in Delhi, the Prime Minister deputed three Central Ministers to assess the real situation in the valley.

Comprising Union Minister of Water Resources Prof. Saifuddin Soz, Union Minister of Social Justice and Empowerment, Ms. Meira Kumar, and Minister of State in the Prime Minister’s Office Shri Prithviraj Chavan, the delegation of Ministers visited numerous villages and tehsils such as Khalghat, Dharampuri, Pipuld, Awalda and Nisarpur. Finding truth in the thousands of complaints that the R&R has not been in consonance with the Policy and the Supreme Court Judgments, the GoM expressed its deep concern for the adivasis, dalits and women who have faced the brunt of such non-compliance. Noting the severity of the widespread corruption, the GoM recommended
that “the outcry against the SRP (cash award) must be responded by stopping this practice as it has bred corruption”.

According to the GoM, “the reports of the Rehabilitation and Resettlement Sub Group and the GRA on the basis of which Narmada Control Authority (NCA) granted permission for raising the height has been largely paperwork and it has no relevance with the situation on the ground”.

Having seen and felt the situation, in April 2006, the Ministers said “The state leadership has to show its political will to accomplish this gigantic task of rehabilitation within a year from now”. In 2010, we still find no notable change. Instead, rehabilitation is still far from complete and the corruption has only increased manifold, as evident from the progress of legal proceedings and people’s complaints to us.

e) Oversight Group: Shunglu Committees’ Findings on Incomplete R&R (July 2006)

Subsequent to the visit of the three Union Ministers to the Narmada valley, and their unambiguous Report, the Prime Minister appointed the Oversight Group (OSG) under the Chairmanship of Former Comptroller and Auditor General Shri V.K. Shunglu, with Prof. G.K. Chadha (Former Vice-Chancellor, JNU) and Dr. Jaiprakash Narayan (Lok Satta, Andhra Pradesh) as the members to ascertain as to whether the stipulations of R&R were being complied with as per the NWDTA and the SC’s Judgements and also to assess the reasons for rejection of land offers by the oustees.

After detailed assessment, which included surveys by the National Sample Survey Organization (NSSO), the Oversight Group came up with a mixed set of recommendations in its Report of July 2006. The Report acknowledged the fact that thousands of PAFs are still in the original villages and have not moved to the R&R sites, since the facilities at many places are bad to average. The OSG itself recorded that many sites for PAFs affected below 90 mts and 100 mts are in a poor state. Thus, the people cannot be blamed for not shifting to the sites. The Report also rejected the nazaria survey and stated that it cannot be considered as final settlement of compensation and hence the house surveys will have to be redone.

Another major highlight is that the OSG (through NSSO) also interviewed 6,486 persons who are not included in the ATRs but residing in the submergence zone. All of them were thus undeclared PAFs! Despite concluding that there is no irrigable, cultivable land in the Land Bank, the OSG did not make any comments on the legal violations by the GoMP. Instead, the OSG sought to justify the SRP in lieu of land as against making an objectively evaluation the government’s performance on the compliance with the NWDTA. Similarly, while the OSG Report admitted that a number of major sons whose entitlements to land / house, endorsed by the Supreme Court judgment, 2005 are still left out of the records, it did not make any clear recommendation on the rights of thousands of such PAFs. The Committee also did not go into the details of rampant corruption in the R&R process. The big scandal of fake land registries later admitted by the GoMP and NCA indicated the limitation of the OSG Report, which did not address the reality of corruption in its Report. We were told that this was in spite of fact that Prof. Upendra Baxi, Prashant Bhushan and others making a detailed presentation before the OSG.

10. RAMPANT CORRUPTION IN R&R: GRAVE VIOLATION OF RIGHT TO REHABILITATION

While the Sardar Sarovar Project has always been engulfed in controversy for its tall claims, non-performance and non-compliance on rehabilitation and environmental measures, one new facet of raging controversy and related legal action that has emerged over the last one decade is the massive corruption in virtually all areas of the resettlement and rehabilitation affected families. Leading this tragedy of rampant corruption, is the state of Madhya Pradesh where an elaborate nexus of corrupt officials and middlemen have allegedly appropriated a few hundred crores of rupees out of the rehabilitation fund. More precisely, of the Rs. 1,900 crores of rehabilitation budget, we were provided with calculations showing how not less than Rs. 300 crores have been misappropriated or wasted.

A visible fallout of this scale of corruption has been the serious non-compliance of the legally mandatory requirements of rehabilitation, thereby violating the rights of affected persons guaranteed by the Constitution, NWDTA, R&R Policy and numerous judgements of the Supreme Court. This is a huge loss, not merely to the affected, but also of the State’s limited financial resources allocated for rehabilitation, and this money could have certainly been
utilized for purchasing land for hundreds of adivasi oustees, to whom the State otherwise has responded by saying that it is not possible to purchase land as it is expensive.

Such a massive misappropriation could have certainly been averted and people's rights ensured, had all the authorities, be it the Narmada Control Authority, Comptroller and Auditor General, Central Vigilance Commission, Lok Ayukta and the concerned Ministers of the Central and State Government responded to the alarm bells that were sounded by the people and NBA since 2002. After the GoM's scathing report of the prevalence of corruption in April 2006, the only effective intervention came from the High Court of Madhya Pradesh, when NBA filed a Public Interest Litigation in October 2007 seeking a high-level and comprehensive investigation into the entire issue and punishment of those found guilty of the corruption and violation of law and also to prevent further misappropriation and misuse of crores of rupees public money.

Though the entire issue began with the shocking series of fake land registries, which was a result of the failed Special Rehabilitation Package (cash for land), very soon, striking evidence of corruption was found in various other aspects of corruption. On the basis of the wide variety of complaints received and a perusal of the High Court's orders, we have been able to list out the following main areas of corruption:

i. Massive corruption through production of fake land registries: Fake registries were a consequence of the situation of impossibility imposed on the PAFs, necessitating them to produce proof of purchase of 5 acres of agricultural land with just about 2.5 lakh rupees, in order to receive the 2nd installment of the SRP. A whole nexus of corrupt officials and middlemen were the actual profiteers of the SRP scheme, leaving the PAFs in a situation without any land and rehabilitation.

ii. Corruption in the quality of civic amenities at the R&R sites: Significant corruption in the quality of the construction works at the resettlement sites, as pointed out by the CAG [Audit Report (Civil) for the year ended 31 March 2004] leading to suspension of 37 NVDA officials, but no further action against them. This has caused serious violation of the rights of PAFs, who are expected to spend a life-time at the new rehabilitation site.

Examples of R&R Sites at Narmada Nagar, Pichhodi, Avalda etc. were reported to us.

iii. Exclusion of the eligible affected persons and payment of compensation and rehabilitation grants to the ineligible: Crores of rupees have also been given away as compensation to ineligible persons (even minors) in Khedi, Piplud, Segawa, Dhanora and many other villages, by fudging up the survey lists of PAFs. Excluding and depriving the eligible PAFs of their R&R, the illegal proceeds are proportionately shared between the ineligible PAF and the officials & touts, we were told.

iv. Corruption due to the flawed enumeration the back water levels: With the NCA appointed Sub-Committee reducing the Back Water Levels, about 5000 families from 55 villages including one township have been excluded from the R&R benefits, while this whole exclusion itself has been questioned, as in village Kasravad, which was represented before us. We were shown charts and reports on BWL, and the activists and people stated that the revised BWLs are neither final nor correct and are already rejected by the MoEF Expert Committee.

v. Irregularities in disbursement of livelihood grants: In villages such as Bhavaria, Dhanora etc. lakhs of rupees have been irregularly disbursed, with touts pocketing a few thousand rupees from the grant due to each PAF, by producing fake documents, without the PAF actually obtaining and settling with an alternative source of livelihood, which is in clear violation of the R&R policy and NVDA Action plan, 1993.

vi. Compensation paid to ineligible properties: Crores of rupees have reportedly gone waste in many villages such as Khedi, Piplud, Chhota Barda, Morkatta etc. where ineligible properties not in the submergence have been compensated for or properties that have been put up (such as houses constructed after issue of Section 4 Notification under Land Acquisition Act). Despite concrete evidence and some official processes, no strict action has been taken against the corrupt officials and touts, we were informed.

vii. Corruption and irregularities in the allotment of house plots: Examples of irregular and arbitrary exchange of house plots from the poor and marginalized to the comparatively rich and influential, in alliance with the corrupt officials who are receiving
money for facilitating such exchanges was brought to our notice in villages such as Chhota Barda and Nisarpur. The unacceptable practice of rehabilitation house plots being purchased from the PAPs by non-PAPs was also reported as a new phenomenon. Many widows, poor single women or the years old tenants are left out only to extract money and save plots for allotment to the rich.

viii. Irregularities by misinterpretation of the R&R Policy etc: Examples of misinterpretation of the R&R policy to cover up corruption was also brought to our notice in villages such as Kavthi, Dhanora, Segawa etc. Instances of payment of cash compensation to the major sons of farmers, showing them as landless (while they are actually entitled to land) or showing fish workers as landless and claiming rehabilitation to be complete are certainly a deviation from the established policy, which we have observed, has also not been pointed out by the District Investigation Committee appointed in May 2009.

a) People’s Inquiry Committee records colossal corruption: February 2007

The Tribunal also perused through the Report of a group of eminent citizens who visited various villages in the Narmada valley in 2007-2008 and conducted a Public Hearing on the issue of large-scale allegations of corruption in the entire rehabilitation process and record our appreciation of the in-depth findings of the Committee and the short-term and long-term suggestions it made to address the pressing issues.

The Report of this team, comprising Padma Bhushan Shri Anna Hazare (renowned social activist); Shri S. M. Mushrif (former IG Police; Maharashtra), Shri Arvind Kejriwal (prominent RTI activist and Magsaysay award recipient) and Krishi Bhushan Shri Anand Kothadia (noted educationist and social activist) re-affirmed the reality of large scale corruption in the R&R process, revealing how the PAFs are at the receiving end of the corrupt nexus between the officers and touts.

The well-documented Report held various categories of government authorities responsible, such as Patwaris, land acquisition & rehabilitation officials, Registration Officers and Bank Officers, in addition to the well-knit nexus of agents, middlemen, notaries imposters, fake witnesses and even advocates. The Report was also critical of the bureaucracy and the political establishment which has been looking the other way as the wounds of corruption festers on the lives of the project affected.

The Team unanimously decried the SRP as not only ‘impractical’, but also as ‘illegal’ and sought allotment of agricultural land instead of cash disbursals. The Report also recommended that strict legal action against the guilty officials and touts should be taken as against implicating and hounding the PAFs, who have infact been ensnared by the corrupt nexus.

b) GoMP admits 758 Registries as Fake: Is it a final number?

The outcome of the Special Rehabilitation Package became evident very soon with the oustees failing to purchase the full measure of 5 acres of cultivable, irrigable land, with half of the SRP amount, which in reality is less than one-fifth of the current market value of agricultural land in the area, which is today Rs. 4-15 lakh per acres, we were told everywhere. The result of SRP was a nexus of officials of the revenue, land acquisition and rehabilitation departments, sub-registrars, contractors and a large number of middlemen who utilized this opportunity to generate fake registries depriving the eligible PAFs of their right to rehabilitation under the Award.

A perusal of the some of the Minutes of the R&R Sub Group, submissions by the GoMP before the Supreme Court and the High Court’s orders, clearly show how the GoMP was in a state of total denial of the existence of the fake registries and the need for any independent inquiry, until such time when it could not more hide the facts and had to admit to the R&R Sub Group in November 2007 that 758 land registries i.e. 27% of the total 2818 registries are fake. The same was reported to the Supreme Court in March 2008. It was only after much public outcry and media reportage, when the NVDA, conducted an enquiry, acting on the directions of the Chief Minister. Apparently, affidavits were filed and reports submitted by NVDA and GoMP without taking serious note of the complaints for years together and without proper investigation, though penal action and threats against the PAFs continued.

Despite the enormity of corruption which spawned over the years, neither was any high level inquiry initiated and conducted by the State nor was any review of process followed in the SRP ever undertaken. Instead the NVDA
sought to extricate itself from the scrutiny of fake registries by shifting the onus on the Registry Department. Instead, it is alleged that the NVDA kept submitting misleading affidavits to the Supreme Court on the compliance of land – based rehabilitation. Even thereafter, NVDA only suspended 13 officials, but did not initiate action against the officials.

However, the matter did not rest here. The case before the High Court progressed and more evidence of fake land registrations came up. During the course of its depositions, NBA informed us that the cumulative number of fake registries could be anywhere upto 2,000 and even beyond. Since all the material is not on record and it is not possible for this Tribunal to specifically comment on an issue as elaborate as this, we await the Report of Justice Jha Commission which is already seized of this matter. It is notable that no registry can be finalized and SRP issued without the Commission’s consent./ We however, place on record our serious concern of the entire issue of corruption and the manner in which it has compromised the rights of the oustees.

c) Legal Status of cash-based disbursal of R&R grants:

One major area of rehabilitation where significant proportion of corruption seems to be taking place is in the cash disbursement of various rehabilitation grants for ensuing alternative livelihood to project-affected families such as for purchase of productive assets like cows, goats, and other livestock or establishment of small grocery, fruit stalls etc. Before we go into the prevalence of corruption, we think it is pertinent to mention that the present cash-disbursals are in fact against NVDA Action Plan, 1993 which clearly states that “In no case shall cash payments be made in substitution for actual rehabilitation”.

Akin to the SRP, the very design of the livelihood grant scheme turned out to be a flawed one, giving way to a nexus of middlemen who created false documents to show that productive assets have been purchased, resulting in no rehabilitation of the landless PAFs. After these issues were brought before the High Court of M.P, along with details of the same in the villages such as Bhavaria the Court, by its interim order dated 24-04-2009 directed that “there will be no distribution of compensation in the form of cash and cheque towards various grants, as it is alleged in the petition that a lot of irregularity and corruption is taking place at the time of distribution of such compensation by way of cash and cheque”.

Subsequently, the GoMP appealed to the Supreme Court against this particular Order and the apex Court while issuing an interim stay of High Court’s Order on 11-05-2009 also directed that “all disbursement of compensation given by way of cheques or cash after 24-4-2009 will be “subject to the scrutiny by Justice Jha Commission”.

The very next day, i.e. on 12-05-2009, the High Court directed the GoMP to “take prompt action, in accordance with law, if they find truth in the complaints and allegations in the interim applications of NBA”. Thereupon, investigation committee were formed at the district level, but surprisingly, the Committees could not find any corruption and violation of the Rehabilitation Policy with regard to livelihood grant. The role of the NCA, which has a statutory duty to ensure the occupational rehabilitation of the oustees, has also not been satisfactory.

d) Two Major Orders of the M.P. High Court: Jha Commission constituted Subsequent to the detailed arguments by the Government of Madhya Pradesh and NBA on each of the aforementioned aspects of the alleged corruption and written submissions by all the parties and perusal of the voluminous documents, the Hon’ble High Court of M.P. passed two well-considered orders in the corruption case.

**By first interim order** delivered on 21st August 2008, the High Court appointed Justice S.S. Jha Judicial Commission of Inquiry to investigate into allegations of fake registries in the process of Special Rehabilitation Package and the quality of civic amenities at the R&R sites.

**By the second interim** order delivered on 12th November, 2009, the Court further empowered Jha Commission, by widening its Terms of Reference, to investigate into all the allegations and aspects of corruption such as livelihood grants, irregularities in house plot allotments etc. after taking into account the manner in which the state government has been responsible for defeating the very purpose of the Rehabilitation Policy, it is charged with a duty to implement, by ensuring that there is no corruption and eliminating the same, if any.

e) GoMP’s hostility to independent inquiry into corruption:

However, it is seen that despite the Hon’ble High Court having directed the formation of
the Justice Jha Commission on 21.08.2008, the State seemed to have dragged their feet in notifying and functionalising the Commission, compelling NBA to again approach the High Court and seek further orders for implementation of its directives. As we saw through the records, it was only after subsequent Interim Applications were filed by NBA and directions of the Hon’ble High Court dated 18.11.2008, 25.11.2008, 05.02.2008 and 19.02.2008 that the GoMP took steps towards making the Jha Commission operational.

It is also pertinent to note here that Justice Jha Commission was appointed directly by the High Court, invoking its writ jurisdiction under Article 226 of the Constitution and not under the Commissions of Inquiry Act, 1956. After the Commission complained of no adequate funds & improper routing (not through the High Court as per the High Court’s judgment), the High Court, we have learnt has issued strict directives to comply with its Orders and report back by June 24th, 2010. It is shocking to note from the Commission’s own Report that even as on date, the Commission doesn’t have the full-fledged, full time team of officials from Revenue, PWD & Police, as direct by High Court.

Thus, it is unfortunate that the GoMP’s approach to an independent and unbiased inquiry into corruption of such scale in the R & R process has not been pro-active, not even co-operative.

f) Unfair Exclusions and No Finality of the Affected: Cause of Serious Concern

The Judgment of the Hon’ble Supreme Court in Narmada Bachao Andolan versus Union of India and others (2005(4) SCC 3) itself is a testimony to the ‘Game of Numbers’ that was being played with the lives of the PAFs. There seems to be a pattern in which the total number of families eligible for R&R was being reduced, every time just before the decision to raise the dam height was taken. This reduction and exclusion has been furthered by two other drastic measures in the recent years, which are:

1. A decision to exclude 4374 families from the list of project-affected families (PAFs) after years, since those were included in the list and some of them have also been paid R&R entitlements.

2. Decision to review the back water levels and conclude reduction of those, declaring properties (land / houses) of more than 5,000 families from 55 villages including one township, which is shown to be out of submergence after having spent few crores on its R&R site.

We were informed of the delay by GoMP in making available the list of 4374 excluded persons till it was called for by the Court, which has worsened the situation, since the list is a mess, people told us. However, both the above decisions are proved to be unreliable, based on assessment in the field and by the Environmental Experts Committee appointed by the MoEF.

We have been told that many of these families include those who have already received R & R benefits and it’s not known as to whether they will now have to return the money (compensation and grants money or house plots etc.) or house plots. Others are those who can’t be excluded when there are many similarly placed families, who are included. There are many others who are eligible, but have been named in the lists, while they still await land and R&R. With regard to which PAFs are truly ‘ineligible’, the question is how and by whom were they declared eligible, in the first place. The game, as is apparent, is not only of numbers but monetary advantages and misappropriation of R & R funds.

I I. NEED FOR LAND-BASED REHABILITATION OF THE PROJECT AFFECTED FAMILIES:

Agricultural Land is the major or even the only source of livelihood for thousands of adivasi and farmer families affected by the SSP in the three states. As a consequence of the progressive Rehabilitation Policy, as a part of the Narmada Tribunal and protracted struggle by the people, about 10,500 adivasi families have been given land in lieu of the land submerged or acquired for the Project in Maharashtra and Gujarat, but to this date not a single family has received acceptable agricultural land in Madhya Pradesh. The urgency, therefore, is to immediately provide a minimum of 2 hectares agricultural land to every eligible PAF, as per the NWDTA, R&R Policy and the Supreme Court’s Judgements, especially of 2000 and 2005.

a) Process of land allotments in M.P - Broken Promises and Legal Violations

• Despite the GoMP stating before the Supreme Court, as early as in April 2000 that it
would prioritize the purchase of private lands to rehabilitate the PAFs, it only made *ex parte allotment* of mostly uncultivable, rocky or encroached out of grazing lands from the Land Bank, which was categorically rejected by the Grievance Redressal Authority. (2000 Report)

- **PAFs** told us that *ex parte* allotment of such unusable and unacceptable land and house plots, without even consulting the affected persons have been made in village Bhadal, Bhilkheda, Pichhodi, Jangarva, Avalda (Tehsil and Dist. Badwani), Chhota Barda (Tehsil Thikri), Khaparkheda, Kadmal, Bhavariya (Tehsil Kukshi, Dist. Dhar) Kakrana, Anjanwara, Sugat, Bhitada, Jhandana (Tehsil Alirajpur) where the distance between the land and house plot is anywhere between 150-200 ms, making rehabilitation impracticable.

- **Examples** of other allotments brought to our notice include lands where actually the NVDA has undertaken compensatory Afforestation or a where a colony of poor people (Indira Aawas Colony) for the past many years or a road exists, lands of sericulture units closed own due to non-irrigability, which is against NWDTA and judgements.

- We practically noted this in the case of adivasi village Pichhodi, which we had visited on 2nd June, where more than a hundred PAFs encircled us with questions as to why the process of purchasing private land for their rehabilitation was disbanded after a headway in the light of the Supreme Court’s 2005 judgement. A similar process in the Jhabua district was also taken up in 2007 and later shelved, PAFs reported to us.

It is such lands, PAFs complained to us, lands that are unilaterally offered and shown as rehabilitated’ in the Reports. Some PAF from Pichhodi have purchased land from SRP but mostly less than the entitlement and some are betrayed due to fake registries.

**b) Resolving the deadlock:**

**Considering Private Land Purchases**

- NWDTA and the R&R Policy states that the PAF must be provided a choice of good agricultural land with house plots and amenities in the rehabilitation villages, in a time-bound manner.

- The stated reason for the non-purchase of good cultivable private land and the introduction of the SRP is that such land is costly. If land is costly for the State, it cannot be cheaper for the PAFs. Given the experience of the SRP in failing to ensure agricultural land to the PAFs, resulting in 1,424 families getting struck after receiving the first instalment, we feel the SRP is neither legally tenable nor workable to ensure that the families actually receive the land entitlement. SRP must be a voluntary choice and should not be imposed, especially on the adivasis and farmers, not accustomed to the land market.

  - The Supreme Court has already asked GoMP to explain to it as to whether and how the SRP is leading to PAPs receiving land entitlement, through its Interim Order dated 23-04-2007. The R&R Sub Group Meeting concluded on 12th September, 2007 also directed the GoMP to “evolve a policy to ensure land for duped PAFs and submit details of action against corrupt officials”.

  - If optimum market price (stated to be at least Rs. 5 lakhs per acre today) is offered and the same is advertised in the local region, thousands of acres of land will most likely be available. This would solve the problem of hundreds of oustees entitled to but not yet allotted land. To follow “No cash for entitlements” as the directive in the state policy, the payment can be made directly by authority to seller.

  - The positive option of land purchase from private owners suggested by the adivasis and farmers should be responded to and the Grievance Redressal Authority (GRA) should also play a role in facilitating the same. By its Interim Order dated 16th April, 2004, the Hon’ble apex Court directed the GoMP to ‘expeditiously examine’ proposals by the PAFs regarding the availability of proper cultivable land that can be obtained/acquired by the State Government. The State is bound to comply with the same. A Land Purchase Committee can be the mechanism, as it exists in Maharashtra an Gujarat, we are told can be established.

We would also like to quote the observation and direction by the Supreme Court while delivering its judgements in 2000 in the Narmada case, which showed the slackness on behalf of the state to allot land to the people and a need to invigorate the same.

“The reports of the Grievances Redressal Authorities, and of Madhya Pradesh in particular, shows that there is a considerable slackness in the work of the identification of land, acquisition of...
suitable land and the consequent steps necessary to be taken to rehabilitate the project oustees. We direct the States of Madhya Pradesh, Maharashtra and Gujarat to implement the Award and give relief and rehabilitation to the oustees in terms of the packages offered by them and these States shall comply with any direction in this regard which is given either by the NCA or the Review Committee or the Grievances Redressal Authorities.

Has the NCA played any role in either assessing land from land bank allotted ex parte or in identifying the alternative, or proposing a modus operandi, we would like to ask. The answer seems to be: NO.

c) Providing Agricultural Land to Oustees: Necessary and Possible

When the State governments are citing non-availability of lands the reason for its failure to provide land for land to the families displaced from submergence, it is well known that large chunks of arable and fertile land is being made available to the industry, real estate, townships, special economic zones and also acquisitions are being made for airports, private hospitals, private universities and infrastructural projects planned for 2025 and beyond. institutions. For instance, after the Special Economic Zones Act was passed in the Parliament in June 2005, 578 formal approvals for setting up SEZs have been granted, out of which 353 have been notified. Maharashtra and Andhra Pradesh have the largest number of approved SEZs in the country. Large number of SEZs have been granted approval in Tamil Nadu, Goa, Gujarat, Orissa and West Bengal as well. So far, the notified SEZ have acquired 30,122 hectares of land. But with the many really large multi-product SEZ in the ‘In Principle’ category, these cover an area of 1.22 lakh hectares. All types of economic activities fall within the purview of SEZs. There is no restriction on the size and numbers of SEZs, with a requirement that only 50% of the proposed land should be dedicated to economic activity. In case of Madhya Pradesh, the Writers and Publishers Limited, Indore is nationally the 7th largest Multi Product SEZ in terms of area, slated to come up on 4,050 hectares of land and has already received the ‘in Principle’ approval. The total land that this one single SEZ occupies is approximately the total land that would be required to rehabilitate most of the SSP oustees. The CAG Audit Report for Madhya Pradesh for the year ending March 31, 2005 has indicted MPSIDC for allotting a large tract of land that was acquired 22 years back and was lying vacant, to Indore SEZ at cheaper rates, resulting in loss of revenues worth Rs 22.58 crore.

Speaking at the Pravasi Bhartiya Sammelan in New Delhi in January 2010, Chief Minister Shivraj Singh Chouhan had invited the NRIs to set up industrial units invited NRI’s with open arms that the State offers the best possible conditions for them: “Madhya Pradesh has no law and order problem, land is available in plenty and clearances for setting up industrial units can be achieved very fast.” Chouhan was quoted in the media (Source: Indian Realty News, Jan 14, 2010). Can this openness not be displayed for the adivais and farmers of his own state? This being the case, acquiring and allotting private land to the oustees should definitely be possible, since in any case, big chunks of lands and resources are being given away to private companies and religious institutions in this very state of Madhya Pradesh, as is also pointed out by the M.P. High Court in one of its judgements in the Omkareshwar case (Judgement dated 21-02-2008 in W.P. No. 4457/07). As the Hon’ble Supreme Court has also held in many cases, the plea of inadequate financial resources cannot be a ground to deny citizens their fundamental and human rights. In any case, a few hundred crores of rupees from the state exchequer have been squandered due to the corruption, which the State is not keen to investigate or stop.

We came across the proposal that land may be acquired from the canal beneficiaries in the upstream dams area, as was initiated, but never fulfilled by governments concerned, in spite of there being a special Act in Madhya Pradesh. We, however, agree with the oustees and their organization that that will lead to secondary displacement and give rise to another set of farmers, who will be deprived without consent and even with unreliable irrigation, as is witnessed in many large dam projects and will again require land-based rehabilitation.

We thus feel, the only workable option is to resume the private land purchase through a Committee which, with representative of PAFs and associated activists which must start immediately and as many sites as needed should be established as ‘rehabilitation villages’ beginning with the already affected adivasi villages in Alirajpur district.

12. STATUS OF SSP-OUSTEES IN MAHARASHTRA AND GUJARAT

a) Rehabilitation of PAFs in Maharashtra: Pending Issues
The impacts of the Sardar Sarovar Project are spread across 33 adivasi villages in the Satpuda mountainous ranges Akkalkuwa and Akrani tehsils of the Nandurbar district of Maharashtra. The PAFs from Maharashtra who deposed before us informed us that due to intense dialogue and peaceful struggle, over last 25 years there was a certain degree of response from the state government, leading so some progress in the land-based rehabilitation of the oustees in Maharashtra, but the rehabilitation process is far from over.

Five R&R sites in the state were established for the first time on 2700 hectares of land in 1990, much of which was dense forest, diverted with sanction from MoEF. PAFs stated that they were opposed to felling of forest for the R&R sites, but later had to accept due to the State not allotting any other cultivable, irrigable land. Another 1500 ha of denuded forest land was diverted in 1994. However, 1500 hectares out of the first chunk of 2700 hectares forest land happened to be uncultivable and hence not used for rehabilitation, leading to the State Cabinet, resolving in January 2004 that the same 1500 ha forest land for which compensatory afforestation is also completed would be replaced. In spite of there being a demand by the oustees for the denuded forest land in possession of FDCM, Maharashtra – approved by the district officials, the State has not implemented the Cabinet decision.

After the Bhoomi Haq Satyagraha at Somaval at one of the R&R site, near the degrade forest land) in 2004 land, two more R&R Sites at Vadchil and Javadavadi (both in Sahahda tehsil, Nandurbar district) were established leading to 9 rehabilitation villages in Maharashtra. However, rehabilitation of all adivasis PAFs in Maharashtra is still to be fully completed. The Government itself has checked the PAFs still residing in the original villages and R&R sites and have found that there are at least 1,000 and more adivasis yet to be fully rehabilitated, with land, while almost all of them were affected by submergence since 1993-1994. All these PAFs are affected below 122 mts of the dam height and some below 80 mts but not yet rehabilitated. We record here that this is in clear violation of the NWDTA and the Supreme Court’s judgement, since submergence has already occurred, but rehabilitation has fallen behind by years and not in sight. This has led to serious plight, as presented before us by adivasis themselves.

We were told that when the Nandurbar district administration carried out joint surveys with the NBA in May 2007, the total number of PAFs still residing in the original villages was finalized as 432, out of which only 71 PAFs have received land in village Chikhli (Tehsil Shahada) but even their full resettlement and rehabilitation is yet to take place. Thus, there are 360 PAFs living in the original villages, who are yet to receive land. Two years later, i.e. in July 2009, the Collector, Nandurbar rechecked the number of PAFs who have moved to the rehabilitation sites but found out that they are yet to get land, apart from five hundred other PAFs who are lying at the R&R sites.

The Narmada Development Department, Nandurbar is yet to take forward the issue of at last 266 PAFs who were found to be submergence-affected in the ‘Tapu’ Surveys and whose entire case, along with detailed joint proposals, with maps and documents is ready and available. We were informed that since this entire process of checking as well as the process of declaring the undeclared PAFs as affected and eligible for R&R is still going on, the final number of PAFs is yet not known nor is the total land required for their rehabilitation, certain.

NBA activists say the figure of affected and eligible PAFs would be not less than 1500 PAFs., since there are at least present 266 tapu-affected PAFs and 305 PAFs whose joint checking is under way and 550 PAFs whose declaration is yet to be done. There are also 700 adult sons in Maharashtra who are to be given land, as their legal entitlement of 2 ha instead of 1 ha as approved by SC judgment, 2005. The enactment of Forest Rights Act is to change the scenario of the total number of PAFs, since some encroachers would become land holders and entitled to alternative rehabilitation. Due to the passage of the Act, there are at least 1,000 more PAFs who will have to be declared and whose status will change. Thus, as per the calculation put before us, which we endorse, the State of Maharashtra will have to identify more than 3,000 hectares of cultivable, irrigable and suitable land for pending rehabilitation.

The new practice of land being taken back from some of the Maharashtra PAFs who were resettled in Gujarat years ago on the ground that they were grandsons of the land holders and not major sons was raised in the complaints received by us. Another interesting complaint was about the same land titles, which were earlier given to the PAFs are now being given to their major sons, as has happened in 54 cases in Vadchil resettlement.
site, which is indeed a serious violation. Much of the 700 hectares of land which the Maharashtra Government claims, is being offered for rehabilitation, PAFs complain, is not cultivable. This is against SC Judgement 2005. Further, pieces of land less than one hectare in measure are being clubbed and shown as land to be offered, but it is not practicable to cultivate such small parcels of land.

Maharashtra began purchase of private land in 2003 for allotment to the oustees. However, for last 3 years the process was marred with rampant corruption, leading to suspension of the process of purchase itself till date and also the suspension of a few officials. While deposing before us, the PAFs sought an independent inquiry and strict legal actions against the corrupt officials. We also note with concern that the Maharashtra Government is planning to go the Madhya Pradesh way in introducing some cash-based scheme instead of land. We are afraid, this may only increase the already prevalent corruption, besides violating the NWDTA. PAFs also complained of high mobility of officials and placement of insensitive ones committing fraud at higher posts.

To sum up, cultivable, irrigable and suitable land of at least 3,000 hectares is still to be identified, purchased, offered and allotted for at least 1500 adivasi PAFs in Maharashtra. PAFs demand that the proposal already initiated by the Nandurbar district administration regarding offering of denuded forest land in possession of the FDCM, (Forest Development Corporation of Maharashtra) should be revived as soon as possible, as this may address the problem of at least a few hundred adivasi families facing displacement.

It is due to this situation, PAFs informed us, that the Maharashtra Government had taken a stand that it cannot provide the final ATRs since the rehabilitation process is incomplete. We were also told by the activists that the issues of the PAFs of Maharashtra is hardly taken up at the Meetings of the R&R Sub-Group, NCA, despite hundreds of adivasis still living in the original villages.

Another important issue raised by the PAFs was about a series of medium and small dams being planned on the tributaries of Narmada in Maharashtra, which would lead to the submergence of lands of the adivasis adjacent to the SSP-affected villages. These dams are basically being constructed to divert water from the hilly communities to the tehsils in the plains with the township at the foothills of Satpudas. Questions are being raised on these dams, which are planned, without actually harnessing the available sources of water within the forest villages, which can surely benefit the adivasis there and then. Once again, the issue of minimizing displacement and destruction of natural resources is not being followed here.

b) PAFs in Vasahats of Gujarat:
Grievances and Issues

We also received some complaints from the PAFs in the Vasahats i.e. resettlement sites of Gujarat who stated that the Gujarat Government has yet not accepted the full number of PAFs, who are eligible to receive benefits of R&R. Even as on date, if figures presented by the people are correct, at least 500 to 700 families in Gujarat are still to get cultivable, irrigable land for farming around which there are to be rehabilitation villages, house plots and amenities. As per the NWDTA, PAFs from Madhya Pradesh and Maharashtra have the right to choose and resettle in the command areas of Gujarat. However, many of the affected from M.P. have chosen not to shift to Gujarat since many of the lands purchased are bad or of poor quality and with other problems. Many who went to Gujarat have also returned back to their original villages in Alirajpur and Badwani tehsil.

Some of the major issues of the oustees at the R&R sites in Gujarat, as reflected in the complaints may be summed up as under:

- Major sons left out, despite being eligible.
- Widows and other remaining PAFs not offered and allotted land or even if allotted, bad or uncultivable, waterlogged lands allotted, which is not being exchanged.
- Land allocated to some PAFs but names not enrolled in the records
- Irrigation not being received by a large number of PAFs in the command area.
- Majority of the R&R sites lack basic amenities including drinking water, electricity. Quality of approach roads is bad creating a lot of difficulty during the monsoon etc.
- No assured livelihood for many PAFs, leading them to uncertain wage labour. Right of one adult from every affected family to a government has been stopped since long.
- Meagre compensation for the trees and other properties that have been submerged.
- Problems in obtaining fodder and water for the cattle.
The Government of Gujarat brought in GRs between 1985-87 based on the Narmada Tribunal Award which was initially not applicable to Gujarat's own PAFs. Thereafter, it purchased land, once it realized that good cultivable land for PAFs is not available with the Government. In all, about 200 vasahats have been established for PAFs from the three states. There were, however, cases of misappropriation and cheating leading to allotment of non-cultivable land to PAFs. Many PAFs from the vasahats, who feel they have faced betrayal are demanding change of land, but they are being made to go back and forth to the GRA, applying to it since years and Government of Gujarat has not been proactive in addressing these grievances in an expeditions manner.

An important issue in the state is of the hundreds of adivasis in the 6 villages near the dam site itself, from whom 1,600 acres of land was acquired as early as in 1961 for the dam officials' colony. However, almost 1,400 acres of this land has remained unused for very long and is now being diverted for purposes of high-class eco-tourism including hotels, water and leisure park, botanical gardens, golf course, ecological trails, convention centre, instead of being returned back to the adivasis, as per law and Supreme Court Judgements. Around 7000 adivasis from the six villages of Kevadia, Limri, Navagam, Kothi, Waghodia, Gora and another 10 villages in the vicinity who are to lose their lands for the tourism projects are demanding the SSNNL and Kevadia Area Development Authority (KADA) to return back their lands and questioning the tourism project at the cost of their land and livelihood. The struggle of these villagers for their right to be recognized as 'Project Affected' is still continuing, with no response from the State, we are told.

We were also informed of the issue in villages Makaddheda, Antras and Gadher where, in addition to the persons affected by the Sardar Sarovar, many families not affected, but living for generations on that land and entitled to that land under the Forest Rights Act are yet to be given land and resettled. It was revealing to learn that after a few PAFs of this village having been resettled, the whole village was taken off the Government records. These families are still residing in the valley awaiting entitlements and prefer to lead a tough life, cut off with huge pondage, lack of communication and no amenities. Thus, despite the villagers forming a Forest rights Committee, the same has not yet received recognition and the Government has in fact cancelled the Panchayats. The demand in the complaints was that this has to be investigated into and corrective action taken immediately.

Forest rights to the old cultivators of theirs which fall in the submergence area should definitely be granted rights as per the Forest Rights Act, 2006. Others whose 'encroached / forest land was lost, years before but not compensated in cash or land, in spite of there being such a provision in the much advertised R&R Policy of Gujarat are asserting. The Tribal Affairs Ministry and the Forest Department must look into the issue and the SSPA must make this up as part of the R&R Plan since many major sons and even elders, who are left out can be accommodated on this forest land at higher level.

We were told that many of these issues were also brought out by the PAFs during the course of a Public Hearing by a Panel of Eminent researcher activists and Citizens of Gujarat including Dinkar Dave, Nirav Patel, Manishi Jani and Aditi Chanchani, who visited the vasahats of Dediapada, Jhaab and Parvetha and hear the people there. We have been furnished an English translation of the Gujarati Report of this Panel and have also drawn our observations from its findings. It was an eye-opener for us to read that contrary to the Panelist's assumption that the people might not ventilate their grievances in the presence of the police, many PAFs poured out their woes, unmindful of the police's watch all the time. We wish to quote a very moving observation by the Panel:

“From the way the affected people put forth their complaints and talked about the behaviour of the concerned officials, we are made to believe that it's crucial that the Government establishment and the civil society of Gujarat, considering the Narmada dam as a lifeline of the state, don’t look at the displaced as a problem; don’t view them as a mere law and order question; but appreciate the fact that it's on the sacrifice of these lakhs of tribals that the lifeline is being built and develop an
dignified and encouraging attitude towards addressing their issues”.

Another startling complaint addressed to us by PAFs from vasahats such as Chimalg oda etc. was of land being taken back from the original allottees. It is a rude shock to the families settled with agricultural land, house plots and various compensatory grants that the Government agency is now taking a position that their names are not found on the computerized list and they are, therefore, ‘not eligible’ for being declared as PAFs and receiving benefits. They have to now return back the land for being allotted to some other PAFs and go away. Where? None has the answer. We are told that the houses of these families were shifted with all formalities by the official agencies and yet now they are declared as ‘ineligible’ after all these years! We have received a list of 165 PAFs from various R&R sites of Gujarat affected years ago at the dam height of 80 mts and below whose lands and house plots are being taken back. We feel that this is unjust and must be stopped immediately.

Such incidents have occurred earlier as well, with the family of Ranchodbhai Tadvi from hailing from village Vadgam, resettled at the R&R site of Pansoli, we are told. Now there is apparently, a list of 150 to 200 PAFs amongst whom some are from Maharashtra and Madhya Pradesh, resettled in Gujarat. If there is a case of genuinely ineligible adivasi PAFs also, the officials and employees who declared, allotted land and shifted the PAFs should be held responsible and accused, not the adivasis unless he is from totally unaffected village and has his property outside the submergence area, not in.

It is, therefore, necessary that a proper survey is conducted of all these families and all entitlements are granted to them while ensuring that they are provided all basic facilities such as drinking water, health, education, electricity etc. and their grievance, periodically and seriously redressed.

13. GRA& NCA NEED FOR EFFECTIVE MONITORING & REDRESSAL

We would like to make some observations on the role of the monitoring agencies that have not just a legal mandate, but also an ethical responsibility to fulfill their supervisory obligation of ensuring that all the stipulations mentioned in the Award, clearances, the Policies and the Court’s judgements are faithfully complied with in an timely and effective manner, i.e. respecting the pari passu clause. In the context of the large-scale corruption, the M.P High Court’s Order dated 12-11-2010, taking note of the history of poor monitoring and redressal records its dissatisfaction with the NCA and the GRA and concludes that the need for an independent investigative agency like the Jha Commission arises since neither of these Authorities can effectively deal with the complaints of such proportion.

**Narmada Control Authority:** NCA, whose wide monitoring powers under the NWDTA and the Scheme of 1980 an 1987 we have already referred to in the preceding sections, should, along with two Sub-groups take stock of the overall scenario of compliance on all the rehabilitation and environmental safeguard measures. The Authority should not take as final and granted the data fed to it by the state-level project authorities, but must evolve a mechanism to cross-verify the same, by engaging independent experts and consulting the people. NCA must also refrain from permitting policy dilutions, leading to deterioration of the quality of R&R and distortions of the established rights of the PAFs.

**Grievance Redressal Authorities:** We have noted with concern the unsatisfactory role being played by the GRAs in redressing the grievances of the project-affected persons and fixing responsibility for non-compliance on agencies like the NVDA, SSPA, NDD & NCA. In Madhya Pradesh, the GRA has also been referring grievances received by it to the state-level project authorities, which is a cause of grave concern and legally unacceptable. We have also been informed that the decision taken in the context of one kind of grievance or is not being made applicable to similar category of grievances. The legal opinion extended by the GRA (M.P) on the issue of SRP, despite the questioning by the Supreme Court may also amount to over-stepping its jurisdiction.

Instead of taking an impractical and unworkable approach that the GRA needs no additional members, the GoMP must assist the GRA by ensuring that it has adequate members and infrastructure to deal with all the complaints in an effective manner. The GRA, for its part, must look into every single complaint and dispose it off in an expeditious manner, prioritizing the rights of the PAFs, within the framework of the NWDTA, the R&R Policy and the Supreme Court’s judgements.
14. TISS STUDY OF SSP: Appraisal of Development Effectiveness cannot go unnoticed

A detailed study titled *Performance and Development Effectiveness of the Sardar Sarovar Project* was undertaken by the Tata Institute of Social Sciences (TISS), Mumbai with the objective to review and analyze the costs and benefits of the Sardar Sarovar Dam at the current state and its overall impacts on the affected people and the nation, and economy.

The key questions asked were:
- What are the actual benefits realized against projected benefits derivable with the dam height at 121.92m?
- What are the social, economic and livelihoods costs of raising the dam height from 121.92 m to 138.68 m and how do these costs compare with potential benefits from raising the dam height?
- What is the status of compliance on social, environmental and economic aspects of the Project till date and what have been the reasons for non-compliance, if any?

On an in-depth analysis of the available data and material, TISS, in its Report released in August 2008 has strongly recommended that the dam height at 121.92 mts should not be raise further by installing the 17 m high gates which would take the dam height to 138.68 mts at least until the past obligations are fulfilled, the benefits of 121.92 mts are completely realized and a honest comparative analysis of future costs and benefits is carried out. Such a decision would also ensure that concerns on social and ecological impacts are addressed, the responsibility for non-compliance is fixed and violators are penalized.

1. Freezing the heights at current levels would have no negative impact on Gujarat and Rajasthan’s share of water as per the NWDT and Supreme Court’s directives and the State is duty-bound to give them. As the state has tried to sidestep this responsibility by providing uncultivable land or cash instead, many families have not shifted out. This has become a contentious issue as according to the State, the families offered the uncultivable lands or cash are considered rehabilitated but on the ground, the affected families are able to barely sustain themselves and their livelihoods.

2. PAFs are entitled to cultivable and irrigable land for rehabilitation as per NWDTA and Supreme Court’s directives and the State is duty-bound to give them. As the state has tried to sidestep this responsibility by providing uncultivable land or cash instead, many families have not shifted out. This has become a contentious issue as according to the State, the families offered the uncultivable lands or cash are considered rehabilitated but on the ground, the affected families are able to barely sustain themselves and their livelihoods.

3. A high-powered independent inquiry into corruption, which is reported to be of unprecedented scale, should be carried out to identify the agencies responsible and book them under the law as also to review the present policies and practices related to R&R in the context of the NWDTA and state policies. A mechanism needs to be evolved, to ensure that misappropriation of the funds meant for the benefits PAFs is stopped fully, with immediate effect.

4. The 2 sub-groups of the NCA, viz., R&R Sub-group and Environmental Sub-group should have better representation of civil society organisations and academic institutions to review the progress on rehabilitation as there have been huge irregularities in the official PAF figures. The authorities have reduced the displaced families to mere numbers subject to random maneuvering.

**Medium to Long Term Measures**

1. The focus of investment in the SSP should be in building the canal network because despite a height of 121.92 m, only about 29-31 % of target villages in Gujarat have been receiving regular water supply, as shown in the citizen’s monitoring report as well as performance audits by the CAG. Secondly, the figure of irrigation coverage has stagnated at only 1.53 lakh ha of area which was achieved at the height of 110.64 m. Data obtained under the RTI shows that during each of the last three calendar years (i.e. 12506.55 MCM in 2005, 19294.57 MCM in 2006 and 19909.58 MCM in 2007) much more water than the allocated share of Gujarat and Rajasthan (i.e. 11718.345 MCM) was available at the SSP, and therefore any further increase in dam height would have no effect whatsoever in realising the targets on irrigation and drinking water.
2. While currently a large amount of money is reported as having been spent on compensation and rehabilitation, the task of resettlement and rehabilitation of all the PAFs in compliance with NWDTA has not been accomplished. The Government of Madhya Pradesh should follow NWDTA norms of land-for-land compensation to the PAFs.

The Tribunal has perused into the Report and looks forward to see how the State and its authorities at the highest level, respond to the same, particularly the valuable factual research and objective recommendations.

The Tribunal members have also been informed of the opinion of the Attorney General of India Shri Goolam E. Vahanvati) dated 08.10.2009 on the issue of raising the height of the Sardar Sarovar Dam height beyond 121.92 mts and would like to refer to his observations on the issue.

“In my opinion before any construction is carried out, it will be prudent to comply with the directions of the Hon’ble Supreme Court which provide for prior approval of the two Sub-Groups and the Grievance Redressal Authorities” [AG]

“The issue of adequacy of the relief and rehabilitation package of the Government of Madhya Pradesh is pending consideration of the Hon’ble Supreme Court. The ancillary issue relating to fake registration is being investigated by the Commission set up by the Madhya Pradesh High Court. Till such time that the Supreme Court decides the said issue and the Commission gives its report, it cannot be said that the Government of Madhya Pradesh has implemented its relief and rehabilitation package in compliance of its obligations arising out of the raising of the height of the Dam to EL 121.92 metres”. [AG]

“In my opinion, the proposed construction cannot be carried out without following the procedure laid down in Direction Nos. 2, 3 and 4 as the implications of the proposed construction will not be clear unless an elaborate exercise is undertaken by the two Sub-Groups. The decision for any further construction should be taken only after the approval of the Supreme Court to the raising of the Dam to EL 121.92 metres and after the completion of rehabilitation measures to the satisfaction of the Hon’ble Supreme Court (the subject matter of IA No. 16-22 in W. P. (C) No. 328/2002 and the Contempt Petition No. 18 in IA No. 16-22 in W. P. (C) No. 328/2002)”. [AG]

15. RIGHTS –BASED DEVELOPMENT: INTERNATIONAL FRAMEWORK

In the last two decades, of the 20th Century, the UN General Assembly reinforced a rights-based development framework, with the Declaration on the Right to Development (1986) and the Rio Declaration on Environment and Development (1992). Taken with the earlier covenants and conventions on human rights such as ICCPR, and ICESCR, they cover a broad spectrum, ranging from human rights, through social development and environment, to economic co-operation.

The Declaration on the Right to Development sets out a number of relevant concepts:

- Development is a comprehensive process aiming at the constant improvement of the well-being of the entire population; it affects economic, civic, social, cultural and political rights.

- The promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms.

- The creation of conditions favourable to the development of peoples and individuals is the primary responsibility of their States.

- National development policies aiming at the constant improvement of the wellbeing of the entire population and of all individuals should be formulated on the basis of their active, free and meaningful participation and fair distribution of benefits resulting therefrom.

- The right of peoples to exercise full and complete sovereignty over all their natural wealth and resources.

- The right to self determination.

- Equal opportunity for access to food and housing.

The United Nations Declaration on the Rights of Indigenous Peoples Adopted by General Assembly Resolution 61/295 on 13 September 2007 interalia states:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.
**Article 3**
Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**Article 4**
Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

**Article 10**
Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

**Article 18**
Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

**Article 19**
States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**The Stockholm Declaration, 1972** for the for the time accepted that environment was fundamental to human well-being and that its management and care in the interest of advancing wider human goals was a central task of states and the international community.

The UN Conference on Environment and Development adopted the Rio Declaration on Environment and Development in June 1992. The Declaration contains 27 principles, usually known as the Rio Principles. Some of these are relevant in the context of water and energy resources management.

**Principle 1** states that 'Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature'.

**Principle 3** recognises the right to development, but insists that it be met in an equitable way that considers future generations as well as present participants in development.

**Principle 4** insists that sustainable development requires environment to be integrated with the development process and form a central feature of the aims of that process. Environment, on its own, is an insufficient goal.

**Principle 10** underlines that all concerned citizens must be involved in handling environmental issues, and must participate in the decision-making process. This participation must be accompanied by effective access to relevant information and by opportunities to seek redress and remedy in case agreements are not respected.

**Principle 13** states that States shall ensure compensation for victims of environmental damage and give priority to the further development of law regarding liability in such cases.

**Principle 15** states that the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

**Principle 22** recognises the vital role of indigenous people and other local communities in environmental management and development, and entrusts states with ensuring their effective participation in the achievement of sustainable development. The Rio principles in conjunction with Agenda 21 thus highlighted not only the linkages between environment and development but also the importance of local communities having a significant role in shaping national development strategies.

The UN Declaration of Human Rights, the Right to Development and the Rio Principles together make up an internationally accepted framework of norms empowering a concept of development that is economically viable, socially equitable, and environmentally sustainable.

**16. INSTITUTIONALIZING COMPLIANCE: TAKING FORWARD THE WORLD COMMISSION ON DAMS PROCESS**

Report of the World Commission on Dams:
The World Commission on Dams provides the following findings on the adverse impacts on displacement of people from their homes and livelihoods by large dams.

- 40-80 million people were physically displaced by dams worldwide; (though this figure has increased many more times and it is reported that Indian alone may have these many displaced persons today)
- Millions of people living downstream from dams – particularly those reliant on natural floodplain function and fisheries – have also suffered serious harm to their livelihoods and had the future productivity of their resources put at risk;
- Many of the displaced were not recognised (or enumerated) as such, and therefore were not resettled or compensated;
- Where compensation was provided it often proved inadequate and where the physically displaced were enumerated many were not included in resettlement programmes;
- Those who were resettled have rarely had their livelihoods restored, as resettlement programmes have focused on physical relocation rather than on the economic and social development of the displaced;
- Even in the 1990s, impacts on downstream livelihoods were not adequately assessed or accounted for in the planning and design of large dams; and
- There is a clear relationship between the magnitude of displacement and the ability to rehabilitate and restore livelihoods adequately - the larger the number of displaced people, the less likely it is that livelihoods can be restored.

The Commission’s findings show that the poor, other vulnerable groups and future generations are likely to bear a disproportionate share of the social and environmental costs of large dam projects without gaining a commensurate share of the economic benefits. Specific cases include:

- Indigenous and tribal peoples and vulnerable ethnic minorities have suffered disproportionate levels of displacement and negative impacts on livelihood, culture and spiritual existence;
- Affected populations living near reservoirs, displaced people and downstream communities have often faced adverse health and livelihood outcomes from environmental change and social disruption; and
- Among affected communities gender gaps have widened and women have frequently borne a disproportionate share of the social costs and were often discriminated against in the sharing of benefits.

The Commission has proposed implementation of the Mitigation, Resettlement and Development Action Plan (MRDAP) and in particular, stress the following.

At the community and affected persons level Based on the provisions of the master contract, performance contracts are agreed with the community and affected persons detailing:

- Compensation, resettlement, and development entitlements;
- Schedule and method of delivery;
- Institutional arrangements to deliver the commitments;
- Obligations and responsibilities of the parties in the contract, namely affected Peoples, community, government and developer; and
- Recourse procedures.

17. SARDAR SAROVAR: CONCLUSIONS & RECOMMENDATIONS

a) CONCLUSIONS:

After a detailed perusal of the essential official and non-official documents pertaining to the Sardar Sarovar Project, particularly the clearances, policies, judgements of the Hon’ble Supreme Court and High Courts, the relevant international conventions and the WCD Report, an assessment of the situation of the affected and to-be affected villages in the valley coupled with an appraisal of the testimonies we heard during the Public Hearing and the hundreds of written submissions / representations we have received, our conclusions are as follows:

1. Serious lacuna in the overall time-bound planning and proper execution of various components of the Project (as directed by NWDTA) has derailed the entire situation of benefits attainment, rehabilitation process and implementation of the environmental safeguard measures.

2. It is clearly established that the Governments of Madhya Pradesh (GoMP) Maharashtra (GoM) and Gujarat (GoG) have violated the right to life, livelihood and
rehabilitation of thousands of oustees of the Sardar Sarovar Project, guaranteed by the Constitution and reaffirmed by numerous international conventions ratified by India by causing illegal and unjustifiable displacement of adivasis and other farmers, fisher people etc. prior to lawful rehabilitation.

3. There has been gross and repeated violation of various binding clauses of the Narmada Water Disputes Tribunal Award and in particular the stipulation that “In no event shall any areas in Madhya Pradesh and Maharashtra be submerged under the Sardar Sarovar unless all payment of compensation, expenses and costs as aforesaid is made for acquisition of land and properties and arrangements are made for the rehabilitation of the oustees therefrom in accordance with these directions and intimated to the oustees”.

4. There are many thousand families in the Narmada valley living to this date, with full community life and agrarian activity even below the BWL of 122 mts and the NCA’s Annual Report (2008-2009) showing that there are 0 families to be rehabilitated is a grave error, carried forward from the NVDA and against the reality and in fact a contempt of the Court.

5. GoMP, GoM and GoG have also violated and failed to faithfully comply with the directives of the Supreme Court and High Courts, the Rehabilitation Policy, Master Plans and Action Plans on various aspects pertaining to the resettlement and rehabilitation of the project-affected. Government of India and the concerned state governments are continuing the ‘historical injustice’ inflicted upon the submergence-affected adivasis by not providing them land, even more than a decade after submergence. The situation in M.P seems to be worst showing no resolve and progress, both on the landed and landless communities.

6. The menace of massive corruption in the entire rehabilitation process today is primarily due to the negligent and non-diligent attitude of the State in addressing the issue with requisite seriousness at the right time. The casual attitude of the State towards the vice of corruption, has also violated the right to rehabilitation and right to life of the PAFs, while no strict action has been taken against the guilty officers and middlemen.

7. The State has not yet carried out a bench-mark survey of all the affected and to-be affected families nor updated land records thus the cumulative number of affected families is not ascertained till date. It has also not yet identified the total land needed for rehabilitation of all the oustees.

8. It is established that the land bank of GoMP is mostly unfit and unsuitable for cultivation or occupied by old encroachers and PAFs in M.P. have not accepted this land provided ex parte, thus proving the failure of the purported rehabilitation.

9. The Special Rehabilitation Package has proved to be a total failure, since it has only bred enormous corruption, while not leading to the rehabilitation of the PAFs with agricultural land.

10. The impact of the raise in dam-height without ensuring prior rehabilitation has severely affected the rights of thousands of inhabitants of this virgin valley and has resulted in acute deprivation of their families who are not rehabilitated as per norms.

11. There has been a total failure to ensure alternative livelihood to thousands of landless labourers, shopkeepers, fish workers, potters etc and the cash compensation of Rs. 33,000 – Rs. 49,000 has not been able to provide a life-sustaining source of livelihood to them. Corruption has thrived over wrong procedure, in violation of the Policy.

12. As the Shunglu Committee has already concluded, the faulty Nazaria survey has resulted in the exclusion of thousands of houses that are in the submergence area, but neither counted nor compensated.

13. There has been a clear violation of the ‘Better-off principle’, which is binding in nature and implies that the PAP must be in a better placed position, after his/her relocation to the R&R site or rehabilitation. The abysmal conditions of basic civic amenities at many R&R sites and the situation of the PAPs who have returned back to M.P from Gujarat shows that R&R is not as rosy as it appears on paper. Surely, people cannot be blamed for not moving out of their original villages into the R&R sites. Their demands should be addressee and should be persuaded after all entitlements are received, not flooded or forced.

14. The Narmada Control Authority and the Grievance Redressal Authorities have failed in their duty to monitor and ensure faithful compliance with all the stipulations in the
NWDTA, policies, plans and Court's judgements. NCA has particularly failed in checking the veracity of Action Taken Reports submitted by the State Governments which have been making false and exaggerated claims of 'substantial compliance'.

15. The R&R Policy has not been uniformly applied to all oustees, affected by various project-related works; thus thousands of PAFs losing lands for R&R sites and those PAFs whose lands are being acquired for the canals of ISP-OSP etc. are not being given the due rights and entitlements under the R&R Policy, which is a violation of Article 14 of the Constitution.

16. The Back Water Levels of the Project are not yet final, since no final survey, including all the tributaries and drains has been undertaken, as yet. The same has also been accepted in the letter by NVDA to Technical Sub-committee, NCA.

17. Report by the Dr. Devender Pandey Committee and the CAG clearly prove that the state governments have not complied with the conditions stipulated in the environmental and Planning Commission clearances, and as such the revision of the investment clearance for the SSP and provision of any additional fund would be illegal and a colossal wastage of national resources.

b) RECOMMENDATIONS:

In the light of the aforementioned conclusions drawn, we wish to make the following recommendations:

1. The Prime Minister, as the highest executive decision-making authority, should immediately call for a complete review of the Sardar Sarovar Project, to be undertaken by a High Level Committee on the basis of the clearances issued by various authorities and with inputs from various Ministries, authorities, official and non-official agencies, the NBA, eminent citizens and independent experts.

2. Until such a review is completed, there must be no further construction related activity on the dam and canals, there should not be any submergence beyond whatever has occurred and no further clearance of any investments under AIBP or any other Central Scheme and funds cleared in the past 6 months must be put on hold until completion of the review, considering the escalation of costs and the repercussions of the same.

3. The said High-Level Committee, as well as the R&R and ESG (two Sub-Groups) and also the concerned Ministers, if possible, must visit the SSP-affected regions in the three states of Madhya Pradesh, Maharashtra and Gujarat, either together or separately in order to make a true assessment of the situation of rehabilitation, corruption and compliance with law and policy.

4. Madhya Pradesh and Maharashtra must, with a definite time frame, ensure agricultural land, along with rehabilitation villages to all the adivasis who have already faced submergence and where submergence is impending such as 177 villages in M.P. falling in 122 mts affected area. Since the habitations of these communities are already engulfed with the reservoir water, they must be guaranteed livelihood security, rations, boat facility, medications and all other basic amenities with utmost urgency and priority.

5. The Government of India must direct the concerned authorities to ensure that allotment of cultivable irrigable and suitable land is immediately made to all the adivasi and non-adivasi PAFs who have not accepted the Special Rehabilitation Package (SRP) or have not been able to purchase land even after obtaining the 1st instalment of SRP. Allotment of land to eligible balance PAFs in the three states, by giving priority to purchase of land from private sellers must be taken up.

6. We recommend that all those PAFs who have received the 2nd instalment of SRP, but have been duped in the process of fake registries must be ensured agricultural land on the basis of Justice S.S. Jha Commission's Report and the specific direction by the R&R Sub-Group in its Meeting dated 12th September, 2007 to ensure land.

7. Considering the magnitude of corruption involved and the urgency of the overall situation, we would request the Justice Jha Commission of Inquiry to come up with an Interim Report, providing adequate details of the materials discovered, so far, in the inquiry made by it into various aspects of corruption and irregularities specified in the two Orders of the Hon'ble High Court of Madhya Pradesh.

8. We do not see any Order of the Court that constrain the Madhya Pradesh Government from initiating action against officials, agents and touts involved in corrupt practices and instead feel that such action must
be taken forthwith in every single case, lest people lose faith in the rule of law.

9. Government of Madhya Pradesh must scrap the Special Rehabilitation Package forthwith and embark on a time-bound programme to provide land to all the eligible oustees as per the NWDTA, R&R Policy and SC Judgements.

10. Noting the clear finding by Dr. Devender Pandey Committee that the Back Water Levels (BWL) of SSP are not final and realizing the fact that the issue of BWLs is both an environmental and rehabilitation-related concern, we see the urgency to immediately finalize the BWLs and the same must be done only with the involvement of both the Environment and Rehabilitation Sub-Groups of NCA and their respective Expert Committees and other concerned authorities such as the CWC.

11. Until such a process as mentioned in Point 10 is complete and approved, the levels cannot be presumed to be 'final' and the GRA should not reject the case of any PAF, citing the revised BWLs as a ground. It has been brought to our notice that some cases have already been rejected by the GRA on this basis and we recommend that all such cases should be re-opened and reheard.

12. The controversy over the accuracy of the list of 4374 PAFs who have been excluded by the NVDA on the stated ground of ineligibility should be immediately resolved and settled by affording each individual / PAF in the list an opportunity of presenting his case before an appropriate authority, cross-checking her / his true status from official records and with the concerned Gram Sabha and NBA.

13. On the basis of the objective and clear recommendation of the Pandey Committee, the MoEF and the NCA-ESG must take appropriate action under the Environment Protection Act and issued immediate directions to halt work on the Sardar Sarovar Project.

14. Narmada Control Authority and its two Sub Groups on Environment and Rehabilitation must fully and effectively carry out their statutory responsibilities, by invoking their wide powers in order to ensure full and fair rehabilitation Project affected families and compliance with all the environmental safeguard measures as per the NWDTA, Narmada Water Scheme, 1980 and 1987, the Rehabilitation Policies and the Judgements of the Hon'ble Courts.

15. NVDA and GRA must adopt a pro-active approach and look into the grievance of every single oustee and ensure that the complaints are redressed and settled, as expeditiously and conclusively, as possible.

16. All persons from whom land is acquired for the R&R site of any other project-affected, must also be treated as a PAFs and all entitlements of R&R Policy must be extended to them.

17. Government of Maharashtra must tackle the corruption in the process of the land purchases and speed up the process of rehabilitation pending at various authorities to ensure that all the remaining families receive land and other entitlements.

18. Government of Gujarat and the GRA, Gujarat must seriously take up the case of every single PAF in each of the Vasahats and resolve the grievances in an expeditions manner, by prioritizing the issue of exchanging bad quality lands with provision of good agricultural lands. The rights (including forest rights) should also be granted to those still living in the original villages.

19. A quick and definite decision must be taken on the rights of displaced persons from the fishing community by providing them / their co-operative societies, right to fisheries in the reservoir. All PAFs who have been engaged in draw down (river bed) cultivation of watermelons etc. must be compensated for the livelihood loss and alternative land must be provided to them. Similarly, all the potter families who have lost land and income due to their brick kilns being submerged must be given land on the reservoir bank.

20. Considering the large number of complaints we have received from numerous villages pertaining to discrepancies in the survey lists, we recommend that the officers in charge of preparing survey lists should be held accountable for every single flaw, be it in the enumeration of the BWLs or the list of PAFs. The list must be finalized only in consultation with the concerned Gram Sabha.

21. An honest attempt to explore alternatives to large-scale projects and options to minimize displacement must be made in the context of the total ill-assessment cost-benefits of the Projects.
PART – II

Canals of Indira Sagar and Omkareshwar in the submergence area of Sardar Sarovar

Status of planning of environmental and rehabilitation measures and compliance with law

1. INTRODUCTION:

The Tribunal began its hearing through visits to some villages in the fertile belt of the Nimad region, where the canals of Indira Sagar and Omkareshwar Projects of the Madhya Pradesh Government (GoMP) are being constructed. The Tribunal was initially perplexed and later shocked to see the large-scale land acquisition and excavation of agricultural fields in village after village which are on the bank of the river Narmada and, therefore, already well-irrigated by pipeline-based lifting and also through other sources such as wells and tanks.

The Tribunal members were already briefed about the basic issues with regard to the canals which can be summarized as follows:

a) Large scale acquisition of land and excavation for the canals in the already well-irrigated river bank villages, which are also in the submergence area of Sardar Sarovar and Maheshwar dams.

b) Lack of adequate and approved planning of canal network, applying relevant criteria and undertaking the necessary environmental safeguard measures, through command area development, without which the canals would not yield the promised benefits, but instead prove counter-productive.

c) Questionable land acquisition processes through force and deceit and imposition of the urgency clause.

d) Non-application of the Rehabilitation Policy and non-provision of the entitlements therein to the families losing lands for the canals.

e) Non-implementation of PESA Act and project-work undertaken without the free, prior and informed consent of many Gram Sabhas in the scheduled area.

The Tribunal members were also furnished copies of the proceedings, legal actions and judgments of the High Court of Madhya Pradesh as well as the interim orders of the Supreme Court. With this background, the members of the wanted to understand the issues from the affected people themselves and make their observations / recommendations on the following aspects, amongst others:

• Is it either logical or necessary to destroy already irrigated prime agricultural lands in dozens of villages in the Nimad region? Should not it be a goal to minimize displacement and destruction of good agricultural land in this and any Project?
• Can and should the canal network of such a massive scale be excavated and built without command area development planning and execution to mitigate the negative environmental impacts prior to & pari-passu with this project?

• Without even extending the benefits of rehabilitation to the canal-affected, as per the Rehabilitation Policy and after decades having been lost in carrying out canal work due to avoidable negligence, is it legal and justifiable to clamp the ‘urgency clause’ for land acquisition and entrap the farmers through forced or deceitful ‘consent letters’?

• Whether there is any basis in law and policy to further the canal construction and excavation without pari-passu compliance of all the conditions in the Environmental clearance & Planning Commission’s clearance and ensuring full, fair and prior rehabilitation?

• What have been the violations of the legal and human rights of the project-affected people and what legal redress must be provided to them? What is the legal responsibility of the project and monitoring authorities?

2. TRIBUNAL IMPRESSIONS: Visit to the villages

(a) Case of Village Pandhania: Illegalities galore with contractors calling the shots

As we entered Nimad from Indore, we met the villagers of Pandhania in Dharampuri Tehsil of Dhar district (where the Omkareshwar canals are being constructed) at a small meeting of about 40 farmers organized in one of the fields. Through the breakfast, the farmers unanimously questioned the rationale of providing canal-based irrigation to villages such as Pandhania which is already well-irrigated by the river and is also benefited by the Kunda Tank since 1956. Amongst some of the cases that the Tribunal could hear in Pandhania, the case of brothers Sukhya Patidar and Jagdish Patidar, sons of Lakshman who stand today with their agricultural field broken into 4 different pieces of land, unfit for cultivation, thus ruining their only source of livelihood was shocking. There were many other villagers who lost total land or their lands have been partitioned to such an extent that it has become useless. The villagers from at least 7 villages narrated the story of how they pleaded & even took to agitation for shifting the canal to government land or even to the borders, but in vain.

As the villagers narrated to the Tribunal the hurried and undemocratic manner in which the land acquisition for the canals was carried out, we began to wonder if at all the canal construction in the area was serving ‘public purpose’ or in ‘public interest’. The affected farmers stated that many of them were forced, threatened, lured or misinformed by the engineers, surveyors, officials and employees of the Narmada Valley Development Authority as also the contractors. They were pressurized into accepting the cash compensation being doled out by the NVDA officials by being misled that they would otherwise stand to lose all claim and benefit out of their lands later. Those who questioned and resisted were warned that they would be arrested and put behind the bars and would not be released until the entire canal work is completed.

The Tribunal also noted with deep anxiety the manner in which the contractors were ‘calling the shots’ in almost every aspect of the canal work – right from the stage of identification of land upto disbursal of compensation and cheques to the affected people. It was revealing to hear as to how the private contractors ‘chose’ the lands to be acquired and excavated at their free will, preying upon the fertile land of farmers which is easy and less expensive to unearth vis-à-vis the government land, which is generally a bit rockier.

There are also some khatedars (land owners) who have had their lands surveyed three times! Patwaris have been bribed in thousands, we were told, to convert and show irrigated lands as ‘unirrigated’ on the government records and permit canal work. This has been the manner in which the canals have been imposed in many other villages, we were informed.

Another issue of concern which the farmers brought to our notice was the environmental impacts such as water logging in the agricultural fields which has already begun to occur. The Tribunal found that the farmers were actually echoing the need for prior and adequate command area planning, i.e. drainage in the black cotton soil area which is clearly lacking, as has been noticed and concluded by Devender Pandey Committee of Experts as late as in April 2010. (See subsequent paras on Pandey Committee Report)

(b) Case of Village Mandil: Adivasis unjustly deprived of their livelihood

After an hour’s ride, we reached village Mandil (Rajpur Tehsil, Badwani district) with 100%
adivasi population where we witnessed the massive excavation for the Indira Sagar main canal. We were astonished to see the huge hollows in the ground that have already been dug almost 55 to 100 meters wide and 35 to 60 feet deep causing nothing less than devastation. It was hard but necessary for us to listen to the farmers and understand that in the place of these huge pits stood fertile multi-cropped fields just a few months ago. We were told that there was sufficient government land in the vicinity from which the canals could have been taken. Neither the government officials nor the contractors could be contactable to answer these questions. Nor would this be a concern of theirs, it appeared, as felt by the affected persons.

At a village meeting in a community hall in the Devgiri hamlet of village Mandil attended by about 200 villagers, in later in the afternoon, the adivasi women and men whom we heard were all marginal farmers (owning less than 5 acres of land) and have become destitute due to the canals. They were in unison about the indispensability of land in their lives. Villagers from Sangao, Umania, Sivai, Damadani & other canal affected villages also joined the meeting.

“If our only source of livelihood is bartered for a few thousand rupees, how will we sustain our families, how will we feed our children, how will we be able to nurture them”, questioned the adivasi women. At this moment, we wish to state: “We were moved by the simplicity and self-reliance of the village communities and strongly feel that when the State has a possibility to minimize displacement and unjust destitution of the adivasis and other nature-based communities, it has a constitutional duty to explore all options to do so”.

Even before the Madhya Pradesh High Court could grant some relief to the affected farmers in November 2009, quite a few of them were coerced into signing ‘consent letters’ and were made to accept paltry amounts of cash compensation. Fearing that they would have to face further hardships and stand to lose everything else, if they do not hasten, many people ended up with a few thousand rupees in return for their fertile agricultural lands.

“When the prices of the agricultural lands in and round the area are anywhere between 3-7 lakhs per acre and a few latest registrations have gone up to 15 lakhs per acre, how can we purchase back our lands that have been destroyed with compensation of a few thousand rupees”, the people asked.

Even far less compensation was given for the pipelines that were randomly broken and wells that were closed down. Worse was the recompense given for the trees that were felled. One farmer was paid only Rs. 200 per tree for 200 neem trees. Such arbitrary low payments go against the very guidelines that the Madhya Pradesh Government has issued since 2007, which is Rs. 2,500 for each tree of 45 cms or more circumference and Rs. 5,000 for fruit bearing trees.

Some adivasi farmers including women such as Gangabai & others cried halt to such inhuman approach. Ramsingh Gendya & a few others spoke of how the contractors recklessly piled up huge mounds of mud over the unexcavated portion of their fields and it cost them anywhere between Rs. 15,000 – Rs. 20,000 to level their fields once again and cultivate the remaining land. Similar illegalities, as were reported to us in Pandhania, were recorded here as well. The questions raised, objections filed by people seem to have gone unheard. While those loosing 60% & more of land have a hope to get land, after the Supreme Court’s interim order (May 2010), they don’t feel very encouraged, given the experience of land based rehabilitation of other dam affected.

3. GENESIS OF THE ISSUE:

Each of the dams on the Narmada, as elsewhere, have huge social and environmental impacts. A major impact is on the land as a source of livelihood and property of the farmers, labourers and other rural and adivasi population. Forcible acquisition of massive land for each of the projects has been going on for the reservoir i.e. submergence area as well as various works related to each of the project including canal, project colony, resettlement sites etc. The land affected by these project related works is not of a small quantity, but of large magnitude in the case of each of the projects. The exact total area to be affected by all the project related works other than for reservoir is generally not even known and even available to the oustees, such as those affected by the canal project of each dam. The story is the same with the Indira Sagar and Omkareshwar canals.

The statutory environmental clearances (ISP - 1987 & OSP-1993) mandated that the command area development plans for the ISP and OSP canals must be submitted to the Union Environment Ministry by 1989 and 1994 respectively and be approved (See MoEF Environmental Clearance for ISP dated 24-06-1987 and MoEF Environmental Clearance for OSP dated 1994 respectively and be approved (See MoEF Environmental Clearance for ISP dated 24-06-1987 and MoEF Environmental Clearance for OSP dated 24-06-1994). However, none of these plans have been submitted to the competent authorities. A major impact is on the land as a source of livelihood and property of the farmers, labourers and other rural and adivasi population. Forcible acquisition of massive land for each of the projects has been going on for the reservoir i.e. submergence area as well as various works related to each of the project including canal, project colony, resettlement sites etc. The land affected by these project related works is not of a small quantity, but of large magnitude in the case of each of the projects. The exact total area to be affected by all the project related works other than for reservoir is generally not even known and even available to the oustees, such as those affected by the canal project of each dam. The story is the same with the Indira Sagar and Omkareshwar canals.

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The state government claimed in the Supreme Court that they had submitted CAD plan for OSP in 1992. However, the Government agreed in their affidavit that submission of final CAD plans remained to be done and they did some submission only at the final stage of the High Court’s hearing as late as in October 2009 and Dr. Devender Pandey Committee has concluded in its report of February 2010 and April 2010, presented before us, that all and complete CAD plans for both dams have not been submitted, even to this date.

Ignoring this laxity on its part, the state government started the canal work as late as in 2003 and began acquiring the lands by invoking the ‘urgency clause’ under Section 17 of the Land Acquisition Act, 1894 and allegedly threatening the people (many of them adivasis) that they will have to accept the meager cash compensation or will not get anything later. Unwilling to part with their well-irrigated and good-crop yielding agricultural lands, which is their lone source of livelihood, many of the farmers wrote to all the concerned state and central authorities to exclude their lands from the canal network. Having received no satisfactory response or meaningful intervention from any of the authorities in time, they approached the Hon’ble High Court of Madhya Pradesh, as a last resort, and filed a writ petition in June 2009. The petition raised all issues including non-application of the Panchayats (Extension to Scheduled Areas) Act, 1996 in the scheduled area, flaws and illegalities in land acquisition process, no final and approved command area development plans and violation of conditions related to environmental compliance and rehabilitation of canal affected population.

(a) Need for planning the canals in the command area: Command Area Development

Prior comprehensive planning is central to any development project and is a quintessential requirement in the case of all large scale projects such as mega-river valley projects. In particular, adequate planning of environmental protective measures is an internationally well-recognized and accepted principle, which is seen as necessary both for mitigation of the negative impacts and in order to optimize the promised benefits of the Project, in a sustainable manner. Literature & research on large dams highlights the fact that without timely Command Area Development (planning as well as implementation) there is left unattended, a huge gap between the planned irrigation and the achieved potential.

It is well-known that large dams have considerable social and environmental impacts in the communities where they are taken up, requiring serious investigations and detailed technical and action plans. Command Area Development (CAD) is one of the basic components of this process which includes planning of the entire canal network from the main canal to the branch canal, tributary, minor, sub-minor and field channel and also comprises of various on-farm and off-farm works, drainage related works, roads and communication channels, tasks related to conjunctive use of ground and surface water, flora-fauna related works such as sanctuary, national parks, plantation, compensatory afforestation, preservation of cultural and archeological monuments etc. Decisions in this regard are to be based on various studies & surveys of the soil, crop pattern, flora-fauna, water, etc, in the area.

Compliance with CAD is considered as necessary to bridge the divide between planned and attained irrigation potential and to achieve efficient utilization of water and management of natural resources in the command area so as to conserve and increase agricultural productivity and prevent serious negative impacts such as impact on drainage, resulting in water logging and salinization, impact on cropping pattern, flora, fauna, health etc.

It was with this understanding that the Government of India had also embarked on the programme of command area development (CAD) since the mid-70s, considering it as a necessary and in fact mandatory environmental safeguard measure in the planning and implementation process of many large and medium dams in the country. Over the years, various Ministries and authorities such as the Ministry of Environment and Forests, Planning Commission, Central Water Commission, Water Resources Ministry etc have evolved numerous conditions, stipulations, guidelines and regulations with regard to CAD. We have been furnished copies of a few of such Guidelines on the issue of CAD for a better appreciation of the legal and policy framework. These include:

- Guidelines for the Environmental Impact Assessment of River Valley Projects, 1985 (MoEF)
(b) Whether GoMP has neglected timely planning of CAD in ISP & OSP?

Even a bare perusal of the various guidelines referred to above, and in particular the clearances issued by the Environment Ministry and the Planning Commission for both the Indira Sagar and Omkareshwar Projects reveal that the project planners and concerned implementing authority i.e. the Narmada Valley Development Authority (NVDA) have caused enormous delay in the entire planning and execution of command area development. In the context of large dams, the pari-passu clause means that the environment protective measures of the dam & on the canals and the CAD plans should be carried out simultaneously. The Comptroller and Auditor General of India's Reports clearly bring out the repercussions of lack of timely and appropriate planning and co-ordination and the losses to the state exchequer and the environment. (See Report of the Comptroller and Auditor General for the year ended on March 1998)

The case of Sardar Sarovar itself is a shocking example, in which till date, there are no final and approved CAD plans for the entire network. It was due to this that the Environment Sub Group, chaired by the MoEF's Secretary took a decision way back in January 2005 to stop irrigation in Gujarat from the SSP and also requested the Water Resources Ministry not to fund the Project any further. This embargo was never lifted thereafter, as there were no complete and final plans that are submitted.

CAD plans are infact a statutory requirement under the Environment Protection Act, 1986 and more so as part of the constitutional framework and rights under Article 47, 48-A as well as Article 21 which is at stake when such large command areas with huge impacts on the environment and population, therein, are not planned for. The Hon'ble Supreme Court has, through various judgements upheld the right to environment as being an integral part of the right to life. Consequently the M.P. High Court after perusing through comprehensive data, official and legal position, national and international practice and field situation granted stay on the land acquisition and canal excavation work.

We have learnt that after some hearings, the Supreme Court, through its interim order dated 25-02-2010 directed a partial and temporary vacation of the stay on the canal work granted by High Court's judgment and stated that the land acquisition and canal construction work can go on 'for the time being'. However, it directed that the same shall be subject to scrutiny by Dr. Devender Pandey Expert's Committee of the CAD Plans submitted by GoMP within 6 weeks and thereupon a decision to be taken by the MoEF within 4 weeks.

4. Large scale Diversion of fertile agricultural lands for canal network: A Threat to food and livelihood security

The Tribunal records its concern over the rapid destruction and diversion of cultivable agricultural land for non-agricultural purposes, in the case of implementation of many projects. The Reports of the Parliamentary Standing Committee on Rural Development (2008), have also expressed its concern for the same. While reporting that at least 30 lakh hectares of agricultural land has been diverted between 1995 and 2005 for non-agricultural purposes, the Committee records the urgency to protect the Agricultural land in the country at a war footing. The High Court’s judgement to save agricultural land and minimize displacement as also unnecessary expenditure from the state exchequer should be seen and taken forward from this prudent point of view. This is the basic objective of the National Resettlement and Rehabilitation policy, 2007 which, interalia, in Chapter – II states that one of its primary objectives
is “to minimize displacement and to promote, as far as possible, non-displacing or least-displacing alternatives”.

1. Cost-Benefits and Justifiability of Canals in the irrigated Areas:

It is quite often seen that the benefits of large projects in economic terms are over-stated while the environmental, social and human costs are not actually and fully valued. This reality appears to be no different in the case of the Indira Sagar and Omkareshwar Projects as well. In the case of the Indira Sagar alone, the total claimed irrigation is 1,23,000 hectares, after submerging 93,360 hectares of land (including 40,332 hectares of good forest). At least 6,056 hectares are to additionally go into the canal excavation (as stated by the GoMP before the Supreme Court) and the final figure of land for canals would certainly be much more since the whole network is far from fully planned, as on date. (See factual data submitted by GoMP in the Supreme Court in SLP No. 34065/2009)

Having referred to the Affidavit of the Government of Madhya Pradesh (GoMP), before the Supreme Court, in which GoMP states that, at present, 28,000 hectares of land in ISP command & 10,000 hectares in OSP command is irrigated, it was quite revealing for us to note that the actual area under irrigation is much more than what is projected. We perused through relevant pages of the Detailed Project Report (DPR) of Indira Sagar prepared in 1982 by the Madhya Pradesh Government which showed the area already under irrigation then to be 29,843 ha. The irrigated land today, farmers like Devendra Tomar of village Pipaj submitted, is not less than 50,000 hectares in the command area of ISP “What then is the actual additional irrigation”, one may ask? The DPR of Omkareshwar prepared in 1983 also shows a similar figure of 22,132 hectares land which was then already under irrigation.

According to the farmers of Nimbola, Sirsala, Karoli, Ekalvara, Pipaj, Semalda and other villages, the Government is attempting to quote highly underestimated figures of irrigated land, to justify the canals.

We have also observed that the canals are being planned in the area that falls in the Sardar Sarovar and Maheshwar dam affected villages i.e. adjacent to submergence / reservoir. Thus, many of the families who already stand to lose their lands for the reservoirs of these large dams will now also have to give up part of the rest of their lands for canals. Besides being an injustice, the Tribunal finds this to be unnecessary and unwarrantable since these villages are at the bank of the Narmada river and hence do not require any other sources like canals. We indeed find reason and merit when people questioned, “When the real fields with irrigation are to be ruined, what is the need and purpose of distant and uncertain canal-irrigation”? (See NBA’s submissions and data in M.P. High Court and Supreme Court on canals coming in to the irrigated villages)

During our interactions with the people at their villages and later at the Hearing, we were informed that, since 1980 there has been a steady improvement in the irrigation sources in the Narmada and Maan river belt. In addition to the canals of the Karam project on Kunda tank, which we visited, the already irrigated lands in the Dhamnod region in Dhar district, we saw the OSP canals being dug parallel and adjacent to the old network of Karam which has been existing since 1950s and functioning well. Even in this month of May we could see the waters reaching the canals and the groundwater table to be so high that even in the newly excavated OSP canals, the groundwater has come above the surface partly filling the main canal.

There is fear that the region stands a high risk of water-logging when the ground water is so high even before the OSP reservoir waters start flowing into those. We also witnessed and heard from the villagers who came from a number of villages such as Nimbola, Sala, Dongargaon, Dahivar and Pandhana in Dharampuri tehsil and Semalda, Karoli, Ekalvara, etc. in Manawar tehsil and Khaparkeda, Chikalda, Nisarpur, etc in Kukshi tehsil (all in District Dhar) that the irrigation covered 80% to 100% of the land in those villages which came from lifting pumps and pipelines on Narmada and Maan rivers along with bores, bore wells, open wells and tanks.

We also met and heard the adivasi farmers and villagers from other tehsils of Rajpur and Badwani (District Badwani) questioning the need for bringing in the canals in their villages. All this has to be reflected into canal planning which would otherwise be outdated and much of it would be a colossal waste.

The Nimad region, which the Tribunal visited, is in fact rich in a variety of agricultural produce, such as wheat, maize, arhar, chillies, sugarcane, cotton, soyabean and horticultural products such as bananas, papaya, citric fruits etc.
The failure of the Government to comprehend the ground realities is leading to destruction of such productive lands in the garb of irrigation and deprivation of the only source of livelihood for thousands of agriculturist families.

Thus, while the enormous submergence and losses of land for reservoir and canals are sought to be justified on the plank of ‘irrigation benefits’, one needs to understand that the land which is lost is not to receive any irrigation (as stated in Affidavit by the GoMP before the M.P. High Court) nor does the land through which a canal passes. After such a scale of displacement and agro-environmental destruction, it is pertinent to ask as to whether the acquisition could still proceed in the present form or could be reviewed, based on correct and complete statistical data. Should not the effort of the State be to save the best agricultural land by revisiting the network land, the command area and the alignments?

(a) Rs. 1,30,000 crores spent: No addition to canal-irrigated areas for 15 years:

Our attention was drawn to a September 2009 Report by Himanshu Thakkar and Swaroop Bhattacharya (South Asia Network of Dams, Rivers and People, New Delhi), wherein the authors have concluded that in 15 years, from 1991-92 to 2006-07, there has been absolutely no addition to the net irrigated areas by canals from major and medium canals, as per official data from the Union Ministry of Agriculture, based on actual filed data from states. This is despite the country having spent over Rs 1,30,000 crores on Major and Medium Irrigation Projects with the objective of increasing canal irrigation. In fact the areas irrigated by such projects have reduced by a massive 2.44 million ha during this period.

The authors state that in this period, the Ministry of Water Resources has been claiming (e.g. in the Working Group Report On Water Resources for the 11th Five-Year Plan and additional information thereafter) that the country has created additional irrigation potential of 10.5 million ha and utilisation of irrigation potential of additional 7.82 million ha, but the official data from the ground show how false these claims are. The net irrigated area by canals all over the country was 17.79 million ha in 1991-92. In all the years thereafter, till 2006-07, the latest year for which the data is available, the net irrigated area by canals has not only been lower than 17.79 m ha, but has been more or less consistently falling.

The reasons and implications as stated in the Report are as follows:

The Reasons: Some of the reasons for this situation include: Siltation of reservoirs and canals, lack of maintenance of the irrigation infrastructure, water intensive crops in the head reaches and non building of the canals and over development (beyond the carrying capacity) of projects in a basin, water logging & salinisation, diversion of water for non irrigation uses, increasing exploitation of groundwater. A reason cited by some: increased rainwater harvesting. In some cases, the additional area added by new projects is not reflected in the figures as the area irrigated by older projects (due to above reasons) is reducing. Indeed the World Bank’s 2005 report India’s Water Economy: Bracing for a Turbulent Future showed that annual financial requirement for maintenance of India’s irrigation infrastructure (which is largest in the world) is Rs 17000 crores, but less than 10% of that amount is available and most of it does not result in physical maintenance of the infrastructure. In some over developed basins, the new projects are like zero sum games, since they would be taking away water for some of the downstream areas. Optimistic hydrological projections, which are almost universal in big irrigation projects, would mean that projects in any case there won’t have sufficient water in the basin to provide the projected benefits. The climate change is likely to make this situation worse.

The Implications: These findings have grave implications. Firstly, they very clearly imply that the thousands of crores the country is spending each year on big irrigation projects is not leading to any additional net irrigated area. Secondly, the real increase in irrigated area is all coming from groundwater irrigation and groundwater is the lifeline of irrigated agriculture. Lastly, this raises many accountability issues: Who are responsible for deciding on these wrong priorities and what consequences will follow? This trend indicates that in stead of spending money on new major and medium (M&M) irrigation projects, the country would benefit more (at lesser costs and impacts) if we spend money on proper repair and maintenance of the existing infrastructure, taking measures to reduce
siltation of reservoirs and at the same time concentrating rainwater harvesting, groundwater recharge and on rainfed areas. On groundwater front, we need to make preservation of existing groundwater recharge systems and augmentation of the same our top priority.

(b) Huge amounts spent on canal-irrigation, but irrigation from groundwater:

A recent report, titled “Let’s respect the water cycle”, written by Amit Bhattacharya, in Times of India, May 30th, 2010 gives the following statistics:

1. **More than 60 per cent of India’s 62 million irrigated hectares is fed by groundwater.** Which means it is not dams and canals that irrigate the Green Revolution belt comprising Punjab, Haryana, Western UP and parts of AP. Bulk of the irrigation is from groundwater.

2. **Between 1991-92 and 2006-07, the government spent Rs 1.3 lakh crore on major and medium irrigation projects without achieving any net increase in the irrigated area.** In other words, the big irrigation projects have failed to bring in any additional area under assured irrigation in the past 15-years.

3. **India’s total canal-irrigated area has decreased from 17,791,000 hectares in 1991-91, to 16,531,000 hectares in 2007-08.** In simple words, the canal irrigation frequency is declining every year. Big irrigation projects are slowly silting up or for other reasons becoming cost ineffective in the long run.

4. **According to a 2005 World Bank report, the annual maintenance bill for India’s canal network comes to around Rs 17,000 crore. Less than 10 per cent of that money is available.** So when the Finance Minister provides the Budget allocations for irrigation, it seems he is not even able to provide money for the upkeep of canals!

6. **INADEQUACY AND INACCURACY OF DATA: WHETHER ACCEPTABLE?**

Having looked at varying data on the affected land and families that the GoMP has placed before the High Court, Supreme Court and the Narmada Control Authority (NCA), the Tribunal records its concern that there is still no finality and certainty of the magnitude of land required for the entire canal network of both Indira Sagar and Omkareshwar nor is the final figure of the families who would be displaced / affected by the two Projects. The fact that this is not done till date shows and confirms the abject lack of seriousness and concern, both for the thousands of families as well as the irrigated agricultural land. (See Annex - B NBA’s Affidavit filed on 04-05-2010 in the Supreme Court)

The inadequacy of the necessary data has also been recorded in the Minutes of the 75th Meeting of the Resettlement and Rehabilitation Sub Group of the Narmada Control Authority held on 16th April, 2010, where the Chairman observes that:

“….The information furnished by GoMP in proforma A-E was highly incomplete and requested State Govt. representatives to offer their comments”. (Page 8 of Minutes)

The hurriedness to push forth the land acquisition, engineering and construction related activities in such a state of non-readiness, when the entire plan is not in place nor is it approved, is certainly neither advisable or beneficial to the people and the State, we observe.

7. **CAN THE PROJECTS GO AHEAD IN THE PRESENT CONTEXT?**

The Third Interim Report of Dr. Devender Pandey Committee of Experts, which is an Appraisal of the Command Area Development (CAD) Plans of Omkareshwar and Indira Sagar Irrigation Projects in Madhya Pradesh, interalia states that:

“Upon scrutiny of the brief interim report of command area development plan, this Committee feels that an implementable CAD plan has not been developed (or may have been developed but not made available to Committee for scrutiny). Such a plan gives time-targeted CAD activities, sample design calculations, itemized costs, the agency responsible for undertaking the various CAD activities, the items for which the onus is to be on the cultivators and the mechanism to motivate the cultivators to timely accomplish their share of the task. Further, the submitted documents do not reflect any thought and corresponding proposed action on several other environmental aspects associated with
Defining the CAD Plans submitted by the GoMP to the MoEF on 16th October, 2009 as mere ‘Expression of Interest’, the Committee concludes its Appraisal with the following observations:

“The Hon. Supreme Court has also mentioned in the said order that according to the State Government, a comprehensive command area development plan was submitted to the MoEF in 1992. Therefore, the Committee has also taken cognizance of this document, and notes that the plan submitted by the State Government to the MoEF in 1992 dealt only with the Omkareshwar Project and did not cover the Indira Sagar Project. The CAD plan for Omkareshwar project was examined by the MoEF and found inadequate that is why in the clearance order of 1993 submission of CAD plan was stipulated”.

“For reasons detailed above, the Committee does not consider the draft command area development plans for Omkareshwar and ISP, submitted to the MoEF by MP in October 2009, as adequate in terms of the conditions laid down as part of the environment clearance, and the subsequent stipulations by the MoEF and the NCA ESG. These plans details only some of the engineering aspects of the command area development activity and the environmental safeguard measures essential for sustainable irrigation development has not been dealt with. Similarly the impact of construction of canal is not provided in the plan and therefore the committee could not assess the impacts of construction on environment such as loss of biodiversity, noise, water and air pollution etc. Therefore, these plans are incomplete and cannot be approved”.

In the overall context, we find it just and expedient that, as per the judgement of the High Court of Madhya Pradesh dated 11-11-2009 and the interim order of the Supreme Court dated 25-02-2010, any further permission for the canal work should be on the basis of the Report by the Devender Pandey Committee, which is an expert authority on the concerned issues and has already been constituted by the Environment Ministry for the said purpose and has also been directed by the Supreme Court to comment on the same. The Supreme Court, vide its Interim Order dated 25-02-2010 has clearly directed that excavation or construction of the canal work would be subject to approval of the Pandey Committee and subsequently the MoEF of the revised plans, submitted by GoMP on 16th October, 2009.

Since the Committee has already given its clear finding, the Ministry of Environment may now take a rational and legal position and decision on the basis of the Pandey Committee’s Report and issue appropriate orders, under the provisions of the Environment Preliminary data provided by GoMP to the Supreme Court and NCA itself reveals that 11,585 families would lose their lands for the Omkareshwar canal that too for the main canal and branch canal alone. Since the full network is yet to be planned, the figure would certainly be much higher. There is no figure for ISP, as per the authorities, since data for ISP is not even maintained.

A plain reading of the Resettlement and Rehabilitation Policy for the Oustees of the Narmada Projects, since 1987 shows that the canal-affected were always part of the original definition and were entitled to all R&R at par with the reservoir - affected. This is reasonable and necessary since family is considered as a unit and the impact of any project-related land acquisition is faced, primarily at the family level and, therefore, the benefits / entitlements are also granted per family. It has been a repeatedly upheld constitutional guarantee and well-established principle of natural justice that there can be no differential treatment of law meted out to persons / communities facing similar violation. Providing different sets of entitlements to families facing similar loss or denying one, any or all of the entitlements, goes against this guarantee and principle. Thus, out of two families losing equivalent land or facing equal loss, the redress must also be similar, as held by the M.P. High Court in its Judgement dated 11-11-2009.

Definition of Displaced person in the M.P. R&R Policy is as follows:
"Any person who has been ordinarily residing or carrying on any trade or vocation for his livelihood for at least one year before the date of publication of notification under Section 4 of the Land Acquisition Act or has been cultivating land for at least three years before the date of such notification in an area which is likely to come under submergence, whether temporary or permanent, because of the project or is otherwise required for the Project."

Apparently, the definition of 'displaced person' remained unchanged in the Rehabilitation Policy for Narmada Projects since 1987. However, when the canal works began in late 2003, around the same time (on September 1st, 2003) the NVDA purportedly brought out a Notification dropping the words "otherwise affected by the Project" from the definition of 'displaced person. This was challenged by the affected farmers before the High Court of M.P. and the Court ruled that excluding the canal-affected from the ambit of displaced persons, who are already unambiguously and thoughtfully defined and covered in the Policy is arbitrary and violative of Article 14 of the Constitution. It may not be out of place to mention that in the earlier Notification issued by the GoMP in August 2000, there was a specific clarification that the canal-affected are within the definition of project-affected!

The activists representing affected people have however contented before us that, both the Notifications i.e. of 2000 and 2003 have not been ratified by the Cabinet and there has been no change in the definition of displaced person (that guaranteed R&R to the canal-affected) since the date of promulgation of the original policy, which holds good and true to this date.

The environmental clearance granted to the Omkareshwar Project on 13th October, 1993 also included the following mandatory stipulation:

"The Rehabilitation Programme should be extended to the landless labourers and the people affected due to the canal by identifying and allocating suitable land as permissible. A time bound programme should be submitted by December 1993"

Our attention was also drawn to another letter dated 20-05-1994 sent by GoMP to the MoEF which was produced by the MoEF before the Supreme Court with regard to OSP environmental and rehabilitation measures almost a year after the clearance was issued (in 1994), in which GoMP accepts that the canal-affected families are covered by the R&R Policy, and elaborately states that they are entitled to all entitlements, including land. The letter reads:

"The canal-oustees are covered in the category 'otherwise required for the Project'. And as such, they would be extended all R&R package which are prescribed for oustees due to submergence, provided they are required to be shifted to a relocation site. As regards allotment of land, they will be extended land to land benefit when they when they lose more than 25% of their holding as per provision in para 3.2 (a) of the State R&R Policy."

10. Interim Orders of the Supreme Court vis-à-vis Rehabilitation Policy:

Rejecting the stand taken by the GoMP that the canal-affected oustees are beneficiaries and therefore, 'need no rehabilitation' the Supreme Court accepted the reality that since many of the adivasis and farmers would face hardships due to the canals cutting through their fields, they must be entitled to land-based rehabilitation.

Through its interim order dated 05-05-2010, it directed that those land holders whose 60% and more land is affected by the canals shall be given land in the command area or its periphery or if that is not possible, land from the land bank must be allotted, after making it cultivable. If this is unacceptable to the CAF, s/he shall be paid the cash equivalent of the land, as per the present market rate, irrespective of when the land acquisition process began. For those land holders losing less than 60% land, compensation as per the Land Acquisition Act and an additional solatium of 30% has been accepted.

There are differences on the interpretation of this order, as is apparent from both, the latest orders issues by NVDA and the submission by NBA.

In our opinion, ideally and reasonably, the right to land-based rehabilitation of all the CAFs losing 25% or more land must be recognized and accepted, since the GoMP itself brought about the Rehabilitation Policy with this provision, after elaborate deliberations and considering many options. According to us, GoMP is clearly estopped from contending that the canal-oustees are not entitled to the benefits of the R&R
Policy. In light of the Supreme Court’s interim order, this hold true even more.

The Tribunal does not wish to say more on this aspect as the matter is sub-judice before the Hon’ble Supreme Court, except re-iterating the findings of High Court of M.P that rehabilitation of the entire canal-affected population is the constitutional and legal obligation of the State of Madhya Pradesh and the State cannot extricate itself from this responsibility.

II. Informed Consent of affected persons in the scheduled areas: Legal Framework

In any democracy, the free, prior and informed consent of the people and communities who are to be affected by any development project is seen as essential. It is this spirit that is reflected in Article 243 of the Indian Constitution, wherein the pivotal role of the local self-governing institutions, particularly Gram Sabha has been recognized.

The Parliament of India had enacted the Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996 by invoking the powers under Article 243-M (4) b of the Constitution. According to Section 4-(i) of PESA, every Gram Sabha in a scheduled area where any development project is proposed and planned will necessarily have to be consulted twice: once before land acquisition and again before the resettlement and rehabilitation. When the High Court had issued its interim status quo order in July 2009, staying the land acquisition and canal excavation work in the scheduled area, it did so, on the ground that there was prima facie non-compliance of this provision, amongst other issues.

Though in its final judgment, the High Court took a position, in the light of certain earlier pronouncement/s by the same Bench that the PESA, being a central legislation, cannot be applicable in the case where the Land Acquisition Act, 1894 is applied, since the latter is also a central Act, it however did observe that GoMP “ought to have incorporated a provision in the Panchayati Raj Adhiniyam, 1993 in accordance with Section 4(i) of PESA Act, providing for consultation with the Gram Sabha or Panchayats at the appropriate level before acquisition of land for development projects or before resettlement and rehabilitation of persons affected by such projects”.

The High Court has however not considered some important aspects of the matter. A special and later statute (PESA) cannot be said to be subordinate to the earlier statute i.e. the Land Acquisition Act, 1894. Both the statutes will have to be reconciled. Harmonious construction would suggest that there is no real conflict between the two legislations, since Land Acquisition Act, 1894 also has consultative provisions (Section 5-A) with the mandatory requirement in PESA, of recommendatory approval by the Gram Sabhas or Panchayats at the appropriate level. According to us, the letter and spirit of PESA will have to be complied with in the case of any developmental projects undertaken in the scheduled areas.

We may also refer to the decisions of the High Courts of Orissa and Madhya Pradesh [Pawan Kumar Agarwal and Another Vs State of Orissa and others (AIR 2001 ORI 91) and Sarapu Chinna Patharaju Dora and Another versus District Collector, East Godavari District, Kakinada and others (2002(2) ALT 218)] where the High Courts proceeded on the assumption that Section 4 of the PESA gives positive rights and empowerment to the Gram Sabhas and Gram Panchayats. The Andhra Pradesh High Court has cited the observation of the Supreme Court’s judgement in Samatha vs State of A.P. (AIR 1997 SC 3297) that:

“The agriculture is the only source of livelihood for scheduled tribes ……. Ninety of the scheduled tribes predominantly live in forest areas and intractable terrains. Ninety-five per cent of them are below poverty line and totally depend upon agriculture or agriculture based activities.”

“The object of Fifth and Sixth Schedules to the Constitution, as seen earlier, is not only to prevent acquisition, holding or disposal of the land in Scheduled Areas by the non-tribals from the tribals or alienation of such land among non-tribals inter se but also to ensure that the tribals remain in possession and enjoyment of the lands in Scheduled areas for their economic empowerment, social status and dignity of their person. Equally exploitation of mineral resources national wealth undoubtedly, is for the development of the nation. The competing rights of tribals and the State are required to be adjusted without defeating rights of either.

The Governor is empowered, as a constitutional duty, by legislative and executive action, to prohibit acquiring, holding and disposing of the land by non-tribals in the Scheduled Areas. The Cabinet, while
exercising its power under Article 298, should equally be cognizant to the constitutional duty to protect and empower the tribals. Therefore, the Court is required to give effect to the constitutional mandate and legislative policy of total prohibition on the transfer of the land in Scheduled area to non-tribals.”

Considering the larger context in this and many other cases, we feel that the problem of the adivasis in the scheduled areas who are facing imminent threat and deprivation of their livelihoods is miserable and unjustifiable. Having perused through the international conventions, constitutional and legal position, we are afraid that destruction of the lands and livelihoods of the adivasis and farmers in the name of irrigation, without their informed consent, which is mandatory in the scheduled adivasi areas is certainly violation of accepted standards of human rights.

In this context, we observe that NBA can agitate this issue further before the appropriate forum of law, if necessary.

CONCLUSIONS & RECOMMENDATIONS – ISP & OSP CANALS:

12 (a) CONCLUSIONS:

Having looked at the position of the Government and Narmada Bachao Andolan reflected in the various documents and having perused through the project clearances, Rehabilitation policy, the judgement of the High Court, interim orders of the Supreme Court and having visited and heard the affected farmers and adivasis, the Tribunal concludes as follows

⇒ The Government of Madhya Pradesh has totally failed in time bound planning and execution of the environmental safeguard measures and in particular, the command area development of Indira Sagar and Omkareshwar Projects resulting in total non-compliance of the mandatory clearances and Guidelines.

⇒ Since the State itself caused enormous delay in planning and executing the projects in time, dispensing with the right of the affected communities to place their objections to the land acquisition process, imposition of the urgency clause and employing pressure tactics and deceit to acquire lands is totally unwarranted.

⇒ The hurriedness to complete the land acquisition and canal excavation in the absence of CAD plans and measures, final and conclusive data of the total land and families to be affected by the entire network is against the law and should not be permitted.

⇒ GoMP has not complied with internationally accepted human rights standards and the PESA Act by not consulting the Gram Sabhas in the scheduled areas of Nimad region, before undertaking the canal-work.

⇒ The state government has been taking an antagonistic stand against the right to rehabilitation (with land) of the canal oustees at par with the reservoir-affected, despite a clear and favourable provision for the same in the Rehabilitation Policy, which is unacceptable and unjustifiable.

⇒ Monetary compensation provided for various properties such as pipe-lines, wells, fruit-bearing trees etc. has been grossly less when compared to the present market value and the Government’s own guidelines.

⇒ The cumulative impact of the large canal-network on the agro-rich river-bank villages in the Nimad region that are already in the submergence of SSP and Maheshwar dams has not even been fully assessed and there has been clear violation of the National R&R Policy with regard to the objective of minimizing displacement as also the High Court’s specific directive to save agricultural land, minimize displacement and assess the options.

⇒ The Narmada Control Authority and the Ministry of Environment and Forests have not effectively played their statutory role as monitoring authorities over the years, resulting in poor implementation of the legally binding stipulations.

In the light of the discussions, findings and conclusions arrived at, we wish to make the following recommendations:

12 (b) RECOMMENDATIONS:
The Tribunal would like to uphold the constitutional right to life and livelihood that inevitably extends to all sections of the dam-affected population, including the canal-affected communities in the Narmada valley. When thousands of families, adivasis and others are to be affected by the Indira Sagar and Omkareshwar canals, their displacement & deprivation, without rehabilitation, has violated & will further trample upon their fundamental rights. They must, therefore, be guaranteed and granted all the entitlements as per law and the Rehabilitation policy.

A detailed household socio-economic survey of the canal affected families must be undertaken to obtain accurate data of the entire affected population (by all levels and types of canals), and then applying the R & R policy of 1989 it should be ensured that there is no further land acquisition, excavation and eviction till the already affected are rehabilitated. For any and every affected, we categorically observe that full compensation and rehabilitation with alternative land and livelihood as per eligibility, must necessarily precede displacement or deprivation i.e. less to be borne, if inevitable.

We agree with the Judgement of the Madhya Pradesh High Court dated 11-11-2009 that the State Government and the people must make and take all efforts to save irrigated agricultural land and communities. The canal network must, therefore, be immediately and conclusively reviewed to exclude the irrigated villages in order to minimize displacement and save prime agricultural land.

Appropriate compensation, at present market value for trees, pipelines, wells and other properties attached to land must be given to all the affected people. The present formula for determining market value must be reviewed with the participation of the affected people, forming appropriate committees.

MoEF has a statutory responsibility to save the best of agricultural land and minimize displacement. On the basis of the Pandey Committee's conclusions, MoEF must halt the projects as the CAD Plans of both ISP and OSP are neither final nor approved and total non-compliance has been established.

Taking forward the observation by the High Court of M.P, the Government of Madhya Pradesh must comply with the letter and spirit of the PESA Act, 1996, by making appropriate changes in the Madhya Pradesh Panchayati Raj Evam Garm Swaraj Adhinayam, incorporating, amongst other things, Section 4(i) of the Act dealing with prior, informed and mandatory consultation with Gram Sabhas in the scheduled areas before undertaking any development-related activity.

The Narmada Control Authority (NCA) must undertake active and effective monitoring of the canal projects as part of the ISP & OSP, as per the Narmada Water Scheme, 1987 and the environment clearances to the projects.
PART – III

JOBAT PROJECT: REHABILITATION CONCERNS OF THE PROJECT-AFFECTED

Amongst the adivasis from Alirajpur district who had deposed before the Tribunal, were also those who have been affected by the Jobat Dam Project. The construction of the Jobat Dam is complete, but numerous concerns are being raised with regard to the compliance of the conditions imposed during the time of granting clearances. In addition to the issue of environmental non-compliance, rehabilitation of a few thousand project-affected was one major issue that the people brought to our notice.

1. Introduction to the issues of Jobat adivasi PAFs: Testimony by Khemabhai

Representing the adivasis affected by the Jobat Project, Khemabhai, one of the PAFs made a brief oral presentation of the various issues before our Tribunal. The Jobat Project oustees also submitted a detailed written memorandum to us, narrating the history of the violations in their case. We were told that an adivasi population of at least 6000-7000 who have either lost their lands, houses or properties, such as wells, hand pumps and trees, much of it without acquisition as per law, are seeking immediate land and livelihood based rehabilitation.

The Madhya Pradesh Rehabilitation Policy for Narmada Oustees, as applicable to all the Narmada project-affected should also be applicable to the Jobat-dam affected, which makes them entitled to agricultural land and alternative livelihood. However, the same is yet to be implemented in full measure. “GoMP has neither provided one hectare of cultivable land to any oustee nor has it established a single rehabilitation site for the affected persons till date,” said Khemabhai.

2. Legal Requirements of Rehabilitation for Jobat Oustees:

The Environmental clearance issued to the Jobat Project on 1st July, 1983 by the Ministry of Environment and Forests contained a clear stipulation with regard to the rehabilitation of the oustees. Point vi of the clearance reads as follows:

“Rehabilitation master plan should be prepared for rehabilitation for the displaced people by identifying suitable sites, availability of land with its land capability, arrangement made for compensation to landless people and training programme etc.”

The clearance emphatically stated that the “Project work may be started after making necessary arrangements to execute the above recommendation (amongst others) effectively as integral part of the project”. Further, the Environmental Appraisal Report of the Jobat Project (April 1983) provided that “...the persons displaced by the submergence are proposed to be resettled in adjoining areas in the
command area by giving them plots of land in the existing villages. All basic amenities are also proposed to be provided to the oustees of the submergence area as per norms fixed by the NWDT Award”.

3. A Glance at the Impacts of Jobat Dam:

The Jobat dam has submerged 1,216 hectares in 13 villages of Alirajpur and 104.24 ha of forest land. Besides, thousands of privately-owned Mahua, date, neem, mango, guava, custard-apple, thaak, ber, babul and many other trees have also been submerged without the adivasis having received any proper compensation for the same. On the issue of compensating the forest losses, the environmental clearance states: “An area equivalent to that going into submergence should be identified in non-forest areas for undertaking compensatory afforestation scheme. For this a detailed compensatory afforestation programme be formulated identifying the areas, specifics to be planned and the other inputs like manpower etc”.

It is however reported that very meager compensatory afforestation has actually been undertaken to compensate the forest and tree losses. Owing to the reportedly unsatisfactory work in the areas of environmental safeguard measures and rehabilitation by the Narmada Valley Development Authority, which were mandatory stipulations in the clearance granted by the Ministry of Environment and Forests, the Jobat Project was blacklisted in the 8th meeting of the Expert committee of the MoEF for River Valley and Hydro-Electric Projects held on the 23rd and 24th of May, 1995. The specific charge against the NVDA was that it did not follow/fulfill any of the conditions laid down in the environmental clearance. It is also reported that no study of the downstream impact of the Jobat dam on drinking water; lift irrigation schemes or fisheries been carried out.

B) Faulty Surveys:

a) As against the official estimates, more land of the adivasis than actually stated has been submerged. It has been reported that even without the full Back Water Level (BWL) impact, much submergence has occurred and there is an imminent risk that this might increase.

b) There are many reported flaws in the survey of the affected families, and this was reaffirmed during the Collector’s survey in 2008. As in the case of SSP, here as well quite a few eligible families have been left out of the list of PAFs and the names of ineligible persons has crept in, obviously due to corruption. The Ration Cards have not been properly made after 2001, which is now the essential document for seeking R&R entitlements.

4. Jobat Project: Dam Complete, Rehabilitation Incomplete

Jobat is one among 30 large dams on the Narmada located at village Waskal in Alirajpur district, which is a wholly scheduled area. Officially known as the Chandrashekhar Pariyojana, the impacts of displacement are spread over 13 villages i.e. Machaliya, Umda, Waskal, Choti Khattali, Badi Khattali, Bheeti, Palasda, Sindhi, Bagdi, Bhanpura, Indravan, Masni and Dawadi. It is however seen, as is understood from the range of grievances below that the land acquisition for the Jobat Project has been marked by numerous legal and human rights violations and hardly any R&R benefits have been provided to the Jobat-dam oustees, in terms of the Policy and clearance.

A) Questionable Land Acquisition process:

a) Land acquisition for the Jobat Project, which started in a fast-paced manner since 2001 and continued upto 2003 was allegedly carried out using misinformation, force, deceit and intimidation i.e. in violation of the accepted human rights standards and without conformity with the mandatory stipulations under the Panchayats (Extension to Scheduled Area) Act, 1996 i.e. prior informed consultation with Gram Sabha before land acquisition and before resettlement and also Madhya Pradesh’s own Guidelines’ (Sr.No.F-12-46/97/Seven-9, Bhopal, dated 31.1.2000) providing for such consultation. An atmosphere of fear was created during the acquisition process and the affected were never even informed of their right to rehabilitation by officials of the NVDA.

b) Adivasis have complained that their irrigated land has been falsely shown as unirrigated on the records and very less compensation for the same has been paid.

c) In the case of many adivasis, their pipelines, tube-wells, wells, rich variety of trees etc. have either not been valued or compensated adequately or in some cases grossly undervalued. There are also cases where these properties have come in the submergence area, but have not yet been acquired.
c) Many PAFs complain that their adult sons and unmarried daughters have been left out of the list of PAFs.

C) Tapu (Marooned) lands:

a) Due to the unplanned project work, many portions of the villages have become tapu (marooned) and such lands have neither been acquired nor have the people there been rehabilitated and compensated till date.

b) Houses of some adivasi PAFs are surrounded by waters from three sides, but these areas have not been considered to be part of the submergence area! Such families are facing acute difficulties, particularly during the monsoon period.

D) Problems due to the Jobat Canals and Water Logging

a) An issue of recent concern to the Jobat project-affected is the impacts due to the allegedly poor quality of the canal works causing water logging and salinization in the nearby villages and also increasing the risk of vector-borne diseases such as malaria.

b) Due to the stagnant pool of water in many areas in the 13 villages, there have also been instances of snake bites, resulting in the death of some children.

The Narmada Valley Development Authority and the Grievance Redressal Authority, Bhopal (Jobat), are yet to satisfactorily address these concerns or initiate corrective actions, inspite of repeated complaints made by the PAFs.

5. Status of rehabilitation of the Project affected: Official Response

Confronted with these issues, after the PAFs made umpteen representations to the district administration, there was some degree of progress when Mr. Chandrashekhar Borkar was posted as the Collector of Alirajpur district during 2008-2009, we were told. According to the people, after their mass dialogue with the Collector on 26-09-2008, he initiated a survey of all the affected villages. However the survey of only one village i.e. Machaliya could be carried out, since Mr. Borker was transferred in the meantime. Even in the survey of this one village, numerous wrongs and inadequacies right at the stage of land acquisition itself came to the fore. Later, when the present Collector Shri Ashok Jeswal enquired with the NVDA about these issues, the Authority prevented continuation of the survey.

As regards alternative land, the experience of the PAFs seems to be no different than what we heard in the case of the oustees of Sardar Sarovar. We were told that the PAFs were shown land at village Kesoor (Dhar Tehsil, Dhar District) and in village Jeerabad (Gandhwni Tehsil, Dhar District). According to the PAFs, the land at Jeerabad is simply unfit for cultivation and the land at Kesoor is disputed and encroached upon. In any case, the total land at Kesoor is highly insufficient for the land-requirement of PAFs of the 13 villages. Left with no other option, the adivasis rejected these uncultivable and unviable lands, which according to them was nothing more than a ‘cruel expression of tokenism’ by the NVDA.

The Tribunal notes with concern the widespread complaint that the Land Acquisition and Rehabilitation officials, straight away negotiated with the PAFs only in terms of cash compensation, without informing them of their legal right to rehabilitation and the authorities made no honest attempt to identify lands for the rehabilitation of the oustees.

The NVDA has taken a rather strange position that if the PAFs have any grievance, they can approach the appropriate court, seeking reference under Section 18 of the Land Acquisition Act, 1894 which is a redress for obtaining increased monetary compensation. That the PAFs have a right per se under the Rehabilitation Policy is being unfairly ignored and suppressed. Special rehabilitation grant offered in lieu of 5 acres of land entitlement has proved to be inadequate and many PAFs failed to invest it in land purchase but were compelled to use it on food & other dire needs. With the compensation amounts in hand, some people went to Badwah (Khargone District) and Kukshi (Dhar district) hoping the land prices would be cheaper and they could purchase some land. Some of them did purchase land, but not equivalent to what they have lost nor 5 acres that they were entitled to. Thus, some families or individuals from some families had to move out of the village and switched over to wage-labour for the sake of eking out their livelihood.

Some PAFs infact specifically named two officials Mr. Salve and Mr. Pawar who have been taking money from certain families to get the ineligible persons declared as eligible for compensation. Allegedly, they have also taken Rs. 5,000/ per head from quite a few eligible adivasi PAFs, promising more compensation, thus duping the innocent adivasis.
Upon the PAFs raising many of these issues with the Grievance Redressal Authority, Bhopal (Jobat), during their meeting with the Chairperson on 7-10-2009, he is reported to have stated that since the Authority can only receive, consider and resolve individual grievances and the issues presented before him, though exhaustive, were of a general nature, pertaining to all the affected villages, the same is beyond the jurisdiction of the Authority and thus the collective petition has been forwarded to NVDA for necessary action.

6. Monitoring of the Jobat Project:

We were also told that in response to an RTI application filed with the MoEF to seek the clearance letter, R&R plan and details of monitoring of the Jobat project, the rather shocking reply from the Ministry was that the file has been lost and the related papers / documents could not be traced in the office. Obviously, this proves that the MoEF has not been monitoring the Project and its R&R, for many years. This, we agree, is again an issue of concern since the NVDA, which has already proved its callousness, corruption and casual approach with regard to the rehabilitation of the adivasi PAFs in the case of other Projects, would have scant regard for law and policy, if there is no monitoring agency or constant supervisory process at the central level.

As per the official statistics (R & R plan related correspondence) of the lower Narmada Projects Division (dealing with Jobat Project) & the Regional Office of Ministry of Environment & Forests, Bhopal 1991 and 1993, the total number of families affected by the Jobat Project were shown to be 550 out of whom 389 families were shown to have been rehabilitated, which included 296 families who lost land while 74 families who lost land & house both, and the rest i.e. 19 families lost only house. No details of land or house plots provided, to how many persons & where, are, however available.

The Project affected people deposed and submitted memos indicating that many families including major sons of the landholders, were left out of this official statistics.

The monitoring reports submitted to the Ministry of Environment & Forests, made available to us, by the activists, are studied by the panel and found the same to be very brief and weak. Status on compliance reported in June 1992 i.e. 2 years after the project work started, by the Project Authorities to the MoEF, responding to the latter’s queries had only the following to say on R & R:

“The rehabilitation Master Plan has already been prepared in 1987 and is under revision in view of rehabilitation policy. The revised R & R plan shall be submitted by 15th June 1992.”

Another response of 1992 (date/month not clear on the document) was: “R & R Plan: Rehabilitation & Resettlement as per the Government of Madhya Pradesh policy adopted for Narmada Sagar Project is to be done.”

The point-wise reply on MoEF’s Monitoring by Superintendent Engineer dated September 1995 noted that “The revised estimate would include the revised cost of rehabilitation and resettlement plan & other environmental safeguards. The same report also confessed “Rehabilitation sites are not yet finalised.” But it also added “772.34 hectares of land in Petlawad, Jhabna, Thandla, Meghnagar, Ranapur Tehsils of Jhatna & 20.46 hectares in Dhar are identified for rehabilitation sites. People of submergence areas are to approve the sites. Visits with the oustees are in progress.”

Same was repeated in the status report of 1996 as well. In the status report dated February 1999, 792.80 hectares of land was said to have been located for rehabilitation (out of 883.19 hectares required) including land for land compensation. As per the reports from the oustees themselves, this has never taken place.

Perusal of the monitoring reports submitted to Ministry of Environment in 2000-01 as well as 2003 clearly brought out that the MoEF would clearly conclude from the report submitted to it that actual finalisation of the rehabilitation plan and its execution never took place right up to 2007. Hence it is shocking that the MoEF did not take any action either to ensure that rehabilitation as per the policy and conditions put forth by the Ministry took place nor to stop the project work that was ongoing during this period. The result obviously was the displacement of such a large number of families without rehabilitation affecting their right to life, although the magnitude was not as large as Sardar Sarovar.

7. NCA’s powers to monitor Jobat under 1987 Narmada Water Scheme:

We have already referred to the Narmada Water Scheme, 1980 in Part- I of this Report, which was expanded and strengthened by a Notification dated 03-06-1987 issued by the Ministry of Water Resources. The said Scheme has invested the Narmada Control Authority with powers for the overall co-ordination, monitoring and supervision of all the dams on Narmada. This Scheme and the Narmada Tribunal Award being instruments under the Inter-State Water Disputes Act, 1956 are legally
binding on the State. The relevant portion from the Scheme reads as follows:
“The role of the Authority will mainly comprise of overall coordination and direction of the implementation of all the projects including the engineering works, the environmental protection measures and the rehabilitation programmes, and to ensure the faithful compliance of the terms and conditions stipulated by the Central Government at the time of the clearance of the aforesaid projects”.

Activists working with the Jobat project-affected also informed us that when the NCA was asked on 15th of April, 2010 to seek a response from the Ministry of Environment and Forests on the issue of monitoring and supervision of the Project, Dr. Afroz Ahmed, Director (Rehabilitation), NCA said that a response is being sought from the Special Secretary, MoEF and the opinion would be shortly conveyed. A response is still awaited. MoEF and NCA, we are told, are yet to take a clear position and undertake, even if belated, effective monitoring of the Project, particularly with regard to the issue of rehabilitation of the Jobat oustees. The oustees have also given a detailed memorandum to the Minister, MoEF, Mr. Jairam Ramesh in April, 2010 but with no response till date, we were informed.

In the light of the aforementioned facts and developments, we are compelled to conclude that there has been considerable lack of diligence in the overall compliance with the clearance conditions and the scrupulous monitoring of the Jobat Project, with focus on the rehabilitation of the thousands of oustees remains a distant reality, even now. This, however, needs to be immediately undertaken and towards this end, we make the following recommendations.

8. **Recommendations:**

1. All the adivasis displaced and affected due to the Jobat Dam Project must be fully rehabilitated with agricultural land, house plot and provision of alternative livelihood as per the clearance, NWDT norms and R&R Policy.
2. Instead of offering uncultivable land from the land bank, GoMP must seriously consider the option of purchasing private land and allotting 5 acres to every PAF and their adult sons and unmarried daughters.
3. NVDA must immediately begin establishment of rehabilitation villages, with all civic amenities as per the NWDTA and M.P. Rehabilitation Policy for the Jobat PAFs from

the 13 villages and complete the same within a fixed time-frame.
4. The Ministry of Environment and Forests, which is empowered under the Environment Protection Act, 1986 to monitor compliance of all conditions in the clearance granted to the Jobat project must undertake a serious review of the true status of compliance of all the conditions granted and initiate appropriate action on the basis of the review.
5. The Madhya Pradesh Government must undertake a joint-survey of all the 13 villages affected by Jobat, involving the concerned and upright officials, PAFs and the representative activists to ensure that no affected and eligible PAF, including the adult sons and unmarried daughters are left-out of the list of PAFs.
6. Lands, houses, trees, wells etc. in submergence, but not yet acquisitioned, must be immediately acquired and appropriate compensation for the same paid.
7. Both NCA and GRA must respond to the petitions by the PAFs at the earliest since it is a delay of years with gross legal violations that has caused great social, economic loss to the families, and pauperized them.
8. All the pending environmental safeguard measures will have to be complied with as per the clearance, in order to mitigate negative fallouts in the project area.
9. As provided in the clearance, GoMP must ensure that the landless are provided alternative livelihood, with appropriate training and other R&R benefits to re-establish themselves.
10. Any action by any official at any level, causing persecution of the adivasis either due to corruption, wrong surveys or intimidation of any other kind must be strictly dealt with, as per law.
Tribunal Observations:

The Tribunal expresses deep concern for the thousands of adivasis, dalits, widowed and single women, fish workers, potters who stand a risk of serious destitution and deprivation, if their rehabilitation is not undertaken in a time-bound and expeditious manner.

We hope the Madhya Pradesh, Maharashtra and Gujarat and Rajasthan Governments will fulfill their constitutional and legal responsibility to the fullest, before taking any measures that would inflict further harm or injustice on these sections of these sections of the population, sharking their very faith in the possibility of ecological and social sensitivity and sustainability in the democratic structures of governance.

The Government of India, as well, we feel must take cognizance of the grave situation that this Report brings forth, which is also reflected in various other Reports by official committees, as well as reports by people's organizations and also the court affidavits by eminent persons. As the monitoring, funding and sanctioning authority, we expect and appeal the Union Government to take a strong position, that long history of violations cannot continue any further unless all plans; complete and feasible, with necessary resources including land are in place. Until the Government undertakes a comprehensive review towards this end, no further approval or project work can be granted.

We appeal to the wider civil society and the people's organizations to assess the Report and provide their critique and take whatever action is possible, towards protection of the rights of people in Narmada and on the issues of land and water management and rights of communities dependent on land, forests, fisheries, rivers and developmental policies resulting in their wide spread displacement due to various projects.

The Panel would be available for dialogue and debate initiated by any of the concerned parties, towards resolution of conflict.
Annexure - I
Glance at the Sardar Sarovar
Implementation and Monitoring Authorities

SARDAR SAROVAR PROJECT

State-Level Authorities

Implementing Authorities

Monitoring Authorities

Interstate Monitoring & Advisory Authorities

Sardar Sarovar Construction Advisory Committee

Review Committee – Narmada Control Authority

MADHYA PRADESH

Narmada Valley Development Authority (NVD&A)

MAHARASHTRA

Namada Development Department (NDD)

Grievance Redressal Authority (M.P.)

Director (Environment)

Narmada Control Authority

GUJARAT

Grievance Redressal Authority (Maharashtra)

Grievance Redressal Authority (Gujarat)

Resettlement and Rehabilitation Sub Group

Sardar Sarovar Narmada Nigam Limited (SSNNL)

Environment Sub Group

Sardar Sarovar Punarvasavat Agency (SSPA)

Hydrology Sub Group

Director (Rehabilitation)
Annexure – II
Extracts from the Reports of the Comptroller and Auditor General of India

1) CAG Audit Report on Gujarat (Commercial) for the year ending March 31, 2001 (At Page 51)

Non-compliance on revision of cost estimates:

“Planning Commission stipulated in two correspondences dated April 1988 and January 1993 that the work of revision of cost estimates should be done at interval of five years whereas Sardar Sarovar construction Advisory committee (SSCAC) in its communication dated March 1993 had asked Sardar Sarovar Narmada Nigam Limited (SSNNL) to revise cost estimates after every three years. Planning Commission approved the cost estimates for Rs 6404.04 crore at 1986-'87 prices in October 1988. Thereafter SSNNL revised cost estimates to Rs 13180.62 crore at 1991-'92 prices in December 1994, (i.e. more than six years and two months later), SSCAC and Planning Commission did not approve this costs estimates. An exercise to revise the cost estimates on the basis of 1996-'97 prices was commenced in June 1997 by SSNNL, however, the same had not been completed as on March 31, 2001. It was noticed during audit scrutiny that SSNNL while submitting the loan proposal for central loan assistance for the financial year 2000-'01 in May 2000, indicated the tentative cost estimates (without item wise details) of Sardar Sarovar Project (SSP) upto 1998-'99 as Rs 23602.98 crore.”

2) CAG Audit Report on Gujarat (Commercial) for the year ending March 31, 2009 (At Page 26-27)

“Due to disputes between GoG and GoMP over certain issues, the cost estimates revised at 1991-'92, 1996-'97 and 1998-'99 price levels could not be approved by Planning Commission. However, pending such approval Central Loan Assistance of Rs 2896.25 crore was irregularly (i.e. meaning in violation of norms) released during the period 1996-2003 under Accelerated Irrigation Benefit Program”.

4) CAG Audit Report on Gujarat (Commercial) for the year ending March 31, 2001 (At Page 56)

Diversion of central assistance received under AIBP

“The funds released under AIBP were specifically meant for the construction of canal and distributaries; however, no such segregation of funds was made from 1998-'99 to 2000-'01 (although in the initial two years, i.e. 1996-'97 and 1997-'98, the state government did mention that Rs 221 crore were sourced from AIBP) and the entire amount (Rs 1,077 crores) was provided as equity contribution for SSP inter alia also for construction of dam, hydroelectric facilities, establishment charges etc.”

5) CAG Audit Report on Union Government for the year ending March 31, 2009 titled Performance Audit on AIBP. (At Page 103)

“Eight years from that observation, a CAG’s performance audit report on AIBP for the period 2003 to 2008 states, “SSNNL diverted Rs 1833.12 crore from AIBP funds, meant for the development of main canal and distribution network to other areas of the project which led to the delay in creation of irrigation potential”.

6) CAG Audit Report on Gujarat (Commercial) for the year ending March 31, 2001. (At Page 52)

Unanticipated expenditure on account of interest charges:

“It was seen in audit that the components of cost towards interest charges and debt servicing were not identified while submitting the original investment proposal to the Planning Commission.
March 31, 2001 SSNNL had incurred expenditure of Rs 10978.63 crore, of which, expenditure of Rs 2413.98 crore (i.e. 22 percent) was towards interest charges and servicing debt liability.”

7) CAG Audit Report on Gujarat (Commercial) for the year ending March 31, 2001 (At Page 57)

Mounting Debt Liability on Account of indiscriminate and unsystematic borrowing:

“The table below gives details of the year wise liability of SSNNL as on March 31, 2001 for repayment of debts along with interest. (Rupees in crore)”

<table>
<thead>
<tr>
<th>Year</th>
<th>Debt repayment obligation</th>
</tr>
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<tr>
<td></td>
<td>Principal</td>
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<tr>
<td>2001-’02</td>
<td>157.04</td>
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<tr>
<td>2002-’03</td>
<td>339.31</td>
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<tr>
<td>2003-’04</td>
<td>614.97</td>
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<td>2004-’05</td>
<td>62.93</td>
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<td>2005-’06</td>
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<td>2007-’08</td>
<td>268.99</td>
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<td>443.57</td>
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<tr>
<td>2013-’14</td>
<td>241.57</td>
</tr>
<tr>
<td>Total</td>
<td>3116.98</td>
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</table>

“SSNNL’s average yearly debt liability (as on March 31, 2001) works out to Rs 944.77 crore. The state Government had directed SSNNL in January 1996 to create a sinking fund out of its own resources with ad hoc contribution of around Rs 50.00 crore annually. SSNNL, however, neither created such a fund nor proposed any alternative arrangement for liquidating the debt liability arising out of issue of bonds. SSNNL, thus without any systematic plan for redemption of the debts went on borrowing for redemption of earlier debts, which resulted in abnormal increase in the expenditure on servicing of the debt.”

Tribunal Comment: These audit comments suggest that Public Accounts Committee should have acted on these issues of misuse of public finance, while fleecing the palms of private financial investors who put in money by subscribing to bonds through which SSNNL raised money. Ministry of Water Resources should have exercised internal control and audit oversight while approving AIBP funds, but even after a categorical comment in the performance audit that entered public domain as early as in 2004, the ministry continued to grant AIBP funds to the project.

These audit comments also raise questions on the absence of monitoring mechanism to ascertain whether the conditionality stipulated in investment clearance granted by Planning Commission were being complied with or not. We are very sad to notice that despite scathing critique on the continued diversion of AIBP funds in the latest CAG audit report on Gujarat (Commercial) for the year ending March 31, 2009 which entered public domain in March 2010, Planning Commission seems to have granted approval to revised cost estimates in third week of May 2010 as reported in newspapers. We strongly recommend that Planning Commission economists and CAG auditors shall undertake a thorough financial review of the project by accessing books of SSNNL, GWIL, GWSSB and the records in MoWR on AIBP funds as well as Command Area Development and Water Management (CAD&WM) funds.

8) CAG Audit Report on Gujarat (Civil) for the year ending March 31, 2003 (At Page 50-51)

Performance of Narmada canal based bulk water transmission project:

“Expenditure incurred on Narmada canal based Saurashtra pipeline project as on March 2003 was Rs 464.17 crore, against the envisaged cost of Rs 409 crore. The gross daily intake from Pariej/ Kanewal during the two years of its operation (December 2000 to November 2002) was 119.18 MLD (42 percent) against capacity of 287 MLD. Of the envisaged coverage of 1860 villages/ urban centers, benefit reached only to 543 villages (i.e. 29.19 percent). Further out of 543 villages/ urban centers, as many as 503 villages/ urban centers were supplied with raw water as there was no filtration arrangements at headworks exposing them to the risk of contacting water borne diseases.”

Tribunal Comment: This must have raised a concern amongst CAG auditors, since despite a relatively higher amount of water withdrawn; the coverage of benefit in terms of villages/ urban centers served didn’t fare well. Was it a case of much of the water drawn getting diverted to industrial use, leaving drought prone villages high and dry? We feel that CAG auditors should have probed this issue further.

9) CAG Audit Report on Gujarat (Civil) for the year ending March 31, 2005 (At Page 49)
“Out of 13 sub projects costing Rs 1331.78 crores for Narmada canal based bulk water transmission project, works to the extent of Rs 808 crore were incomplete as on March 2005. Time overrun of three years was already witnessed in the case of three sub projects, which led to cost overrun of Rs 125 crore. Out of 21 Regional/Group water supply schemes, only seven were completed and remaining 14 were still under various stages of construction. Six water supply schemes taken up for execution during the period under review were incomplete. Failure of GWSSB as well as consultant in monitoring the execution of works indicated ineffective internal control resulting in cost and time overrun and deprival of benefits to targeted population. As a result of delay, the gross average daily intake from Khirai off take point during May 2003 to June 2005 was 145.17 MLD (29 percent) against capacity of 500 MLD. Of the envisaged coverage of 1342 villages/urban centers, benefit reached only to 415 villages/urban centers (i.e. 31 percent).”

10) CAG Audit Report on Gujarat (Commercial) for the year ending March 31, 2006 (At Page 18)

Diversion of 255 MLD water to Gandhinagar city and thermal power station:

“Gujarat Water Infrastructure Limited (GWIL) executed and commissioned a sub project at a cost of Rs 39.39 crore for supplying 255 Million Liters per Day water to Gandhinagar city, thermal power station at Gandhinagar etc. It was noticed during the audit that the said sub project was not covered under the master plan. Thus, the implementation of this project resulted in diversion of 255 MLD water meant for supply to drought prone area. Under the sub project, allocation of 90.10 MLD water was made for domestic use. As per Indian Standard code of basic requirement for water supply, drainage and sanitation, the domestic water requirement of Gandhinagar city should have been 49 MLD (i.e. 140 liters Per Capita per Day multiplied by 3.5 lakh persons, i.e. population figure assumed as on 2015).”

Tribunal Comment: When we calculate how much out of 255 MLD water went for industrial use (i.e. 255 MLD minus 90.10 MLD, viz. 164.90 MLD), the claims that Narmada canal based drinking water pipeline project catered primarily to drinking water requirements of drought prone area appear misleading.

11) CAG Audit Report on Gujarat (Commercial) for the year ending March 31, 2006 (At Page 19)

Excess allocation of waters to industrial users in Kachchh:

“The master plan of Narmada canal based bulk water transmission project envisaged allocation of 232 MLD water for Kachchh district, which included 45 MLD for industrial use. Scrutiny of industrial connections released/approved by GWIL and Gujarat Water Supply and Sewerage Board (GWSSB) revealed that upto March 2006 the total water allocated for industrial use was 61.91 MLD against the stipulated allocation of 45 MLD. The excess allocation of water for industrial use would reduce the availability of water for domestic use and thus adversely affect the drinking water requirement of people of Kachchh.

The GWIL management and Government stated in a reply dated July 2006 that SSNNL had increased the allocation for industrial use from 0.2 Million Acre Feet (i.e. 674 MLD) water to 1.0 MAF (i.e. 3369 MLD) water wide a decision taken in May 2006, from which the excess allocation would be adjusted.”

12) CAG Audit Report on Gujarat (Civil) for the year ending March 31, 2005 (At Page 45)

Shifting priorities in disregard of NWDT: Industrial use outpace Domestic use

“NWDT allocated 1.06 MAF (i.e. 3571 MLD) water out of Gujarat’s share of 9.00 MAF water from the Narmada river towards ‘municipal and industrial use’. Of this 1.06 MAF water, 0.86 MAF water (i.e. 2921 MLD) was reserved for drinking water needs.”

13) CAG Audit Report on Gujarat (Commercial) for the year ending March 31, 2009 (At Page 46)

Shifting priorities in disregard of NWDT: Industrial and municipal use outpace Irrigation

“Capacity that is created as on March 31, 2009 towards municipal and industrial (1.29 MAF), under progress (0.09 MAF) and planned for (1.63 MAF) totals up to 3.01 MAF. As per NWDT award 88 percent of Narmada water allocated to Gujarat (i.e. 7.94 MAF out of 9.0 MAF) was to be used for irrigation and the remaining 12 percent for industrial use. Thus, SSNNL has already exceeded the allocated quantum for domestic and industrial purpose by 1.95 MAF. This suggests that SSNNL was creating the network of branch canals mainly to cater to the demands of drinking water (sic) and creation of irrigation potential has taken a backseat.” Is it merely the case that ‘municipal and industrial use/ drinking water’ has been hiked
beyond what was allocated in NWDT? Or is the hike mostly to serve industrial interests? In our view, CAG auditors should have asked this question as well, rather than simply portraying the shifting priorities as ‘from irrigation to drinking water’.

The data in front of them clearly and unambiguously suggested that industrial use has outpaced domestic use. The proportion of domestic use (0.22 MAF) and industrial use (1.07 MAF) within the capacity already created brings home the warped priorities. They also needed to recollect that in a previous audit they had found that GWIL and GWSSB releases/approved industrial connection in Kachchh district exceeding the stipulated allocation (61.91 MLD against the stipulated 415 MLD)”.

**Tribunal Comment:** We have been informed of the citizens’ monitoring report (coordinated by Pravah and IWMI Tata Water policy program, April 2006) on Narmada Canal based bulk water transmission project. Although the study does add to CAG audit on the performance of the ‘drinking water’ component, in our views the said study falls short of probing how much of Narmada water flowed and continues to flow for industrial purposes. That study could have also looked at rural-urban disparity and instances like diversion of ‘drinking water’ meant for drought prone area to Gandhinagar etc. We strongly feel that there is a need to probe stratified water use statistics on ‘municipal and industrial use.”
Annexure – III

Deposition by PAFs from the Narmada Valley before the Independent People’s Tribunal
June 3rd, 2010, Badwani, Madhya Pradesh

Dozens of affected project-affected people representing thousands of adivasis, farmers and fish workers in the valley affected by the Sardar Sarovar Dam, Indira Sagar, Omkareshwar canals and Jobat Project deposed before the Independent People’s Tribunal. The Hearing was also video-filmed. Out of the many testimonies, a few have been selected to provide a sample of the broad spectrum of people’s voices that are struggling to cling on to their land and livelihood, exposing corruption and facing the uncertain rising waters. Excerpts of the testimonies translated from Hindi, Nimadi, Marathi, Paori and Bhilali

TESTIMONIES

Testimony 1: Kailash Awasya
(Situation of adivasis in Alirajpur (M.P)

“The life in the adivasi areas was comparatively more self-sufficient and the people were happy, harnessing the natural resources within the village and in the forests, very less dependent on market. The problems of the people in the 26 villages of Jhabua district (now Alirajpur) began to increase in the wake of the Sardar Sarovar Project (SSP). People just couldn’t understand as to what kind of a sudden development this was – When there were no roads, no drinking water, no clinics, no schools for all these decades after independence, how and why this big Project? How will it improve their lives, people wondered?”

“Adivasi villages from Jalsindhi to Sugat have already faced unjust and illegal submergence prior to full land and livelihood based rehabilitation. People have been making repeated representations to the NVDA, GRA, NCA, protesting the inconsistent and half hearted rehabilitation, but in vain! Many women have just not been included in the list of PAFs in the 26 villages, the land records not been updated and names of many families are just missing from the land records….Where does the State expect these hundreds of adivasis to go, leaving their lands and forest? How can the State continue to commit contempt of the Supreme Court’s directions with such impunity?”, questioned an angry Awasya.

Testimony 2: Ratan Bhilala
(Village Sugat, Tehsil and District Alirajpur)

“My land has completely been submerged but no proper land records of the same are available. I have been fighting for years, without any land records. If, even after submerging our lands, the government cannot rehabilitate us, should not the dam stop?
Without our lands, where do we go, what do we cultivate and what will we eat? Our lands and our livelihoods, our houses are submerged. I know of many adivasi families in our villages where the father is declared as affected but son is not. Our name doesn’t appear in the affected person’s life because we have no records! How much more ‘affected’ should we be before our names appear on the list? Our houses and farm lands have gone under waters but we are alive and we will continue to survive, we will fight for our survival with dignity.”
Testimony 3: Dhursing
(Village Bhitada, Tehsil and District Alirajpur)

“We were rehabilitated 8 years back in Gujarat and took possession of the land. But this site and our lands get submerged every monsoon. We have made umpteen representations to the GRA. We are made to shuttle from one office in Ahmedabad to another in Baroda, with no conclusive decision on our rights. I have been fighting for last 15 years. Vexed up, I have returned to my original village, along with 16 other families. This situation prevails in other villages in Alirajpur such as Kakrana, Bada Amba, Anjanwara etc.”

Testimony 4: Bawa Mahariya
(Village Jalsindhi, Tehsil and District Alirajpur)

“I have been struggling for our village, our right to land and forest for the past 25 years. When it wanted us to part our lands, the government talked to us very sweetly. We were promised that we would get land for land rehabilitation. But when our lands are now submerged, and we have been asking our due, we are only shown the door. It is high time we declare that the dam can go ahead only if the Government shows us land…Land, land and land is what we want and assert.

“Rehabilitation is complete only on papers. We don’t know papers, show us the land and take us to the land then we would say that we are rehabilitated. This fight is not for politics- this is for our rights, this land is our mother, forests our father, we would protect them”. Where would we go with money? We do not want money, we want land for the land that we have lost. Has any project even managed to rehabilitate people?”

We will save our Jal, Jungle, Jameen. We will submerge where we are, but we will not move unless we get all our rights”.

Testimony 4: Gokhru Manglia
(Village Kharya Bhadal, Tehsil and District Badwani)

“I am from the first SSP-affected adivasi village of Badwani Tehsil. When rehabilitation is still due and we are all living in the village and none of us have moved, how is it that we are being shown as rehabilitated in the government records? If there is no land with the government to rehabilitate us, why then is the dam’s height being raised? Why are we being made destitute and homeless?”

Testimony 5: Gomtya Bhilala
(Village Kharya Bhadal, Tehsil and District Badwani)

“I am shown as ‘out of submergence zone’ but actually, my land submerged this year. Why am I not being declared as an affected person? Many adivasis like me, who are not declared should be re-surveyed and declared as eligible to R&R. There are 7 villages such as Kotbandhani, Turkheda, Bhadal, Lonkhedi etc. in the Bhadal area of Badwani tehsil which are forest villages and in the submergence zone. Not rehabilitation site has been established for any of these villages. We have rights over the forests and shall continue to assert them. The lands are submerged already, there is no record of how much forest land has already submerged and how many trees have already been cut, but shall strive for our rights and to save nature”.

Testimony 6: Khajan Chupa (Anjanwara)
(Village Anjanwara, Tehsil and District Alirajpur)

“So much is there to be said by all of us and so much has already been said and is known about our condition. But there is no chance for us to verify and cross check with the government officials as what they have to say on the problems narrated by people, since none of those were invited, for this Tribunal have turned up. It’s a shame”.

Testimony 7: Mansaram Jat
(Village Kothada, Tehsil Dharampuri, District Dhar)

“It is such a disgraceful violation that the Narmada valley’s soil, which is one of the best for agriculture in entire country is being destroyed at this pace and on this scale, that too in the name of development by
our own government. Post-independence governments are also no better than the British. They seem to be doing no good to the poor and nature-based communities. There is no party or government ready to genuinely listen to the woes of farmers. Government has plenty of land for temples/trusts etc. but still wants our lands and takes it away without involving us in the decision-making or even without giving back land. Government does not even stick to its own guidelines to evaluate our lands at present market costs. “What is the purpose of such lands being offered in ‘rehabilitation’ that too uncultivable if the lands are at one place and the housing plots at another.”

Testimony 8: Gajendra Patidar
(Village Chhota Barada, Tehsil Thikri, District Badwani)

“What motivation exists for the people to move to the R&R sites? Except for crumbling concrete structures, none of the facilities are proper. Forget human beings, even dogs cannot subsist in such conditions. Worst of all, even the dispensary is in a terrible state. Medicines in the R&R site for Chhota Barada itself have been found to have crossed their expiry date in 2008, but are still being used”.

Testimony 9: Shanno Bhabi
(Village Chikalda, Tehsil and District Badwani)

“There is no celebration going on here, we have gathered here to get our rights, we do not want to move away from our lands our region, we want to remain in this region, we have generations old land and we do not want to part from this land. We will turn into beggars if we loose our lands and we do not want to become beggars. We are not after riches, but we don’t want rags as well. We hope that you listen to us and give a right decision “.

Testimony 10: Ranveerbhai
(Village Semalda, Tehsil Manawar, District Dhar)

“The Madhya Pradesh Government imposed this SRP i.e. asked us to take cash of “5 lakh 58 thousand in two installments, instead of land and presumed we could purchase 5 acres of agricultural land!! The agents have only profited due to SRP who went into villages and made people to write false affidavits saying government has given them 5 acres of land. We found out these cases to frauds through right to information, and forced government to inquire into the matter after which NVDA admitted that 758 registries were fake. Rehabilitation officers filed fake FIR against our people saying that we paid them money but people did not buy lands, at the end of all. They were cheated. Huge corruption in the entire compensation process is being exposed. Even blind people are not spared. Lands of 4-5 such persons in Manawar tehil has been sold without their consent”.

Testimony 11: Madubhai Machuwara
(Village Chikalda, Tehsil and District Badwani)

“We are a mixed and vibrant community of all castes and all professions, we have been cultivating watermelons in the sands of Narmada, we have been carrying on fishing for generations, but the Sardar Sarovar has ruined our fish catch forever. We should at least be given rights over whatever remains i.e. right to fish in the reservoir and compensation for our submerged drawdown lands. We are 5000 people engaged in such occupation”.

Testimony 12: Rameshbhai Prajapati
(Village Nisarpur, Tehsil Kukshi, District Dhar)

“Our occupation of pottery is in danger. We have been in the same occupation for many generations. We need to live by the river and have been asking for land by the river. We have been asking for 5 acres of land but government has not given us the land by the river so far. We are already suffering and how is the State going to give us the soil that we require for making bricks, which their reservoir has submerged”.

Testimony 13: Shanta Yadav (Pipri)
“Our tribal brothers have already lost their lands and we fear that it is our turn now. If the dam height is increased to 138 mts, we will be doomed, out culture, our villages will be all washed away by the waters. We have to make a choice whether to accept land or cash? We have always been saying that we only want land and no cash. The Government has repeatedly changed its words and stand a number of times.
But we have remained the same. We are here always, unmoved and our stand has always been the same, we have always been with the truth and we have always spoken only the truth. We do not want this dam, this big dam is a big lie and is not going to do any good to us, except displace and destroy us”.

Testimony 14: Pramila Behan,  
(Village Kasravad, Tehsil and District Badwani)  
“If we are ready to money, we get plot, if we do not offer money to the government officials they refuse to give us plots... What sort of a hollow rehabilitation is this? There is corruption ll around but no rehabilitation”.

Testimony 15: Parmanandbhai Kewat  
(Maikal Kewat Naveek Mahasangh, Mandaleshwar)  
“We the boatsmen have been carrying on our livelihood, ferrying people through the river since the time of Akbar Baadshah, which continued even during the Holkar reign and British period. Our rights over the river, over the fisheries and over the boating contracts should always remain intact, otherwise we would seriously be deprived our only source of livelihood, which has already been affected in a bad way due to submergence of 36 ghats on the Narmada”

Testimony 16: Nanaksingh Gandhi  
(Tehsil and District Badwani)  
“About 2.30 acres, of my land at Ward no 7 on the road towards Kasarawad, is affected due to the highway build by the NVDA and has been divided into two parts, but I have not been considered eligible for rehabilitation, as yet”.

Testimony 17: Vijay Singh Umraosingh  
(Village Mohipura Tehsil Anjad and District Badwani)  
“NVDA had earlier passed a special order accepting 26 houses of Mohipura as SSP-affected since the Project had cut off these houses from the other facilities of the village such as school, panchayat bhavan, hospital, blacksmith, carpenter, mason, flour mill etc. NVDA suddenly now claims that some levels have been changed and, therefore, the houses would not be acquired. This is unjust and we demand that we must be considered as project-affected and be rehabilitated”.

Testimony 18: Tikam Patidar  
(Village Jatpur, Tehsil Manawar, District Dhar)  
“The Omkareshwar canals which are cutting right through our irrigated fields are ruining our entre agriculture, which is our only source of livelihood. Irrigation is need for agriculture. But when we are already reaping good crops, what is the point in destroying the existing agriculture and bringing in irrigation? We all canal-affected farmers, who are living with good agriculture in the irrigated river-bank villages are united that our lands should not be destroyed for the massive canal networks of the two Projects and that our agricultural lands must be saved, at any cost”.

DEPOSITIONS FROM MAHARAHSTRA:

Testimony 19: Vijay Valvi  
(Tehsil Dhadgan, District Nandurbar)  
“Maharashtra sill has more than 1500 adivasi PAFs to be rehabilitated, before it can claim to have completed its obligations towards the oustees. There are many more left in the original villages, there are undeclared PAFs, those whose lands have become topu, there are people in the rehabilitation sites who are waiting for housing plots and agricultural lands. We have all the reports to prove this. Until all these PAFs are rehabilitated, Maharashtra cannot claim substantial compliance”.

Testimony 20: Noorji Padvi  
(Village Danel, Tehsil Akkalkuwa, District Nandurbar)  
“I live in the 7th village from the dam site, my land was first submerged in 1994. The law says that we should be rehabilitated 6 months prior to submergence but in fact we have been giving away our lands
without any benefits of rehabilitation. There are number of laws enacted in the name of tribes and for tribes but in reality the tribes are getting affected everywhere, our district is known as Tribal District but within our own district we have no place to go!!"

All the three states still have the time to come out and declare what are the facts of this dam, the time is not gone yet. SSP is the dam built in the name of Kutch and Saurashtra, but they haven’t received the waters yet, then for whom has this dam been built? There is no electricity; there is no drinking water, what exactly are the benefits of this dam?

Government wants to make us destitute and live in the slums, and then evict the slums too…this development is not for us, not for ordinary people. This is the development of the rich, of the agents and contractors. When the dam reaches its full height, and when the gates will be installed soon, imagine what disaster would it be!!"

Testimony 21: Noorji Vasave
Village Chimalkhedi, Tehsil Akkalkuwa, District Nandurbar)

"We lost our lands in 1994 for the first time, and we have still been living in the same village, government has not given us anything, we have been living in temporary shelters and in these shades in worst situations. About 4, 200 hectares land was allocated for rehabilitation of which 2700 hectares was given for rehabilitation while the remaining 1500 hectares was uncultivable and unsuitable for rehabilitation. Government must speed up the process of rehabilitation, instead of the dam. In this country people fight for temples and religion but nobody fights for tribes like ours who would do justice to tribes? Which judge would do this justice? And how should we approach?"

Testimony 22: Manglya Pawra
[(Village Bhadal (Chikhli Rehabilitation site) Maharashtra]

"There are many people still left behind in the original village only a handful are shifted to the rehabilitation site. Only 1 person from each extended family is declared as PAF and the rest are left behind in the original villages. We have not been given any land titles in the rehabilitation sites even after 2 years of rehabilitation and here are problems with electricity, drinking water etc. The rehabilitation sites look pretty from outside but have nothing really to offer to the people like us, it is like those palaces which look beautiful from outside but has nothing inside".

DEPOSITIONS FROM GUJARAT:

Testimony 23: Vitthal Bhai
(Manibeli, Maharashtra, rehabilitated at Parvetha Vasahat in Gujarat)

"In Gujarat the land given to us is of a bad quality and simply unfit for cultivation due to heavy waterlogging. The situation is even more worse during the monsoon. We were farmers in our original villages and we have now been converted into wage-labourers, uncertain of work and wage. Is this development and rehabilitation? The GRA in Gujarat does not heed to our complaints and we are not even allowed to openly agitate for our rights. Why does the State see us as a problem? Could the dam have been built without our sacrifices? We are seeking our rights as per law and not charity"

Deposition by activists:

Along with the people, activists also deposed and brought to the Panel’s notice other pressing issues such as gross non-compliance on various environmental measures and asked as to why the dam and canal works should not be stopped, as recommended by the Devender Pandey Expert Committee. Rohan from Kalpvriksh, Pune; Rehmat from Mathan Adhyayan Kendra, Badwani and Vimalbhai from Matu Jan Sanghathan, Delhi presented the poor state of environmental compliance in Narmada and other large dams and stated the issue of environmental impacts, as a critical issue linked with people’s lives must be seriously considered by the Tribunal.

On the basis of cogent field-research and analytical assessment of CAT and CAF sites in Maharashtra and Madhya Pradesh, a few grave issues of environmental non-compliance, was brought to our notice by an activist from Pune, Mr. Ruhaan Joshi. He pointed out that the catchment area treatment work has also not really come true as expected and projected because
of wrong choice of species, lack of monitoring, apparent corruption involved and major gaps in the planning and implementation. Similarly, even compensatory Afforestation work has lagged behind and in fact failed at many places. Even where the Govt. makes claims of mono-plantation, there is factory or tank.

Adivasis, farmers and activists, together including Ranveerbhai, Gokhru Bhilala, Noorji Padvi, Medha Patkar brought forth larger issues such as why, even after so much of expose, there is no honest options-assessment of large dams, why no review even at this stage when rehabilitation has fallen behind by years and no sight of environmental compliance. They also questioned the wisdom of economic cost-benefit analysis alone as the criterion in decision-making even at level of the Planning Commission, ignoring socio-environmental concerns. How can clearance and central authorities not take a logical and legal position of review after established non-compliance on every aspect, action on which is to precede furtherance of project work and dam height.

They also highlighted the undemocratic manner in which large dams and projects are pushed, without involving the Gram Sabhas and the community at large. Impact, not only on the river valley population, but the river, affecting a larger gamut of people was brought out by Vimalbhai, giving example from Bhagirathi. All categories of project-affected whether affected by colony, canal or downstream, must be granted the right to rehabilitation, it was asserted.

Narrating some of the instances of 25 years struggle, they questioned the callousness of state approach and appealed to the Tribunal's sensitivity to ensure justice.
Independent People’s Tribunal in the Narmada Valley

The Independent People’s Tribunal to investigate into the large-scale displacement, lack of rehabilitation and environmental compliance and cost-benefits of the Sardar Sarovar and Jobat Dam Projects, Indira Sagar & Omkareshwar Canals was constituted in May 2010. The Tribunal members visited a dozen villages in the Narmada Valley on June 2nd and heard hundreds of affected persons at the Hearing of Tribunal on 3rd June at Badwani.

The Tribunal was requested to examine and assess the legality and justifiability of taking the Sardar Sarovar Project ahead, without a serious review and faithful compliance of law, policy and the Court’s judgements to ensure the rehabilitation of all the thousands of oustees with land and livelihood and also to undertake the necessary environmental protective measures. The Tribunal was also required to look into and make its observations on whether the canal-network of Indira Sagar and Omkareshwar should be reviewed to exclude the irrigated river-bank villages, minimize displacement and save the best of agricultural land and opin as to whether land acquisition and excavation of canals can proceed any further without the full command area plans, complete data and guaranteeing full rehabilitation.

After perusing through some of the significant legal documents, Court Orders, official reports, representations from the people, correspondence, newspaper reports, strenuous synthesis of all material available on record and most importantly, after its visit to about a dozen villages in the ‘submergence zone’ of the valley buzzing with life and activity, the Tribunal’s Award brings forth the ground reality which is being presented with 180 degree differences by parties to the debate & controversy.

While the people’s struggle goes on in the valley, asserting their fully legal and human right to life, livelihood and rehabilitation in an ecologically sustainable framework, we hope this Award by the panel of eminent citizens will bolster their voice in their engagement with the State agencies to realize their rights.

About the Tribunal Members:

Justice (Retd.) Ajit Prakash Shah retired as the Chief Justice of the Delhi High Court and has been regarded world over as one of the most progressive judges, who has interpreted every law in the rule book in the real interest of the people. Born and raised in a family of lawyers, Justice Shah rose well-above the confines of the profession to give the widest possible meaning to the Constitution in order to safeguard the fundamental freedoms, dignity, equality and human rights of individuals and marginalized communities; be it the rickshaw-pullers, slum-dwellers, under trials, children, disabled, sexuality minorities etc. His legacy of raising the bar of human rights standards through carefully-drafted yet profoundly humane judicial pronouncements would certainly serve as a beacon to judges across continents.

Shri Devinder Sharma, is a well-known agriculture, food and trade policy analyst. He also chairs the New Delhi-based Forum for Biotechnology and Food Security. His in-depth knowledge and understanding of problems afflicting the agriculture sector and his untiringly work over decades to ensure food security to all and protect the livelihood of small and marginal farmers has won him international acclaim. His writings are widely read and considered by various think tanks, academic institutions and media. He is highly regarded by activists and farmers for his sincerity and commitment to the cause of sustainable agriculture. Among his recent works include two books: "GATT to WTO: Seeds of Despair" and "In the Famine Trap".

Professor Jaya Sagade is a Fulbright fellow and Director, Institute of Advanced Legal Studies ILS Law College, Pune. She specializes in the area of gender and law, human rights, and reproductive health. Prof. Sagade is presently serving as the Vice Principal of the ILS Law College, Pune. She has been closely associated with and participated in social justice movements in Maharashtra. Dr. Sagade has also been to many national and international conferences and presented research papers on many human rights issues.