



International Environmental
Law Research Centre

Justice S.M. Daud Report

**Justice S.M. Daud, Report of the Chairman and other Non-official
Members/Invitee, Committee to Assist the Resettlement and
Rehabilitation of the Sardar Sarovar Project-Affected Persons,
Government of Maharashtra, 29 June 2001
(extracts, pp. 1-2, 6-12, 39-55)**

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The Government has appointed this Committee under a Revenue & Forests Department Notification No. SSP 312000/PK4/R-5 dated 23.02.2001, which was later modified by further Notifications No. SSP 312001/PK4/R-5 dated 23.03.2001 and by a Corrigendum No. SSP 312001/PK4/R-5 dated 12.03.2001.

The Notification assigns to us various tasks which have been reduced to issues reading as follows:

1. Is it correct to say that there is land available for the resettlement of the PAPs in conformity with the Tribunal Award, the policy of the Government and the verdict of the Supreme Court?

2a. Does there exist an irrigation facility that could be made available for the benefit of the PAPs?

b. If not, what recommendations should be made in this behalf?

3a. What is the impression of the Committee/Members/Invitees in respect of the villages earmarked for resettlement colonies?

b. If the resettlement colonies are wanting in certain respects, what recommendations should the Committee make to see that Government's policy for rehabilitation is implemented?

4. Has the process of rehabilitation of affected tribals been in accordance with the NWDT Award and the government policies for rehabilitation as also the decisions given by the NCA?

To enable us to make appropriate recommendations, we have made extensive visits to the villages in the submergence areas as also the lands/sites/villages proposed or actually functioning as resettlement villages. The meetings held there for the tribal villagers were in the nature of 'gramsabhas' which came to be attended in large numbers by tribals from the affected villages situated far and near.

DOCUMENTATION FOR COMMITTEE'S SCRUTINY

We regret that many documents, which we had sought from the Government, have not been made available to us. While it may not be possible to say that this was done designedly, it certainly has hampered us to some extent in knowing the Government's views on crucial matters. Some of the papers made available to us in a show of compliance with the requisitions were found to be irrelevant and not throwing any light on the subjects on which the Committee required illumination. As against this, the NBA (Narmada Bachao Andolan) has made detailed submissions and presented various documents covering almost the entire controversy. The Government will find this material useful to carry out the different tasks mentioned in our report.

ISSUES

With a view to pinpoint the Terms of Reference with great accuracy we have considered it desirable to formulate issues. These issues give a fairly accurate picture of the range of inquiry to be conducted by us. While the witnesses/government officials/members of the NBA and PSS have been allowed to freely state their views without our asking them leading questions we have tried to keep the oral submissions and depositions within the confines of the subjects covered by these issues. The issues are set out below with a short statement of our findings there. We must here state that the Annexures given to the notification constituting the Committee of which we are a part gives the erroneous impression of Government having done everything possible to accommodate the rehabilitation needs of the tribals. It is with regret that we have to comment on the erroneousness of the impressions sought to be created by as crucial a document as the notification whereunder our Committee has been constituted. From the picture prevailing as on 7.2.2001 (from the document submitted to the Committee in April 2001 placed as Exhibit 'D') it would appear that practically all the oustee families including those affected at 90 m have been rehabilitated and if there be any remainder, their number is trifling. Our inquiry indicates the reverse to be the correct position. In other words the greater part of the oustees are yet to be resettled who are still without cultivable land or a house plot. Even those brought into the rehabilitation sites, a large number of them face severe privations such as no land being allotted to them or those with allotments have to put up with less land or land unsuitable for cultivation,

lack of water etc. This deprivation goes to the extent of water required for drinking. If there be a shortage of drinking water it goes without saying that nothing like water for irrigation of the lands allotted to the tribals exist. And yet the figures supplied to us by the Government seek to give the impression as if every facility prescribed by the Tribunal Award and the Government policy has been provided to those who have been rehabilitated. Exhibit 'D', is a good example of the chasm between promises and reality. In the remarks column the stock comment is that some work has been completed, that further works are under progress, that they are proposed, etc. Thus on the Government's own admission fortified by the admissions which the officers were compelled to make before us, it is clearly established that the rehabilitation process is far from complete and lacking much the spirit that animates the Tribunal Award and the policies proposed by the Government itself.

The Issues

Number 1. In response to Issue No. 1, whether there is land available for resettlement of PAPs, from what has been ascertained by us, it does not appear that land is available for the resettlement of the PAPs in conformity with the Award of the Tribunal, the policy of the Government and the verdict of the Supreme Court, specially in view of the fact that all those who have been shifted in the past or those presently affected at 90 mt height of the dam have not been provided with suitable land.

Number 2(a). In response to Issue No. 2, requiring us to say if there exists irrigation facility that could be made available for the benefit of the PAPs, we say 'No'.

Number 2(b). Our recommendation in respect of the irrigation facilities would be that efforts should be made by the Government within a limited time frame to provide separate irrigation facility to each agricultural land that is being allotted for cultivation.

Number 3(a). Our observation of the resettlement colonies we visited has been that all of them are full of shortcomings specially in respect of quality and availability of suitable land to enable the resettled people to start life anew. The provision of civic amenities, including potable water is not as it could be expected under the prescribed norms. Indeed, the Government has made an effort, but that is not enough and will require more application of mind, resources and effort.

Number 3(b). Wherever the resettlement colonies are wanting in respect of facilities directed to be provided, we opine that the Government rectifies the defects as a time-bound programme immediately, in the light of the recommendations that have been made herein.

Number 4. In response to this issue whether the process of rehabilitation has been in accordance with the NWDTA and the Government policy for rehabilitation and the decisions of the NCA, we feel that it has not been wholly so. In fact, the attempted rehabilitation is substantially less and at times in breach of what has been required by the Tribunal Award, the Government resettlement policy and the verdict of the Supreme Court. Those affected at 90 m were to be resettled by 31 December 2000, even that has not been accomplished. Moreover, NWDTA had insisted on rehabilitation preceding submergence. Obviously this has also not been complied with.

There are 33 villages which are in the submergence zone and had the sequence laid down by the Tribunal been adopted, i.e., rehabilitation first and eviction from areas marked for submergence later, many of the problems which the tribals and officialdom face today would not have arisen. What we find is that while the Government is keen on shifting the tribals out of their villages, the same care and anxiety is not reflected in their programme for rehabilitation. Moreover, not everyone likely to be affected and so requiring rehabilitation has been accounted for.

OBSERVATIONS ON RESETTLEMENT AND REHABILITATION

The 33 villages to be submerged are from the two talukas of Nandurbar district, the talukas being Akrani and Akkalkua, 24 villages from Akrani and 9 from Akkalkua. The tribals of these villages have been in occupation and settlement of that region from times immemorial. Except for one family of brahmins, who were functioning as priests at Shoolpaneshwar temple in Manibeli, the entire affected population comprises of tribals.

The tribals, basically farmers, were not merely dependent on supplemental income from forest and river produce. A fair part of their income came from animal breeding and poultry keeping. They had unlimited access to pasturage

available in plenty in all seasons and poultry had its full in the sense of multiple feed available in and close to the homes of tribals in the old villages.

Though living in seemingly secluded areas, it is not as if the tribals were completely cut off from the market. The collected forest produce and where necessary fish and melons obtained from or near the river, could be bartered or sold in the township of Taloda, Akkalkua, Molgi, Dhadgaon, etc., in case of need. The animals and poultry gave them the usual output of manure, eggs and reproduction of these species which enabled practically every tribal to have large flocks of cattle, goats and sheep and poultry, etc. These provided a valuable food supplement in lean times to the tribal and his family. In fair times a tribal could sell and buy his other requirements such as clothes, agricultural implements and necessities like salt and tea, etc.

The tribals have been in possession of these lands for many generations now. However, in Akrani the tribals are recognised as encroachers on these lands. These villages are still officially termed as forest villages and despite many resolutions and orders of the Government to convert them into revenue villages; the task was initiated but aborted mid-way and now it looks like this process in these villages is being stalled. Akkalkua was formerly part of an estate whose owner has been described by the tribals as a Chieftain. The said Chieftain let his staff collect revenue or rent or whatever they could from the unfortunate tribals and they did so with impunity, there being no one to check their depredations. The tribals complain that the same state of affairs has continued even after the abolition of the rights of the Chieftain.

Attempts have been made for the rehabilitation of affected tribals on 4,200 hectares of forest lands specially converted for this purpose. From amongst those tribals who have opted to be resettled in their home State of Maharashtra, they have been brought over to the five resettlement colonies developed on this forest land, all in taluka Taloda of Nadurbar district. These resettlement colonies are Rozwa resettlement colony, Sardar Nagar, Rewa Nagar, Narmada Nagar and Deomogra Nagar. Indeed the Government of Maharashtra has made a good attempt in the matter of rehabilitation, but much still remains to be done.

Time has not stood still and the number of people yet to be rehabilitated has increased from year to year. The pressured officialdom has worked out schemes for rehabilitation in a haphazard manner. This has not been deliberate but on account of the pressure brought to bear upon them to come up with solutions without enabling a proper scrutiny of the numbers displaced and the assets required and available for resettling the oustees. Subsequently the tribals who have been shifted into the resettlement colonies set up by the Government are facing numerous problems regarding land and civic amenities.

What this has led to is that patches of land meant for one PAF have been allotted to more than one such PAF with all the rivals virtually coming to blows. Another feature commonly found is that the patch of agricultural land said to be available for a PAF does not measure up to the promised 2 or 1 hectare. A part of it, sometimes a sizeable part, is what is known in the vernacular as 'potkharab'. This is on account of the soil being rocky, sandy, covered with streamlets and drains, covered with irremovable weeds and shrubs. Then we have come across cases of persons who on paper have been given lots of cultivable land, but find themselves resisted when they tried to take possession. Some of those offering claimed to be in possession as original dwellers since long and who questioned the right of the Government to allot what they claimed to be their land to any of the Narmada oustees. The same story is repeated in the case of home plots. Some such plots have been allotted to more than one person leading to the usual trouble bordering on violence.

There are also instances of tribals who figure in the list of PAFs and have been shifted to the rehabilitation sites but have not been given their entitlements of agricultural land. It is said that land to be given to these tribals is not physically available. Non-availability of agricultural land to the PAFs is not something for which the tribals can be held responsible. Government has to make good this recompense if not in the rehabilitation site somewhere in the close proximity thereof. This is in contradiction to the Government's reasons for making ex parte allotments. It is said that such allotments are compelled because of the obstructive attitude of the tribals. If land is not available to accommodate those declared as PAFs, it is a contradiction in terms to say that the tribals refuse to move out from the villages earmarked for submergence for which reason the Government is forced to make ex parte allotment of lands.

Apart from the defaults in the nature of omission, the authorities vested with the powers of rehabilitation have delayed acting with the promptitude expected of them. This has increased the problems of the tribals as they were either forced to stay in the villages to be submerged or being without a roof over their head and/or agricultural land which was to be their means of livelihood to begin with.

Some of the tribals still residing in the original villages have been deprived of the lands they were cultivating in the submergence areas without being placed in possession of the lands allotted to or allocable in the rehabilitation sites. Those who have received agricultural land, cultivable or otherwise, have not received legal titles for the same. And absence of legal titles concurrently with the allotment of land has often allowed errors and conflicts to creep in. This has reduced them to penury unknown to the unfortunates who had a supplemental source of livelihood in the form of forest produce, game, fish and fruits etc. As of today, none of the resettled villages has a nearby forest or river which can enable them to get something of the past which appears to have been lost for ever.

As an example of the rehabilitation sites in Maharashtra we cite the situation we found in Rozwa. It is inhabited by about 300 to 400 families. Their homes are little better than hovels. They lack potable water, condemning the women folk to walk miles to fetch a pail of drinking water. The agricultural lands allotted to some of the residents were parched, it being one of the severest summers that the region had faced in recent times. To add to the woes of the residents the MSEB without making even the electricity available had sent, bills showing consumption of thousands of units of power and calling on the tribals to pay the charges. This mindlessness of officialdom is not an isolated incidence. No wonder the people at the rehabilitated village appear frustrated.

One of the contributory factors is the absence of a master plan which ought to have been formulated by the Maharashtra Government to ascertain the precise number of PAFs and the land requirements for their resettlement, its failure to ascertain from the PAFs their option as to the resettlement in Maharashtra and/or Gujarat and the piecemeal measures taken by the Government whenever a clamour arose either for expediting the SSP (Sardar Sarovar Project) or for doing justice to the displaced tribals. A failure to prepare a master plan which was even found desirable as a prerequisite by NWDTA and the Supreme Court, is clearly a serious lapse giving rise to numerous problems including omission and underestimation of PAFs, vitiating the very process of resettlement and rehabilitation.

RECOMMENDATIONS

First and foremost, there should be a change in the definition of a PAF/oustees, to include all categories of people affected by the dam related works.

From the definition of an oustee offered in the NWDTA, it is clear that those ordinarily residing or cultivating land fall within it. Hence the application of an age-limit vis-à-vis cut-off date does not seem to have an appropriate basis in the NWDTA (i.e. only those who were 18 years as of 1-1-1987 are counted as PAFs.) What is also seen is that even those supposedly 'undeclared' by the Government, have their own agricultural land and houses as well, which will be submerged due to the project. In fact most of them own 'Ghar Pattas' and have been paying the house tax regularly. Going by the above definition, all tribals owning property or otherwise who will be affected by submergence should be counted as PAFs and be offered the same entitlements in rehabilitation.

The cut-off date for major sons/unmarried daughters should be that on which the tribal inhabitant gets his resettlement entitlements in actuality as per the Award on his removal from his home and land both included in the villages to be submerged. The date of 1-1-1987 as assumed by the Government to be the cut-off date has no bearing at all with the present realities of the life of the tribals.

Major sons and unmarried major daughters should be treated as individual units by themselves entitling them to equal rehabilitation facilities identical to those meant for the recognised head of the family. This change should be effected in the resettlement colonies as well as in the original villages with immediate effect.

For ascertaining the acreage, which a displaced agriculturist amongst the tribals has in possession and hence entitled to, unpublished official surveys of 1985-86 (which resulted in the Government Resolution of 1992) which do exist, should be treated as the base for completing the process of conferring land rights in the original villages. This should be completed presently before any further displacement takes place.

Further, on the land rights of the tribals, it ought to be said that it is the responsibility of the Government to confer on them their due rights in respect of their land holdings in accordance with their own policy resolutions to that effect and the Supreme Court ruling in the case of *Pradip Prabhu v. Government of Maharashtra*, 1995, requiring the Government so to do. It does not appear that the Supreme Court's directions have been complied with. The

Government owes the tribals the rights that they have over these lands that they have possessed for generations. This would have to be done immediately and as a pre-requisite to any further displacement. The granting of rights would have to be carried out with the understanding that even those already shifted to the resettlement colonies would get accorded their rights in the original villages and any suitable corrections in the rehabilitation entitlements would be made subsequently.

Much is made of the surveys of PAFs carried out by the Government agencies for ascertaining the true number of tribal families to be affected. From the Government side an attempt has been made to give finality to the last survey carried out. We are not satisfied with this approach. True, those not eligible for relief or rehabilitation should not be given that facility, but we find it very difficult to believe that tribals known for their honesty and integrity are falsely setting up claims so as to attain benefits to which they are not entitled. Such avarice and greed is fairly common amongst the plains' people, which may account for the Government attitude. In the case of tribals, however, it is a misplaced suspicion, except possibly in a few cases.

The formation of 'tapu' (island) and isolated villages/hamlets becoming socially unviable units is common knowledge. The State policy is quite clear on this point requiring affected persons from such villages/hamlets to be declared as 'affected' and so as to become eligible for all rehabilitation entitlements. Since this is not being done, the Government should carry out a survey with the help of the NGOs to ascertain the correct position in this respect in the region. The official list of affected tribal families should be subsequently prepared and verified in gramsabhas called in the affected villages, and the offers of similar resettlement entitlements should be made to them.

A fresh door-to-door census will prove the disparity between reality and the results of the Government survey carried out in the past and hence this new survey ought to be carried out as a matter of urgency. For this purpose it is desirable that the Government takes assistance from NGOs like NBA who enjoy the confidence of the people and from the elders of the villages to be submerged. This survey should be carried out prior to any further displacement or submergence or further increase in the height of the dam.

In the context of the resettlement of those tribals who are affected at the present height of the dam, we see many problems plaguing the process. On one hand there is no proper realistic survey of the number of tribals to be affected, while on the other there is no agricultural land available for their resettlement presently.

The process of ex parte allotment of lands is believed to be in keeping with the approval of the NCA (Narmada Control Authority). One seriously doubts if this is permissible having regard to the Tribunal Award prescribing options to the oustees. It is of course true that the oustees cannot keep resisting and refusing eviction and rehabilitation for all times to come. But the reasons for rejection and resistance have to be considered and if found justifiable upheld, with the Government being under an obligation to remedy the situation. Moreover, since the ex parte allotment is a 'deemed settlement' in the eyes of the NCA, this device ought not to be used by the Government to inflate the number of settled PAFs in the context of a pre-requisite for the permission for further progress in dam construction where in fact they have no suitable lands to offer to all the recipients of such notices. The Committee had witnessed and intimated to the concerned authorities that such notices were being issued carelessly. There surely is the case where the offers are made but there is no availability of land in the resettlement colonies.

On the occasion of the first tour we had picked out at random three notices intimating the oustees of ex parte allotments of land/house plots to them. A physical verification showed that the notices were incorrect in material particulars and this forced the collector to concede that all the 145 notices that were then issued to those PAFs affected at 90 m, could not be acted upon and that those notices will be withdrawn until after a proper scrutiny. The third tour was carried out after an interval of about a month, when instances of similar defects arising out of a wanton use of this method whereby out of 145 notices issued earlier, the Government had no land to offer to as many as 63 of them, came to our notice forcing the officers then present to concede the occurrence of mistakes. One hopes that this course will not be repeated in future. It is however learnt that without furnishing the compliance statement as was expected in relation to the previous notices, fresh notices have further been issued to 71 PAFs from amongst the 145 PAFs stated earlier.

The PAFs having agricultural land in the submergence villages should be compensated acre for acre (within the ceiling limit) and at the least a 2 hectare plot of agricultural land and a house plot of 90' x 60', as directed by the NWDTA. Building material should be given for the construction of a house to include tiles, bamboos, A/C sheets and such number of wooden posts as are considered necessary for setting apart the residential portion of the home

from the non-residential. This has to be provided as per the state Government policy immediately after shifting. The house plot should not be more than 1-2 km away from the agricultural plot allotted, except in exceptional cases with the written consent of the PAF prepared before gaonsabha.

All agricultural plots allotted or to be allotted to the oustees to be made completely cultivable at the Government expense. House plots, in a single new 'gaothan' of the oustees should be of such PAFs as are bound by ties of kinship and sub-tribal affinities as in the NWDTA. Every such 'gaothan' should have the community facilities mentioned in the Tribunal Award and the Government Resolutions on the subject.

The NWDTA has specified community resettlement by way of rehabilitation villages. The Government of Maharashtra, till now, has quite successfully pursued this principle.

Now that there is a need to purchase/acquire more land, it should be done in like manner as this principle is obligatory.

Each PAF allotted agricultural land should be immediately provided with the required quantity of water for irrigation purposes until some permanent arrangement in the shape of a water-bearing well is made separately available to the allottee of the agricultural land.

The right of the tribals in the new agricultural land and house plots will be in the nature of a permanent settlement. This is of particular importance since they should not be without legal titles to their lands in the new resettlement colonies as they were in their original villages. In the rehabilitation villages grants of agricultural lands and house plots should not be merely physical. Those rehabilitated have to be supplied the relevant title deeds and revenue papers lest the dishonest revenue staff tries to tinker with the acquisitions the tribals have made after sacrificing so much. This should be done immediately lest they are again misdescribed as encroachers, trespassers, land grabbers or squatters and the lands then be re-acquired from them by the State itself. They will however not be allowed the right to sell or encumber this property though the right of inheritance will be kept intact. The tribals be prohibited from selling, encumbering, leasing etc. of their agricultural lands except to recognised public institutions like the revenue department, nationalized banks, co-operative banks or credit societies and that for raising loans purely for agricultural purposes.

Excepting the resettlement village of Simamli in Gujarat, which offers a little satisfaction, rest of the resettlement villages from Maharashtra in particular, visited by us, lack almost all the basic facilities required for habitation, specially quality and availability of suitable agricultural land. One cannot ignore the enormous number of complaints that the Committee came to hear from the aggrieved people about having been shifted to the new sites without being provided with compensatory agricultural land. One of the greatest shortcomings is that of non-availability of water even for domestic purposes like cooking and drinking. Even in Simamli, it is not as if everything is as it should be. People have complaints but comparatively speaking it appears to be the best of the resettlement habitats that we could visit.

In regard to the facilities for providing water at the resettlement colonies to irrigate crops and for potable purposes, the document dated 14.5.2001 and received by the Committee at its meeting at Nandurbar held on 20.5.2001 from one of the officers of the Government, shows that near about 70-80 percent work remains to be done and this covers all the five resettlement villages. Needless to say this is an admission by the administration of the lack of a vital input in the rehabilitation package.

The present resettlement colonies are facing multiple problems in relation to those who have already been shifted there. Their basic problems, with regard to agricultural land and civic amenities, still remain unmet. While this situation prevails, these sites should not be burdened with further exacting demands in relation to new oustees to be shifted there. Unless those already shifted are fully cared for by resolving all their problems within a time bound framework, especially land related, there appears to be no room for further resettlement at these sites.

Moreover, it is considered that there are a certain number of people from the submergence villages who have been transported by the Government to the rehabilitation sites. The Government does not look upon them as PAFs and the shifting at Government expense is claimed to be an act of compassion inspired by humanitarian ideals. We have seen very little of humanitarianism in the dealings of the Government with the oustees. In fact that certain people were shifted from the villages to be submerged is prima facie proof that they and their forefathers were natives of the same villages and were entitled to the prescribed acreage of land whether as recorded landholders or alleged encroachers. For this reason we recommend that the distinction between 'declared' and 'non-declared'

oustees should be done away with. All those who are non-declared should be made entitled to the resettlement package of the Government. This change should also be effected in the original villages.

It is surprising that towns in Gujarat as far away as Jamnagar are said to be getting Narmada waters, while those in the so-called resettlement village of Rozwa have to do without this precious liquid for days together. At times the rest of the resettled villages have to fetch potable water from distances ranging from 2-5 kilometres. Surely, this is a strange way of inflicting misery upon injury.

Every family of a displaced tribal has a right to a steady source of income from non-traditional sources. The project is going to need a number of employees to attend to various tasks. The tribals are not entirely illiterate or unskilled. The state of the villages to be submerged indicates a high level of cooperation between the residents for the mutual benefit of all. The tribals take little from the river and the forest and are aware of the need to renew the assets they partake of. That is why the 33 villages still have an unsullied forest covering and unpolluted source of water. Their care and concern shows that the tribals have an aptitude of which use can be made by the authorities to give unto the supposed beneficiaries what has been promised to them. Each tribal family should be having a member who can easily be absorbed in Government service related to the project.

The residents of these 33 villages which are to be submerged are indigenous people who have been pushed into areas inaccessible or considered difficult by the invading plainmen. Pushed to the extreme the tribals have invested their labour and skills to eke out a fairly comfortable living. As they have been deprived of even this, it is but fair that civil society through its representatives, the legislature and executive, makes good the loss. How difficult it will be for the tribals to adjust to the new lives which they will be compelled to live cannot be really understood by those living on the labour of others. The rehabilitation villages do not have a perennial source of water or a forest nearby. As of today the tribals have very little acquaintance with the wisdom or craftiness necessary to survive in a market-dominated economy. At least two or more generations of the tribals will require sustenance in the shape of cash assistance to make up for the non-agricultural income which was at their disposal from the nearby river and forest. That is why we are going to suggest a fairly long period for the cash equivalent for the loss caused to the tribals by being deprived of fish melons and forest produce etc. This sustenance was available to every tribal without exception.

For the loss of the non-agricultural income the tribals should receive monetary compensation running over a period of at least 50 years. We are aware that what we prescribe is far less than what the tribals are entitled to. Their loss is almost irreparable. There should be an attempt to also focus on self-employment with natural resources by replacement of the lost resources. Forest lost cannot be replaced but food, fuel, fodder should be ensured at the resettlement colonies. Therefore, grazing land, fuel sources like fuel depots and adequate cultivable agricultural land wherein there be food for consumption and employment opportunities should be ensured. Land for land, minimum of 2 hectares, for each displaced family, declared or undeclared, would go a long way in achieving this.

But some amends must be made and we suggest that each project-affected nuclear family which we consider as including a man, wife and three children, all such children being below the age of 18 years, should get monetary compensation at the rate of Rs 2,000 per month. Every additional mouth should be entitled to an extra sum of Rs 400 per month. Children who have attained majority, whether with their parents or separated, shall be treated as a separate nucleus entitled to compensation on the above lines though of course, if a daughter is married and is going to get compensation via her husband, will not render her eligible to receive compensation separately. Marriages of the daughters to eligible PAPs (project-affected persons) will transfer their right to receive compensation from the father of the daughter to her husband into whose family she has moved in.

For those who have been deprived of their agricultural land and houses because of submergence but have not yet been placed in possession of culturable land and house plots, we recommend compensation at the rate of Rs 3,000 per acre per annum right from the date of ouster until being placed in undisturbed and legal possession of the new agricultural land and house plots.

The monetary compensation suggested above, shall be index-linked and shall be payable with variations based upon the annual CPI (Consumer Price Index) – the base year for this purpose being 1987.

The tribals should be paid immediately their outstanding dues in respect of the loss of their standing crops and tress which have been submerged almost every year since 1993/1994, and for which the Government has effected 'panchanamas' on every single occasion.

For the loss of the non-agricultural income, we deem it necessary to suggest that the tribals deserve compensation on this score. It may be said that they were encroachers/trespassers in the matter of collecting and selling forest produce, catching fish for either consumption or sale and raising different types of melons on the banks of the river, again for personal consumption or sale. It may also be said that the livestock and poultry that the tribals had is not something for which they deserve compensation as in any case, pasturage was from government lands. A closer look at the legal position would disabuse the common notion spoken of above. The tribals had acquired the right to collect forest produce, wood for construction and fuel, fish from the river, etc. That right is termed in law as a 'profit à prendre' called also a 'right of common'. In Black's Law Dictionary, 6th edition, profit à prendre is defined as:

A right exercised by one person in the soil of another, accompanied with participation in the profits of the soil thereof. A right to take a part of the soil or produce of the land (...) the taking (profit) is the distinguishing characteristic from an easement. (...) It carries with it the right of entry and the right to remove and take from the land the designated products or profits and also include the right to use such of the surface as is necessary and convenient for the exercise of the profit.

These rights, the tribals, according to the depositions made before the Committee, have been exercising since times immemorial. Therefore, property has been taken away from them and for this they deserve compensation. Even in relation to agricultural lands it is not enough to say that the tribals were encroachers/trespassers vis-à-vis the Akrani lands which were forests governed by the Conservation of Forests Act of 1980. As a matter of fact, at one stage a survey was begun as early as in the year 1985, with the idea of converting the so-called forest land into 'bhoodidar' rights. Suddenly the process was later reversed by a non-speaking fiat of 1994. The survey begun at this stage was under the Maharashtra Land Revenue Code and when it was suddenly reversed, the reversal apart from being illegal, was by a non-speaking notification rescinding the work already done (Government Notification No. RB/DESK/II/LND/II/475/1994 dated 7.6.1994 issued by the Office of the Commissioner, Nashik Division). We do not see how the Government is entitled to flout the laws in this fashion.

It appears that the matter has gone much further in the sense that the acreage, the boundaries and draft village papers had been virtually completed. Apparently, then it struck the Government that there would be a contravention of the Conservation of Forests Act, 1980, which is a Central legislation. Assuming that this is so, it is not as if the Government of Maharashtra is helpless. We wish to make it clear that the Sardar Sarovar Project is an inter-state undertaking with the State of Gujarat being the biggest beneficiary. The Centre's assent to the project has come fairly late and therefore, the Union Government also cannot disclaim its responsibility by saying that it is a matter concerning States over which it has no control. Art 254(2) of the Constitution of India, lays it down that where a law made by the legislature of a state with respect to one of the matters enumerated in the concurrent list contains any provisions repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the legislature of such state shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that state. There is of course, a proviso to this sub-article which enables the Parliament to enact at any time, any law, including a law adding to, amending, varying or repealing the law so made by the legislature of a state. Having regard to the equities, the least that can be done is to see that the displaced tribals get the necessary benefits to which they are entitled. To claim that they were near trespassers in forest land is a gross error. For generations these tribals have been cultivating the lands and prescriptive titles can be acquired even against the State. If the tribals and their forefathers have been in possession since the last at least 100 years if not more, it follows that they have become the owners of the said lands. The Forest Conservation Act of 1980 is not a parchment in granite which cannot be wiped out. It can be easily amended by State Legislation, which legislation will have to undergo the process prescribed by the Sub-article (2) of Article 254.

The recommendations that we wish to make hereby are not only in relation to vital matters but also in relation to other matters, which may be considered as less important, but are nonetheless equally crucial for the everyday living of the tribals. For example, the tribals do require boats for crossing the river to meet their daily requirements. As the tribals in Manibeli have pointed out, as long as there are villages with tribals residing in the valley, Government should provide free transport and boats, both ordinary and machine boats, depending on the distance for transport. Without this the tribals from almost all the villages in Maharashtra are facing a great difficulty in reaching out to places of market, health and other services, many of which are in Gujarat.

The schools presently in the submergence villages supposedly run by the Government exist merely on paper. Complaints have been made that the teachers appointed to teach in these schools never visit the institutions, though are regular in the drawing of their salaries. For this reason, at some places, it is the Narmada Bachao Andolan (NBA) which is running schools (called 'jeevanshaalas') up to fourth standard, manned by local, not

highly paid but dedicated teachers. These teachers are from the tribals themselves and the results are commendable. A good percentage of children pass fourth standard exams in good colours. Those who have passed out and gone to get education in the higher schools in places like Dhule, Malegaon, Dhadgaon, etc have again shown high performance. The Government should now support these schools with the existing staff also retained and all such facilities are provided as are meant for educational institutions existing elsewhere in the State of Maharashtra.

Most of the tribals who appeared before us had scores of grievances against the officers with whom they had come in contact with. The very fact that the Government has not been successful in persuading all the residents of the villages to be submerged to move out to the resettlement regions, is proof that the oustees have not got their promised compensations whether in kind or cash. The government has not been able to convince the tribals of its capacity to carry out the task of rehabilitation as expected.

The great divide between officialdom and the NGOs like the NBA and PSS is most unfortunate. Whatever be the reasons, the misgivings have to be removed and this can best be done if the Government in conjunction with the above-mentioned NGOs carries out the process of rehabilitation. Most important is that the two sides stop attributing improper motives to each other and cooperate to accomplish the difficult but necessary task of seeing that the displaced tribals get their dues as early as possible. In this context, where submergence and displacement have been made inevitable, it is now extremely necessary that at least those affected tribals must be fully rehabilitated through co-operation of all concerned.

The recommendations, which we make, should not be construed as a favour to the displaced tribals or a planned extravagance foisted upon a State facing financial stringency. The Sardar Sarovar Project is basically expected to yield benefits. It is but fair that those who are losing their lands and homes get a small share from the expected abundant yield. The Constitution of India in its very Preamble speaks of several values, but places first that of Justice in the social, economic and political context. If justice is required to be done to the water-starved regions of Gujarat, justice also requires that those who are making this possible get a small fraction of the goodies as their compensation, for what they are losing. The Directive Principles of State Policy may not be enforceable in any Court, but are, to use the language of the Constitution, 'nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws' (see Article 37).

Again Article 46 of the Constitution enjoins the State to promote with special care the educational and economic interests. In particular of the Scheduled Tribes and to protect them from social injustice and all forms of exploitation.

Article 300A prohibits depriving a person of his property save by authority of law and law is not merely that is found in the different codes and GRs (Government Resolutions). One has to go by the spirit and this views the expression 'property' to include any proprietary interest including a precarious interest. Here we have seen that the tribals had the river waters, the forests and the rich soiled Narmada valley agricultural lands for their exclusive enjoyment. Now that they are going to lose all this and more, it is incumbent upon the Indian people, through its representative governments to compensate the losers to the extent permissible. As it is, all manner of people deserving or otherwise, get Government handouts. Compensating tribals for the great loss they have or will sustain should not be viewed otherwise than as their just entitlement.

India is a signatory to an international convention to safeguard the interests of the tribals and recognise their age-old rights. The International Labour Organisation (ILO) Convention 107 adopted in 1957 as a 'Convention concerning the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries'. India was one of the first countries to ratify ILO 107, doing so on 29 September 1958. The Convention, with a view to safeguard the interests of the tribals, provides in Article 11:

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

Article 12:

1. The populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations.
2. When in such cases removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable

to provide for their present needs and future development. In cases where chances of alternative employment exist and where the populations concerned prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees.

3. Persons thus removed shall be fully compensated for any resulting loss or injury. (underlining ours).

ILO 107, confirms the rights of tribals over traditional lands in their possession and the mandatory guidelines for the resettlement of those who are to be displaced. However, on both counts, it appears that the Government has failed in regard to the tribals affected by the Sardar Sarovar Project. The land rights of the tribals are not only being denied but the tribals are being short-changed in resettlement too.

The tribals have lost or will be losing what was their hearth and home since umpteen generations. The loss they have sustained, quite apart from the disruption of family ties and even if restricted to things material, is enormous. That loss has to be made good. In spite of government efforts, the rehabilitation process has fallen much behind again, as never has there been an attempt to make a detailed, perfect and realistic plan. A part of the loss which the tribals have sustained, apart from the loss of family ties to community resources which is never counted in the official estimates, is also due to the non-compliance with the official policies. Now that the apex Court has permitted further construction of the dam, it should be remembered that the very apex Court has required the rehabilitation to be accomplished strictly in accordance with the norms governing resettlement as laid down by the NWDTA and State rehabilitation policy. Even the same has not been achieved with regard to those affected at 90 metres height of the dam. For this purpose we suggest that a Seven-Member Committee do function to oversee the process of rehabilitation. The Committee shall include a representative each from the NBA and PSS, and representatives of the tribal community each from the original villages and resettlement sites. The rest of the members shall be nominated by the Government from their Revenue, Forest, Tribal Affairs and Rehabilitation departments. This Committee shall meet once a month for the next two years to come and thereafter once every three months until the physical rehabilitation is completed in its entirety. It is necessary that the tribals have an additional protection in the sense of their true representatives overseeing the work of rehabilitation. For this purpose we suggest the names of M/s Manikrao Gavit, a Member of the Parliament and also a Member of this Committee, and Shri K.C. Padvi, a Member of the State Legislature from Nandurbar. These two gentlemen shall participate in the Committee meetings irrespective of whether they continue to be returned or otherwise to the legislatures of which they are presently members. We have to make it clear that Shri Gavdit is not privy to the last recommendation.

To repeat, what we have recommended is not really an extravagance; it is but a small recompense for the much that has been lost and that which will be lost in the years to come. Where lacking, the Government of Maharashtra should bring its R&R package up to the mark and it should consider improving its policy to make provisions advantageous to its own tribal citizens and superior to those pronounced elsewhere.

Government on its part should strictly comply with the conditions laid down by the Supreme Court for raising the height of the dam beyond 90 m. The present situation is such that there are still hundreds of families who are affected at 90 m and are yet to be offered any proper resettlement options. In this regard, the contradictions between the ground reality and the figures furnished by the Government are eloquent and it will be necessary for the Government to correct its figures. Since the earlier data has been placed before the Narmada Control Authority on the basis of which certain vital decisions were taken, the correct version should also be notified to the NCA. The Government should not use incorrect information merely because a stamp of finality has been conferred upon it at the Mantralaya level. In any case we would like to bring to the Government's notice its responsibility to see that it does not accept any proposal to raise the height of the dam beyond its existing height of 90 m unless the obligations laid down by the NWDTA and Supreme Court are fulfilled as a whole in regard to those PAFs affected at 90 m and yet to be resettled. The Government should also see to it that the process of shifting people conforms precisely to the permitted raise in the height of the dam.

The contradictions between official information coming from different sources indicates that all is not well with the collection of information by the Government agencies. It is necessary that the Government for its own honour garners accurate and incontrovertible evidence on basic facts like the number of project affected persons and families, exact acreage of agricultural lands required for the oustees, the number of house plots and building material to be made available and the incidental details. If correct data be assembled, it will be a great aid in the rehabilitation of the displaced tribals. In collecting this information, the Government should not pressurise the local officials by giving them impossible deadlines. The local officials are short of hands and the tasks they have to carry out are onerous. Increasing the pressure on them to furnish this or that detail by a deadline will only

aggravate that problem. What we suggest is that hereafter any process of development proposed to be carried out by the Government will be done in effective collaboration with the 'gramsabhas' of the villages. It should be remembered that the tribals lack the skills to communicate with the officialdom, which also has a tendency to ignore their grievances. For this reason assistance provided by the NGOs like the NBA should be solicited and welcomed. The 'gramsabhas' of each tribal village, specially convened for the purpose, shall collect the relevant factual material within a reasonable period and verify its correctness or otherwise before the same is transmitted to the Government. This information should prevail over the statistics prevailing at the Mantralaya level. The Government should furnish every tribal written information in the form of an official leaflet detailing entitlements to project-affected families.

The master plan, as described herein, should be presently prepared in the form of a draft and widely publicised amongst the people and their sympathisers and finalised after due deliberations.

The assistance to be rendered by or taken from the NGOs should be on par with that provided in the policy documents for rehabilitating the population affected by the earthquake which took place on 30 September 1993 in the district of Latur in Maharashtra; where it was made obligatory on the part of the government agencies to seek meaningful assistance from and participation of the NGOs. Government should seek cooperation of the NGOs because they command the confidence of the people unlike the Government officials for whom rightly or wrongly, there is distrust.

The recommendations in relation to compensation whether in cash or kind shall be in addition to and not treated as a substitute for compensation suggested by the Tribunal, the Government and the NCA recommendations.

The recommendations that we may have made, if accepted, should be incorporated into either a legislation or a government resolution. This will prevent errors of omission and commission and give the administration as also the affected people an instrument to adhere to.

We hope the Government will accept our recommendations in toto and that in particular it shall publish this Report as early as possible.

We are grateful for the assistance rendered to us in the discharge of our duties by the officers of Maharashtra and Gujarat Governments, in particular those from the areas and sites we have visited. Further, we would like to thank the representatives of the NBA and PSS for the assistance rendered by them in enabling us to get a proper perspective of what has been done and remains to be done.

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