

NARMADA

*Inquiry into Displacement, Resettlement and Rehabilitation
of People Affected by the Sardar Sarovar Project, 2004*



Tribunal Members :
B.D. Sharma, Harsh Mander, Chitra Palekar

6-7 September, 2004

**Indian People's Tribunal
on Environment and Human Rights**

The Indian People's Tribunal on Environment and Human Rights (IPT) was formed on June 5, 1993 to conduct fair and credible investigations focusing on issues concerning human rights and environmental justice. Positioned as an alternative People's Court that gives voice to the struggles of grass-roots organizations and affected communities, IPT conducts investigations. Through the hearings conducted so far the Tribunal has gained acceptance and continues to advocate for a change in the attitudes of the judiciary and government officials in responding to the grievances of socio-economically disadvantaged communities through greater transparency and accountability.

IPT Secretariat:

Bedoshruti Sadhukhan, Preeti Verma

Any part of this report may be freely reproduced for public interest purposes with appropriate acknowledgement.

The report is available at the following addresses as well as on our website.

The Indian People's Tribunal on Environment and Human Rights (IPT)

65, Masjid Road
Jungpura
New Delhi - 110 014

4th Floor CVOD Jain School
84 Samuel Street, Dongri
Mumbai - 400 009

Tel: 91 11 2431 69 22/ 2431 98 56 Tel: 91 22 2343 66 92/2343 9651

E-mail: iptindia@vsnl.net
Website: www.Indiarights.org

Published by: **Combat Law Publications (Pvt) Ltd.**
for Indian People's Tribunal on Environment and Human Rights

Design and Layout: **Ideas & Impressions**
Phone 9810686122

Suggested Contribution: Rs. 30/-

TABLE OF CONTENTS

List of Abbreviations	2
Panel Members	3
Background to the Present Inquiry	5
History and Background of the Sardar Sarovar Project	10
Summary of Major Findings	13
Survey and Identification of PAFs	15
- Situation in Gujarat	15
- Situation in Maharashtra	16
- Situation in Madhya Pradesh	20
Land Acquisition	22
Displacement and Rehabilitation	25
- Maharashtra	28
- Madhya Pradesh	29
- Gujarat	31
The Narmada Control Authority	34
The Grievance Redressal Authority (GRA)	36
Resettlement and Rehabilitation Sites	38
Recommendations	39
Bibliography	43
Annexures	
Annexure A: List of villages/ rehabilitation sites at the Public Hearings	44
Annexure B: Directions of the Supreme Court in the case of Narmada Bachao Andolan versus the Union of India and Others	45
Annexure C: Order of the Supreme Court in the case of B.D. Sharma versus the Union of India and Others, 1201 of 1990	48
Annexure D: NCA Table showing Situation of R&R as in Aug '04	50
Annexure E: Interim Order of the Supreme Court of India in the case of I.A. No. 4 and 7	51
Annexure F: MP's diminishing PAFs list: A Game of Numbers	53
Annexure G: List of Government Officials Invited for Hearings	55

LIST OF ABBREVIATIONS

CM	Chief Minister
GR	Government Resolution
GRA	Grievances Redressal Authority
GOG	Government of Gujarat
GOM	Government of Maharashtra
GOMP	Government of Madhya Pradesh
GOI	Government of India
ha	hectare
IBRD	International Bank for Reconstruction and Development
IDA	International Development Association
IPT	Indian Peoples' Tribunal on Environment and Human Rights
m	metre
MoEF	Ministry of Environment and Forests
MoWR	Ministry of Water Resources
MP	Madhya Pradesh
LAQ	Land Acquisition (Act)
NBA	Narmada Bachao Andolan
NCA	Narmada Control Authority
NGOs	Non-governmental organisations
NVDA	Narmada Valley Development Authority (Madhya Pradesh)
NWDT	Narmada Water Disputes Tribunal
NWDTA	Narmada Water Disputes Tribunal Award
PAFs	Project Affected Families
PAPs	Project Affected Persons
PESA	Panchayat Extension of Scheduled Areas (Act)
PIL	Public Interest Litigation
R&R	Resettlement and Rehabilitation
SC	Supreme Court
SSP	Sardar Sarovar Project

PANEL MEMBERS

Dr. B.D. SHARMA is a social activist and participates in the struggles of the tribal people. He served in the Indian Administrative Service and later as Vice-Chancellor of North Eastern Hill University. He occupied the highest constitutional position concerning tribal people as the former Commissioner for Scheduled Castes and Scheduled Tribes. An authority on tribal affairs in the country, he was responsible for formulation of tribal policies, particularly the Sub-Plan Strategy. He was also instrumental in bringing back on the national agenda the Vth schedule as a vital policy instrument. Dr. Sharma has authored many books in Hindi and English, including *Tribal Affairs in India*, *The Web of Poverty*, *Fifty years of Anti-Panchayat Raj*, *Dalits Betrayed* and *Planning for Tribal Development*.

Ms. CHITRA PALEKAR is a film-maker/scriptwriter living in Mumbai. A post-graduate in Economics, she worked initially with Tata Economic Consultancy Services and then as a lecturer in Economics. At the same time, she was involved in the serious Theatre Movement. Performing in Modern Indian Classics such as *Yayati*, *Pagla Ghoda*, *Aadhe Adhure*, *Nag Mandal* she became an actor of repute in Hindi as well as Marathi theatre and won a number of Maharashtra State Awards. The film *Akriet* which was her debut as a producer and film actor, won international recognition. She has scripted and been an Associate Director of award winning films like *Thodasa Roomani Ho Jaayen*, *Kairee*, *Dhyaas Parva*; *Bangarwadi*. She was one of the three Creative Directors of Apna Utsav in Mumbai in 1989. She has also been a weekly columnist. Currently she is preparing to direct a film based on Mahasweta Devi's story.

Shri HARSH MANDER is a writer and social advocate. He has served in the Indian Administrative Service in the predominantly tribal states of Madhya Pradesh and Chhatisgarh for almost two decades, mainly as a leader of district governments in tribal areas. He has also served as Country Director of Action Aid, a development organisation, from September 1999 until March 2004. Currently a visiting fellow at the Centre for Law and Governance at Jawaharlal Nehru University in New Delhi, Mr. Mander is associated with various social movements, working with issues of communalism and communal harmony; nationalism, violence and the law; tribal, dalit, and disability rights; the right to information; custodial justice, and homelessness and the rights of homeless people and bonded labourers.

He travels frequently, and writes and speaks regularly on diverse issues of social justice. His publications include *Unheard Voices: Stories of Forgotten Lives, Cry, My Beloved Country: Reflections on the Gujarat Carnage 2002 and its Aftermath*, and *The Ripped Chest: Public Policy and the Poor in India*.

BACKGROUND TO THE PRESENT INQUIRY

The Sardar Sarovar Project (SSP), a multi-purpose dam project built in the Narmada River Valley, has been challenged on several accounts by the thousands of families affected by the Project. The withdrawal of the World Bank from the project in 1993, the Supreme Court case, petitions to the monitoring agencies - the Narmada Control Authority (NCA) and the Grievances Redressal Authority (GRA), have all played an important role in the people's struggle against the violation of their fundamental right to life and livelihood.

As the dam height increases, it is imperative that the guidelines with respect to resettlement and rehabilitation are followed. Yet, reports from the valley and various statements related to the relief work by the Maharashtra and Madhya Pradesh governments, reflect that much needs to be achieved by the state governments to prevent further displacement in the submergence zone, before any further increase in the dam height.

It is with this background that the Narmada Bachao Andolan (NBA) requested the IPT to conduct an inquiry. The Indian People's Tribunal (IPT) constituted an independent citizen's panel to investigate, through a series of public hearings, into the situation of displacement, resettlement, and rehabilitation of families and villages affected as a result of the Sardar Sarovar Project (SSP).

The members of the Panel were Dr. B.D. Sharma, former Commissioner, Scheduled Castes and Scheduled Tribes, Government of India; Ms Chitra Palekar, filmmaker; and Shri Harsh Mander, former civil servant, researcher, writer and activist. The report for the Panel has been primarily written by Shri Harsh Mander, with a wide range of support and inputs from affected people, activists, government officials in Maharashtra, academics and friends.

TERMS OF REFERENCE:

1. To hear the affected peoples' perspectives and experiences with regard to the implementation of the Sardar Sarovar Project (SSP) since its

inception to the present date. To especially hear and analyse the cases of compliance or non-compliance of the rehabilitation policy, NWDTA and the Supreme Court's rulings.

2. To study the documents and reports - both official and non-official - that may be put up before it or be obtained by it independently, related to the displacement and rehabilitation of the Adivasi and non-Adivasi oustees, to derive its conclusions and recommendations related to just rehabilitation.
3. The Citizens' Panel will analyse the situation of the project-affected people in the valley and, to the extent possible, at the resettlement sites, in the context of the right to life, right to livelihood, and right to food, guaranteed by the Constitution of India and through its interpretative judgments, the Supreme Court.
4. To present the People's Tribunal report to the concerned governments, the sanctioning, monitoring and evaluating authorities and agencies, and to the citizens of the country.

For this, the Citizens' Panel may review the case of SSP in the wider context of the Narmada Valley Development Projects, the past and ongoing large dams in the Narmada Valley, and the larger water policy issues. It may also explore larger issues such as various acts and policies related to displacement of Adivasis and other disadvantaged/ vulnerable communities, as well as policies related to village self rule and local self government (Panchayati Raj and Gram Sabhas) as is relevant to the issues related to displacement, resettlement and rehabilitation.

PUBLIC HEARING AND SITE VISIT :

The team conducted their field visits on September 6 and 7, 2004, to selected villages marked for submergence as well as those that have already faced the brunt of submergence in Madhya Pradesh and Maharashtra, and resettlement sites in Madhya Pradesh and Gujarat. The team was able to hear hundreds of villagers from about 55 SSP- affected villages in Madhya Pradesh and Maharashtra, from a few resettlement sites in Maharashtra and about 25 resettlement sites in Gujarat. The logistical arrangements were facilitated by local villagers and activists of the Narmada Bachao Andolan (NBA), which is the organization of the affected people. The

Panel also visited some resettlement sites that have been planned for oustees in Madhya Pradesh, but no one has even moved to these incomplete sites yet.

On September 6, 2004, the public hearing was held in village Khaparkheda, tehsil Kukshi, district Dhar, Madhya Pradesh. This village falls within the submergence zone at 100 metres of dam height. Fortunately, the water is yet to reach this fully-populated village, and its residents continue the business of daily living, even as the threat of submergence looms very near. Affected people from Badwani, Dhar and Khargone districts were also present at this meeting, and presented their grievances. Several government officials were invited but none appeared for the hearing.



Public Hearing at Khaparkheda, September 6, 2004

On September 7, 2004, the public hearing was held in village Nimgavhan, tehsil Akrani, district Nandurbar, Maharashtra. We accessed this village with great difficulty, after a long journey by jeep, boat and then on foot. On a hilltop, surrounded by the dam waters, we heard grievances of hundreds of adivasis from the Bhil, Bhilala, Pavra and Tadvi communities in the adivasi belt - including most of the affected villages of Maharashtra as well as villages of Jhabua district of Madhya Pradesh, which lie on the opposite bank. These villages have already been subjected to the rigours of submergence and forced displacement. We were told that villagers in this region have been facing submergence since 1994. Several government officials of the rehabilitation agencies and Narmada Development Department of Maharashtra appeared for the hearing. The officials include:

- **Shri V.S. Ahire**
Resettlement Officer
SSP – Kevadia.
- **Shri Waghmare**
Sectional Engineer
Narmada Vikas Division
Dhadgaon, Akrani Tehsil
- **Mr. D.D. Gond**
Sub Divisional Officer
Narmada Vikas Division
Akrani
- **Mr. Sharad Wadwe**
Deputy Collector
Taloda

The second large public hearing, very late that night, was held at the R&R site of Parvetta-2, tehsil Sankheda, district Vadodara, Gujarat, where we heard people from the original Gujarat villages of Gadher, Vadgam, Mukhdi, Surpan and others, now resettled at as many as 25 R&R sites in Vadodara and Narmada districts. These villagers were resettled starting in the mid-1980s. In this public hearing, the case of canal and colony affected people of Gujarat was also presented.

A list of the villages and Vasahats (R&R sites) represented at the public hearings is attached as Annexure A.

The People's Tribunal members express their thanks to all individuals and organizations that have contributed to and enabled this report, and especially to villagers who travelled long distances, often in very difficult circumstances, with patience and hope, to attend the hearings, one of which was finally held as late as 4 o'clock in the morning. We would also like to acknowledge the officials who came forward to present their point of view before the Panel. A word of thanks from the writer of this report is due to Angana Chatterji who served with him for another similar investigation into the Indira Sagar Project, and provided feedback and inputs in the writing of this report as well.

The testimonials and documentary evidence offered during the Panel's visit to the affected area, and government records and documents form the basis of this report. Although there are many vital questions about social, economic and environmental cost-benefit ratios, human costs, economic viability and ecological impact of mega-dams that arose even during our brief visit, for the purpose of the report, the Panel's recommendations are focused on the terms of reference, and directed to the issues of displacement, resettlement and rehabilitation for families affected by the Sardar Sarovar Project (SSP). The standards used are noted in the report and include principles of human rights and natural justice, the Narmada Water Disputes Tribunal Award, judicial rulings, especially the Supreme Court judgment in the case of Narmada Bachao Andolan versus Union of India and others (2000), and the rehabilitation policies of the three states.

This report will be presented to the various concerned government officials, members of monitoring and evaluating bodies, to civil society groups, peoples' organisations and, more importantly, to the people of this country. Its primary objective is to assess the current situation of displacement, resettlement and rehabilitation of the people affected by the SSP and make recommendations for securing to them their entitlements, in all cases where it finds these abridged or violated in any way. The Sardar Sarovar Project has been discussed, debated and appraised at a large number of local, national and international fora, and continues to be the focus of a powerful people's struggle. This report attempts to bring authentic information to people and the government about the latest situation of displacement, uprootment, resettlement and rehabilitation of people affected by SSP, in the hope that it may assist in a small way in finding out a just and humane solution to the long drawn conflict and the future of the project. However, we hope that the findings here are relevant also to upcoming projects as well, in terms of the challenges and even the feasibility of just rehabilitation and of the magnitude of the human and environmental costs that these projects necessarily entail.

HISTORY AND BACKGROUND OF THE SARDAR SAROVAR PROJECT

The Sardar Sarovar mega-Project (SSP) in the Narmada River Valley is one of the largest and most controversial of the large dams in India. The SSP, located at Navagam in Gujarat, is planned as the terminal dam on the Narmada River; a part of the series of 30 large, 135 medium and 3000 small dams planned on the river and her tributaries, collectively called the Narmada Valley Development Project (NVDP). The SSP was envisioned as early as the 1960s, but there were conflicts between the riparian states and opposition from Maharashtra and Madhya Pradesh over water sharing issues, which led to the formation of the Narmada Water Disputes Tribunal (NWDT) in 1969, which gave its awards in 1979. As the Tribunal allocated the Narmada waters to various states and ruled on sharing of SSP benefits, it also delineated the framework for resettlement and rehabilitation (R&R) of oustee families whose lands and/or houses would be submerged by the Sardar Sarovar Dam, and detailed out a time bound procedure to be carried out by the state governments.

The World Bank carried out an appraisal process from 1979 till 1985, and in 1985, signed loan and credit agreements with the Union of India and with the state governments, approving lending (IBRD and IDA – hard and soft loans together) a total of \$ 450 million (it released a part of this loan but withdrew before reaching the target). A part of the loan assistance from the Bank is yet to be paid back by the Indian government, and hence the agreements, we are told, are still legally applicable. These agreements upheld the NWDTA provisions for R&R, and also added four other principles of rehabilitation, including that there should be a better standard of living for oustees after displacement, they should be given land of better or at least the same quality as before, there must be equal treatment of oustees and people in the host community that receives the resettled oustees. In addition, the World Bank categorically stated that no cash compensation should be given in lieu of land.

The World Bank withdrew from the Sardar Sarovar dam and irrigation Projects in 1993, as a result of the publication of an independent review of the Project, under the Chairmanship of Bradford Morse, former Chair of the UNDP. The Morse Committee Report of the SSP was highly critical of the social and environmental aspects and impacts of the project, it concluded that the project was not viable in its current form, and that it could not proceed and be completed without un-institutional means.

For the last two decades, the people affected by the Project have been challenging many issues related to the dam, primarily displacement and rehabilitation. The 'oustees', as the affected people are officially known, are organized as the Narmada Bachao Andolan (NBA). In 1994, a PIL was filed in the Supreme Court by the NBA to raise various social and environmental aspects of the dam, and to question the viability of its benefits. The case carried on for six years; the Court stayed the dam construction for four years from 1995 to 1998. The final judgment by a three-court bench, delivered on October 18, 2000, was a split judgment. The majority judgment delivered by Justices Anand and Kirpal, permitted further dam construction to proceed from 88 m to 90 m. It upheld that beyond 90 m to every next level, construction should proceed only after full compliance with the resettlement and rehabilitation (R&R) as mandated in the NWDTA. The minority judgment delivered by Justice Bharucha, recommended stoppage of construction, proceeding only after receiving clearance to comprehensive plans and full compliance with rehabilitation norms at every 5 metres. The directions of the Supreme Court judgments, both the majority and minority ones, are annexed as Annexure B.

The Full Reservoir Level of the SSP is 138.68 metres. At this level, the total land to be submerged by the dam is about 40,000 hectares, including about 13,000 hectares of forest land. Official figures state that the submergence due to the SSP at its full height of 138.68 metres, affects 245 villages, including 19 villages in Gujarat, 33 in Maharashtra and 193 in Madhya Pradesh. In addition, there are many categories of people affected by various parts of the project; people who are not even necessarily recognized as "project-affected persons (PAPs)" and hence not entitled to R&R.

At the time of the Narmada Waters' Tribunal of 1979, the total number of affected families was officially estimated to be less than 7000 families¹. During our visit, we observed that some of the larger villages in the Nimad plains of Madhya Pradesh have 700 affected families in a single village even,

so just 10 of those would make up 7000. Today, official figures place the Sardar Sarovar affected families in three states at around 41,000 (and in one document it is stated to be 43,816). However, activists of the NBA estimate the figure to be closer to 50,000 (after adding major adult sons and other currently undeclared but eligible families).

The People's Tribunal believes that there are an estimated 11,000 families yet to be rehabilitated, who are affected at the current height of 110 metres.² Many thousands of these have already faced and continue to live with the trauma of submergence, and others who are affected at the same level will face submergence at higher levels of rainfall. Hence, the current reality is that the construction of the Sardar Sarovar Project has proceeded to a height of 110.64 metres, but rehabilitation has not been kept pace, as a result we saw that the displacement had caused great devastation and avoidable human suffering to the affected populations. The task of our Peoples' Tribunal was to convene public hearings among the people affected by different works of the SSP, and to investigate the status of displacement, resettlement and rehabilitation.

¹ The NWDTA states, "according to present estimates, the number of oustee families would be 6147 spread over 158 villages in Madhya Pradesh, 456 families spread over 27 villages in Maharashtra." It does not mention Gujarat oustees here.

² The GOMP's figure for balance families under 110 metres, including temporary and permanent was 12681. Reducing about 2500-3000 families who have moved to Gujarat or to R&R sites in Madhya Pradesh, the figure for Madhya Pradesh is about 10,000. This of course includes all people who have not moved to their R&R sites, since they cannot be said to have been rehabilitated, despite contrary claims of the state government. Add to this, the figure of an estimated 1500 declared and undeclared (but eligible) families in Maharashtra, for which the Task Force and *tapu survey* are good bases. In addition, there are about 200 families left in Gujarat in Mukhdi, Antras, etc.

SUMMARY OF MAJOR FINDINGS

When 30 metres of the Sardar Sarovar dam remain to be constructed beyond the current height (final height is 138.68 metres), we believe that serious questions about the feasibility of rehabilitation for thousands of already affected families, as well as those earmarked for future submergence, need to be raised. This is an even more formidable challenge because under the Award, at least half of the balance of families is eligible for land-based rehabilitation.

It is a matter of deep regret that a rehabilitation master plan with corrected and updated land records, final numbers and lists of project-affected families, and details of agricultural land and house plots to be offered to all entitled oustees, is yet not ready even at this advanced stage of the project. Cultivable, irrigable land has not yet been identified to resettle the thousands of families who are entitled to and are demanding rehabilitation with land. The officials are not making adequate efforts towards creating 'rehabilitation villages' as was envisioned in the Award, on the contrary, people's testimonials show that officials are actively trying to divide affected populations by offering land far away from each other, acquiring some oustees' fertile irrigated agricultural land to settle others, and other such strategies. As a result, thousands of families in the remote and hilly tribal communities of Maharashtra (district Nandurbār) and Madhya Pradesh (districts Jhabua, Badwani and Dhar) as well as thousands in large, heavily populated mixed caste villages in the fertile Nimad plains of Madhya Pradesh, await just rehabilitation with very little information and even less hope.

Any process of coercive and involuntary displacement imposed on people by state authorities inevitably leaves a trail of enormous human suffering. However, our field visits and public hearings confirm that the callousness of state authorities, and their multiple and often wanton failures to adhere to the binding commitments and duties of the state as defined by the law, the Award, state rehabilitation policies, and universally accepted norms of justice, have gravely compounded the sufferings of the affected people.

We feel that the forced displacement without adequate rehabilitation that has taken place in this project has grossly violated human rights, the NWDTA and SC judgment and caused great harm and insecurity of food,

housing, water, to the Adivasi people. Moreover, there has been a grave impact on the health and safety of the PAFs, because the incidence of water-borne diseases has increased severely in the reservoir, there is severe malnutrition and chronic hunger due to lack of food, and several deaths have taken place due to snake-bites and crocodile attacks.

The People's Tribunal is shocked and intensely distressed to note that the State government of Madhya Pradesh has not provided to even a single affected family of the SSP a single acre of agricultural land in lieu of their involuntary loss of lands and livelihoods. This has been achieved by what is not less than an actively deceitful set of processes adopted by the public officials of Madhya Pradesh in violation of its written commitments, obligations and policies. The Government of Madhya Pradesh has actively, in flagrant and wanton violation of the letter and spirit of both the Award and its own rehabilitation policy, promoted cash compensation, and in effect, imposed cash compensation in lieu of land without making any exceptions.

In the light of these grave failings, we feel that the construction of the dam height to 110 metres right now is unjustifiable, given that the resettlement and rehabilitation of several thousand families affected at this dam height still remains. We heard, met and saw hundreds of such families. At the same time, the official bodies are contesting these numbers and are claiming the balance families as 'zero'. Again, we feel that this is totally unjustifiable, and that it is both morally and legally binding on the concerned officials to fully rehabilitate thousands of families already affected, in the letter and spirit of the Award, and to comprehensively plan for the rehabilitation of all other families, before proceeding further with the dam construction.

A. SURVEY AND IDENTIFICATION OF PAFS

The Award defines an 'oustees' as "any person who since at least one year prior to the date of publication of the notification under Section 4 of the Act [Land Acquisition Act, 1894], has been ordinarily residing or cultivating land or carrying on any trade, occupation, or calling or working for gain in the area likely to be submerged permanently or temporarily."

In addition, it is stated that every major son, over the age of 18 at the time of Section 4 notification, must be treated as a separate family.

It is these definitions that have been used by government and rehabilitation officials, to identify and enumerate all people affected by the project. The following is the situation of identification of oustees in the three states:

SITUATION IN GUJARAT:

Initially when it was constituted, the NWD Award did not apply to Gujarat, but merely directed Gujarat to resettle oustees of the other states affected by SSP. Only in 1985 was a Government Resolution (GR) passed in Gujarat in order to make the Award applicable in this state as well. As an unfortunate result of this, the definition of 'oustees' in Gujarat too became limited to those affected by submergence, as in the definition above. Thus the thousands of families in Gujarat affected by the construction of the 75,000 kilometre-long canal network, including over 23,000 families who have lost more than 25% of their land, and those "colony-affected" villagers of the six villages around the dam site, are not even given the basic entitlement of being called "project-affected persons", and hence are all denied rehabilitation based on the principles set out in the Award. We feel that those families who have lost most of their land holdings to the canal or the colony or other related works of the project, should, in the spirit of natural justice, be treated on par with the submergence-affected people and be given the same entitlements.

We also read, with great anguish, recent newspaper reports of how the Kevadia Colony area is to be developed for eco-tourism, and heard from people that the villagers of the six villages are to be summarily removed from their properties by the end of October 2004. The Adivasis, who have lived on those lands for generations, described to the People's Tribunal how they are now being viewed as a security threat in their own homes, by tourists from the cities of Gujarat and elsewhere. These are the people of Navagam, Kevadia, Wagadia, Kothi, Gora, Limdi, whose lands were acquired as early as 1960-61 at a meager Rs. 80-250 an acre. They told us that only after a long struggle have they managed to remain on their lands, even though their lands are mostly all acquired for the project. But now, we hear that they are about to be forcibly removed even from their smallholdings, which have been their slender lifeline for survival. For those who have title deeds, they are to be offered a maximum of Rs. 36,000 as compensation, through a GR which was issued in 1991-92. Most families that have accepted the money, have received even less than this. This, of course, is totally insufficient for buying replacement land of any kind. We think that a grave injustice has been done to these people when their lands were forcibly acquired in the 1960s. Since more than 750 families continue to live in the region, forcibly evicting them now would be a further, severe injustice. Instead they should have a part of the benefits being derived from the project, or be justly rehabilitated wherever they choose.

SITUATION IN MAHARASHTRA:

As for the Maharashtra submergence villages, the total number of PAFs has chronically been a matter of dispute and continues to be so, even though the dam is at 110 metres today, and several disputed people's homes and lands have even come under submergence by now.

In December 2001, the Maharashtra government commissioned a Task Force, chaired by the Divisional Commissioner, Nasik, which gave its final report in July 2002. This was a comprehensive household-level survey of all families in the villages, undertaken jointly by government officials such as those of revenue, forest departments and Narmada Vikas Department (NVD), along with villagers and their representatives, the NBA. We believe that the Maharashtra government is certainly to be commended for this unprecedented step towards identification of all oustees and their rehabilitation. We are also happy that the state cabinet also endorsed the report of this Task Force in 2003, and decided that they would settle the

issue of these so-called 'undeclared' people, or people whose eligibility for rehabilitation under the Award has not been officially acknowledged. The Task Force found 2176 families who are living in the submergence villages but are still 'undeclared' as PAFs. We believe that they need to be declared eligible, and rehabilitated urgently, since many of them have already faced submergence of their properties.

Of these, 899 undeclared persons were found to be over the age of 31. The project received a conditional clearance from the MoEF in 1987; hence that year was set as the cut-off year to determine the number of major or adult sons. Hence the number of 899 represents the people who were over the age of 18 in 1987 and should certainly be granted entitlement as adult sons. They are 'undeclared' since the government does not recognize their existence in the village. However, many of them have at least one kind of documentary proof, such as name in voters' card, or a ration card. Even though they are 'undeclared' for the purposes of rehabilitation, some of them showed us notices from the government saying that they are to fall in submergence, so they must move their houses to a higher level. Surely, this by itself should prove their existence in these villages and should be sufficient to declare them as PAFs.

However, at the time of our public hearing, more than 2 years after the publication of the Task Force report, we were told that more than 800 of these families are yet to be declared, their lands and properties are yet to be identified and acquired, and their rehabilitation is yet to be planned and implemented. Even for those 349 families who have been recently declared by Justice Kurdukar of the Maharashtra Grievance Redressal Authority (GRA), some of their properties have already got submerged without the process of land acquisition or compensation. We believe that this has been an unfortunate result of pushing the dam construction ahead, even though the necessary land acquisition and rehabilitation processes have clearly not been completed as required under the Award and the law. Such a serious violation of the legal rights of the oustees, and the Supreme Court judgment, has sadly not evoked any appropriate directions, even less action against the responsible officials, on behalf of the inter-state monitoring authority, NCA.

The Task Force also found that 1277 persons belonged to the age group of 18 to 31 years. These are people who were not 18 years old in 1987, but will qualify for rehabilitation if the cut-off date is changed to the date

of rehabilitation rather than the arbitrary date of 1987. The Justice Daud Committee report, which was released in January 2001, recommended that the difference between declared and undeclared families must be ended since all people are coming under submergence. The Committee also recommended that the cut-off date for counting major adult sons be changed to the date of rehabilitation, which would entitle these 1277 families for rehabilitation. However, these people have not yet been declared affected and eligible. The Maharashtra government passed a GR in December 2003, approving the change in cut-off date; however, they made this subject to approval from the Narmada Control Authority (NCA). The NCA, however, according to information received by us, has refused to give its approval and has told the Maharashtra government not to increase numbers at this stage. This can clearly be seen as a strategy being used by the authorities to deliberately keep numbers low, in order to keep up the patently false claim of 'full compliance with rehabilitation.'

The Task Force ended its report with the recommendation that the Maharashtra government must undertake an extensive "*tapu* survey" to determine which hamlets of certain villages would get marooned. The Maharashtra government, we are glad to report, did undertake the "*tapu* survey", and completed this in October 2003. Through the survey, it was found that 93 families, who were earlier thought to be marooned at the full height of the dam, actually fall into the actual submergence, rather than just getting marooned. The GOM admits its mistake in leaving these people out of even the Task Force list; however, they have not been declared affected yet, hence their entitlement is not yet officially recognised. In addition, 57 families were declared as "*tapu*-affected", or marooned, whose lands are also to be acquired and they are supposed to be rehabilitated. Not only has this not been done yet, but also hundreds of others also coming in the '*tapu*' have not been surveyed or mentioned in the Tapu Report. We were told by the people of Savariya and activists who showed us documents that at least 250 families of Savariya village (Akrani tehsil) are identified but not yet declared as affected.

A big impediment to the process of survey and identification of families is that land records, especially in the Adivasi areas, are completely out of date, causing many people to lose their entitlements to rehabilitation because they are not recognized as affected people, simply because land records have sometimes not been updated for generations. The story of a long process and struggle for securing these rights was articulated and



Public Hearing at Nimgavhan, September 7, 2004

presented to us by many Adivasi men and women, such as Ganya Vasave, vice-sarpanch of Atti village, Manya Pavara of Savariya, Noorji Vasave of Chimalkhedhi, Pinjaribai Pavra of Sikka and Kevalsingh Vasave of Nimgavhan.

In the Akrani tehsil of Nandurbar district of Maharashtra, there are 73 villages that are classified as forest villages where the people have not been given their land rights. Of these, 24 lie in the submergence zone of SSP and the others are outside the area. The case has been filed by the oustees in Bombay High Court since the last few years; the interim orders given by the Court directed the state government to submit a proposal to the Centre for diversion of this forest land. The GOM proposed that 14,000 hectares of forest land, in these 73 villages, be diverted and regularized. The MOEF, however, agreed to the diversion of 4073 hectares and granting of land rights, but only after the resolution of the case of T.N. Godhavarman versus the Union of India, pending before the Supreme Court of India. In the meantime, in 24 of these 73 villages, part of these 4073 hectares is either submerged, or many tribal families have been evicted from their land.

Hence we heard from people and saw in documents that the numbers of affected people in Maharashtra have been constantly increasing due to better surveys and identification of PAFs. However, it is sad that many of

these persons end up losing their entitlements since much of their properties are submerged even before these were acquired, or even if acquired, it is not replaced with alternative land or livelihood. The state cabinet decided on 21 January, 2004, that the dispute over the 'undeclared families' would be resolved, and there were meetings to this effect between members of the NBA and ministers.



The partially submerged Hapashwar Temple, Gujarat

However, we are told that it has not yet happened. Hence, we met and heard many families affected under 110 metres, whose names are in the Task Force report, but they are still not on official records. We believe that this loss of food security and livelihood of people has now resulted in a humanitarian crisis that could certainly have been avoided.

Maharashtra is the state where maximum submergence has occurred till date, but still communities continue to stay, demanding fulfilment of their rights.

SITUATION IN MADHYA PRADESH:

In the villages of Alirajpur tehsil of Madhya Pradesh, which lies on the opposite bank of the Narmada from the Maharashtra villages, the situation

is very similar. However, unlike Maharashtra, in Madhya Pradesh, there has unfortunately never been a comprehensive household survey such as undertaken by the Task Force set up by the Maharashtra government, or even a 'tapu' level survey. We feel that these are urgently needed. Land and succession rights are especially an issue in these villages. In these Adivasi communities, we found innumerable examples in which even old persons' names are not on the records and land acquisition has been done in the names of deceased persons since succession rights have not been granted, and where land rights are not settled in the case of decades-old forest cultivators. In these interior inaccessible tribal villages, land records are notorious for very frequently not being updated for years, even generations. Even 50 to 70-year-old men are classified as "major (or adult) sons" by the Narmada Valley Development Authority (NVDA), rather than as independent landholders. This is, for example, the case of Pidiya Hazariya of Jalsindhi and Dedia Jhetriya of Anjanwara, whose petitions we received. We were told that the NVDA has, in principle, agreed to take official steps do redress all such cases, but this has not been done yet.

Without this, even entitlements to land holdings and, through this, to rehabilitation are not acknowledged; therefore fair and legal rehabilitation for unrecorded oustees is an impossibility. Bawa Mahariya and Pervi Gulabsingh of Jalsindhi explained this in the public hearing, with their very clear and perceptive analysis of the character of the state, and its strategies to acquisition their property, land, water, forests, other resources, and deny them their due. They convinced us of the unreliability and injustice of the present system from the perspective of a PAF, particularly an Adivasi.

Not just in Alirajpur villages, but also in the seven forest villages of Badwani tehsil, Badwani district, land records are totally outdated and land rights are not correctly settled. The land acquisition process of these villages is a mess, with different official documents even varying on the amounts of land owned by the same family. We heard the testimony of Kishore of Kharya Bhadal village, that his family's land has got submerged, but land rights are not yet settled.

In the Nimad plains of Madhya Pradesh as well, the identification of families entitled for rehabilitation has been done in a very unsatisfactory manner. Thousands of adult sons have been left off the lists of PAFs. Here too, succession rights are not granted to heirs of landholders, thereby compounding the problem of the adult sons having been excluded, since their rights are not recognized.

B. LAND ACQUISITION

Land acquisition is the process by which the State acquires private lands without the voluntary consent of the landowners, for what it states to be what in the law is described as a 'public purpose' or in the 'public interest'; in this case the construction of the SSP. Land acquisition is governed by the Land Acquisition Act of 1894 (LAQ), an act used by the British colonial government against its subjects in the colony, and continues to be used even today in much the same spirit.

At the outset, we would like to observe that the LAQ was initially enacted by the colonial rulers to be used for small-scale acquisitions, within a territory. Today, this same colonial legislation is being used to acquire vast stretches of land, across several states. This incongruity has never been addressed by law and policy makers in independent India, hence we believe that the whole process is intrinsically flawed, unjust and ritualistic.

The legal basis by which the state sanctions involuntary land acquisition is heavily adverse to its citizens and needs to be changed. The law as it stands is based on the principle of the eminent domain of the state and its ultimate right to all resources, and it does very little to protect the legitimate rights of the citizen in relation to a state intent on the coercive acquisition of individual properties. However, we find that the manner in which the law has been implemented in the SSP, in effect illegally abridges and denies even the very limited rights that the citizen does have under this essentially colonial law.

In the first place, the notification under section 4 of the Land Acquisition Act, 1894 is designed to provide information to the landowners and house-owners as well as other affected people that the government intends to acquire their land and other private property for what it states is in the 'public interest'. The purpose of this notification is to give them the opportunity to legally interrogate this intention with any objections that they may have. The state regards its legal obligations as having been adequately met with a mere notification in the official gazette and publication in newspapers. Whereas it may thus fulfil minimalistically its formal legal obligations, it is indifferent that such notification is meaningless to a population that is largely non-literate with very little access to the printed word. There are many oral modes of communication in rural areas that

the state does adopt for other purposes, such as the drum-beat, or face to face public meetings. However, we found very few instances of any such efforts by the state in the context of land acquisition adopted in the Narmada Valley. In fact, the 29th Report of former SC/ST Commissioner, Dr. B.D. Sharma, criticizes the process of section 4 notification as a “farce”, particularly for Adivasi people, because it does not serve the purpose of providing information to oustees required for them to access their legal rights, as it is supposed to.

In many cases, we found that notices under section 4 of the Land Acquisition Act are issued generally close to or even after the time of physical displacement. We heard from Badribhai of Bagud village that the land acquisition process has not yet been completed in his village, even though it falls into the submergence zone at the current dam height of 110 metres. This entirely formalistic adherence to the bare letter of the law, that too in a manner that does not scrupulously adhere to even this letter of the law, does not firstly give an opportunity to the landowners to raise objections and be heard about the alleged public purpose of the acquisition. It therefore becomes a meaningless exercise, because the construction of the dam progresses on time and the acquisition of the land is a foregone conclusion long before the affected families are formally noticed under the provisions of the law. This is thereby reduced to a mere formality.

The problem is further escalated because the initial estimation of the people and lands affected by submergence were made (as admitted even by the officials in the 52nd meeting of the NCA) on the basis of contour maps, without undertaking field visits. Field visits were not conducted until much later, and then only for notification purposes under section 4. Therefore, impacted people continued to live in insecurity, which could have been prevented altogether.

The hardships caused by faulty land acquisition processes were greatly aggravated because as already noted, land records, especially in the tribal areas - the villages of Maharashtra and the villages of Jhabua district of Madhya Pradesh - are not authentic and have not been updated for many generations.

In both Madhya Pradesh and Maharashtra, the actual lists of persons to be displaced remains disputed even today, because of incomplete land records, faulty surveys and failures to record adult sons eligible as separate units

for rehabilitation. The state governments are not being proactive in resolving these disputes, involving thousands of families, despite sustained agitations and assurances.

The entire procedure of fixing and determining the price of land has been unfair, and the process of hearing objections and appeals have been disposed of without giving a fair opportunity of information and hearing to the affected people. People with irrigable lands were compensated only for unirrigated lands, people with higher quality land have been paid the same amount for each acre as those with inferior lands, and the quality of land was disregarded during the process of valuation. Some families have had to put in the money for their houses to purchase land, which otherwise would have been used to make a replacement home.

The direct fallout of this is that the people have been unable to purchase land that is similar to the land that they owned either in quality or size as compared to what they owned prior to the acquisition. As an outcome, people have also been forced to buy less land than they own and also land of a much poorer quality.

The situation of the landless labourers, especially in the Nimad plains of Madhya Pradesh is especially grim. The total compensation due to them was in itself not a very large sum (not even Rs. 1 lakh for most). Even this was received in installments. With no opportunities to receive additional monetary support in the form of loans etc., the people were unable to purchase even a house with this money. The money ended up being spent on day-to-day expenses and the repayment of past loans.

During its public hearings, a large number of complaints were received that the measurement of the size and values of the acquired properties was done in inconsistent, arbitrary, non-transparent and corrupt ways, as a result of which many properties were grossly undervalued. Ranvir Patel of village Semalda, Manawar tehsil, has maintained a detailed record of his village, and he placed before us documents and statistics and examples to prove this.

But by far the biggest failing of the implementation of the LAQ has been the denial of an important constitutional provision, known as the Panchayat Extension of Scheduled Areas (PESA) Act. The said Act covers scheduled regions and districts, which includes almost the entire area affected by the

Sardar Sarovar Project. The Act mandates that in the said areas, the village-level gram sabhas must be consulted and their informed consent achieved before beginning a process of land acquisition, and also for rehabilitation. In his presentation, Shri Ratansingh of Khaparkheda village said that, in spite of his village passing a *therav prastav* – a resolution, and sending it to the concerned officials, the gram sabha's consent was never sought, let alone taken, either for planning acquisition or rehabilitation. We believe that the PESA Act was instituted to protect regions where vulnerable Adivasi populations live, and to give them a voice when they need to be displaced. However, we were told that this has not happened anywhere, and this is therefore a most unfortunate abdication by the State of its duties to protect the rights of its vulnerable Adivasi people.

We were told that Mr. Digvijay Singh, former Chief Minister of Madhya Pradesh, was briefed about this in 2003 by another panel of eminent persons, consisting of Mr. L.C. Jain, former member of the Planning Commission, Ms. Shabana Azmi, and Swami Agnivesh. Following this, we are told, the GOMP had issued orders to provide all the information on the number of PAFs and their entitlements to every Gram Sabha, which would review the official information and pass a resolution indicating the flaws and necessary changes in records, as well as other suggestions. However, we found that this was still being implemented at best in a token formalistic way. The views of the Gram Sabhas are not respected and records still remain incorrect, as we saw from the example of Khaparkheda village. We recommend that, in future, the concerned authorities follow the PESA Act very strictly. For villages where land acquisition has already been done, we feel that even at this stage all information must be shared with the gram sabha and their views and suggestions given due weight. For villages where displacement is yet to occur, we strongly assert that submergence should not be allowed to occur until the consultative land acquisition is properly carried out as per the constitutional provisions.

C. DISPLACEMENT AND REHABILITATION OF PAFS

In a highly significant judgment in the case of B.D. Sharma Vs. Union of India and others, Writ Petition (Civil) No. 1201/1990, the Supreme Court of India clearly laid down that the complete rehabilitation of the oustees must take place at least six months *before* the submergence of their properties.

“Rehabilitation should be done so that at least six months before the area is likely to be submerged, rehabilitation should be complete in respect of homestead; substitution of agricultural property and such other arrangements which are contemplated under the rehabilitation scheme.”

A copy of the SC order in the case of Dr. B.D. Sharma versus Union of India and others is annexed as Annexure C. This implies also that the schedule of construction of the project must be such as to ensure that submergence at no stage should outpace full, satisfactory and complete resettlement and rehabilitation. This principle is in broad conformity with what the NWDTA too had stipulated earlier in 1979, and the Supreme Court itself reiterated in its judgment of 2000. In Indian jurisprudence, the rulings of the Supreme Court have the full force of law.

In addition, Clause IV (7) of Chapter IX of the NWDT Award states:

“Allotment of Agricultural Lands: Every displaced family from whom more than 25 percent of its land holding is acquired shall be entitled to and be allotted irrigable land to the extent of land acquired from it subject to the prescribed ceiling in the state concerned and a minimum of 2 hectares (5 acres) per family, the irrigation facilities being provided by the State in whose territory the allotted land is situated”.

Further, Clause IV (2) (iv) and Clause IV (6) (ii) of Chapter IX of the Narmada Water Dispute Tribunal Award stipulates that rehabilitation must strictly precede submergence and be undertaken at least a year before submergence. Clause IV (2) (iv) of the Narmada Water Disputes Tribunal states:

“Gujarat shall acquire and make available a year in advance of the submergence before each successive stage, irrigable lands and house sites for rehabilitation of the oustee families from Madhya Pradesh.”

Also, Clause IV (6) (ii) states:

“In no event shall any areas in Madhya Pradesh and Maharashtra be submerged under the Sardar Sarovar unless all payments of compensation, expenses and costs as aforesaid is made for acquisition of land and properties and arrangements are made for the rehabilitation of the oustees there from in accordance with these directions and intimated to the oustees.”



Government officials attending the public hearing at Nimgavhan, September 7, 2004

Hence the NWDTA clearly listed out how Gujarat and the other two states would carry out resettlement and rehabilitation in time-bound manner. In addition to the policy of giving minimum 2 hectares of land-for-land for every landholder, the Award also mandates that oustees be given a house plot in specially established rehabilitation villages, with all basic community amenities. It gives a clear choice to oustee families as to whether to settle in Gujarat or their own home state.

The Supreme Court verdict, which was presented in October 2000, upheld that R&R for the SSP must be completed as mandated in the Award, and that further construction at each stage is contingent on the full and satisfactory implementation of rehabilitation as laid down under the Award.

In this context, the actual displacement and losses due to submergence, which is the situation in which thousands of Adivasis, whom we visited, find themselves today, is a gross violation of the NWDTA and the SC judgment, and the individual state governments must be held directly responsible for the contempt of the court directives, and causing torturous deprivation and uprootment of tribal communities living in these mountainous areas since generations. Today, their socio-cultural and

ecological environs stand severely affected and disrupted, and much of their valuable life-supporting natural resource base is lost.

MAHARASHTRA:

Maharashtra began its land acquisition processes in the late 1980s, at a time when they had no plan for resettlement of affected people. The earliest land for rehabilitation, which was 4200 hectares of degraded forest land in the Taloda region, was diverted from the Forest Department and made available as late as 1990 and 1994 (in two installments). Many families were indeed settled on this land, but we are told that the 1500 hectares of this land could not be allotted due to it being deemed to be uncultivable. Today, the oustees of the 9 villages in Akkalkuva tehsil of Maharashtra, are asking to be resettled on this balance 1500 hectares, which have already been compensated for. Noorji Padvi of Danel village made an impassioned presentation at the hearing, and said that his people want to be settled on forest land, and that the government owes them this 1500 ha of forest land. We believe that this is a reasonable request, and given that the Maharashtra state cabinet has already approved it, we wonder why no progress has happened on this issue since January 2004. The officials present at the hearing did not have any information about this, but neither did they deny the cabinet's decision. We recommend that 1500 ha of this already earmarked degraded forest land be immediately diverted for the resettlement of these oustees.

For the oustees of Akrani tehsil of Maharashtra, the government is buying private lands for resettlement. However, we have learnt that this process is taking place very slowly, and in the meantime, the dam height continues to be raised and more and more families continue to come under submergence.

In all, the Maharashtra Task Force found 568 families who were declared to be PAPs but not yet rehabilitated. Till the writing of this report over 300 of these families are still not rehabilitated. This is of course apart from the estimated 2000-odd families who are affected but still not declared as PAPs, according to the Task Force figures. Hundreds of these families have already faced the brunt of submergence. This is further established by the fact that GOM paid a compensation amount of Rs. 37 lakhs in 2002 about Rs. 60 lakhs in 2003, to more than 1100 families affected at 100 metres, while the figure affected at 110 metres is much higher, and we know that a large percentage of them are not rehabilitated.

However, we observed that at the time of this writing, a table was put up on the website of the NCA, which shows balance PAFs under 110 metres in all three states, as 'zero'. A copy of the table along with the web link is Annexure D. Such a grossly false presentation of the reality which we stand witness to, is not only a highly condemnable act of official deceit, but is a contempt of court, for which the officials must be held accountable and strict action taken against them, out of respect for the affected persons' rights including the right to information. We understand that this is a result of distorting the data on PAFs by using the distinction between temporarily and permanently affected persons, and also by allotting ex-parte land to PAFs.

MADHYA PRADESH:

As mentioned earlier, the People's Tribunal is shocked and intensely distressed to note that the State Government of Madhya Pradesh has not provided to even a single affected family of the SSP a single acre of arable irrigable agricultural land in lieu of their involuntary loss of lands and livelihoods. It has achieved this by what is not less than an actively deceitful set of processes adopted by the public officials of Madhya Pradesh in violation of its written commitments, obligations and policies.

This subversion, we found, has happened in a variety of ways. The primary one, we are told, is a practice of allotting land, either in Gujarat or Madhya Pradesh, in an ex-parte manner (which literally means one-sided, without hearing or the consent of the affected party) to the oustees. In doing this, the government has not only ignored the PAFs' right to choice of the state to settle in, but also the choice of land, by allotting uncultivable grazing land to many families in Madhya Pradesh.

We are told that Madhya Pradesh has always worked under the assumption that all people entitled to land under the Award would move to Gujarat, where they are to be resettled in the command area. This assumption is not based on the consent of the affected families of Madhya Pradesh, and thereby flagrantly violates the Award. Hence, the authorities have sent ex-parte notices to thousands of landholders giving them the location of their allotted land in Gujarat. This mechanism clearly violates the provisions of the Award and the SC judgment, which say that each oustee family should be given three choices of land and then resettled with land of their liking. In many cases, the ex-parte land allotments in Gujarat, we are told, are of

totally uncultivable land. Some of the lands allotted in Gujarat, when inspected by PAFs, were not even fully paid for and were not legally purchased from owners.

However, it is important, we felt, to also challenge the facile assumption made by the Madhya Pradesh government that most land-owning families would want to move to Gujarat. In our interactions with the PAPs, we saw that this assumption was clearly flawed since the overwhelmingly large proportion of families who were interviewed by us, want to be rehabilitated only in their home state of Madhya Pradesh. However, the authorities send them notices of ex-parte land allocations in Madhya Pradesh, and that too, of land which is totally uncultivable. As a result, not a single family in Madhya Pradesh have been resettled with land.

The oustees of Picchodi village in Badwani district and Jalsindhi village in Jhabua district told us separately that 39 of them have approached the Supreme Court of India, through 2 different petitions, in order to demand land-based rehabilitation in Madhya Pradesh. In April 2004, the Court directed the NVDA of Madhya Pradesh to purchase private land to resettle these oustees, and directed oustees to present proposals of land available. A copy of this order is Annexure E. People told us that they made efforts to travel around the area and find private sellers who are willing to sell their agricultural lands for oustees. However, Buddha Banga of Picchodi told us that in the presence of the GRA, the NVDA flatly refused to purchase private lands, in spite of agreeing to it before the Supreme Court. At the time of this writing, the next hearing is yet to come up in the Court. The Jalsindhi applicants have already lost almost all their land, and Picchodi oustees have already fallen into the submergence zone at 110 metres, and it is obvious to us that they, along with thousands of others have not been rehabilitated.

Madhya Pradesh has also subverted the land-for-land principle through a process of active promotion of cash compensation in lieu of land, not only for land, but more recently also for house plots. In the March 1993 document called 'Action Plan of Resettlement and Rehabilitation' of the Madhya Pradesh government, it is clearly reiterated from the Award that, "In no case shall cash payments be made in substitution for actual rehabilitation. Cash payments shall be restricted to such transactions as mandated by the decision." However, Madhya Pradesh has completely flouted their own policy and is actively distributing cash compensation.

Another method of subversion by the state of Madhya Pradesh has been through the process of making a distinction between temporarily and permanently affected oustees. To reiterate from earlier in the report, the Award defines an 'oustees' as follows:

"Any person who since at least one year prior to the date of publication of the notification under Section 4 of the Act [Land Acquisition Act, 1894], has been ordinarily residing or cultivating land or carrying on any trade, occupation, or calling or working for gain in the area likely to be submerged permanently or temporarily."

We are convinced that this tactic is being used by the state of Madhya Pradesh in order to artificially reduce the number of oustees that it needs to officially show as rehabilitated. A table showing how this is being done was submitted to us and is Annexure F. We think this is extremely unfortunate, and recommend that the GOMP be directed to terminate this policy right away.

We found that the Madhya Pradesh government has failed to provide cultivable and viable holdings of agricultural land to even one oustee. In addition we note that a process of a household-level survey, such as the Task Force in Maharashtra has never been conducted in Madhya Pradesh. As a result, there are thousands of families left without rehabilitation while having faced or to face submergence. This is clearly illegal and greatly unjust, and we feel that this needs to be addressed right away.

GUJARAT:

Gujarat prides itself on having completed resettlement and rehabilitation of oustees fully and completely. While it is true that thousands of families have been resettled with land in Gujarat, and we recognize that this is, at least in comparative terms, a commendable feat, which has never before been accomplished for any dam project in the country, the quality of this rehabilitation still has a great deal of serious flaws. We also heard from hundreds of villagers gathered from 25 resettlement sites at the public hearing at Parvetta, that a very large number of people have been shifted to R&R sites in Gujarat, but have not been given fertile and irrigable lands at least equal to the quality of that which they have given up for the SSP. Thousands of people in Gujarat are unhappy with the uncultivable land

they have been allotted. Most of the villagers who spoke to us, or gave submissions, talked about this. Many of them told us that they have written to the GRA also, but have never received any replies or the complaints were forwarded to the Sardar Sarovar Punarvasahat (Rehabilitation) Agency but towards no resolution. We read from official documents that GRA Gujarat has received more than 20000 petitions, over 70% of which are land-related grievances. We understand that the GRA has indeed replied to most of these. However, in their replies, the GRA expects a response from the illiterate PAF within 30 days, failing which they close the case. This is why many PAFs, not having been able to tackle the red tape demands of the bureaucracy, feel that their grievances have not been addressed by the GRA. For many, the situation has deteriorated so much that these families have moved back to their original villages of Gadher, Vadgam, etc, and are living on the riverbanks yet again.

However, this too is not without problems. Bhagwanbhai Dhoda Tadvi, who has moved back to Vadgam from his *vasahat* (R&R site) at Malu, was anxious as he shared with us that he has been constantly under threat from forest officials and police, who are threatening to burn down his house if he doesn't return to Malu. He replied that he was determined to stay and fight. At the time of this writing, we heard that indeed his house was partially demolished by forest and government officials, with the help of police. We believe that destroying a home and that too by state authorities is a deplorable inhuman act, no matter what purpose it was done for. We recommend that the predicament of Shri Tadvi be addressed immediately, and he be compensated for the damage caused to his house and family, and also that strict action be taken against the concerned officials.

Most R&R sites in Gujarat are located in the command area. Unfortunately, most R&R sites were flooded this year, and thousands of families lost their crops, due to water logging in the command. This, we are told, is primarily due to unplanned and inadequate drainage facilities being provided along with the canal network. At the hearing, Narayan Tadvi and Bharat Tadvi of Krishnapura Vasahat described the situation as pathetic and even suffocating. There are documents to show that the Gujarat government knew about the possibility of water logging in the command from many years ago, but the experience of this year makes it obvious that enough has not been done to address this. As a result, thousands of families, many of whom are already displaced people, have faced the compounded trauma of losing their crops due to water logging this year.

Hence, we believe that, while compared to the abdication and dismal performance of the other state governments, it is to be commended that the Gujarat government has allotted land to so many thousands of families, but the quality of land in many cases is very poor, the purchases often clouded by murky allegations of corruption, and there are thousands of others left out who cannot be said to have been rehabilitated at all. Rehabilitation, in this case, has not been completed satisfactorily.

THE NARMADA CONTROL AUTHORITY (NCA)

The Narmada Control Authority, as mentioned earlier, is an inter-state monitoring body. It encompasses within it, the Resettlement and Rehabilitation (R&R) Sub-Group and the Environment Sub-Group (ESG). The NCA and its sub-groups were created by the Award in 1980 as the machinery for implementation of its directions and decision, by checking up on social and environmental measures taken. The Sub-groups were meant to do this by conducting regular field visits. They were to concede to a dam height increase only after checking compliance as well as consulting with the GRAs. However, on asking the villagers, we found that the NCA and the Sub-groups had not conducted a single field visit for the last four years. In addition, people felt that the R&R Sub-group was being sidelined by the NCA's general body, who were conceding to height increases without verification of ground level realities. This of course leads to the NCA falsely claiming 'zero' balance families under 110 metres, as mentioned above, and as seen in the table in Annexure D. This official falsity is all the more serious since we see on the table that the total Madhya Pradesh PAFs below 110 m dam height is shown to be 5168, which is a sharp and unexplained decline from the original official figure that used to be 12681. This reduction of its legal responsibilities for rehabilitation is a sleight-of-hand achieved by the device of illegally reducing the so-called 'temporarily affected people', as mentioned before. Nowhere in the NCA documents could we find a mention of its acceptance of this belated differentiation between temporarily and permanently affected families, or even for that matter of the practice of giving cash compensation, yet it is obvious to us that they have tacitly accepted it.

In addition, we found instances when the directions of the NCA are not being followed. We could see from the documents that the NCA had directed the state governments to acquire large chunks of land, measuring 200 hectares or more, in order to set up 'rehabilitation villages' as was envisioned in the Award. However, this has not been followed.

Hence we feel that, overall, this suggests a deliberately weak role and position of the NCA, the structure that the apex court had most depended on to ensure compliance with its directions that rehabilitation must keep pace with dam construction. We recommend that both the Sub-Groups of the NCA must conduct immediate and urgent field visits to assess the current situation on the ground, and not give further clearance until this is done, as well as all the truly balance families, whose number is certainly in thousands, are rehabilitated.

THE GRIEVANCE REDRESSAL AUTHORITY (GRA)

The Grievance Redressal Authorities (GRA) were created during the Supreme Court proceedings, and appointed in each state by the respective state governments, as a mechanism to investigate and resolve complaints and grievances of PAFs regarding their rehabilitation. However, it is obvious to us that the performance of the GRAs in the three states, but especially in Madhya Pradesh, has provided little hope to affected families seeking their legal entitlements, as the GRA has failed to adequately address the issues affecting them. The basic problems that people talked about in dealing with the GRA included: 1) its insistence on dealing only with specific complaints from individual oustees and not generic problems presented to it; 2) the length of time it takes to decide cases (up to two years); and 3) the Chairman's refusal to make field visits or conduct public hearings. We were told that Mr. Sohoni of the Madhya Pradesh GRA has made just one visit to the affected area during two years, and this Authority has operated out of Bhopal with occasional hearings in Indore, making it virtually impossible for impoverished oustees to travel the distance to approach it. But the biggest flaw in the Authority's functioning is that it has no independent machinery to verify and investigate the oustees' grievances.

People told us that if they made a complaint against the NVDA, the GRA would send the NVDA itself to investigate the disputed claims of the oustees and the NVDA. We believe this defeats the purpose of the GRA in many ways. In this regard, the submission that we received about the case of Shri Gulabsingh Kutriya of Bhitada village, Alirajpur, is quite telling. He has been declared as an oustee who is losing over 25% of his agricultural land to submergence; such has been mentioned in the government Gazette as well. Later the NVDA began claiming that he is losing less than 25% of his land, and hence is not entitled to alternate land. Shri Kutriya wrote to the GRA about this. Instead of getting an independent level survey done by an independent agency, the GRA directed the NVDA to reply to the claim. The NVDA, we are told, did not do a survey to check the level, but merely reiterated that he was losing less than 25% of his land. The GRA accepted this argument and disposed of Shri Kutriya's case.

We also found that in cases in which the Authority has issued positive directions to the NVDA, the government has not acted upon them in a timely manner. In this regard, we would like to mention the submission we received about the case of Shri Ganpat Sursingh of Nadi Sirkhedi village, Alirajpur. He and his fellow villagers agreed to resettle in Gujarat and were issued land there. But when they went there, they found that the same land had been allotted to others from another hamlet of their village. They returned to their original village and wrote to the GRA about this. The GRA directed that they must be allotted alternate land in a week's time. Shri Ganpat says that it has been two years since and the GRA's orders have not been followed. Unfortunately, the GRA has taken no actions to see to the implementation of its own orders.

In another key issue, that of claims for inclusion in the PAF lists, the Authority has stated that the burden of proof lay entirely on the claimant. As stated before, this burden requires producing documentary evidence, but this is often not possible for the claimant because of the state's own negligence and failure to update land records. Even where some documentary evidence exists, the Authority has been very selective. The Authority has refused to accept any document – even voter's identity card, ration cards etc that is dated after to the issue of the Section 4 notice, arguing that the person concerned had an incentive to lie about his age.

We believe that the GRA, especially in Madhya Pradesh but also in the other states, has failed in to live up to its responsibility of monitoring the rehabilitation of oustees and insuring affected people of the protection and entitlements due to them under law.

RESETTLEMENT AND REHABILITATION (R&R) SITES

We also received a submission from 43 families of Picchodi village and also heard from Shri Haresingh of Picchodi and Shri Ghanshyam of Bhavariya village, who are all protesting the acquisition of some of their lands for making R&R sites for oustees. These families are also oustees and they are affected by submergence from SSP. They are in addition facing the double brunt of displacement since their balance lands, those higher and not affected by submergence, are being acquired for R&R sites. As mentioned in the 'land acquisition' section above in this report, these communities were not consulted before their R&R site was chosen, in violation of the PESA Act. If they had been, then families such as these 43 families would not have chosen such a site that renders them all landless. To add to this, we saw an affidavit filed by the GOMP in the Supreme Court before the 2000 verdict, saying categorically that they would not acquire lands of SC/ST communities for R&R sites, and such lands as would make the owners landless as the result of the intended acquisition. After the verdict, they changed their policy without consulting the Supreme Court and inserted the phrase 'as far as possible'. Hence they now are routinely making SC/ST communities landless by these processes. We think this is unacceptable and recommend that the GOMP stops this process right away.

RECOMMENDATIONS

This Panel was witness to the tragic destruction of the lives, shelters, habitats and livelihoods, preserved and fostered through many generations, of thousands of farmers, agricultural workers, artisans and tribal people in the Narmada Valley. Their enormous and still mostly unacknowledged suffering is firstly the outcome of what is an increasingly contested mode of development. However, it has been compounded by state action that has consistently not upheld but instead extinguished the legal and moral rights of the affected people.

The public hearings, field visits and examination of the relevant records undertaken by the People's Tribunal confirms that all three state governments have failed to comply with a wide range of provisions related to the legal entitlements of resettlement, compensation and rehabilitation, of affected populations of the SSP. The government authorities of these three governments, and indeed also of the central government, have failed to adhere to and ensure compliance with a large number of provisions of the law, the Narmada Water Disputes Tribunal Award, the Supreme Court judgments of 1991 and 2000, the rehabilitation policies of the three state governments, and the internationally established rules and regulations for impacted people, as well as tribal peoples, such as the ILO 107.¹ The result has been enormous, prolonged, unmitigated and frequently unnecessary suffering of the affected people, large numbers of whom are especially vulnerable adivasi communities towards whom the government owes a special constitutional obligations. Therefore, there is an enormous urgency for the governments and people of India to try to redeem, however belatedly, their great debt to the affected people of SSP, by implementing the following recommendations forthwith.

- (i) We have found that the principle of providing land for land for all project affected people provided for both in the Narmada Water Disputes Tribunal Award and the SC judgment has been widely

¹ See Angana Chatterji (2004) *The Biopolitics of Hindu Nationalism: Mourning*. In *Cultural Dynamics* 16 (2 &3): 319-372. London: Sage Publications

violated, most brazenly in the state of Madhya Pradesh. It is proposed that further displacement in the remaining villages be stopped forthwith, until all project affected persons are rehabilitated actualising land-based rehabilitation in set-up rehabilitation villages with all amenities and sufficient house plots, adjacent to agricultural land.

- (ii) The problem of disputed lists of affected people must be resolved transparently and expeditiously, by an independent authority, after hearing all affected people, within the Gram Sabhas and not outside. This should be done within the next 6 months and should be approved by a planning committee with official as well as non-official members, which should be appointed in each state along the lines of the practice adopted by the GOM. We feel that the unofficial members must include the member of the peoples' organization, NBA, which is the only movement group working among the oustees of SSP in the 3 states. All PAFs listed in Maharashtra Task Force must be declared eligible and rehabilitated.
- (iii) All PAFs who are temporarily affected, or those with houses and/or lands that are marooned, should also be considered affected at a given dam height.
- (iv) All the state governments must be directed to prepare a master plan of all balance PAFs, with details of agricultural land in big chunks to be allocated to them, as was recommended by GOI appointed Five Member Group in 1994.
- (v) The government of Madhya Pradesh should be directed to purchase private land as per SC judgment 2004 and offer denuded forest land for tribal communities if need be, as a last resort. The government of Maharashtra should be made to rehabilitate the balance families on 1500 hectares of forest land which is to replace the unusable already diverted 1500 hectares. This should be permitted by the Central Ministry of Environment and Forests, at the earliest.
- (vi) The process of ex-parte land allotment must be stopped right away, since it a process that allows the subversion of the land-for-land principle, and is only used by the authorities to show 'zero'

balance families on their website. We believe that it is not a legitimate process to justly rehabilitate affected people; instead oustees must be allotted arable irrigable land of their choice.

- (vii) All major sons in each of the affected villages must be brought onto record, and the final number of PAFs at full dam height must be declared. The cut-off date for major sons in families where land acquisition took place much earlier but rehabilitation has not yet occurred, should be extended at least till 1995.
- (viii) As per the SC judgment, each major son, at least in the case of tribal families in the forest areas, should be granted 2 hectares of land whether in Maharashtra or Madhya Pradesh.
- (ix) The R&R Sub-Group must direct the state governments of Madhya Pradesh to stop distributing cash compensation in lieu of land and house plots for rehabilitation, following the principle avowed in the NWDTA, the Supreme Court judgment and every major document on rehabilitation in the SSP. The Sub-Group should also ask the governments and authorities to give up the illegal distinction between temporarily and permanently affected families.
- (x) The R&R sub-group as well as Environmental sub-group of NCA must regularly visit the Narmada Valley to assess the latest situation first-hand and produce a detailed report to the concerned ministries mentioned above. The frequency needs to be at least once every three months to produce quarterly reports as was directed by the Supreme Court in its judgment in the case of B.D. Sharma versus Union of India and others in 1990.
- (xi) Noting the gross violation of land rights, right to food, right to rehabilitation and right to life, the Government of India should not release any further funds for SSP till it verifies that the total compliance on R&R policy is attained.
- (xii) In compliance with the rulings of the Supreme Court of 1991 and 2000, further dam construction should be stopped for the present until the gaps in rehabilitation are fully remedied, and future construction schedules must ensure that in no case is submergence allowed to outpace full rehabilitation. The people already affected

by submergence who have not been fully compensated and rehabilitated in accordance with their legal entitlements must be fully rehabilitated, and all families in villages earmarked for future submergence resettled and rehabilitated in all respects at least 6 months prior to their submergence.

- (xiii) The manifest and multiple failures of the present monitoring and grievance mechanisms must be remedied, in recognition of the fact that none of these failures would have been possible if these mechanisms had functioned. There should be accountability and penalties for these failures of public officials. The role of civil society, especially local movements and affected people themselves, in independent monitoring should also be formally acknowledged and respected by the state, and repressive adversarial positions against democratic movements and resistance abandoned.
- (xiv) An independent monitoring and evaluation (M&E) agency in each state must be set up right away and should be functional.
- (xv) There should be a field-based activist acceptable to the affected people's organization, as a part of the R&R Sub-Group of NCA.
- (xvi) We strongly recommend that a commission be set up immediately by the Government of India, which is empowered to look into all the problems related to displacement, uprootment, relief and rehabilitation, including those listed above, faced by people whose lands, livelihoods or shelters are adversely affected by the project. It should be ensured that the water levels are not allowed to rise further till these problems and grievances are adequately resolved, and it is confirmed by this Commission that proper rehabilitation has been accomplished in compliance with the Award and the orders of the Supreme Court. The situation in the Narmada Valley in the coming years would decide the fate of not only the lakhs of people to be affected by SSP and other large dams, but also the fate of the mega-projects in the country.

B.D. Sharma

Chitra Palekar

Harsh Mander

BIBLIOGRAPHY:

- Action Plan of Resettlement & Rehabilitation for the Oustees of Madhya Pradesh, Government of Madhya Pradesh, Narmada Valley Development Authority, March 1993
- Angana Chatterji (2004) The Biopolitics of Hindu Nationalism: Mournings. In *Cultural Dynamics* 16 (2&3): 319-372. London: Sage Publications.
- Morse, B., Chairman. 1992. *Sardar Sarovar: The Report of the Independent Review*. Resource Futures International, Inc, Ottawa. 216 pp.
- Narmada Control Authority. 1999. *Report on a Field Visit to SSP Areas in Madhya Pradesh and Maharashtra*. NCA, Indore. 17 pp.
- Narmada Control Authority. 2000. *Sardar Sarovar Project: Environmental Management Plan*. NCA, Indore, India. 200 pp approx.
- Narmada Control Authority. *NCA About Us*. NCA Composites and Functions. 2004. http://www.ncaindia.org/aboutus_ind.htm, accessed May 10, 2004.
- Narmada Water Dispute Tribunal Award, 1979.
- Roy, A. 1999. *The Cost of Living*. Modern Library Publications, New York. 14-17 pp.
- Sangvai, Sanjay. 2002. *The River and Life: People's Struggle in the Narmada Valley*. Earthcare Books, Mumbai, 240 pp.
- Supreme Court of India. *Civil Original Jurisdiction, Case of B.D. Sharma versus Union of India and Others*. Writ Petition (C) No. 1201 of 1990. New Delhi.
- Supreme Court of India. *Civil Original Jurisdiction, Case of Narmada Bachao Andolan versus Union of India and Others*. Writ Petition (C) No. 319 of 1994. 2000. New Delhi.
- World Commission on Dams (WCD). 2000. *Dams and Development: A New Framework for Decision-Making*. Earthscan Publications, London. 404 pp.

Annexure A: List of villages/ rehabilitation sites represented at the Public Hearings

September 6, 2004: Hearing at village Khaparkheda

From district Dhar:

Khaparkheda, Kadmal, Bhavariya, Nissarpur, Chikhaldia, Bhilkheda, Bajrikheda, Ekkalbara, Kavti, Gopalpura, Bodhwada, Bada Barda.

From district Badwan:

Kharya Bhadal, Picchodi, Borkhedi, Morkhatta, Sondul, Avalda, Bagud, Piplud, Pipri, Chota Barda, Choti Kasravad.

From district Khargone:

Dharampuri, Nimola.

September 7, 2004: Hearing at village Nimgavhan

From district Nandurbar, Maharashtra:

Nimgavhan, Dhomkhedi, Surung, Sikka, Mal, Khardi, Bhilgaon, Savariya Diggar, Atti, Keli, Thuwani, Bharad, Bhadal, Urdya, Manibeli, Chilmalkhedi, Dhankhedi, Danel

From Madhya Pradesh:

Jalsindhi

September 7, 2004: Hearing at Parvetta-2 R&R site

R&R sites represented:

Parvetta-1, Parvetta-2, Khokhra, Krishnapura, Lunadra-2, Agar, Baroli, Dabhoi Nada, Dharampuri, Dhepa, Gora, Kachata, Kambolakuan, Karnet-1, Karnet-2, Khandpura, Kanteshwar, Malu, Mokhdi, Pancholi, Vadadhla, Vavlyara, Vada]-2, Savli, Satti Ambli, Kukad, Sarsinda, Vasna

Annexure B: Directions of the Supreme Court in the case of Narmada Bachao Andolan versus the Union of India and Others, 319 of 1994

The Judgments

The Order of Supreme Court is in two parts. The majority judgment, by Justice Kirpal and Justice Anand (Chief Justice) is the operative judgment and the one that will be followed. It is 183 pages long. The minority judgment, by Justice Bharucha, running into 32 pages, will not be operative. However, in spite of this, the judgment by Justice Bharucha is a very significant one.

The importance of Justice Bharucha's judgment is that it shows that the highest court of the land has not rejected the main issues and concerns raised by NBA. One judge, from the bench of three judges has taken cognizance of the arguments and has ordered a de facto review of the project by calling for the project to seek fresh environmental clearance.

Directions of Majority Judgment
Kirpal, J.

While issuing directions and disposing of this case, two conditions have to be kept in mind, (i) the completion of the project at the earliest and (ii) ensuring compliance with conditions on which clearance of the project was given including completion of relief and rehabilitation work and taking of ameliorative and compensatory measures for environmental protection in compliance with the scheme framed by the Government thereby protecting the rights under Article 21 of the Constitution. Keeping these principles in view, we issue the following directions.

1. Construction of the dam will continue as per the Award of the Tribunal.
2. As the Relief and Rehabilitation Sub-Group have cleared the construction up to 90 meters, the same can be undertaken immediately. Further raising of the height will be only pari passu with the implementation of the relief and rehabilitation and on the clearance by the Relief and Rehabilitation Sub-group. The Relief and Rehabilitation Sub-group will give clearance of further construction after consulting the three Grievances Redressal Authorities.
3. The Environment Sub-group under the Secretary, Ministry of Environment and Forests, Government of India will consider and give, at each stage of the construction of the dam, environment clearance before further construction beyond 90 meters can be undertaken.
4. The permission to raise the dam height beyond 90 meters will be given by the Narmada Control Authority, from time to time, after it obtains the above-mentioned clearances from the Relief and Rehabilitation Sub-group and the Environment Sub-group.
5. The reports of the Grievances Redressal Authorities, and of Madhya Pradesh in particular, shows that there is a considerable slackness in the work of identification of land, acquisition of suitable land and the consequent steps necessary to be taken to rehabilitate the project oustees. We direct the State of Madhya Pradesh, Maharashtra and Gujarat to implement the Award and give relief and rehabilitation to the oustees in terms of the packages offered by them and these

States shall comply with any direction in this regard which is given either by the NCA or the Review Committee or the Grievances Redressal Authorities.

6. Even though there has been substantial compliance with the conditions imposed under the environment clearance the NCA and the Environment Sub-group will continue to monitor and ensure that all steps are taken not only to protect but to restore and improve the environment.
7. The NCA will within four weeks from today draw up an Action Plan in relation to further construction and the relief and rehabilitation work to be undertaken. Such an Action Plan will fix a time frame so as to ensure relief and rehabilitation pari passu with the increase in the height of the dam. Each State shall abide by the terms of the action plan so prepared by the NCA and in the event of any dispute or difficulty arising, representation may be made to the Review Committee. However, each State shall be bound to comply with the directions of the NCA with regard to the acquisition of land for the purpose of relief and rehabilitation to the extent and within the period specified by the NCA.
8. The Review Committee shall meet whenever required to do so in the event of there being any un-resolved dispute on an issue which is before the NCA. In any event the Review Committee shall meet at least once in three months so as to oversee the progress of construction of the dam and implementation of the R&R programmes.
 - ✓ If for any reason serious differences in implementation of the Award arise and the same cannot be resolved in the Review Committee, the Committee may refer the same to the Prime Minister whose decision, in respect thereof, shall be final and binding on all concerned.
9. The Grievances Redressal Authorities will be at liberty, in case the need arises, to issue appropriate directions to the respective States for due implementation of the R&R programmes and in case of non-implementation of its directions, the GRAs will be at liberty to approach the Review Committee for appropriate orders.
10. Every endeavour shall be made to see that the project is completed as expeditiously as possible.

This and connected petitions are disposed off in the aforesaid terms.

CJI (A.S. ANAND)
J (B.N.KIRPAL)
New Delhi,
October 18, 2000.

Directions of Minority Judgment
Bharucha, J.

I should not be deemed to have agreed to anything stated in Brother Kirpal's judgement for the reason that I have not traversed it in the course of what I have stated.

In the premises,

1. The Environment Impact Agency of the Ministry of Environment and Forests of the Union of India shall forthwith appoint a Committee of Experts in the fields mentioned in Schedule III of the notification dated 27th January, 1994, called the Environmental Impact Assessment Notification, 1994.
2. The Committee of Experts shall gather all necessary data on the environmental impact of the Project. They shall be free to commission or carry out such surveys

and studies and the like, as they deem necessary. They shall also consider such surveys and studies as have already been carried out.

3. Upon such data, the Committee of Experts shall assess the environmental impact of the Project and decide if environmental clearance to the Project can be given and, if it can, what environmental safeguard measures must be adopted, and their cost.
4. In so doing, the Committee of Experts shall take into consideration the fact that the construction of the dam and other work on the Project has already commenced.
5. Until environmental clearance to the Project is accorded by the Committee of Experts as aforesaid, further construction work on the dam shall cease.
6. The Grievance Redressal Authorities of the States of Gujarat, Madhya Pradesh and Maharashtra shall ensure that those ousted by reason of the Project are given relief and rehabilitation in due measure.
7. When the Project obtains environmental clearance, assuming that it does, each of the Grievance Redressal Authorities of the States of Gujarat, Madhya Pradesh and Maharashtra shall, after such inspection, certify, before work on the further construction of the dam can begin, that all those ousted by reason of the increase in the height of the dam by 5 meters from its present level have already been satisfactorily rehabilitated and also that suitable vacant land for rehabilitating all those who will be ousted by the increase in the height of the dam by another 5 meters is already in the possession of the respective States.
8. This process shall be repeated for every successive proposed 5 meter increase in the dam height.
9. If for any reason the work on the Project, now or at any time in the future, cannot proceed and the Project is not completed, all oustees who have been rehabilitated shall have the option to continue to reside where they have been rehabilitated or to return to where they were ousted from, provided such place remains habitable, and they shall not be made at all liable in monetary or other terms on this account.

The writ petition is allowed in the aforementioned terms. The connected matters are disposed of in the same terms.

No order as to costs.

J. (S.P. Bharucha)

New Delhi,

October 18, 2000

Annexure C: Order of the Supreme Court in the case of B.D. Sharma versus the Union of India and Others, 1201 of 1990

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO 1201 OF 1990

B.D. Sharma	...	Petitioner
Versus		
Union of India & ors	...	Respondents

ORDER

We have heard Mr. Sharma in person, Additional Solicitor General for Union of India and Counsel for the State of Gujarat, Madhya Pradesh and Maharashtra. Mr. Bagla, the present Commissioner who is present in Court has also been heard.

A letter received from Mr. Sharma, when he was in Office as Commissioner of Scheduled Castes and Scheduled Tribes has been treated as a Writ Petition under Article 32 of the Constitution. His letter essentially raised questions with reference to the relationship between the Commissioner and the Union of India as also the State Government, the effective nature of the reports made from time to time by the Commissioner; implementation and non-implementation of the recommendations and the consequences arising out of the same and the constitutional methods which should have been guaranteed for the purpose of treating the Scheduled Castes and Scheduled Tribes for the purpose of monitoring their welfare. That letter apparently appeared to raise constitutional issue of importance and, therefore we considered it appropriate that it should be examined. It is true that in the latter reference was made to certain institutions where according to Mr. Sharma, there was infraction of the obligation and, therefore, certain action should be taken.

The Interlocutory Application now filed is in relation to a question which perhaps requires more of regulation than constitutional questions to be looked into. We are told that Writ Petition are already pending before the High Courts of Madhya Pradesh and Gujarat filed by people who are affected by the developments that are taking place in those areas in reference to the Sardar Sarovar. Apart from the fact that Writ Petitions are pending and the High Court had made certain Interim orders; the nature or particulars are yet not known. It is really difficult for this Court to regulate the details of the working of a Scheme of this nature but we are of the view that rehabilitation of the oustee as a result of the Project coming up can be examined.

Counsel for the three States have supplied figures on the basis of which we find that in Maharashtra there will be 2468 oustees, in Gujarat the number would be 4500 and in Madhya Pradesh it would be 6800 or so. The award indicated certain figures but there has been a change in the position of the oustees.

From the Affidavit of the Gujarat Government we find that out of 4500 oustee families about 3100 families have already accepted rehabilitation. The remainder obviously is yet to be attended to. Mr. Sharma has also told us that in view of the fact that State of Gujarat has already been taking rehabilitatory steps, there is not much of agitation against the Scheme in Gujarat. We have been told that in the other two States there is some amount of agitation.

Sardar Sarovar is an inter-state project, the feeder being Narmada an inter-state river. This is financed by the World Bank and assistance is forthcoming from some of the foreign countries. As it is, completion is behind schedule. It is, therefore, difficult to look for enforcement of what had been contemplated whether in the agreement or in the Award. While we agree that the rehabilitation should be done as far as possible in a methodical and meticulous way, to enforce terms and conditions stipulated in the agreement such as eighteen months notice before effecting evacuation in terms may be difficult and may not be beneficial for the ultimate purpose. We understand that there is a committee headed by the Secretary, Social Welfare, as a Sub-committee under Narmada Control Authority. We would require this committee where the Secretary, Social Welfare is the Chairman, to be activated so as to ensure rehabilitation. We would direct that this committee would move in the areas where there is rehabilitation to be undertaken and directly ensure that rehabilitatory process is undertaken. The rainy season is on but within a month or six weeks the weather would improve. We would, therefore, require rehabilitation to be personally supervised at intervals by the Committee in all the areas likely to be submerged when water is stored.

It was submitted to us that the first storage of water in Gujarat area is to be done in 1993, and in two years it would be done in the State of Madhya Pradesh. It is, therefore, necessary that before April, 1992, rehabilitation should be effected in regard to the oustees who are said to be the remainder of 4500. Rehabilitation should be so done that at least six months before area is likely to be submerged, rehabilitation should be complete and should be in respect of home-stead, substitution of agricultural property and such other arrangements which are contemplated under the rehabilitation scheme. This Court would require a Report to be furnished of the developments and progress made in the matter of rehabilitation once in every month. We would, therefore, suggest to the committee to meet at least once after they have visited the areas which they consider necessary, give their views with particular details of rehabilitation to be placed before the Court for direction.

We make it clear that it is not our intention to hold up the progress of the work. On the other hand we would like it to be completed expeditiously so that the time gap may not affect the progress of the project.

Mr. Bagla wanted to make out a point about his difficulties in functioning. To meet it, learned Additional Solicitor General made a statement that Government had decided to set up the National Commission before the end of September, 1991.

List the matter on 20th September, 1991.

Sd/-
.....CJI
Sd/-
.....J
(M.H.KANIA)
Sd/-
.....J
(KULDIP SINGH)

New Delhi
August 9, 1991.

Annexure D: NCA Table showing status of R&R as in August 2004

SARDAR SAROVAR PROJECT

**RESETTLEMENT AND REHABILITATION (R&R)
AT VARIOUS ELEVATION OF SARDAR SAROVAR DAM
As on 26.8.2004**

State	PAFs upto 100.0m		PAFs between 100.0m to 110.64m			PAFs between 110.64m to 121.92m			PAFs between 121.92m to 138.68m			G.Total	
	Resettled	Balance	Total	Resettled	Balance	Total	Resettled	Balance	Total	Resettled	Balance		Total
Gujarat	2767	0	2767	811	0	811	1148	0	1148*	0	2	2	4728
Maharashtra	1934	0	1934	729	0	729	433	266	699**	193	143	336**	3698
Madhya Pradesh	3692	0	3692	5168	0	5168	865	12005	12870*	4727	6557	11284***	33014
Total:	8393	0	8393	6708	0	6708	2446	12271	14717	4920	6702	11622	41440

*The figures are tentative as reported by the Party States in 60th R&R sub-group meeting held on 26.8.2004, final figures shall be reported in the ATRs.

** This number may increase due to addition of genuine PAFs to be declared by GRA and State Government.
*** This number may change after declaration of Land Acquisition Award and addition of genuine PAFs to be declared by GRA.

ANNEXURE E: Interim Order of the Supreme Court of India in the case of I.A. No. 4 and 7

Item No 301

Court No 6
A/N Matter

Section PIL

I.A. No. 10 IN I.A. NO. 4 IN Writ Petition (Civil) No. 328/2002

NARMADA BACHAO ANDOLAN.....Petitioner (s)

VERSUS

UNION OF INDIA AND ORS..... Respondent (s)

(for directions and office report)

WITH

I.A. NO. 11 IN I.A. NO. 7 IN W.P. (C) 328/2002

(For directions)

Date: 16/04/2004 These Petitions were called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE MR. JUSTICE S.B. SINHA

For Petitioner (s)

For the applicants in I.A 10

Mr. Sanjay Parikh, Adv.,
Ms. Anitha Shenoy, Adv.,
Mr. A.N. Singh, Adv.,
Mr. Bishwajyoti Pathak, Adv.
Mr. S. Muralidhar, Adv.

For the applicants in I.A. 11

For Respondent (s)

For Union of India and
Narmada Control Authority

Mr. Kirit N. Rawal, SG
Mr. Mukul Rohtagi, ASG
Mr. Syed Naqis, Adv.,
Mr. P. Parmeswara, Adv.,
Mr. S.N. Terdol, Adv.

For State of M.P.

Mr. C.S. Vaidyanathan, ASG
Mr. Satish K. Agnihotri, Adv.,
Mr. Rohit K Singh, Adv.,
Mr. Pradeep Tiwari, Adv.

For State of Maharashtra:

Dr. R.B. Masodkar, Adv.,
Mr. S.S. Shinde, Adv.,
Mr Naresh Kumar, Adv.
Mr. Ashok H. Desai, Sr. Adv.,
Mr. Kamal Trivedi, AAG
Ms. Hemantika Wahi, Adv.

Mr. Aruneshwar Gupta, AAG
Mr. Jog Singh, Adv.,
Mr. Amarjit Singh Bedi, Adv.

Ms Sandhya Goswami, Adv.

Mr. Prashant Bhushan, Adv.
Mr. Narinder Verma, Adv.,
Mr. Vishal Gupta, Adv.,
Mr. Rohit Singh, Adv.

UPON hearing counsel the Court made the following

I.A. Nos. 10 & 11. The prayer in this application is to direct the respondents not to proceed with further construction of Narmada Dam by raising its height to 110 meters till all affected people are rehabilitated. The main grievance of the applicants is the subject matter of two I.A.s. (I.A. Nos 4 & 7).

Having heard learned counsel for the parties at considerable length, we are of the view that for the present, no case has been made out to stop the ongoing construction raising the height of the dam. At the same time, it is necessary to note that the matter relating to rehabilitation of oustees is required to be examined by all concerned and implemented in terms of the award made by the Narmada Water Disputes Tribunal, orders and directions issued by this Court from time to time, the orders and directions of Narmada Control Authority and that of Grievance Redressal Authorities of the state concerned. Further it has been brought to our notice by the learned counsel appearing for the applicants that the land in village Matanya, Tehsil Maheshwar and some of the other villages being proper cultivable land can be obtained/ acquired by the State Governments and given to the oustees as a rehabilitation measure. The applicants may give concrete suggestions in this respect to the respondent – State of Madhya Pradesh. On receipt of such suggestions, the matter shall be expeditiously examined by the State Government. In case, the applicants/ oustees are still not satisfied with the decision of the State Government, it would be open to them to approach the Grievance Redressal Authority. The said Authority shall also examine the grievance of the oustees cannot be taken up or treated lightly. It may also be noticed that a positive approach has been adopted by the oustees that what they are concerned with is the proper rehabilitation and not the stoppage of the construction of the dam and they have approached this Court seeking stay of construction as they were not satisfied about the proper offer having been made to all affected parties for their rehabilitation and other related aspects of rehabilitation.

For the present having noticed aforesaid issues, we express no opinion. We however direct that these two applications along with I.A. Nos. 4 & 7 shall be listed for hearing in the 3rd week of July 2004. Mr. Muralidhar, learned counsel appearing for the applicants in IAs 7 & 11 shall file a brief synopsis on the reopening of the Court after vacation.

The matter is adjourned in the above terms.

Annexure F: MP's diminishing PAFs list, A Game of Numbers

Rehabilitation of Sardar Sarovar Project Affected Families

A Game of Numbers: MP's Diminishing PAF List

Status of R & R at Dam height EL 95 Mts of MP PAFs

		Claimed as resettled			Option of Balance			
Date	Total no. of PAFs	In MP	In Guj.	Total	Balance	MP	Gujarat	Source of Information
Aug. 29, 2001	5397	1182	2385	3567	1630	1378	452	Agenda of 50 th Meeting of R & R Sub-Group
Nov. 11, 2001	5379	1394	2381	3775	1603	782	821	RCNCA (CMEs' Meeting
Dec. 08, 2001	5397	1399	2481	3817	1580	1217	363	Agenda of 50 th Meeting of R & R Sub-Group
Jan 07, 2002	5397	1486	2691	4157	1240	1150	90	Minutes of 51 st meeting of R & R Sub-Group
Feb. 08, 2002	5397	1486	2691	4157	1240	1150	90	Agenda of 52 nd Meeting of R & R Sub-Group
May 14, 2002	1883			1873	10			Minutes of 53 rd Meeting of R & R Sub-Group
June 31, 2002	1883*	967	916	1883	0	0	0	Quarterly Status Report, NCA
Dec 31, 2002	1883*	967	916	1883	0	0	0	Half yearly Status Report, NCA

* The GoMP has resettled only those PAFs (i) whose agricultural land is coming under permanent submergence and (ii) whose habitation is coming under permanent or temporary submergence due to a 1 in 100 year flood. (end notes are taken directly from NCA documents).

Status of R & R at Dam height EL 100 Mts of MP PAFs

		Claimed as resettled			Option of Balance			
Date	Total no. of PAFs	In MP	In Guj.	Total	Balance	MP	Gujarat	Source of Information
Aug. 29, 2001	7913	1327	2584	3911	4002	2554	1448	Agenda of 50 th Meeting of R & R Sub-Group
Nov. 11, 2001	7913	1587	2684	4271	3570	1902	1668	RCNCA (CMEs' Meeting
Jan 07, 2002	7913	1670	3360	5030	2883	2693	190	Minutes of 51 st meeting of R & R Sub-Group
Feb. 08, 2002	7913	1670	3360	5030	2883	2693	190	Agenda of 52 nd Meeting of R & R Sub-Group
June 31, 2002	3071*	1890	1036	3026	45	45	0	Quarterly Status Report, NCA
Nov. 14, 2002	3710*	2443	1198	3641	69	69	0	Minutes of 54 th meeting of R & R Sub-Group
Dec 31, 2002	3710*	2443	1243	3686	24	24	0	Half yearly Status Report, NCA
May 13, 2003	3682*	2434	1258	3692	0	0	0	Minutes of 55 th meeting of R & R Sub-Group
June 31, 2003	3682*	2434	1256	3692	0	0	0	Half yearly Status Report, NCA

* PAFs whose lands are temporarily under submergence due to 1 in 100 flood have not been consider for R&R

Status of R & R at Dam height EL 95 Mts of MP PAFs

Date	Total no. of PAFs	Claimed as resettled			Option of Balance			Source of Information
		In MP	In Guj.	Total	Balance MP	Gujarat		
Aug. 29, 2001	12881	1809	2002	4811	8070	5489	2581	Agenda of 50 th Meeting of R & R Sub-Group
Nov. 11, 2001	12881	2005	2886	4901	7708	5288	2420	RCNCA (CMs') Meeting
Feb. 08, 2002	12881	2079	3653	5732	6949	5219	1730	Agenda Notes of 52 th Meeting of R & R Sub-Group
Nov. 14, 2002	12881	2175	3628	5803	6878	5425	1453	Minutes of 54 th meeting of R & R Sub-Group
May 13, 2003	5607							Minutes of 55 th Meeting of R & R Sub-Group
June 31, 2003	8406	5893	2016	7909	497	291	206	Half yearly Status Report, NCA

* This number may change after declaration of LAQ awards. PAFs whose lands are temporarily submerged due to 1 In 100 year flood have not been considered for R&R

** "tentative"

*** This number may change due to addition of genuine PAFs likely to be included after declaration by GRA and passing of land acquisition award."

Annexure G: List of Government Officials Invited for the Public Hearings

Mr. Priyaranjan Dasmunshi
Ministry of Water Resources
Shramshakti Bhavan
Rafi Marg,
(opp. Parliament street)
New Delhi

Mr. S. Vatsa
Principal Secretary, Rehabilitation
Rehabilitation Ministry
Government of Maharashtra Mantralaya
Mumbai

Mr. Patangrao Kadam
Minister for Rehabilitation
Government of Maharashtra Mantralaya
Mumbai

Mr. Pradeep Bhargava,
Vice – Chairman, Narmada Valley Development Authority (NVDA) and Principal Secretary, Narmada Valley Development Department (NVDD)
Narmada Bhavan,
Tulsi Nagar
Bhopal – 462003

Mr. Rajneesh Vaish
Commissioner, Rehabilitation, NVDA
E 2/1 Narmada Colony Scheme 78,
Vijay Nagar,
Indore

Mr. Afroze Ahmed
Director Rehabilitation
Narmada Control Authority
Scheme No. 74 – C,
Building No 113
Vijaya Nagar
Indore

Chairman
National Commission for Scheduled Castes
5th Floor,
Lok Nayak Bhavan,
Khan Market
New Delhi – 3

Mr. Sagar
Tribal Development Commissioner,
Tribal development Corporation,
Adivasi Vikas Bhavan,
Near Circuit house,
Nasik,
Maharashtra

Mr Padmasingh Patil
Ministry of Irrigation,
Government of Maharashtra Mantralaya,
Mumbai

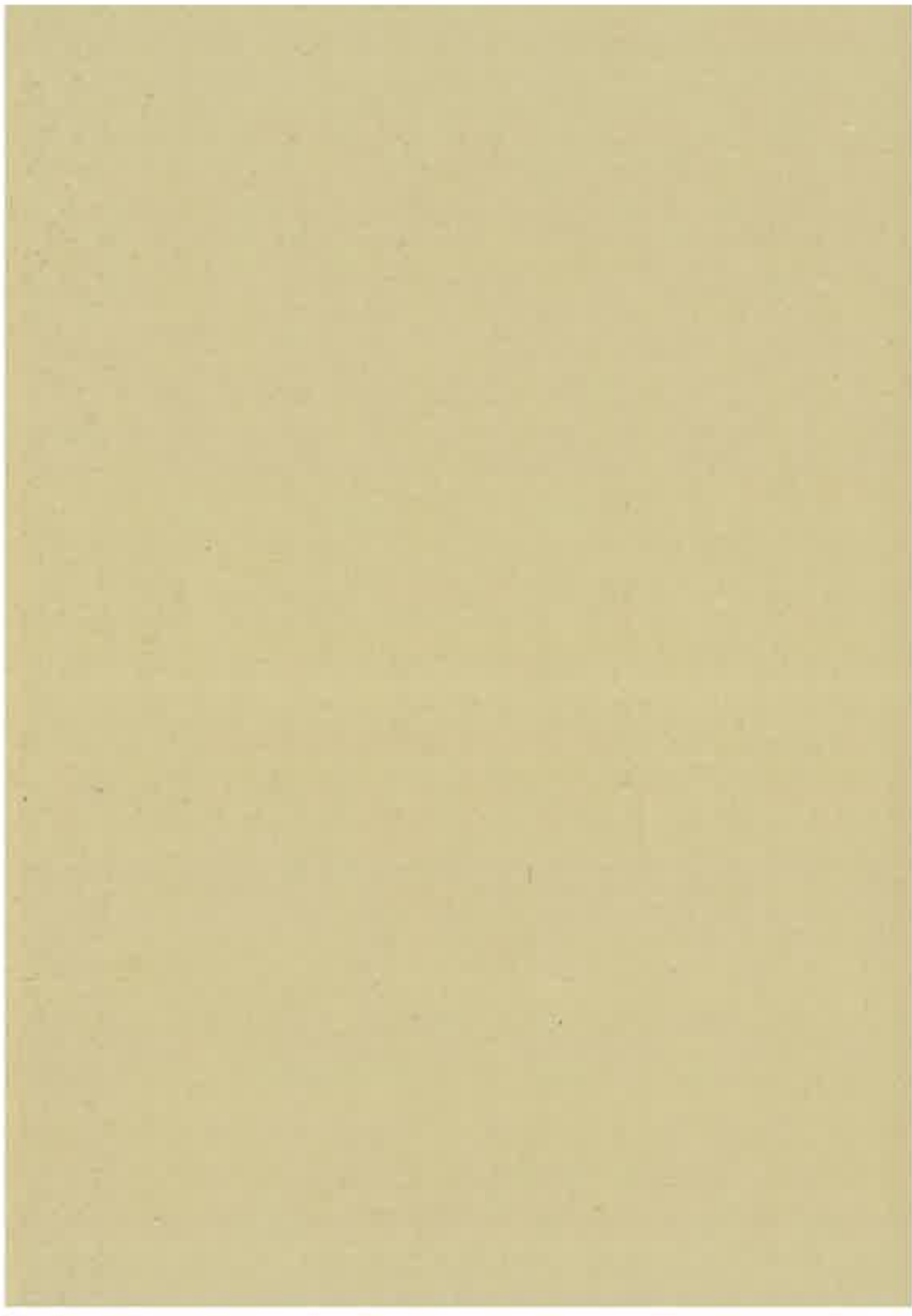
Mr. A.K.Bhatt,
Collector
Collector's Office
Jhabua District
Madhya Pradesh

Ms. Anjusingh Baghel
Collector
Badwani District
Madhya Pradesh

Mr. Gautam
Collector
Dhar District
Madhya Pradesh

Divisional Commissioner's Office
Nasik Road,
District Nasik
Maharashtra

Mr. Rawat
Divisional Forest Officer
Forest Office,
Badwani
District Badwani,
Madhya Pradesh



The Indian People's Tribunal on Environment and Human Rights

In June 1993, at the National Conference on 'Human Rights, Environment and the Law' 400 people comprising lawyers, judges, human rights activists and non-governmental organisations (NGOs) met to share their experience. Disillusioned with the apathy of the judiciary towards human rights and the environment they decided to campaign for changes in the system. The conference culminated with the setting up of the Indian People's Tribunal on Environment and Human Rights (IPT) on June 5, 1993. The IPT is positioned as an alternative 'People's Court'.

Retired Supreme Court and High Court Judges associated with the IPT investigate crucial human rights violations and cases of environmental degradation. These reports are then used by local groups to further the campaign and strengthen their struggle. In some cases, a public interest litigation is filed on the basis of these reports to obtain relief for the victims.

OBJECTIVES

- To highlight environment and human rights issues and provide an alternative vision for both, the judiciary and the public.

- To investigate cases of gross human rights violations and environmental degradation and to report, campaign and litigate.

- To highlight the plight of the oppressed, in particular children, women, tribal people, slum dwellers, labourers and prisoners, and encourage victim communities to fight for their rights.

KIND OF INVESTIGATIONS UNDERTAKEN BY THE IPT

- Forced evictions due to mega-projects, urbanisation and natural disasters

- People's rights in protected areas

- Atrocities against women

- Attacks on minorities

- Atrocities against Dalits

- Impact of industrialisation/Mega projects

- State Repression and Police Atrocities

- Environmental Pollution/Degradation

For copies/further information, please contact:

The Indian People's Tribunal on Environment and Human Rights (IPT)

65, Masjid Road

Jungpura

New Delhi - 110 014

Tel: 91 11 2431 69 22/ 2431 98 56

4th Floor CVOD Jain School

84 Samuel Street, Dongri

Mumbai - 400 009

Tel: 91 22 2343 66 92/2343 9651

E-mail: iptindia@vsnl.net

Website: www.indiarights.org