

**THE REPORT OF THE INDIAN PEOPLE'S TRIBUNAL ON ENVIRONMENT AND HUMAN RIGHTS
ENQUIRY INTO THE VIOLATIONS OF HUMAN RIGHTS, LEGAL ENTITLEMENTS, AND RIGHT TO
NATURAL RESOURCES OF THE MAN DAM AFFECTED TRIBALS, MADHYA PRADESH.**

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Tribunal Headed by:
Justice. G G Loney
(Retd. Judge, Bombay High Court)

April 2002

Indian People's Tribunal on Environment and Human Rights

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PANEL PROFILE

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LIST OF ABBREVIATIONS

CM	Chief Minister
CPRs	Common Property Resources
DPs	Displaced Persons
DPR	Detailed Project Report
GoMP	Government of Madhya Pradesh
ILO	International Labour Organisation
IPT	Indian People's Tribunal on Environment and Human Rights
LAO	Land Acquisition Officer
MoEF	Ministry of Environment and Forests
MPAPRA	Madhya Pradesh Project Affected Persons Rehabilitation Act, 1985
MRP	Man River Project
NABARD	National Bank for Agricultural and Rural Development
NCA	Narmada Control Authority
NBA	Narmada Bachao Andolan
NGOs	Non Governmental Organisations
NVDA	Narmada Valley Development Authority
NVDD	Narmada Valley Development Department
NVDP	Narmada Valley Development Projects
NWDT	Narmada Water Disputes Tribunal
PAFs	Project Affected Families
PAPs	Project Affected Persons
PAS	Punarwas Ayojan Samiti
PESA	Panchayat (Extension to the Scheduled Areas) Act, 1996
RIDF	Rural Infrastructure Development Scheme
RPC	Rehabilitation Planning Committee
R&R	Rehabilitation and Resettlement
SCs	Scheduled Castes
SSP	Sardar Sarovar Project
STs	Scheduled Tribes
WB	World Bank
WCD	World Commission on Dams

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BACKGROUND TO THE IPT

In barely two months time, in June 2002, when the monsoons arrive, the residents of 17 villages in Dhar face the prospect of losing their homes and lands to the rising waters of the Man dam. As of now, they have nowhere to go, except perhaps the streets of urban centers like Dhar, Indore and Bhopal where they will join the masses of poor who have been displaced and destituted before them. The dam wall is currently under fast paced construction, and submergence is imminent according to the government of Madhya Pradesh's own estimate. Yet, it chooses to ignore the crisis people face or to make only half hearted attempts that are a travesty of its own policies and laws.

The Man dam is one of the 30 large dams being constructed in the Narmada valley. This dam is being built on the Man river, one of the tributaries of the Narmada, at Jeerabad in Manawar Tehsil of Dhar District, Western Madhya Pradesh. According to government figures, the completed dam will submerge more than 17 villages and affect about 1227 families, most of whom are Bhil and Bhilala farmers (except for some shopkeepers from the market village of Kachauda, and local artisans.)

The rehabilitation policy of the Government of Madhya Pradesh formulated in 1987 and finalised in 1989 specifically provides for "land for land" as the main basis of the rehabilitation package. The environmental clearance of 1984 (refer to Annexe No.2) also specifies rehabilitation on non-forest land. Cash compensation is provided only if the oustee specifically requests it, and when the oustee is an adivasi, that too is subject to stringent safeguards. However, the oustees have never been told of their entitlement to land, and cash compensation (that too miserably small) has been used as a way of dispensing with the government's legal and moral obligations.

In 1997, the affected people came into contact with the Narmada Bachao Andolan and learnt of their right to rehabilitation. As a result of their struggle, in 1999, the Government of Madhya Pradesh passed an order stating that people must be fully rehabilitated before submergence could occur and agreed to constitute a Rehabilitation Committee for this purpose.

However, there was little progress on the rehabilitation front, and despite this, in December 2000, the Government of Madhya Pradesh (GOMP) began work on the dam in full earnest. Throughout 2001, the affected people demonstrated at Indore and Bhopal as well as at the dam site. Hundreds of affected people were jailed for nearly 10 days. The struggle still continues but the affected people are yet to be rehabilitated and submergence is only two months away. Lands and livelihood will be submerged and lost for ever, and thousands of adivasis will be transformed into paupers with no resources to make a living.

In the context of the multiple violations of people's legal and human rights and the multiple betrayals by the state, the Indian People's Tribunal on Environment and Human Rights (IPT) held a People's Tribunal in Khedi Balwari, the first village to be affected by the dam. The Tribunal hopes to strengthen and support the people in their struggle for justice.

A three-member tribunal was appointed by the IPT to investigate the situation of the oustees under the Man irrigation project, in view of the impending submergence in June 2002. The panel for the Man project hearing consisted of Justice GG Loney (Retd, Bombay High Court), Mr. Vinod Shetty, Human Rights Advocate, Mumbai, and Dr. Nandini Sundar, Associate Professor, Jawaharlal Nehru University, New Delhi. The panelists were requested by the IPT, vide a letter dated 8th March 2002 to conduct an enquiry with the following Terms of Reference:

- To look into the imminent possibility of submergence of hundreds of families from seventeen villages in June 2002.
- To enquire into how cash compensation is being used to systematically deny the Adivasis' right to natural resources and livelihood including land and their right to exist as a community.
- To look into the violation of the conditions of the rehabilitation policy of 1989 by the Madhya Pradesh Narmada Valley Development Authority and the environmental clearance.
- To investigate into Government's lack of accountability towards the demands and struggles of the affected people.
- To investigate into compliance with regard to provisions of Schedule V areas, Bhuria Commission Report, and 73rd Amendment of the Constitution.

The proceedings and findings of the Tribunal are described after providing some background description of the irrigation project and the rehabilitation framework under which the Government of Madhya Pradesh is supposed to operate.

PROCEEDINGS OF THE TRIBUNAL

The Panel visited a resettlement site, Aamkheda followed by a visit to the dam site. According to a Government of MP Gazette Notification, submergence of lands belonging to 864 families living in 17 villages will take place in June 2002. Given the state of progress, this is very likely - the main masonry wall of the dam is nearly complete, except for the central portion. Inside the reservoir earth was being collected to strengthen the wall. Stone pitching was also in progress. Since there was little water in the riverbed, the area to be submerged was clearly visible - including entire villages with their houses and fields.

An open public hearing was held at village Khedi Balwari on 17th March, which was attended by about 600 people from all the affected villages. Due notice of the public hearing was given to the affected persons through local Non Governmental Organisations (NGOs). Similarly the IPT had taken care to invite the concerned officers of the state government of Madhya Pradesh to attend the enquiry and to submit their views. However, despite being intimated, no one from the government of Madhya Pradesh attended the enquiry. The panel received a number of submissions in writing and heard oral depositions from 23 people affected by the Man Project, namely:

1. Mantri bai, village Rehtiyaon
2. Kamla bai, village Rehtiyaon
3. Chandarsingh, village Khedi Balwari
4. Ramkuarbai, village Khedi Balwari
5. Mangibai, village Rehtiyaon
6. Galla Redia, Village Khedi Balwadi
7. Bhuvan Singh Nangria, village Kacchauda
8. Ramesh Sukhlal, village Kacchauda
9. Kailash Chand Vaishno Bairagi, Village Kacchauda
10. Gedyabhai, village Khanpura
11. Pema, village Gadaghat
12. Govindbhai, village Khanpura
13. Mangilal Aapsingh, Rehtiyaon
14. Laloo Rumal, village Sangwi kala
15. Balibai, formerly Gadaghat, now Kesur
16. Awansingh, formerly Golpura, now Kesur
17. Devsingh Tersingh, Retiya
18. Mansingh Madia, village Bhuvada

19. Balibai, village Bhuvada
20. Bondibai, village Khanpura
21. Mangilal bhai, village Gadaghat

We heard people affected by other dams in the Narmada valley who are supporting the struggle of the Man affected people.

22. Urmila Patidar, oustee from village Pathrad, Maheshwar dam area
23. Banabai , oustee from Upper Beda Project
24. Vania Bhawara, oustee from Sardar Sarovar Project (SSP).

We also heard some activists who are working with the people of this area:

25. Alok Agarwal, NBA activist, who was member Task Force to review large dams, (including the Man Project) in the Narmada valley.
26. Chittaropa Palit, NBA activist and member of the Punarwas Ayojan Samiti, Man-Jobat Projects constituted by the Govt. of Madhya Pradesh on 22.08.2000.

On the 18th, March the team travelled to Bhopal to address a press conference. During the press conference the interim report was released.

MAN IRRIGATION PROJECT: SALIENT FEATURES

The Man Irrigation Project being built on the river Man, a tributary of the river Narmada is one of the 30 major dams being built in the Narmada Valley - a part of the mammoth Narmada Valley Development Projects (NVDP) that have been the center of much controversy and struggle in the Narmada valley in the last two decades.

This Project that is being constructed at village Jeerabad of Manawar Tehsil of District Dhar, Madhya Pradesh will have a full reservoir level of 297.65 m. The height of the dam is 53 m. The Detailed Project Report (DPR) of 2001 states that 1156 families will be affected by the project although only 993 families out of these will be both displaced and affected. The other 163 families will be losing less than 25% of their lands. However the latest Government data states that only 864 families will lose their lands, homes and livelihoods to the Project. It is not clear how 1156 families were decreased to 993 and further to 864 families.

As per the information at the dam site, the dam will cause a reservoir submergence of 1168.671 ha for a total of 17 villages, that includes 782.871 ha of cultivated area, 381.407 ha of fallow land and forest Area of 4.939 ha. The canals will submerge at least 200 ha. of non-forest lands and 2.5 ha. of forestlands.

The project cost at the time of Planning Commission clearance was Rs.44.1 crores. Subsequently it was revised to 108.12 crores in 1997 and has now been submitted for approval at 142.07 crores.

According to the DPR, the Culturable Command Area of the project will be 15,000 hectares, spread over 48 to 57 villages of the command. The project has no power potential.

CULTURAL, ECONOMIC AND SOCIAL PROFILE OF THE AREA

According to the census of 1991, Dhar has a population of 13,67,412. The area of the district is 8,149 sq. km. Scheduled Tribes constitute 53.5% of the district's population and the Scheduled Castes 6.9%.

The major tribal communities here are Bhils and Bhilalas. Bhils are the second largest scheduled tribe of India, numbering over 7 million at the time of the 1981 census. They are spread over a large territory of Western India, in southern Rajasthan, western Madhya Pradesh, eastern Gujarat and northern Maharashtra, yet have been denied any kind of statehood. Bhil social organisation is characterised by the presence of diverse social groups recognized on the basis of kinship, territory, culture contact, religious tenets, etc. The Bhil Bhilalas are said to be the offspring of immigrant Rajputs and Bhils. The Bhilalas of Madhya Pradesh are divided into four endogamous groups, namely Darbar, Urappe or Dhapale, Bhagor and Rathia. These groups are distributed in the districts of Dhar, Jhabua, and West Nimar. Literacy rates are very low (5.3%). The district has 49 languages. 60% of the population speaks Hindi and 25% speaks Bhil/Bhilali. Eight percent speaks Nimari and other languages constitute 7%.

The Bhils and Bhilalas in the submergence area of the Man Project is mainly land owning agriculturists, although there are a few landless families as well. Proximity to the perennial river Man means that all lands are irrigated. There are also a large number of wells. The area has fertile black soil. Taken together, this means that these are productive lands, and displacement will indeed cause major loss. Apart from agricultural land, tribals also depend on the forests nearby for a variety of needs that range from fuelwood, fodder, and timber to fruits, roots, and herbal medicines. None of this gets taken into account when determining compensation.

Lands are legally held together jointly by families at least until the family patriarch is alive. In fact, however, the land may be managed and cultivated by separate families. In other words, actual distribution of land under cultivation may long have been effected without concomitant change in the land records. Unfortunately, these patterns in land holdings can have an adverse impact on their entitlements after submergence since the state privileges the official land holder, and denies those whose names are not entered in the records the right to due compensation. In other words, a policy predicated on individualized ownership punishes tribal families for their joint land holding cultural patterns.

The Project claims to benefit 4000 families in the command area, around 85% of whom are tribals as per government information in 2001. Given that at least 1227 families will be displaced officially, and that the damage they suffer is far more overwhelming than the benefit gained by these 4000, the cost benefit ratio in terms of human lives is absurd.

LEGAL AND POLICY FRAMEWORK FOR REHABILITATION AND ENVIRONMENTAL MITIGATION

The Government of India and the Government of Madhya Pradesh have developed a legal and policy framework to deal with questions of rehabilitation and the mitigation of adverse environmental impacts resulting from large development projects. However, these policies are routinely violated. In this section, we provide a glimpse of the provisions governing rehabilitation.

4.1 NWDTA (Narmada Waters Disputes Tribunal Award), 1979 as the overarching framework

The Narmada Projects were planned in the 1950s and 60s. However, there was a conflict between the riparian states of Madhya Pradesh, Maharashtra and Gujarat. The Narmada Waters Disputes Tribunal (NWDT) was appointed to adjudicate on the matter. *In 1979, the Tribunal passed the Narmada Award, this judgement being at par with law.*

Hitherto, displaced persons whose lands were acquired for reasons of "public purpose", were compensated for their acquired assets in cash under the aegis of the Indian Land Acquisition Act.

In a radical departure from the legislation existing until then on displacement and rehabilitation questions, the Narmada Award recognised that mere monetary compensation for lands and homes was not adequate, and what is required is the restoration of livelihoods. It therefore pronounced a land for land compensation. The government was required to provide fertile, irrigated and cultivable lands to the farmers, in lieu of their submerging lands. The NWDT also pronounced linkages between rehabilitation, submergence and project construction. It required the government to prepare a Master Plan for rehabilitation, based on actual availability of land right at the outset of the project.

The Narmada Award provides the overarching framework for the rehabilitation of the oustees of the Narmada Projects. It was on this basis that the Rehabilitation policy of the Madhya Pradesh government was framed in 1987.

4.2."Rehabilitation Policy of the Narmada Valley Development Department (NVDD) Madhya Pradesh, for the oustees of the Narmada Projects" - 1987

In 1987, the Government of Madhya Pradesh brought out a rehabilitation policy for the oustees of the Narmada Projects on the lines and contours of the Narmada Award. It was formally issued by the NVDD in 1989. The primary plank of this policy is "land for land". Every land holding family is to be given a minimum of 2 ha. and a maximum of 8 ha. of irrigable land under this policy, adult sons being treated as separate families. Affected persons whose lands are being acquired for submergence or for any other project related purpose are eligible for the "land for land" policies, as are non-titled land users. (Refer Annexure .1)

About the entitlements of the affected land holders, whether titleholders or encroachers, the policy states in Section 3.2 to 3.3 that the affected land holders are entitled to land and assistance in order to irrigate these lands.

The Policy states:

3.2 (a): Every displaced family from whom more than 25 percent of its land holdings is acquired in revenue villages or forest villages shall be entitled to the extent of land acquired from it, subject to provision in 3.2 (b) below.

3.2(b): A minimum area of 2 ha. of land would be allotted to all the families whose lands would be acquired irrespective of whether Government land is offered or private land is purchased for allotment.

Where more than 2 ha. of land is acquired from a family, it will be allotted equal land, subject to a ceiling of 8 ha."

3.2 (c): The government will assist displaced families in providing irrigation by well/tube well or any other method on the land allotted, provided such land is not already irrigated.

3.3: Encroachers, whether on revenue land or forestland, will also be entitled for allotment of land. Where the area of the land acquired from an encroacher is up to 1 ha., he will be entitled to 1 ha. area of land. In those cases where acquisition of land from an encroacher is more than 1 ha., he will be entitled to 2 ha. of land irrespective of the fact that the land acquisition from such an encroacher may even be greater than 2 ha.

The policy also clarifies the conditions under which the affected family may choose cash in lieu of land.

In Section 5.1 it states that -

" However if an oustee family does not wish to obtain land in lieu of the submerged land and wished full payment of the amount of compensation it can do so by submitting an application to this effect in writing to the concerned Land Acquisition Officer. In such cases oustee families will have no entitlement over allotment of land and shall be paid full amount of compensation in one installment."

If any oustee family belonging to the Scheduled Tribes submits such an application, it will be essential to obtain orders of the Collector who will, after necessary enquiry certify that this will not adversely affect the interests of the oustee family. Such application of the Scheduled Tribes families will be accepted only after the above said certification by the Collector."

The policy makes it very clear that the entire financial responsibility to ensure that a Scheduled Tribe family is rehabilitated belongs to the state government. It states:

Section 5.4 " Grant- in- aid would be paid to cover the gap between the amount of compensation and the cost of allotted land in these cases where the cost of allotted land is more than the amount of compensation. This grant would be payable to all displaced land owning Scheduled Caste and Scheduled Tribe families and other families losing up to 2 ha. of land.

4.3 Order of the Narmada Valley Development Department (NVDD) dt. 4.6.1996

On 4.6.1996, an order was passed by the NVDD that the general principle guiding the rehabilitation of oustees of the Narmada Projects has to be land for land and cash compensation could be given only in exceptional circumstances.

The Order of the Vice Chairman Narmada Valley Development Authority stated

" it is being directed that if any displaced family does not accept land for land and applies instead for full cash compensation for the acquired land, then the signatures of the head of the family and his wife and the adult members of the family will be essential. In this context, the Collector will take the statements of the Kotwar, Patel, Rehabilitation companion, of the concerned village and after appropriate enquiry shall certify that the disbursement of the entire amount of cash compensation in one installment and that the relinquishing of the land

for land package is not against the interest of the concerned family. The application of the displaced family shall be accepted only after this certification has given by the Collector. According to the approved rehabilitation policy, full cash payment of the compensation should be made as an exceptional case, only if insisted upon by the displaced family.

Therefore according to standing order no. 2 (dated 6.1.96) when action is taken in this regard, there must be a detailed enquiry on the application for cash compensation submitted by the displaced family in the form 1.1 and in the context of the general policy of land for land an exception be allowed only in special circumstances."

4.4. Environmental Clearance given for the Man Project by the MoEF, 1984

On 2nd January 1984, when the legally required environmental clearance was given to the Man Project it was granted on a conditional basis. One of the primary conditions was that a Master Plan should be prepared for the rehabilitation of the oustees and that care should be taken that the project colonies were to be located on non-forest area. (Refer Annexure.No. 2)

The other conditions included the restoration of the site (after earth had been dug out for the construction of the earthen dam) including leveling and filling of dug areas and plantations on slopes, the creation of green belt of 500 m breadth in forest area and 50m in non forest area to stop soil erosion, compensatory afforestation for 8.89 ha. forest coming under reservoir and canals, plantations along FRL and canals and a wood depot to be established at dam site for labor.

4.5 Clearance by Planning Commission in 1992

The Planning Commission gave its clearance to the Project on the 5th of June 1992 on the condition that "The environmental safeguards as stipulated vide Dept. Of Environment, Government of India's letter No. J- 11016/98/82-Env.5 dated 2.1.84 shall be implemented to the satisfaction of the Dept. of Environment, Govt. of India." (Refer Annexure. No. 3)

In addition to this, the rehabilitation and resettlement of the people affected by the Man Project is also affected by three orders of the Madhya Pradesh government of 1999, 2000 and 2002.

4.6 Order of the Madhya Pradesh government of 2nd May, 1999

On the 2nd of May 1999, following a month long sit in Bhopal by the affected people of the Man Project along with people affected by other dams in the valley. (Refer Annexure No. 5), the government Order No. Serial No. F 12-1/112/27/2/97/534 issued by the Vice-Chairman, Narmada Valley Development Authority dated 2nd May 1999 stated,

"After reviewing the current situation in the Man and Jobat Projects, it has been decided that no such work will be undertaken on these Projects as may submerge any village in the monsoon of 1999. Simultaneously, a Punarwas Ayojan Samiti (Rehabilitation Planning Committee) will be constituted in order to ascertain well-planned rehabilitation. This committee will plan for the total rehabilitation of the oustees. The committee will keep in mind the rehabilitation and resettlement of families living in the areas likely to be submerged due to the construction work up to the 15th of June of any year, should be completed by the 31st of December of the preceding year as per policy."

For effective rehabilitation, the Madhya Pradesh Project Affected Persons Rehabilitation Act, 1985 will be used as found necessary, for which the work of framing rules will be taken up separately.

For effective rehabilitation, a planning committee will be constituted under the Chairmanship of the Minister, Narmada Valley Development Department in which the representatives of the oustees will also be included. This Committee will be constituted by 31st May, 1999.

4.7 Order of the Madhya Pradesh government of August 2000

This order constitutes a Punarwas Ayojan Samiti for the rehabilitation of the affected people of the Man Project. It includes elected people's representatives and officers of the District and the Project. It also includes representatives from every affected village and two representatives from the NBA. However the village representatives are not named, so the composition of the committee is very skewed. In the very first and only meeting that people were invited to, this skewed composition led to their voices being stifled and their insistence that they cannot be submerged without rehabilitation was ignored, as the larger body agreed to continue with the construction on the dam.

4.8 Order of the Madhya Pradesh government of March 2002

In March 2002, the Madhya Pradesh government passed an order to approve a special rehabilitation grant for the oustees in order to enable them to purchase land for rehabilitation.

THE STRUGGLE AGAINST DISPLACEMENT

The Man Project was given Environmental clearance by the Ministry of Environment and Forests on the 2nd of December 1984. The conditions included the preparation of a Master Plan for the rehabilitation of the oustees on non-forest areas. The Planning Commission clearance was given on the 5th of June 1992 and soon after that work began on the dam site (see sections 4.4. and 4.5 above). The cornerstone of the NVDD Rehabilitation Policy, finalized in 1989 (see section 4.2) is 'land for land'. All those losing more than 25% of their lands are to be given land in lieu; a minimum of 2 hectares and a maximum of 8 hectares - the land ceiling in the state.

However, despite the policy, between 1992-1994, cash compensation was distributed to the largely tribal population of the Man Project area. The affected tribal people were not offered land for land. Nor were they informed of their rights and entitlements under the policy. Thus the rights of the affected people were completely disposed off with a pittance in cash. The grounds were thus laid for the complete pauperization and marginalisation of these tribals on the completion of the dam.

In December 1996, activists of the Narmada Bachao Andolan came into contact with Man dam affected oustees for the first time. This was around the time when eviction notices were being served to the Man Project affected people. Faced with the eviction notices and the sure prospect of future pauperization, and armed with the newly found knowledge that they had a legal right to land-based rehabilitation, the Man dam oustees begin to organize themselves with the help of the Narmada Bachao Andolan.

In April 1999, people from five dams including the Man Project sat on dharna in Bhopal for nearly a month from 5th April to 2nd May. As a result of the month long sit in and a 21 day fast by the affected people and activists of the Narmada Bachao Andolan, on the 2nd of May 1999, the GOMP passed an order stating that a Punarwas Ayojan Samiti (Rehabilitation Planning Committee) would be constituted by 31st May, 1999 in order to ascertain well-planned and total rehabilitation of the Man dam oustees. The order said that "The committee will keep in mind the rehabilitation and resettlement of families living in the areas likely to be submerged should be completed at least six months prior to submergence.

Yet it took over a year for such a committee to be constituted, leave alone work on rehabilitation to begin, despite Gram Sabha resolutions from the affected people and reminders from the NBA. The Committee, formed on 22 August 2000, included almost all elected representatives to the Parliament and State Legislative Assembly from the districts of Dhar and Jhabua, and large numbers of government officials but only two Narmada Bachao Andolan representatives. Moreover it did not name any representatives from the affected people, thus completely skewing the composition of the group.

On the roads, once more ..

In November 2000, with no progress on rehabilitation, work was suddenly started on the hitherto unconstructed spillway section of the half-finished Man Project.

Soon after that, on 24th January 2001, several hundred Man dam affected people marched in Dhar calling on the government to immediately stop dam work and complete land based rehabilitation before any further construction. The Collector of Dhar promised to look into the issues but he gave no answers then or later. On the 28th of January 2001, representatives of the affected people and the NBA activists met the senior officials of the NVDA and the Narmada Minister and requested them to stop all work on the Man Project until rehabilitation is complete. As a result, on 30th January 2001, the GOMP passed an order to stop work on the spillway section of the dam. However, this relief was short lived and from the 11th of February

2001, without any information to or consultation with the people, the construction on the spillway section of the Man Project commenced yet again.

On the 19th of February 2001, the first meeting of the 'Punarvas Ayojan Samiti', of the Man Project was held. Unfortunately, in the meeting, the affected people's concerns about the complete absence of land based rehabilitation were suppressed. According to the information provided by the government in this meeting, 993 families were to be affected in the monsoon of 2001. In other words, about 5000-6000 adivasis were slated for displacement with all their legal rights violated and no rehabilitation provided.

After much mulling about the future course of action, the affected families decide to peacefully demonstrate at the dam site and prevent further construction of the dam, in order to safeguard their rights. Early in the morning, on 21st March 2001, about 1000 project affected people captured the dam site and began a *dharna* there. By late afternoon around two hundred tribal people and their supporters who had been demonstrating at the dam, demanding land and rehabilitation were beaten up, arrested and put into Dhar jail. 213 people were kept in jail for seven days. 47 other children who had been rounded and brought to the jail were finally sent home in the middle of the night. Finally, after a week on the 27th of March, the administration was compelled to release most of the people unconditionally.

However, the NBA activists, Chittaropa Palit, who has been working with Adivasis for more than a decade and a half, as well as Urmila Patidar, an affected person from the Maheshwar dam project, were detained in jail and charged along with 12 others with committing atrocities on Adivasis under the SC/ST Atrocities Act. The specific charge was that while being arrested and beaten up, the protestors were able to distinguish tribal police women from others and called them derogatory names.

In addition to this atrocities case, warrants relating to old cases were submitted to the Jail Superintendent in order to detain the activists. The jail official received warrants against Palit for six cases in Dhar and for five cases from the Mandleshwar Court. Warrants were also served by the Khargone Court, directing that she be produced before it. The two activists were detained for 13 days.

In the second week of April, the affected people heard that the government had decided that they would not be provided with land. Instead, in the case of submergence, they would be provided tin sheds for temporary shelter as well as half the rate of minimum wages on a daily basis during the submergence. On the 16th of April 2001, the Man oustees demonstrated at the Commissioner's Office at Indore asking the government to explain their intentions. The Indore Commissioner and Dhar Collector present at Indore urged the people to meet the **Sarkar**, if they wanted answers. When the people asked these very senior officials who the **Sarkar** was and where they could find him, they had no answers.

Between April and May 2001, work continued without pause on the spillway section of the dam. In the meantime, as the government played for time, two meetings were held with the government officials at Dhar. But instead of taking urgent steps towards the rehabilitation of the affected people, the government officials stated that all decisions could only be taken by the government in Bhopal.

In search of the elusive Sarkar ...

From 18th May, 2001, adivasis affected by the Man Project and the Sardar Sarovar Project in Madhya Pradesh began a dharna in Bhopal to demand agricultural land for long term and sustainable rehabilitation. During the seven day dharna, the oustees twice managed to meet officials of the Narmada Valley Development Authority offices, but were told each time that all

decisions about the Man Project could only be taken by Shri Digvijay Singh, Chief Minister, and it is him that the people must meet.

Despite having 500 adivasis practically at his doorstep for nearly a week, waiting to meet him, the Chief Minister made no time for them. Instead, he was busy on a Gram Sampark Abhiyan, travelling to distant villages to find out what problems rural people were facing. Finally on the 23rd of May the people were assured of a meeting. But early in the morning of the 24th, hearing that the Chief Minister was to leave Bhopal once again without meeting them, around 400 people marched to his residence. Only the old people and infants were left behind.

The marchers were met with barricades. The police decision to allow a delegation to go in to meet the Chief Minister turned out to be a ruse, as both the delegation and those gathered outside were arrested. The police also rounded up the infants and old people left behind by the demonstrators at their tent, dismantled their tents and brought them all to the Bhopal Jail. At the end of the day when the affected people were released, they were taken straight to the railway station to catch the train back to the village. It was obvious that there was no place in Bhopal for dispossessed people asking for their rights. Their journey ended without the people being able to find out who the Sarkar is and whether it actually exists!!

THE PEOPLE DECLARE SATYAGRAHA, THE GOVERNMENT BLASTS THE DAM..

Ignored and humiliated, the affected people went back to their villages, declaring that they would face this government callousness not by fleeing but by facing the rising waters of the dam in the monsoon. They declared *satyagraha*. Not a single house was dismantled nor did a field remain unsowed in spite of the fact that the villages were slated for submergence due to the dam, in the monsoon of 2001. The government closed down the school and the Anganwadi in the first village to be affected by the Project - Khedi Balwadi, but resistance by the women of the village stopped the government officials from physically extracting and carrying away the village hand pumps and from severing the electricity connections.

In the last week of June, due to sharp pre monsoon showers, the river flooded and started filling the fields of Khedi Balwadi. The people stoically continued with preparations for the formal beginning of the satyagraha on the 2nd of July 2001. On 30th June, 2001, the dam officials panicked and blasted out the river sluice on the Man dam, just two days before the program of monsoon satyagraha ensued. It was a big victory for the people and a tribute to their patience.

From the 2nd of July, *satyagraha* of the Man Dam affected people against the illegal and unjust submergence of their villages began in village Khedi- Balwadi, with the resolve that if the government gave them no land, then the people would brave the rising waters. However, due to sporadic rains and the open river sluice, in the monsoon of 2001, all waters that rose were drained away, and the villages escaped submergence.

Despite the government's move to blast out the river sluice, there seemed to be no serious long-term reflection within the government on the appropriateness of flooding out people without rehabilitation or land. In October 2002, work was restarted on the dam. On the 24th of December, the adivasis demonstrated once again at Dhar. But despite prior information, the District Collector left Dhar just as the rally entered the Collectorate, trying to avoid the affected people. Since the people refused to go home, the Collector was forced to come back at 10.00 p.m. at night to listen to the people. He promised to give answers in ten days. However, when a group of representatives came back to the Collector in ten days for the answers, he refused to meet them and told them while getting into his car that all answers would come only at the Bhopal level.

Meanwhile on the 31st of December 2001, the State Government notified in the Gazette that 865 families would be affected by the Man Project in the monsoon of 2002. Of these only 22 families have received land so far. Most families have not even received house plots.

In March 2002, the state government announced a cash package of Rs. 12 crores. The people responded by stating that they welcome this fresh provision but that this can only be a step to the state government providing the affected people with **agricultural land** and an opportunity to relocate as a community. Without land, the people have refused to leave their villages and have prepared themselves to face submergence and satyagraha.

It was in this context that the IPT asked the Panel to hold a public hearing or Tribunal.

THE FINDINGS

In this chapter we draw together all the findings of the enquiry. This is divided into three sections, based on testimonies from the affected people, figures (often inconsistent) available in project documents and a reading of the constitution and international conventions.

The visit to the dam site revealed that the main masonry wall of the dam was nearly complete, except for the central portion. Inside the reservoir, earth was being collected to strengthen the wall. Stone pitching was also in progress. Since there was little water in the riverbed, the area to be submerged was clearly visible - including entire villages with their houses and fields. The panel has every reason to believe the Government Gazette Notification that submergence of 17 villages will take place in the monsoon of 2002. Unlike, the government, however, the panel was horrified by the prospect of throwing out so many thousand citizens of the country in the near future without any alternative source of livelihood or shelter.

I. The People Speak: No Rehabilitation to Date

1.1. Misleading and incomplete information provided to oustees

Extent of Submergence: When people were first informed about the dam, they were told that only some of their land was going to be submerged. They were not told that their entire land would go under submergence. People are not confident that the submergence will affect only 17 villages. Govindbhai of Khanpura said that by their estimate some of the land outside the submergence area would also be flooded.

Entitlement to land: The oustees who have land (whether title or encroached land of long standing) were not told that under the Narmada Project Resettlement and Rehabilitation policy of 1992, they were entitled to cultivable irrigated land in exchange, with a minimum of 2 ha for each project affected family. Mantri bai, 45 years, from Rehtiyaon said, " the officials did not inform us about the resettlement policy. We want land for land. Only then we can survive." Kamlabai of Rehtiyaon added that the government got them to sign documents, which they then took away, and since they are illiterate they did not know what these contained. (These probably contain a voluntary acceptance of cash compensation as against land).

1.2 Use of force against villagers

The government is resorting to forcible eviction of affected people rather than resettling them. Mantribai, village Rehtiyaon, said that after having told them that only some of their land would be submerged, the government tried to bully them into taking compensation for their houses, threatening them with bulldozers and police if they did not accept the money. This was supported by others, like Chandarsingh of Khedi village.

Mansingh Madia of village Bhuvada stated that they had already been forcibly evicted with bulldozers when earth was extracted from their fields to make the dam. Balibai, also formerly of Bhuvada said that her family got Rs. 17,000 for 12 bighas and was forced to move to Junapani when their land got dug.

The government also tries to make it impossible for people to continue living in their old villages by destroying whatever little amenities it has provided. For example, in July 2001, the Government demolished the government school in Khedi Balwadi. It also tried to pull out hand pumps but the people did not allow them.

1.3 Inadequate compensation given to oustees

The oustees were given cash compensation which was not adequate even to buy the same amount of land at the prices prevailing then, leave alone in 2002. It goes without saying of course, that income from common property resources and other non-market sources was not taken into account when calculating compensation.

Take the following cases for example,

Mantribai of village Rehtiyaon has 20-22 bigha of land (in her name and her 3 brothers) on the banks of the river Man, on which she grows 3 crops a year, wheat, green vegetables and chaumasi. About 8-9 years ago, she got Rs. 168,000 for this. The cost of each bigha today, were they to try and buy land in exchange is Rs. 80,000-1 lakh. Even at that time, the cost of each bigha was about 70,000.

Kamlabai of village Rehtiyaon has 30-bigha land, divided between 4 brothers. The family is self sufficient, and in fact, are even able to sell grain. Every year they produce about 100-quintal wheat, 50-quintal makka, 40-quintal cotton, and 20-quintal soya. In cash terms, even after deducting all costs, they get an income of Rs. 40-50,000 per annum. In addition, they have mango and belaphal trees on their land. In exchange for all this, they got a measly Rs. 170,000 in compensation.

Gulab Singh originally had 5 ha in Kachauda village, and was the middle school teacher there. About 10-12 years ago, he got Rs. 234,000 as compensation for his 5 ha, which works out to approximately Rs. 30,000 per ha (excluding the 30% solatium). In 1992, he bought 2 bighas or 0.5 ha at Rs. 55,000 each in Dhamanda, about 18 km from Aamkheda. In other words, even at rates prevailing ten years ago, it would have been impossible for any person to buy land comparable to that which was being acquired from them. In 2002, of course, the value of land has gone up - with one estimate putting it as Rs. 280,000 per ha. Gulab Singh continues to cultivate his land in Kachauda, i.e. till so far as it is submerged. According to Gulab Singh, estimating the value of land is difficult in this area because land is not a commodity here, unlike in Malwa. Almost everyone has some land - and if not, they simply move 'encroach' and do *nevad*.

Chandar Singh, village Khedi Balwadi said that his father, brother and he have 12 bigha between them. In all, their joint family (father and his brothers) have 40 bigha between them. They got approximately Rs. 80,000 compensation in total.

In a few cases, people have been given alternative house plots in resettlement colonies, namely Kesur, Aamkheda, and Junapani. But these plots do not have any cultivable land attached to them, which is why people are justifiably reluctant to move to these plots.

Low valuation of Trees: Govind Bhai of village Khanpura noted that a significant amount of cash income depended on trees. For instance, 1 mahua tree brings an annual income of Rs. 2-3000. They were being compensated at a rate of only Rs. 4000 per tree. This area has khajur, mango and mahua trees. The government has already cut all the teak trees.

1.4 Many affected persons missing in the official list of affected persons

Adult sons and daughters: Several people, like Chandarsingh of village Khedi, have not been included in the list of adult sons and daughters, even though they were adults at the time of the Award in the early 1980's. Some others also said that while they were not adults at that time, they were so now. Given that adult sons function independently in adivasi communities,

this amounts to dispossessing entire families of land. People demanded that the cut off date of adult sons and daughters be changed to 15th June, 2002 as was done in the Bargi dam area of the Narmada valley at the instance of the Madhya Pradesh Government. Khedi village has about 70 young men, almost all of who work on the land. There is no factory employment available.

'Encroachers': In many tribal areas, the absence of proper settlement records means that long term cultivators are branded 'encroachers'. Mangilal Singh of Rehtiyaon village argued that he had been cultivating his land for 37 years: "Now they call me an encroacher ". The need to cultivate land as a means to livelihood, the availability of forest land and the collusion of forest staff through bribe taking also means that *nevad* (taking possession of forest land to cultivate) is a common way of life in adivasi areas. However, when it comes to resettlement, thousands of tribal families, who are classified as landless but who are in fact cultivating lands, are not officially listed. Although the NVDD 1987/1989 policy promises land to 'encroachers', in fact, this promise is violated.

1.5 Problems in resettlement colonies

22 families from Gadaghat and Golpura got land at Kesur. Not everyone got land. Balibai, from one of the Gadaghat families which did get land, said they were given 8 bighas each family. The land is full of ravines, and they are only able to grow makka on it, as against gahu, chana, soyabean, and makka which they grew on their lands earlier. Awamsingh (originally from Golpura, now resettled at Kesur) said that in Golpura his family had 26 bighas. In Kesur they were given 15 bighas and Rs. 9000. In Golpura they had 3 houses - in Kesur, they were given only 1 house plot.

Tensions with host villages: The Kesur villagers (host village) resent the oustees since they have been resettled on their grazing lands. Moreover, some of the lands given to oustees were already encroached by Kesur villagers, creating tensions for both sides. Some of the land given to the 22 families submerges routinely every monsoon being next to a stream bed, and is therefore not available for cultivation.

No room for cattle: Govind Bhai of Khanpura, said that people who had been offered house plots at Kesur had also refused because these were not big enough (at 60 x 90) to house themselves, cattle and store grain. He himself had 10 cattle and 20 goats. Balibai of Kesur (previously Gadaghat) said that earlier her family had 5 cattle, 12 goats. Now they have 2 cows and 5 goats, as there is no room for them to stay and no land for grazing.

Resettlement sites inadequate: The site visited by the panel, Aamkheda, has 36 plots of 60 by 90 feet each which have been allotted to families from Kachauda. There are 297 families who are being displaced from Kachauda as per the government notification of 2001, yet only 36 house plots are available for them. None of these plots have been occupied so far. It is not difficult to see why. There is no agricultural land that is attached to these sites, so occupying these plots may mean a roof over one's head but sure starvation. There is no work here even for locals, leave alone for oustees from other villages. The Aamkheda site has one school and one Panchayat bhavan and some tree saplings (e.g jam, aonla, liptis) in round fences. There are three tubewells but with little water, owing to drought. The Aamkheda resettlement site has been carved out by taking over some government waste land that had been encroached and combining this with government land. The only oustee at the site is a school teacher and his family who have made themselves at home in the school building.

Need for community resettlement: The adivasis in this area are closely linked to each other and are strongly bound communities. Not only do they celebrate all important rites together as a community but they also have various labor sharing institutions such as *dhas* and *parjiya* which help them to survive economically. They also have fairly well developed systems of local

jurisprudence that they exercise as a community. They have community heads in the shape of Patels who keep order in the community, the Pujaras or the people who intervene between them and their gods and ancestors and the Wartis or the distributors, a function greatly valued in an economy that values equity as the basic principle of community existence.

It is clear that if the affected families are scattered without land or are even resettled with land spread through various villages, their existence as a community with strong political, cultural and economic bonds will be completely ruptured. The few examples of those tribals affected by the Man Project who have bought land in other villages planning to settle down later once the dam is built is dire. For example, Bhuwansingh of Khedi bought land in Sangwi. But host community villagers were hostile to him, and took over the land that he had purchased. Similar situations have arisen with a few Man affected tribals who have bought land in Junapani and Nayapura. Thus it is clear that there is no possibility that these villagers will be able to survive without living together as a community.

1.6 Ignoring Common Property Resources: Impoverishment through displacement

The human costs of economic development have become a contemporary issue of great importance. These costs include insecurity of livelihood; problems of access to common property and public services; health and nutrition hazards, such as increased morbidity and mortality; marginalisation, loss of community structures and social disarticulation. It is the same in the case of Man oustees.

It is frightening to see that development projects aimed at fighting poverty are actually causing poverty. This is because the gains from development are being increasingly overshadowed by a steady rise in the number of people who have to be involuntarily resettled. The displacement often leads to impoverishment. The upheaval and dislocation is always traumatic. Therefore it is important to recognise the impoverishing potential of development projects early in the planning stage itself.

Loss of natural resources: In addition to losing their cultivable lands, people are losing their access to water from the Man river for irrigation, and natural resources from which they derived additional income and subsistence, e.g. minor forest produce, fish, firewood, fodder and grazing land for their cattle. Devsingh deposed: " We used to get grass for the cattle, firewood, drinking water, Guar Gum, oil from the trees, bamboo etc. Apart from this we used to collect Guar Gum from trees which could be sold for over Rs.60 - 100 at the market. Now we don't have any of these benefits ". Balibai of Kesur (previously Gadaghat) said that in Kesur, they were forced to use cowdung cakes instead of fuelwood as there was no forest nearby.

Agricultural Labourers and Artisans face loss of livelihood: Several agricultural labourers also deposed (Mangibai of Rehtiyaon, Galla Rediya of Khedi Balwadi, Bhuvan Nangria of village Kachauda, Pema of village Gadaghat). They have not been given any compensation for their houses or alternative house plots. Nor has any alternative employment opportunity been offered to them in new sites, as the policy envisages. During the hearing there were a few village artisans, e.g. Kumhars making earthen pots, present. Ramesh Sukhla of village Kachauda stated that as a result of displacement they would lose their traditional occupation and they will not be able to make a living from other occupations since they are not educated and skilled. On average they now do work of Rs. 100 a day. They would lose their source of both raw material (free earth, water and wood to fire their pots) and their market, since town people use copper pots etc.

From land owners to labourers: Since they were not given alternative land, Bhuvada villagers are doing *mazdoori* for the dam or on other people's cotton fields. At the dam site, men get

Rs. 50 for lifting stones and Rs. 30 for other work. Women get less. Even for men, this is less than the minimum wage.

Chander Singh, Khedi Balwari village said, "We farmers know only how to till and cultivate, we do not know any other work. If we are given cash as compensation instead of land, we will not be able to sustain ourselves for long. We are demanding land and the government is telling us to find the land. We are ready to give back the compensation money given to us if we get proper land compensation. The police beat us up and we are humiliated. Jal, Zameen and Jungle is ours."

1.7 State apathy and coercion: refusal to redress grievances

The Government is asking the people to find alternative land for themselves (as Chandarsingh of Khedi Balwadi testified) thus completely abdicating its own responsibility for the rehabilitation and resettlement of the oustees. It is shocking that the resettlement of oustees is not an integral part of the construction of the dam and that even after 17 years of construction, their situation has been ignored. This clearly shows the unaccountability of the Government.

Another concern is the elusiveness of the 'sarkar'. Several women repeatedly emphasized that the same government, which demands their votes at election time, has absolutely no time for them otherwise. Mantribai and Kamlabai of Rehtiyaon both said that they had been searching for the 'sarkar' for five years, but had never ever come face to face with it. "*Sarkar chip gayee aur police ko aage kar di*". (The government has hidden itself behind the police). Ramkuarbai of Village Khedi asked, "what have we done that we should be condemned to drown? God gave us this land. Why is the government always after adivasis? Doesn't it have enough land of its own?"

Ramkuarbai and Bondibai from Khanpura said that in Dhar, the Collector refused to meet them and said only the CM could provide the answer. When they went to Bhopal to try and meet the CM, they were arrested by the police and put into jail. They described how the women were beaten up in Dhar so that 'they had no *izzat* left.' The Collector, instead of meeting them, tried to run them over in his car. Six women had to be taken to hospital.

II. The Statistics Speak: Concerns over the Viability of the Dam

2.1 Limited benefits

It is clear from the Detailed Project Report (DPR) that lands actually amenable to canal irrigation is around 12,277.88 ha. comprising of 217.36 hectares of Class I lands suitable for canal irrigation, 7507.079 hectares of Class II lands that have moderate limitations for canal irrigation and also including 4553.458 hectares of Class III lands which have severe limitations for canal irrigation. The rest of the lands that belong to Class IV and V categories are both shallow and eroded or not suitable for irrigation under any condition.

Data culled from revenue departments of the state government during the process of the Task Force in 1998 and submitted by the NBA to the IPT finds that out of the 15,000 hectares claimed to be in the command, 7048 hectares are already irrigated.

The data also revealed that while the actual capacity of tanks in the command is 1588 ha (for Manawar tehsil) and 303 ha (for Gandhwani tehsil) i.e. a total of 1891 ha, yet utilised capacity today is only 704.593 ha. Thus unutilised capacity of tanks even at present is 1186 ha.

Thus, nearly half of the command is already irrigated and 20% of the command cannot be irrigated under any circumstances. Obviously that leaves only 30% of the command to be irrigated - around 4500 hectares of land. It is also clear that around 1200 hectares of land can be further irrigated with the already created irrigation structures. Thus irrigation facilities have to be created for only 3300 hectares of land (as against 15,000 ha originally envisaged). This raises the fundamental question about the utility of this dam compared to the ensuing large submergence. The costs, we are convinced, far outweigh the benefits.

2.2. Discrepancies in the extent of and status of the command area

Alok Agarwal, senior activist with the NBA pointed out several significant issues to do with the Project. He stated that there seemed to be a great deal of confusion about the extent of the command area. The DPR of the Project (July, 1982) mentions that the Command of the Project will be in 48 villages of Dhar district. The Draft Appraisal of the Man River Project submitted to the World Bank (CR 1108 IN/NVDA 1394) details 22 villages in Manawar block and 31 villages in Gandhwani block of Dhar District - a total of 53 villages. However, the status report of the Narmada Valley Development Department 1998 lists 56 villages by name, while mentioning that there are 57 villages in the command. It can only be presumed that the Command covers between 48 and 57 villages.

2.3 Inconsistency in statistics regarding the extent of submergence and number of families affected

The 1998 status report of the NVDD mentions a reservoir submergence of 1094.886 ha for a total of 17 villages. Of this culturable land is 709.086 ha compared to 865 ha mentioned in the 1982 DPR.

The DPR of July 1982 mentions that over 560 families - the majority of whom are Bhilala tribals - will be affected. Yet, in the 1997 proposal to NABARD this has been arbitrarily decreased to 266 families - possibly to deflect adverse attention from funders. The report of the NVDD of 25.10.1999 estimates the number of families affected as 827, while the NVDD's report of 20.10.2001 estimates it as 1156 families.

2.4 Conditions of the MoEF Clearance: Violation of environmental conditions and blacklisting by MoEF

The Ministry of Environment and Forests cleared the Project in 1984. The conditions included the creation of a rehabilitation master plan for the rehabilitation of the affected people in colonies on non-forest land. However, there seems to be no resettlement till date except in the tiny sites of Kesur where 22 families are resettled, Junapani where also a very small number of villagers have been resettled, and the as yet uninhabited site of Aamkheda which holds only 36 house plots.

As a result of non compliance of the conditions of the environmental clearance by the project authorities, i.e: rehabilitation and environmental measures, in the 8th meeting of the experts committee of the MOEF for river valley and Hydro electric project held on the 23rd and 24th of May 1995, the Man Project was black listed for "very poor R&R although the project was nearing completion."

However, it must be noted that the Ministry of Environment and Forests did nothing after this to ensure compliance. Despite the affected people petitioning and meeting the MoEF again and again the MoEF has taken no steps at all.

In fact, the government has started felling of trees through a contractor, and all trees in Sanwi Kala have been felled, in violation of the condition of the Forestry clearance that tree felling from FRL to 4 m below FRL will not be permitted. Yet, the MoEF has no mechanism either to implement or ensure the conditions of the Project clearance.

We also note that the Planning Commission Clearance strictly stipulates that the conditions of the Ministry of Environment and Forests as well as the Forests clearance be met. However, the Planning Commission also does not keep any record of whether the conditions are ever complied with once the Project is cleared.

2.5 Financing from RIDF Scheme of NABARD enables violations of human rights:

It was also brought to light that the construction of the Man dam is being refinanced by the NABARD - the National Bank for Agriculture and Rural Development. This means that the NABARD gives the Madhya Pradesh government the funds for the work already done for the project. Unfortunately, this apex financial institution which is financing not only the Man Project but hundreds of other irrigation projects in the country neither has comprehensive policies nor the monitoring mechanism to take responsibility for the impact of its financing.

The Man dam is being refinanced through the RIDF II scheme (Rural Infrastructure Development Scheme) of NABARD. This scheme gets its funds every year from the priority sector lending funds of the public sector banks that remain un-disbursed at the end of the year. However, since the funds are offered as refinancing they put tremendous pressure on state governments to maximize work on the project. Even when NABARD lays down conditions for rehabilitation of the affected people, as it has in the case of the Man Project, it has no machinery for monitoring these. Inevitably, given the dual forces of refinancing pressure and lax monitoring, NABARD's R&R conditions as well as the MP government's own policy framework on R&R become early casualties.

For example, this year, initially all work done on Projects funded by NABARD under the RIDF II upto 31.12.2001 was to be refinanced by the NABARD. This basically meant that there was to be no pressure on governments to construct beyond this date, in violation of environmental conditions. However the NABARD at the last moment decided to extend this date to 30th June, 2002. Thus, work that would have stopped on the 31st of December 2001 is being carried on till the monsoon, with no concern for the fate of the people to be submerged by the increasing dam wall. It is also in direct contradiction to the condition stated in the Government order on the R&R of Man oustees of the 2nd May, 1999 that "The committee will keep in mind the rehabilitation and resettlement of families living in the areas likely to be submerged due to the construction work upto the 15th of June of any year, should be completed by the 31st of December of the preceding year as per policy."

Clearly, the violation of human rights by a policy of hastening construction without sequencing it to submergence on the part of an apex financing agency like the NABARD, that aims to support agriculture, farmers and rural development, is completely unacceptable and has to be rectified.

III. Violation of Constitutional Obligations and International Conventions

While displacement without rehabilitation per se is both inhuman and contrary to the Narmada Project Rehabilitation Policy, the refusal to provide land based rehabilitation to adivasis additionally violates the letter and spirit of several national and internal policies and conventions, such as Act 40 of 1996, which provides for special protection for adivasis, and the ILO convention on indigenous peoples which notes that tribal/indigenous peoples should not be arbitrarily separated from their land and resources.

Both the Indian Act and the ILO convention rest on the recognition that for adivasis, their land is central to their livelihood. Along with natural resources like forests and rivers, the land is also sacred, being peopled with the spirits of ancestors. There are more than 60 million tribal people in India, many of them dependent on land they and their forebears have cultivated for generations.

Vth Schedule of the Constitution/Act 40 of 1996 (PESA)

The Vth Schedule of the Indian Constitution enables the Governor (on the advice of the Tribes Advisory Council) to make special laws regarding the transfer of land to non-tribals to prevent land alienation, regulate money lending, and modify the application of any other state laws to scheduled areas. In practice, however, apart from land alienation laws, state laws have generally been extended to scheduled areas without any changes.

The Provisions of the Panchayat (Extension to the Scheduled Areas) Act, 1996 (PESA) enacted on 24 December 1996 (Act 40), provided a chance to realize the spirit of the 5th Schedule. Rather than leaving powers with the governor, it gives power to the village communities or gram sabhas themselves to frame rules that are suitable for local customs and conditions. PESA is applicable to the nine states which have scheduled areas under the 5th Schedule, including Madhya Pradesh.

PESA makes the gram sabha 'competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution'. (Clause 4d).

The Act also provides that 'the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level. (Clause 4i).

The MP version of the Act, passed on 5 December 1997 notes that the gram sabha in scheduled areas will have the powers to 'manage natural resources including land, water, and forests within the area of the village in accordance with its tradition and in harmony with the provisions of the Constitution and with due regard to the spirit of other relevant laws for the time being in force.'

While the MP government may well argue that the Act came into existence only after land had already been acquired and it is in any case required only to 'consult' the gram sabha, it is morally obligated to accept the gram sabha's views with regard to the nature of rehabilitation. The gram sabhas in the affected villages have already made it clear that they will not be satisfied in the absence of land based rehabilitation to which they are entitled according to the terms of the Narmada Rehabilitation Policy.

ILO Convention 107

International Labour Organisation Convention 107, (ILO 107) was adopted in 1957 as a "convention concerning the Protection and Integration of Indigenous and other tribal and semi-tribal populations." India was one of the first countries to ratify ILO 107, which it did on September 29, 1958. The Convention provides:

PART II, LAND

Article 11

The right of ownership, collective or individual, of the members of the populations concerned over the lands that these populations traditionally occupy shall be recognised.

Article 12

1. The populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations.
2. When in such cases removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist and where the populations concerned prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees.
3. Persons thus removed shall be fully compensated for any resulting loss or injury. [emphasis added]

There are three importance things to notice about ILO 107. First, it affirms the right of tribal peoples to their traditional lands. Second, it stipulates the causes for which tribal people s maybe removed: national security, national economic development, and the health of the tribal population. Third, it provides that tribal peoples who are displaced shall be " provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development." Undergirding the provisions of ILO 107 is the idea that resettlers should be at least as well off after resettlement as before.

United Nations World Commission on Environment and Development (the Brundtland Commission)

In 1987 the United Nations World Commission on Environment and Development (the Brundtland Commission) addressing the need for respect for indigenous and tribal land and resource rights noted that:

" The starting point for a just and humane policy for such groups is the recognition and protection of their traditional rights to land and other resources that sustain their way of life - rights they may define in terms that do not fit into standard legal systems."

In 1984 the Narmada Control Authority established to oversee the projects, declared that: " for tribals, there is no rehabilitation more effective than providing land as the source of livelihood."

CONCLUSIONS

We find that the situation in the villages which are going to be submerged by June 2002 is in urgent need of redressal. The families of 17 villages are under immediate threat of losing their livelihood unless alternative land for cultivation and housing plots are provided before submergence. Submergence should be postponed till the oustees are properly resettled and rehabilitated. We find it shocking that the resettlement of oustees is not an integral part of the construction of the dam and that even after 17 years of construction, their situation has been ignored.

Economic dispossession has an extremely adverse effect on the cultural life of the indigenous people. In other words, one can notice in the name of development, an attack on the life support system of the indigenous people. What is particularly distressing is that attempts to defend their rights to livelihood and cultural determination are branded anti-developmental or anti-national. Clearly adivasis are not seen as an essential part of the body politic or the nation state which is being developed. They are seen to have no right to define their own development.

We are also deeply unhappy with the government's apathy towards people's needs and their refusal to recognize people's democratic rights to decision making. On the contrary whenever they make attempts to meet the government officials or CM, they are arrested and beaten up. In the best of circumstances, as Kamalabai of Bar Bhetia village said, "When I insisted on land as compensation instead of cash, the officials told me that I talk too much." All this is despite the Madhya Pradesh government's much hyped emphasis on 'participatory development'.

In fact, till date no project has recognised people's rights to participate in all the process of decision making that affect their future. Displacement is taken for granted. The assumption seems to be that the people should adjust themselves to the situation once a decision to displace them is taken. The rehabilitation policy and law must take people's rights to consultation into account, and be based on a respect for human rights.

Non-participatory decision making also has implications for the valuation of costs and benefits of the project. Not only are non-formal and non-commoditised costs not taken into account, but the costs of delays in construction of the dam far outweigh those of the dealing with the situation properly in the first place. Project costs escalate as the time taken to resolve issues rises dramatically.

In conclusion, we call upon the Government of Madhya Pradesh to take immediate cognizance of the genuine grievances of the affected families in the 17 villages and adhere to the spirit of its own Rehabilitation policy for the oustees of Narmada projects.

In the light of our observations, since it is not possible for the government to immediately solve the difficulties enumerated above before the monsoon of 2002, **the dam construction should be halted urgently until such time as resettlement and rehabilitation is complete.** If immediate steps are not taken we apprehend that the situation may result in the most serious violation of human rights.

RECOMMENDATIONS

Taking cognizance of all the above, we call on the Madhya Pradesh government to immediately

1. Take note that it has violated severely the conditions of the Central environmental clearance, the rehabilitation policy of the state, the conditions of the planning commission

clearance, and stipulations of the UN Charter of Rights for indigenous people as well as Convention 107 of the ILO, we urge them to immediately rectify the situation.

2. Stop all work on the spillway section of the dam and consider blasting the river sluices of the dam in the manner that it had resorted to last monsoon.
3. Identify large chunks of agricultural land for community resettlement, and buy it from private owners if need be. We note and welcome the Rs. 12 crore package announced by the MP government and recommend that it should be used to buy lands for the affected people. We note that the rehabilitation policy of the Madhya Pradesh government recommends that every affected family has a right to a minimum of 2 hectares of irrigated land and that the special rehabilitation grant for the tribals should cover the entire gap between the compensation for land acquired and the cost of the land. Thus the special rehabilitation grant must be linked to the amount of land that they own but the minimum amount for the grant must be to ensure that he/she can buy 2 ha. of irrigated land.
4. Families owning more than 2 ha. of land must be compensated for the larger holdings.
5. It is also imperative that the financial provision be done at the rates of irrigated land, since the MP R & R policy promises resettlement on irrigated land. **If more than twelve crores is needed to fulfill the entitlements of the affected persons, the government should make it available.** If the lands are not irrigated the government must take steps to make them irrigated.
6. The Madhya Pradesh government must implement its order of 2nd May 1999 that for effective rehabilitation, the Madhya Pradesh Project Affected Persons Rehabilitation Act, 1985 for the release of lands in the command area of the Project will be used as found necessary, for which the work of framing rules will be taken up separately.
7. Noting that the WCD guidelines state that the notion of the project-affected-person needs to be gender-inclusive, and that the women's policy that has been formulated by the Madhya Pradesh government as well as the Rehabilitation Policy of the NVDD (Narmada Valley Development Department) underscore the need for recognizing the land rights of women, we recommend that women and men should be co-beneficiaries of the compensation packages awarded to households. That is the title deed should be made in the name of both women and men. Also that all single, unmarried, widowed or deserted women should receive individual compensation.
8. All the sons and daughters, and other independent single women, widows, deserted women who have reached the age of 18 years or above on 15th June 2002 should be registered as separate families, and allowed separate entitlements, as was done in the case of the Bargi Project.
9. Artisans, landless people must be enumerated and given their full dues as per the policy.
10. All trees, wells and houses that have not been included, must be enumerated and compensated.
11. We note the WCD guidelines warn that ignorance of customary law and local use, understandings of access to and control over resources can undermine the existing rights that women or indigenous peoples' have over resources, in particular common property resources. In the context of the Man dam oustees, it is crucial to acknowledge the pattern of the joint holding of land even where the land has been distributed and therefore the compelling need to draw up the land settlement (bandobast) before submergence so that the numbers of people who are landholders can be rectified, and their entitlements given.

12. Till the new resettlement colonies are fully established, all facilities in the village - school, electricity, hand pumps etc.- must be maintained, so that people's rights are not violated.
13. Once the land is identified, the new resettlement colonies should be equipped with all facilities. These lands should be free of any encumbrances so that oustees are not brought into conflict with host villages.
14. We recommend to the state government that they put into place a mechanism - a Rehabilitation Committee on the lines of the Committee that was constituted by the order of 2nd May, 1999 and 22.08.2000, (Annexure 5) but allowing for greater participation by the affected people so that the people are encouraged to plan for and implement their own rehabilitation as per their needs and aspirations, as far as possible. The NBA can be included in such a committee as the organization representing the affected persons.
15. Drop all criminal charges against the villagers and NBA activists, e.g. under the SC/T Atrocities Act and enter into dialogue with them.
16. We also call on the Ministry of Environment and Forests, the Planning Commission to ensure that their conditions of their clearance to the Man Project are complied with, including the conditions of land based community rehabilitation.
17. Further, we also call upon NABARD to review the deeply flawed nature of its refinancing loans, and the ensuing violations of human rights, and to take responsibility for those to be affected by Projects financed or refinanced by the NABARD, beginning with the Man Project.

ANNEXURE 1

Extract from the REHABILITATION POLICY FOR THE OUSTEES OF NARMADA PROJECTS- GOVERNMENT OF MADHYA PRADESH, BHOPAL, 1992

The policy of the State government regarding rehabilitation and resettlement of displaced persons of Narmada Sagar Complex Projects as amended upto August 1992 is as follows :

1. Broad Principles for Rehabilitation of Displaced Families :

- a. The aim of the State Government is that all displaced families as defined hereinafter, would, after their relocation and resettlement improve, or at least regain, their previous standard of living within a reasonable time.
- b. It would be ensured that no hardship is caused to the displaced families in moving out from the present habitat into a new place and way of living.
- c. It would be ensured that no adverse social, economic and environmental effects of displacement would take place on the host communities.
- d. Special care would be taken of the families of Scheduled Castes, Scheduled Tribes, marginal farmers and small farmers.
- e. Families having legal titles to land and the ---- the purpose of entitlement for compensation or for payment of an amount equivalent to compensation as the case may be and for their rehabilitation.
- f. No distinction would be made between the families displaced from the revenue families and the families displaced from the forest villages in respect of their rehabilitation.
- g. Reasonable compensation would be determined for the lands, buildings and other immovable assets acquired. Similarly, a reasonable cost would be charged for the lands that would be allotted at the new sites.
- h. Displaced families would be rehabilitated, maintaining the existing structure of social groups as far as possible, in the command area or near the periphery of the affected areas in accordance with their preference.
- i. Adequate physical and social infrastructure and community services would be provided at the new sites.
- j. While resettling families entitled for allotment of land, it will be ensured that viable units of land are given.
- k. In order that in the process of resettlement, the new and host families get fully integrated, the displaced families would be encouraged and assisted in purchase of lands from voluntary sellers of the host villages.
- l. The rehabilitation policy be so implemented that middlemen and profiteers get eliminated.
- m. Landless agricultural labourers 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.
- n. Displaced families would be given priority in employment on the project construction.

1. **DEFINITIONS :**

1.1(a) 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 by the project.

1.1 (b) **Displaced family :**

- (i) A family composed of displaced persons as defined above shall mean and include husband, wife and minor children and other persons dependent on the head of the family : e.g. widowed mother, widowed sister, unmarried sister, unmarried daughter or old father.
- (ii) Every son who has become major on or before the date of notification under Section -4 of the Land Acquisition Act shall be treated as a separate family.

2. (a) **Landless person :**

A person who, whether individually or jointly with members of his family, does not hold any agricultural land or does not have any land for agriculture.

Explanation :

If a person is practicing agriculture on revenue or forest land by encroachment, he will not be treated as landless person in view of provision in Clause 2.1 below. If a person is working on the land holdings of other as a laborer, he will be treated as a landless person.

1.2 (b) **Small Farmers :**

A cultivator with an unirrigated land holding of 2 Ha. or irrigated land holding of one Ha. or less.

(c) **Marginal Farmer :**

A Cultivator with an unirrigated land holding of one Ha. or irrigated land holding of 0.5 Ha. or less.

1.3 Rehabilitation includes resettlement. No distinction shall be made between persons displaced from agricultural lands and those from forest lands for the purpose of rehabilitation.

2.0 **LAND AND PROPERTY ACQUISITION**

2.1 All Relevant land records would be brought up to date expeditiously for ensuring adequate compensation and allotment of land to displaced persons. Encroachers would be treated as "Bhoomi Swami" for the purpose of entitlement for payment of an amount equivalent to compensation, provided the encroachments whether in revenue villages or forest villages were made prior to 13.04.1987.

2.2 The price of land in the submergence area has been depressed for the last several years. For calculating the compensation for agricultural and rural abadi land to be acquired for the project, the price of similar land in the adjacent command areas will be taken as the basis. For assessing the value of urban abadi and other lands, the average sale prices in the nearest town of similar size outside the submergence area will form the basis of calculation of compensation.

2.3 If 75 % or more land of a contiguous holding of any person is required to be compulsorily acquired such person shall have the right to seek such acquisition of the entire contiguous holding. In other cases, such as enclaves surrounded by water, hamlet rendered as non-

viable social unit, disjointed holdings, non-submerged land of less than 2 Ha, etc, a decision about the offer if any for acquisition of the entire holding would be taken after examination on a case by case basis by the Narmada Valley Development Authority.

- 2.4 Compensation of buildings will be determined on the basis of their "replacement value".
- 2.5 Displaced families would be allowed to take away their building material that could be salvaged of the houses at the old sites to the new relocation sites. There would be no reduction in the compensation amount due to this. Transit passes would be issued by the competent forest officials for carrying away wooden ballies, frames and all such articles which require permits.
- 2.6 For determining the compensation of trees, capitalized value on the basis of income likely to accrue for a specified period, determined according to each species of trees, would be taken into account.
- 2.7 Outstanding loans from financial institutions will be transferred to the branch of the Bank operating in the service area where the oustee will be allotted lands. Encumbrances would stand transferred to the oustees. However in case of defaulting borrowers, the amounts due to the bank will be adjusted by the Land Acquisition Officer for regularization/liquidation of overdue.

3.0 **ALLOTMENT OF AGRICULTURAL LANDS**

- 3.1 Displaced families would be rehabilitated in accordance with their preferences on land at the new sites, taking as far as possible, the social groups as a unit.

3.2 (a) Every displaced family from whom more than 25 percent of its land holdings is acquired in revenue villages or forest villages shall be entitled to the extent of land acquired from it, subject to provision in 3.2 (b) below.

3.2(b) : A minimum area of 2 ha. of land would be allotted to all the families whose lands would be acquired irrespective of whether Government land is offered or private land is purchased for allotment.

Where more than 2 ha. of land is acquired from a family, it will be allotted equal land, subject to a ceiling of 8 ha.

- 3.2 (c) The government will assist displaced families in providing irrigation by well/ tube well or any other method on the land allotted, provided such land is not already irrigated. In case the allotted land cannot be irrigated (which fact would be certified by the Agriculture Department), the displaced family would be allotted a minimum of 4 ha. of land instead of 2 Ha. provided at 3.2 (b) above. In other cases where irrigation is not possible, the development of dry land would be subsidized by the State Government to the extent of 75 % of the cost involved, unless higher subsidies are provided to farmers in any other scheme of the Government.

3.3 Entitlement of Encroachers for Allotment of Land

Encroachers, whether on revenue land or forest land, will also be entitled for allotment of land. Where the area of the land acquired from an encroacher is up to 1 ha., he will be entitled to 1 ha. area of land. In those cases where acquisition of land from an encroacher is more than 1 ha., he will be entitled to 2 ha. of land irrespective of the fact that the land acquisition from such an encroacher may even be greater than 2 ha.

FIXATION OF RATES FOR LANDS TO BE ACQUIRED, BOTH DUE TO SUBMERGENCE AND RESETTLEMENT PURPOSES

As far as possible, efforts will be made to acquire --- cooperating with the rehabilitation activities to be nominated by the Chief Engineer of the project.

- 4.2. Consent awards would be passed under Section 11(2) of the land acquisition Amendment Act 1984, as far as possible. For the purpose of consent awards, the price to be agreed to by the

b. Land owning and other families of the Scheduled Castes and the Scheduled Tribes	Rs. 11,000
c. Families of small and marginal farmers	Rs. 11,000
d. Other land owning families and families of any other category	Rs. 5,500

5.2 The rehabilitation grant of Rs. 11,000 /- is related to present prices and is linked to the Government of India's "poverty line figures". Whenever it is revised by the Government of India, the amount of rehabilitation grant stated in para 6.1 above will also be correspondingly revised.

5.3 Transportation Assistance :

The Project shall be responsible for the transportation of families from the area of submergence , according to a detailed movement plan to the relocation sites and the entire expenditure in this behalf shall be met by the project. Transportation includes transportation of families, live stock, personal effects, salvaged/dismantled building materials, agricultural produce and agricultural equipment. In case the transportation facilities provided by the project are not availed of , the relocated families shall be entitled to a lump sum relocation grant of Rs. 500 on a written request from the displaced person.

7. ALLOTMENT OF PLOTS IN RURAL AREAS

- 7.1 For rural displaced families, abadi plot of 502 sq.m size (i.e. 5,400 sq. ft. - 90' x 60 ') would be allotted to each family in rural areas free f cost.
- 7.2 A grant- in-aid would be paid to the displaced family to the extent of the differences between the compensation paid for the previous dwelling and the cost of the house, the family would be entitled under the extent of Indira Awas Yojna at the relocation site.
- 7.3 Since oustee tenant families of rural areas, whose income is below poverty line shall be paid grant-in -aid according to their entitlement under the Indira Awas Yojna for construction of houses in the new abadi site. The tenant employees of the Government institutions, local bodies, cooperative institutions and registered public, or private companies in organized sector shall not be entitled for this grant -in-aid.

ANNEXURE 2

CONDITIONS OF MoEF CLEARANCE FOR THE MAAN DAM PROJECT

No. J- 11016/98/82-Evn.5
Government of India
Department of Environment

Bikaner House
Shahjahan Road,
New Delhi – 110 011

Dated the

2nd of Jan.1984

To
The Chairman,
Central Water Commission,
Sewa Bhavan, R.K.Puram,
New Delhi-110066

Sub: Man River Project, Madhya Pradesh - Environmental Clearance

Dear Sir,

I am pleased to inform you that the above project has been considered by the Environmental Appraisal Committee and approved from the environmental angle provided the following safeguard are implemented during the execution of the project.

- (i) Restoration of the construction areas should be ensured to the extent possible, to remove scars and to prevent further soil erosion by
 - levelling and filling of borrow pits
 - landscaping of open areas
 - vegetation of exposed slopes
- (ii) Afforestation should be undertaken on a large scale in the catchment, along the canals and on the periphery of the reservoir. Suitable financial provision for this should be made in the project estimates.
- (iii) Adequate arrangement should be made to provide fuel to the construction workers, in the project costs to prevent indiscriminate deforestation.
- (iv) Master Plan should be prepared for the rehabilitation of the oustees taking care that the project colonies are located outside forest area.
- (v) A green belt around the reservoir periphery should be created ---. The green belt should be 500 m in forest area and at least 50 m in the non-forest area.
- (vi) The department shall gladly extend any assistance required for the implementation of the safeguards.

Thanking you,

Yours faithfully,

Sd.
(S.MUDGAL)

Director & Member Secretary
Environmental Appraisal Committee

ANNEXURE 3

CONDITIONS OF THE PLANNING COMMISSION CLEARANCE OF THE PROJECT,
GOVERNMENT OF INDIA

No. 2(246)/89-I&CAD
Yojana Bhavan

Sansad Marg,
New Delhi,

5th of June, 1992

To,
The Secretary,
The Planning & Development Department,
Government of Madhya Pradesh,
BHOPAL

Sub: Man Irrigation Project - Estimated cost RS. 44.10 crores

Sir,

I am directed to convey that the Man Irrigation Project of Madhya Pradesh estimated to cost RS. 44.10 crores (Rupees Forty-Four crores and ten lakhs only), the salient features for which are given in the enclosed annexure has been considered acceptable for investment in the Plan, subject to the following conditions: -

- (i) The environmental safeguards as stipulated vide Dept. Of Environment, Government of India's letter No. J- 11016/98/82-Env.5 dated 2.1.84 shall be implemented to the satisfaction of the Dept. Of Environment, Govt. of India.
- (ii) The conditions as laid down vide Min. of Environment and Forest, Govt. of India's letter No. 8/596/84-FRY (CONS), dated 20.3.85, shall be complied with to the satisfaction of Ministry of Environment and Forests (Department of Forests and Wild life), Government of India.
- (iii) The scheme may be executed as per approved outlays from year to year and should be completed by March 1997, after which the Plan account on this scheme will be closed.

Yours faithfully,

Enclosed as above

(B.N.Navalawala)

Advisor(I&CAD)

For Secretary, Planning Commission

Copy to:

1. Secretary to the Governor of Madhya Pradesh, Bhopal
 2. Shri P.R.Chari, Vice Chairman, NVDA, Narmada Bhavan, Tulsi Nagar, Bhopal.
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ANNEXURE 4

Forest Clearance of the Man dam Project

No. 8 / 596 / 84 – FRY (CONS)
Govt. of India
M/o Environment and Forests
(Deptt. Of Forest & Wild Life)

New Delhi, the 20th March 1985

To,
The Secretary,
Forest Department,
Govt. of M.P.,
Bhopal

Sub : Release of 4.393 ha. of forest land in Dhar Distt. for construction of Man river project.

Sir,

I am directed to refer to your letter No. 5/220/84/10/3 dated 7.11.84 on the above mentioned subject seeking prior approval of the Central Govt. in accordance with Section 2 of the Forest Conservation Act, 1980.

The proposal of the State Govt. has been examined by the Advisory Committee constituted by the Central Govt. under Section 8 of the aforesaid Act.

After careful considerations of the proposal and on the basis of recommendations of the above mentioned Advisory Committee, the Central Govt. hereby conveys its approval under Section 2 of the Forest Conservation Act '80 for release of 4.393 ha. of Forest land in Dhar Distt. For construction of Man river project to the following conditions.

- i) Legal status of the forest to remain unchanged.
- ii) **Felling of trees will not be permitted between FRL and 4 m. below FRL.**
- iii) Compensatory plantations to be raised over equivalent non-forest land at the cost of the project.
- iv) Trees to be planted on either side of the canal banks, approach roads and on vacant lands under the control of the Irrigation Department.
- v) Water to be supplied free of cost in the command area to the Forest Deptt. Raising nurseries and irrigated plan actions on the surplus lands to be identified in the command areas.

Yours faithfully,

Sd.

(Saroj Kapoor)

Under Secretary to the Govt. of India

ANNEXURE 5

MADHYA PRADESH GOVERNMENT ORDER OF MAY 2nd TO STOP FURTHER CONSTRUCTION OF THE
DAM

Government of Madhya Pradesh
Narmada Valley Development Department
(English Translation)

Serial No. F 12-1/112/27/2/97/534

Bhopal
Date 02.05.99

To,
Vice Chairman,
Narmada Valley Development Authority,
Narmada Bhavan,
Tulsi Nagar, Bhopal

Subject: In the context of the various projects under the aegis of the Narmada Valley Development Department

After reviewing the various projects in the Narmada valley, the state government gives the following orders about their implementation –

1. Keeping in mind the status of the affected people of the villages to be affected this year by the Indira Sagar Project, any work on the spillway section of the dam that will cause an increase in the submergence will be suspended until the 15th June, 1999.

In the context of the Award given by the Narmada Waters Disputes Tribunal (NWDI), the state government has made a petition and arguments in the Supreme Court to constitute a new Tribunal. Remaining within the context of this plea and petition, the various aspects of the Indira Sagar Project will be reviewed by the state government along with the affected people of the submergence zone, representatives of other people's organizations and experts. The state government will nominate the names of such organizations, experts and representatives on the proposal of the Narmada Valley Development Authority. The said review should be completed by 31.10.99.

2. After reviewing the current situation in the Man and Jobat Projects, it has been decided that no such work will be undertaken on these Projects as may submerge any village in the monsoon of 1999. Simultaneously, a Punarwas Ayojan Samiti (Rehabilitation Planning Committee) will be constituted in order to ascertain well-planned rehabilitation. This committee will plan for the total rehabilitation of the oustees. The committee will keep in mind the rehabilitation and resettlement of families living in the areas likely to be submerged due to the construction work upto the 15th of June of any year, should be completed by the 31st of December of the preceding year as per policy.

For effective rehabilitation, the Madhya Pradesh Project Affected Persons Rehabilitation Act, 1985 will be used as found necessary, for which the work of framing rules will be taken up separately.

For effective rehabilitation, a planning committee will be constituted under the Chairmanship of the Minister, Narmada Valley Development Department in which the representatives of the oustees will also be included. This Committee will be constituted by 31st May 1999.

3. The Task Force constituted by the state government has recommended that there is a great deal of new thinking about irrigation all over the country and the world. Since several types of alternative forms of (to big dams) of irrigation are now available, these possibilities must be explored in Madhya Pradesh. Consequentially, the Madhya Pradesh government has taken a decision that the alternatives to the Upper Veda and Lower Goi Projects must be explored, because there has either been no work or very little work on these dams. The Narmada Valley Development Authority and the people's organizations along with the representatives nominated by the Narmada Bachao Andolan will jointly search for such alternatives to these Projects, through which, at least, the extent of irrigation originally proposed for the given command area will be made available. The possibilities of decentralized energy planning in this area will be explored in the process. The committee to conduct this study will be constituted by 31st May 1999.

4. Implementation of the decisions taken for the total rehabilitation of the Bargi dam oustees in the concerned rehabilitation Planning Committees, as well as agreements made from time to time with the organization of the Bargi dam oustees formed up within one month.

5. In January 1998, the state government has constituted a Task Force to conduct a detailed study of the relationship between seismic activity and dams. The Disaster Management Institute of Madhya Pradesh has been given the responsibility to implement this study through a Task Force. The state government expects that the report of this study will be presented by 31.10.1999. Finances for this study will be provided by the Narmada Valley Development Authority.

6. The state government has also taken a decision that steps should be taken to apply the Madhya Pradesh Project Affected Persons Rehabilitation Act of 1985 to all irrigation Projects in Madhya Pradesh. In the context of this, a draft of the rules and regulations for this Act will be prepared on the advice of the Narmada Bachao Andolan and other concerned parties and submitted to the state government by 30th June 1999.

7. It has been brought to the notice of the state government that because cash compensation is being paid in lieu of agricultural land and house plots, various types of problems are arising, as a result, the state government desires that the Narmada valley Development Authority should review all aspects of this issue and give a suitable proposal to the state government within a period of two months in order to formulate policy.

Ravindra Sharma,

Additional Chief Secretary,
Government of Madhya Pradesh
Narmada Valley Development Department

ANNEXURE 6

THE ORDER OF THE MADHYA PRADESH GOVERNMENT CONSTITUTING A PUNARWAS AYOJAN SAMITI

S.No 12/1/112/27/2/97/21/1/86
Bhopal dated 22/10/2000

ORDER

Superceding the order no. 12/1/112/27/2/97/725 dated 22.6.99 the, Madhya Pradesh government constitutes a Punarwas Ayojan Samiti (Rehabilitation Planning Committee) for the implementation of rehabilitation programs of the affected persons of the Man and Jobat Projects being constructed under the aegis of the Narmada Valley Development Department under the Chairmanship of the Honorable Deputy Chief Minister, Narmada Valley Development Department in the following manner:

1. Honorable Shri Subash Yadav, Deputy Chief Minister, Narmada Valley Development Department – Chairman.
2. Non- Governmental Representatives :
Regional Members of Parliament

1. Shri Gajendra Singh ,M.P., Dhar
2. Shri Kantilal Bhuria, M.P., Jhabua

Regional Members of Legislative Assembly

1. Shri Balwant Singh Mandloi, 298, Manwar,
Village Jamli, Post Bilda, Tehsil Gandhwani,
District Dhar.
2. Shri Karan Singh Pawar
300, Dhar, Block No. 1 and 2
3. Shrimati Jamuna devi
Honorable Chief Minister,
303, Kukshi, B-9, (74 Bungalows)
Swami Dayanand Nagar, Bhopal

Smt. Sulochana Rawat,
305, Jobat, New Family block No. 2/20

2 representatives each from the Village Panchayats affected by the Project

and

Two representatives from the Narmada Bachao Andolan

1. Chittaropa Palit
62, Mahatma Gandhi Marg,
Badwani, M.P.
2. Shri Rehmat
62, Mahatma Gandhi Marg,
Badwani, M.P.

3. Governmental Representatives

1. Vice Chairman, Narmada valley Development Department
2. Member, Rehabilitation, Narmada Valley Development Authority
3. Member, Engineering , Narmada Valley Development Authority
4. Shri L.K.Bagh, Advisor, NVDA
5. Commissioner, Indore
6. Director, Rehabilitation, NVDA

7. Chief Engineer, Lower Narmada Projects, Indore
8. Chief Engineer, NVDA
9. Director, Field(Rehabilitation)
10. Additional Director, Social Sciences, NVDA
11. Additional Director, village and Urban Investment,
12. Superintending Engineer, NVDA

The work of the Committee and the other conditions are attached.

In the name and by orders of the Governor,

R.C.Gamod,
Deputy Secretary
Madhya Pradesh government, NVDD

ANNEXURE 7

Order decreeing that the cut off date for determining adult sons status should be the date of first submergence.

(English Translation)

Madhya Pradesh Government
Panchayat and Rural Development Department

No. 869/22/14-7/---/97

Bhopal dated 15.01.98

To,

1. Collector
Jabalpur, Madhya Pradesh
2. Chief Executive Officer,
District Panchayat, Jabalpur, Madhya Pradesh.

Subject : For the purpose of giving displaced members of families falling in the Bargi submergence the facilities of housing benefits

The government has taken a decision that all sons of families that have been displaced by the Bargi Irrigation Project are to be treated as separate families who have become adults as on 30/6/90 and are living separately with their families. The Department is carrying on the work of identifying and enumerating the families living below the poverty line. The task of identifying the families of adult sons should be also undertaken during the above task. The adult sons of such families who have been displaced by the Bargi Project should be treated as separate families in order for them to benefit from the schemes of the Rural Development Department, including Indira Awas Housing schemes, and the same should be extended to them as per their eligibility.

R. Parasuram
Secretary

P.No. /870/22/V- 7/Jaroyo/97

Bhopal dated 15/1/1998

Copies to :

1. Principal secretary, Madhya Pradesh government, Department of Water Resources for information.
2. Shri A.C.Mazumdar, Member, Narmada Valley Development Authority for information.
3. Shri V.C.Dharmadhikari, Director, (Rehabilitation) for information.
4. Commisioner, Jabalpur Division, Jabalpur, Madhya Pradesh for information.

R. Parasuram
Secretary
Madhya Pradesh Government,
Panchayat and Rural Development Department

ANNEXURE 8

GRIEVANCES REDRESSAL AUTHORITY

M.P

(Sardar Sarovar Project)

Case No. 141

ORDER

1. This is a grievance made by Kuwarsingh s/o Bhangada, residing at Kikarwas, Tehsil Kukshi, District Dhar. The case of the complainant is that his village is affected by Sardar Sarovar Project and that as his entire agricultural land would be submerged, he has become entitled to allotment of irrigable land according to the Narmada Water Disputes Tribunal Award hereinafter referred to as Award. He contends that he was given to understand that he could have to migrate to Gujarat, if he wanted allotment of land and hence he had gone to Gujarat twice to have a look at the land proposed to be allotted to him by Gujarat but after having a look at the area where Gujarat supposed to resettle him, he returned back to Madhya Pradesh as he was not willing to occupy the area offered by Gujarat for his resettlement. He has further contended that he was given to understand by the authorities that as he was not willing to migrate to Gujarat, he would have to be content with cash compensation only and it was in these circumstances that he had accepted the amount of compensation. He has contended that he is entitled to allotment of agricultural irrigable land in Madhya Pradesh as provided by the Award and if such land is allotted to him, he is willing to refund the amount of compensation paid to him in that behalf.
2. The comments of NVDA were sought with regard to the complaint filed by the complainant. In reply, it was stated by NVDA that as the complainant had accepted the entire amount of compensation for the land required from him for the project, he was not therefore entitled to allotment of agricultural land. However by a supplementary reply dated 07.02. 01 it has been stated that the complainant has been informed that he would be allotted land provided he was willing to return 50% of the amount of compensation paid to him on account of acquisition of his land, within a week from the date of receipt of the aforesaid intimation sent to him in that behalf.
3. A letter dated 4th February 2001 was received from the complainant requesting that the hearing should be held in his village, as he was unable to come to Bhopal. However, for the reasons set out in the Order passed by the authority in Cases no. 149 & 150, the request of the complainant, could not have been granted in the prevailing circumstances and the case was fixed for hearing on 14.02.01. On that date none appeared on behalf of the complainant. Shri. Uppal, Director (Rehabilitation) NVDA, Indore, appeared and was heard.
4. The facts that the complainant is an 'oustee' as defined by the 'Award', that his land holding has been acquired for the Sardar Samovar Project and that he is unwilling to occupy the area offered by Gujarat for his resettlement and has not occupied that area are not disputed. In the circumstances, the complainant has undoubtedly become entitled to allotment of agricultural land in Madhya Pradesh. During the pendency of this case. A copy of the letter dated 19.01.01 sent by the Rehabilitation Officer to the complainant has been filed. That letter does not indicate that any parcel of land provided by the Award has been allotted to the complainant. He has been directed by that letter to deposit 50% of the amount of compensation paid to him for acquisition of his holding within a week from the date of receipt of that letter, so that further action as regards allotment of land could be taken. The manner in which the State has proceeded to discharge its obligation under the provision of the Award is not that which is contemplated by the Award. Sub Clause (iv) (7) of Clause XI of the Award lays down that anoustee family entitled to land according to that clause shall be allotted irrigable land as provided by that clause and the same shall be transferred to theoustee family if it agrees to take it.
5. In the circumstances of the case it is directed that the state should first allot to him agricultural land as laid down by the Sub-clause (iv) (7) of Clause XI of the Award and thereafter send an intimation to the complainant in that behalf ascertaining whether he is agreeable to take it and in case he is so agreeable, to require him to deposit 50% of the amount of compensation paid to him which would be set off as an initial installment of payment as provided by the Award. In view of the fact that the state is dealing with a Project Affected family, it is directed that the state should comply with the aforesaid directions at an early date.

S/d
CHAIRMAN
GRIEVANCES REDRESSAL AUTHORITY

Dated 20th February 2001

ANNEXURE 9

THE FIFTH SCHEDULE

The Fifth Schedule of the Constitution of India deals with administration and control of scheduled areas and scheduled tribes in these areas.

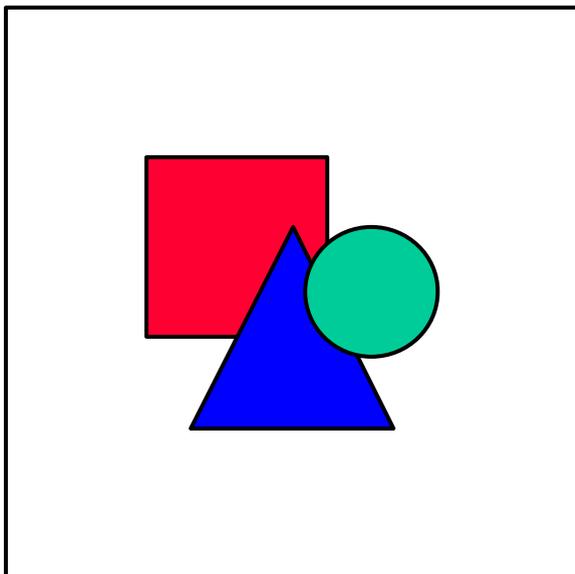
FIFTH SCHEDULE AREAS

The Fifth Schedule covers Tribal areas in 9 states of India namely Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Chattisgarh, Orissa and Rajasthan.

The North Eastern states such as Assam, Meghalaya, Tripura and Mizoram are covered by the Sixth Schedule and not included in the Fifth schedule.

State	Areas
Andhra Pradesh	Visakhapatnam, East Godavari, West Godavari, Adilabad, Srikakulam, Vizianagaram, Mahboobnagar, Prakasam (only some mandals are scheduled mandals)
Jharkhand	Dumka, Godda, Deogarh, Sahabgunj, Pakur, Ranchi, Singhbhum (East&West), Gumla, Simdega, Lohardaga, Palamu, Garwa, (some districts are only partly tribal blocks)
Chattisgarh	Sarbhuja, Bastar, Raigad, Raipur, Rajnandgaon, Durg, Bilaspur, Sehdol, Chindwada, Kanker
Himachal Pradesh	Lahaul and Spiti districts, Kinnaur, Pangi tehsil and Bharmour sub-tehsil in Chamba district
Madhya Pradesh	Jhabua, Mandla, Dhar, Khargone, East Nimar (khandwa), Sailana tehsil in Ratlam district, Betul, Seoni, Balaghat, Morena
Gujarat	Surat, Bharuch, Dangs, Valsad, Panchmahl, Sadodara, Sabarkanta (partsof these districts only)
Maharashtra	Thane, Nasik, Dhule, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli, Chandrapur (parts of these districts only)
Orissa	Mayurbhanj, Sundargarh, Koraput (fully scheduled area in these threedistricts), Raigada, Keonjhar, Sambalpur, Boudhkondmals, Ganjam, Kalahandi, Bolangir, Balasor (parts of these districts only)
Rajasthan	Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaurgarh, Siroi (partly tribal areas)

Essentially The Fifth Schedule is a Historic Guarantee to Indigenous people on the right over the land they live in. The full text of the Fifth Schedule of the Constitution of India by clicking here.



HEDULE

[Article 244(1)]

Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes
PART A-GENERAL

1. Interpretation: In this Schedule, unless the context otherwise requires, the expression "State" does not include the States of Assam, Meghalaya, Tripura and Mizoram

2. Executive power of a State in Scheduled Areas - Subject to the provisions of this Schedule, the executive power of a State extends to the Scheduled Areas therein.

3. Report by the Governor to the President regarding the administration of Scheduled Areas

4. The Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes.

PART B-ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

4. Tribes Advisory Council

(1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State: Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor.

(3) The Governor may make rules prescribing or regulating, as the case may be,

(a) The number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof,

(b) The conduct of its meetings and its procedure in general; and

(c) All other incidental matters.

5. Law applicable to Scheduled Areas

(1) Notwithstanding anything in this Constitution the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good government of any area in a State, which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may-

(a) Prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) Regulate the allotment of land to members of the Scheduled Tribes in such area; (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in subparagraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law, which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor ***.4 making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART C- SCHEDULED AREAS

VI. Scheduled Areas:

In this Constitution, the expression "Scheduled Areas" means such areas as the President may by order declare to be Scheduled Areas.

The President may at any time by order.

1. direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area; (aa)increase the area of any Scheduled Area in a State after consultation with the Governor of that State
2. alter, but only by way of rectification of boundaries, any Scheduled Area;
3. on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;
4. Rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas;] and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

PART D-AMENDMENT OF THE SCHEDULE

VII. Amendment of the Schedule:

1. Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.
2. No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

ANNEXURE 10

DECLARATION OF PRINCIPLES OF INDIGENOUS RIGHTS

(Adopted by the Fourth General Assembly of the World Council of Indigenous People, Panama, September 1984.)

PRINCIPLE 1

All indigenous people have the right of self-determination. By virtue of this right they may freely determine their political status and freely pursue their economic, social, religious and cultural development.

PRINCIPLE 2

All states within which any indigenous people lives shall recognise the population, territory and institutions of the indigenous people.

PRINCIPLE 3

The culture of the indigenous people is part of the cultural heritage of mankind.

PRINCIPLE 4

The tradition and customs of indigenous people must be respected by the states, and recognised as a fundamental source of law.

PRINCIPLE 5

All indigenous people have the right to determine the person or groups of persons who are within its population.

PRINCIPLE 6

Each indigenous people have the right to determine the form, structure and authority of its institutions.

PRINCIPLE 7

The institutions of indigenous peoples and their decisions, like those of states, must be in conformity with internationally accepted human rights both collective and individual.

PRINCIPLE 8

Indigenous people and their members are entitled to participate in the political life of the state.

PRINCIPLE 9

Indigenous people shall have exclusive rights to their traditional lands and its resources: where the lands and resources of the indigenous peoples have been taken away without their free and informed consent such lands and resources shall be returned.

PRINCIPLE 10

The land rights of an indigenous people include surface to subsurface rights, full rights and interior and coastal waters and rights to adequate and exclusive coastal economic zones within the limits of international law.

PRINCIPLE 11

All indigenous people may, for their own needs, freely use their natural wealth and resources in accordance with Principles 9 and 10.

PRINCIPLE 12

No action or course of conduct may be undertaken which, directly or indirectly, may result in the destruction of land, air, water, sea, ice, wildlife, habitat or natural resources without the free and informed consent of the indigenous people's affected.

PRINCIPLE 13

The original rights to their material culture, including archaeological sites, artifacts, designs, technology and works of art lie with the indigenous people.

PRINCIPLE 14

The indigenous people have the right to receive education in their own language or to establish their own educational institutions. The languages of the indigenous people are to be respected by the states in all dealings between the indigenous people and the state on the basis of equality and non-discrimination.

PRINCIPLE 15

The indigenous people and their authorities have the right to be previously consulted and to authorize the realization of all technological and scientific investigations to be conducted within their territories and to be informed and have full access to the results of the investigation.

PRINCIPLE 16

Indigenous people have the right, in accordance with their traditions, to move freely and conduct traditional activities and maintain kinship relationships across international boundaries.

PRINCIPLE 17

Treaties between indigenous people and representatives of states freely entered into shall be given effect under national and international law.

THESE PRINCIPLES CONSTITUTE MINIMUM STANDARDS THAT STATES SHALL RESPECT AND IMPLEMENT.

ANNEXURE 11

DRAFT UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

As agreed by upon by the members of the UN working group on Indigenous Population as its eleventh session, Geneva, July 1993. Adopted by the UN sub-commission on Prevention of Discrimination and Protection of Minorities by its resolution 1994/45, Aug 26, 1994.

UN Doc. E/CN.4/ 1995/2, E/CN.4/ Sub.2/1994/56 at 105 (1994).

(Only selected portions are carried here)

1. AFFIRMING that indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such.
2. AFFIRMING ALSO that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind.
3. AFFIRMING FURTHER that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust.
4. REAFFIRMING also that indigenous people, in the exercise of their rights, should be free from discrimination of any kind.
5. CONCERNED that indigenous peoples have been deprived of their human rights and fundamental freedoms, resulting, *inter alia*, in their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.
6. RECOGNIZING the urgent need to respect and promote the inherent rights and characteristics of indigenous peoples, especially their rights to their lands, territories and resources, which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies.
7. WELCOMING the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur.
8. CONVINCED that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs.
9. RECOGNIZING also that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.
10. EMPHASIZING the need for demilitarization of the lands and territories of indigenous peoples, which will contribute to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world.
11. RECOGNIZING in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well being of their children.
12. RECOGNIZING ALSO that indigenous peoples have the right freely to determine their relationship with States in a spirit of coexistence, mutual benefit and full respect.
13. CONSIDERING that treaties, agreements and other arrangements between States and indigenous peoples are properly matters of international concern and responsibility.
14. ACKNOWLEDGING that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.
15. BEARING IN MIND that nothing in this Declaration may be used to deny any peoples their right of self-determination.
16. ENCOURAGING States to comply with and effectively implement all international instruments, in particular those related to human rights, as they apply to indigenous peoples, in consultation and cooperation with the peoples concerned.
17. EMPHASIZING that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples.
18. BELIEVING that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field.
19. Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples.

PART I

ARTICLE 3

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

PART II

ARTICLE 6

Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext.

In addition, they have the individual rights to life, physical and mental integrity, liberty and security of person.

ARTICLE 7

Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:

- a. any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- b. any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- c. any form of population transfer which has the aim or effect of violating or undermining any of their rights;
- d. any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;
- e. any form of propaganda directed against them.

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

PART III

ARTICLE 12

Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature, as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs.

ARTICLE 13

Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of ceremonial objects; and the right to the repatriation of human remains.

States shall take effective measures, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected.

PART V

ARTICLE 19

Indigenous peoples have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies 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 20

Indigenous peoples have the right to participate fully, if they so choose, through procedures determined by them, in devising legislative or administrative measures that may affect them.

States shall obtain the free and informed consent of the peoples concerned before adopting and implementing such measures.

PART VI

ARTICLE 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard.

ARTICLE 26

Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions, and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.

ARTICLE 27

Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status.

ARTICLE 28

1. Indigenous peoples have the right to the conservation, restoration, and protection of the total environment and the productive capacity of their lands, territories and resources, as well as to assistance for this purpose from States and through international cooperation. Military activities shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands and territories of indigenous peoples.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

ARTICLE 30

Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. Pursuant to agreement with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

PART VII

ARTICLE 31

Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information,

media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.

ANNEXURE 12

INTERNATIONAL LABOUR ORGANISATION Convention No 169

Convention concerning Indigenous and Tribal Peoples in Independent Countries

The General Conference of the International Labour Organisation, Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

NOTING the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

RECALLING the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

CONSIDERING that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

RECOGNISING the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

NOTING that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

CALLING attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

NOTING that the following provisions have been framed with the cooperation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, as well as of the Inter-American Indian Institute, at appropriate Levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

HAVING decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session and

HAVING determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957; adopts this twenty-seventh day of June of the year one thousand nine hundred and eighty-nine, the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989.

Give below are the portions from the declaration the International Labour Organisation (Convention no. 169) regarding land.

PART II. LAND

ARTICLE 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.
2. The use of the term "lands" in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

ARTICLE 14

1. The rights of ownership and possession of the peoples concerned over the lands, which they traditionally occupy, shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands, which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

ARTICLE 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.
2. In cases in which the State retains the ownership of mineral or subsurface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

ARTICLE 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands that they occupy.
2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.
3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.
4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.
5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

ARTICLE 17

1. Procedures established by the peoples concerned for the transmission of rights among members of these peoples shall be respected.
2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.
3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them

ARTICLE 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences

ARTICLE 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

- (a) The provision of more land for these peoples when they have not the area necessary for providing the essentials for a normal existence, or for any possible increase in their numbers;

- (b) The provision of the means required to promote the development of the lands, which these peoples already possess.

ANNEXURE 13

Select Petitions submitted to the Panel by the affected persons

Petition # I

17th March 2002
Khedi Balwari

To
Justice G.G Loney
Indian People's Tribunal on Environment and Human Rights
Camp-Khedi Balwari
Dist. Dhar (M.P.)

Respected Sir,

I am Kailashchandra, son of Shankardam, belonging to the Caste - Bairagi Vaishnav caste. I was a temple priest in Village Kachavada, and that was the only means of my livelihood. This year village Kachavda is going to submerge totally in the Man dam. The government of M.P. has made no arrangements for the rehabilitation of the village or the village temple. The compensation that I got for my house is Rs. 22,600/-. I have no means to support my family in future.

I request you to recommend in your report to the Govt. of M.P. that along with the rehabilitation of the village; the temple also should be constructed in the village so that a *poojari* (hindu priest) like me can support us.

Yours,
Sd/-
Kailashchandra Shankardam
Village: Kachavda
Dist: Dhar.

Petition # 2

17th March 2002
MUMBAI

To
Justice G.G Loney
Indian People's Tribunal on Environment and Human Rights
Village Khedi-Balvari
Dist. Dhar (M.P.)

Respected Sir,

We are the residents of Village Gadaghat. It is situated in Dhar District. It is among the 17 villages, which is going to submerge forever behind the wall of Man Sanchai Project. The Govt. did not give us any farmland or new village, has violated rehabilitation policy and our right to live.

The situation is that even though we are in the project affected area, our names are totally missing in the list of Project Affected Persons (PAPs). It means that after being ruined we will have no means left to face the new distressing life. We will be left to lead a miserable life.

We request the Indian People's Tribunal to strongly recommend to the Govt. of M.P. to update the list of Project Affected Persons and include our names.

We also request that those among us who were not adults during the notice of Section-5, may also be included in the said list because we are going to be ruined now and being adult, have the responsibility to support our family. With this motive we urge that the decisive date for finalising the list of adult son and unmarried adult daughter should be 15 June 2002. We have been informed that the government, in the case of the affected of Bargi Dam, had ordered that the year of submerge to be taken for deciding the list of adult sons.

Yours truly,
Sd/

Village

representative

Petition # 3

To,

Justice. G G Loney

Indian People's Tribunal on Environment and Human Rights

Camp Khedi Balwadi

Dist. Dhar (M.P.)

Sir,

I am Bhavsing, son of Zhalaya belonging to Bhil caste. I am a resident of Minyakhedi, of Dhar and am an affected person of Man Project, which is proposed to be constructed at Man river.

I urge you to look into the following:

- (1) In 1989 the Govt. of Madhya Pradesh made a resettlement policy for the affected people of Narmada Dam. According to the policy, the people whose more than 25 percent land is going to submerge will have to present the government land in lieu of land. All the families whose houses are going to submerge will have to give their house plots. The arrangement of resettlement will be collective and the rehabilitation will have to make available facility such as of electricity, School, Hospital, Temples, seed storehouse, Panchayan Bhavan, Water etc.
- (2) It has been made clear in paragraph 5.1 of Rehabilitation Policy that if the affected person wish to claim cash compensation in exchange of the land, then he personally have to make an application and the right of deciding the cash compensation of the land will lie with the affected person and not with the government. Further it has been made clear in the Rehabilitation Policy that if the applicant is an *Adivasi* then compensation cannot be granted merely on the basis of his application. His application will have to be examined by the District Collector and if the Collector give certificate and verifies that the applicant's family will not be adversely affected by the distribution of cash compensation and in such circumstances only the applicant will be given cash compensation and not otherwise.
- (3) Neither my co-acountholder nor myself had ever asked the government for cash in compensation for the land. In fact, the government did not inform us that we are eligible for land and were not shown any agricultural land nor did the collector inquired about the adverse effect on our family after distribution of cash compensation.
- (4) The government has deceived us and we have joined with the Narmada Bachao Andolan and are fighting for the last five years. Due to our constant struggle, the government of M.P. passed an order on May 1999 and made it clear that we have the right to be rehabilitated and until we are rehabilitated our house/land should not be submerged. According to this order they approved that the rehabilitation work be done by a Joint Rehabilitation Committee of the affected rural and the activists of Narmada Bachao Andolan as well as the government officers. But since November 2000, the government without any rehabilitation is constantly proceeding with the dam work. Whenever we raised our voices against this, we had to stay in jail. We were always told that we would get an answer only in Bhopal. When we went to Bhopal, the authorities there said that the Chief Minister could only answer to us. But the Chief Minister is not willing to meet us. On the other hand the dam work is proceeding and our home, farmland is going to submerge forever. I am worried where will I go? How will I support my family? How will I wander on the street of Bhopal or Indore? The government is talking of increasing the cash compensation. I don't want cash compensation but land where I can live for generations.

As such I request you to make our voice reach the country and the world and compel the government to give justice to its own citizens.

Most humbly,

S/d

Bhavsingh

